**WSU RESEARCH FACILITIES USE AGREEMENT**

For Use of WSU Facilities by Non-WSU Entities

**Name and Address of WSU Facilities:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 (Hereinafter referred to as “Facility”)

Research/Testing Plan entitled \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and described in **Attachment A— Research/Testing Plan, hereinafter referred to as “RTP”,** shall be conducted in the Facility. The RTP must be approved by WSU in writing prior to commencement as being consistent with purposes, intended uses, and capacity of the Facility.

Washington State University (hereinafter referred to as “WSU”), hereby agrees to permit [name and address of Company leasing facilities], hereinafter referred to as (“Company”), to use the Facility beginning on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and ending on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “Term”) during normal WSU operating hours unless specifically indicated otherwise in the RTP.

In consideration for WSU permitting Company to use the Facility, and intending to be legally bound, Company hereby agrees as follows:

**1. Space, Charge & Additional Fees**

**1.1** Company shall have the right to utilize that portion of the Facility described as \_\_\_\_\_\_\_\_\_\_\_\_\_\_ located in the \_\_\_\_\_\_\_\_\_\_\_\_ building, in room #\_\_\_\_\_\_, as shown in the RTP. Company accepts the Facility in its condition “as is” with all faults, and shall have no right to make any changes or modifications to the Facility.

**1.2** Company shall pay to the WSU, in advance, a facility use charge, hereinafter referred to as “Charge” for the non-exclusive use of the Facility. Commencing on ­­­­­­­­­­\_\_\_\_\_\_\_\_, the amount of [$2.48 x number of months x number of square feet ($29.77/annual sqft)] will be due on the first day of each calendar month during the Term of this Agreement. Payments shall reference the ORSO number of this Agreement, be made payable to Washington State University, and be sent to Office of Research Support & Operations – WSU, PO Box 641060, Lighty Ste. 280, Pullman, WA 99164-1060.

**1.3** In addition to use of the Facility, Company shall have the right to use such equipment and supplies/materials for an additional payment (“Additional Charges”) as determined by the WSU department responsible for the management of such equipment and supplies/materials. The WSU department shall manage the billing and collection of such Additional Charges. Additional charges due under this Agreement are as follows: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**2. Use of Facility**

Use of the Facility by Company for the RTP shall be subject to the following terms and conditions:

**2.1** Company shall conduct all the RTP in accordance with all state, federal, local and WSU laws, rules, regulations, policies and procedures including but not limited to regulatory compliance. Company shall provide written evidence to WSU’s Contact listed in Article 9.1, indicating that Company has obtained all regulatory approvals and permits necessary or appropriate in WSU’s judgment to conduct the RTP, provided that this provision shall not be interpreted to require WSU to provide the services of any regulatory compliance bodies or committees in connection with the RTP.

**2.2** All Company personnel conducting the RTP shall successfully complete all WSU required training and/or certification through and with the guidance of the WSU personnel as outlined in RTP.

**2.3** Company shall not make any changes or modifications to the Facility, equipment or grounds utilized in connection with the RTP without the prior written approval of WSU. Company shall be responsible for any and all damage to the Facility, equipment, grounds, and/or personal property therein resulting from Company’s use. Company shall be solely responsible for the design, installation, and maintenance hereunder of any improvements to meet the requirements of the Americans with Disabilities Act (ADA) on the Facility for its clients and employees and recognizes that its services must be provided in a manner consistent with the ADA and in accordance and with the approval of WSU.

**2.4** All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public areas of WSU premises, including the Facility, must be kept unobstructed by Company and must not be used by Company for any purpose other than entrance or exit from the premises or the Facility.

**2.5** Company waives all rights of quiet enjoyment. The Company is not the sole user of the Facility and shall allow WSU employees and agents to access to the Facility at any time. Company’s use of the Facility for the RTP shall be based on availability as determined by WSU in its sole discretion and must not disrupt normal operations or WSU’s needed use of the Facility. Company will cease use of the Facility if WSU determines it needs use prior to the scheduled end time of Company’s use, so long as WSU provides at least a twenty-four (24) hour notice to Company and WSU credits the Company’s Charges for the associated loss of use. It is agreed that WSU’s personnel will be present daily to permit access to the Facility and will secure the Facility at the conclusion of each day.

**2.6** By taking possession of the Facility, Company will be deemed to have accepted the Facility in its current condition, strictly on an “AS-IS” basis. Company acknowledges that neither WSU nor its agents or employees have made any representations or warranties as to the suitability or fitness of the Facility for the conduct of Company’s business or for any other purpose. WSU shall have no obligation for any modification or improvement of the Facility and/or other equipment.

**2.7** No use shall be made or permitted to be made or acts done in, by or through the Facility or other WSU premises, which are unlawful, constitute interference with the safe and efficient operation of the Facility or WSU premises or which are inconsistent with this Agreement. Company shall not commit, or cause to be committed, any public or private nuisance within the Facility or on WSU premises, nor, without limiting the generality of the foregoing, shall Company allow the Facility or WSU equipment or premises to be used for any improper, immoral, unlawful, or objectionable purposes.

**2.8**  This Agreement is specific to the Company and its employees and the Company shall not assign this Agreement nor allow any other person, group or entity to use the Facility, equipment, or other space during the scheduled time(s) without the prior written consent of WSU.

**2.9** Any Company owned Property left in the Facility shall, after a period of ten (10) days from the last day of the Term, be deemed abandoned and shall become the property of WSU to be disposed of or utilized at WSU’S sole discretion. Costs of disposal of any Property or materials left in the Facility will be the responsibility of the Company and WSU will be compensated by Company for such expenses, if required.

**2.10** Company understands that use of the Facility may involve exposure to potentially hazardous conditions and materials, including, but not limited to: chemical, biological, mechanical, electrical, thermal, and/or, radiation hazards. Company shall plan and perform Company Research in such a way so as to ensure Company’s personal safety as well as the safety of others in the Facility community. The Company will be responsible for assuring compliance with Federal, State, and local laboratory safety regulations and practices before being allowed to use the Facility and operating potentially hazardous dangerous equipment required by Company’s work. The Company shall be responsible for Company’s personal safety. If Company brings its own hazardous materials or creates new hazardous conditions in the Facility, Company shall provide a complete list of the hazardous materials and conditions to WSU chemical representative, named in RTP, one week prior to the first date of the Term above. Company assures WSU, by signing this Agreement, that Company’s knowledge of hazardous materials and conditions and general laboratory practice is advanced enough to permit the safe execution of the RTP.

**2.11** Company shall be responsible for proper disposal, handling, monitoring and recording of any toxic and/or hazardous waste generated by and/or from any of its uses hereunder of the Facility and if required, any needed licenses or compliance approvals for such duties. Company shall maintain complete records concerning such toxic and/or hazardous waste, which records shall be made available for reasonable review and copying by WSU upon written request by WSU. Company's use, occupancy and activities on the Facility, unless specifically agreed to in writing by WSU, shall not exceed those of a conditionally exempt small quantity generator as defined by EPA Waste Disposal rules and regulations. Company shall not be responsible or liable for any existing environmental hazard(s) on the Facility. Note: Requirements and information about Biological and radioactive wastes may be obtained from the WSU Biosafety and Radiation Safety Offices.

**2.12** Company shall be responsible for the coordination, notification, identification, cleanup, and decontamination of personnel, equipment, facilities, air and surface sampling and monitoring and waste disposal, resulting from the release of Company’s hazardous materials that impacts WSU facilities, equipment, or personnel.  Company understands that Company facilities, equipment or personnel may be adversely affected by the release of WSU hazardous materials from WSU work conducted in the Facility which may impact Company facility, equipment, or personnel.  Company will not hold WSU financially or legally responsible for any such impact on Company facilities, equipment, or personnel. Company accepts full responsibility for the risk and impact of conducting work in the WSU research Facility including any injuries, harms, and/or occurrences which could negatively impact Company and/or its employees and/or its representatives.

**3. Maintenance and Operations of the Facility**

**3.1** Company shall have no obligation for any modification or improvement to the Facility and/or other equipment. Company shall maintain the Facility in a good, clean, and orderly condition and repair consistent with the nature and state thereof as of the execution of this Agreement. Company hereby waives all right to makes repairs at WSU’s expense. Company shall contact WSU Maintenance at 335-9000 immediately upon discovery of any system failures, fluid leaks, damage, etc. to WSU facilities. WSU shall have the right to enter the Facility at reasonable times, without notice, for the purpose of making necessary inspections, repairs, and/or maintenance.

**3.2** WSU shall be responsible for the routine janitorial care of the Facility normally provided WSU. WSU shall also be responsible for all maintenance of the Facility and WSU premises and property, except Company’s equipment and personal property.

**3.3** WSU shall furnish such electrical and heating, ventilation and air conditioning, water and sewer services to the Facility as may, in the WSU’s reasonable judgment, be required for the use of the Facility. Company agrees that WSU shall not be liable for failure to provide such services during any period when it uses reasonable diligence to supply the same: it being understood that WSU reserves the right to discontinue services temporarily as may be necessary, due to accident, unavailability of employees, strikes, equipment failures, utility outages, repairs, alterations or improvements, acts of God, or any other event beyond the control of WSU. Company will minimize or eliminate energy waste by actively managing their energy use such as shutting off Company equipment or devices when not in use, keeping windows closed, shutting fume hood sashes when not in use, etc. Once-thru cooling systems using domestic water are prohibited unless specifically approved in writing by WSU.

**4.** **Insurance**

**4.1** Prior to Company’s use of the Facility, Company shall furnish, to the WSU Contact listed in Article 9.1, an appropriate and current certificate of insurance evidencing that there is presently in effect a policy of commercial or comprehensive general liability insurance, including public liability and property damage, written by an insurer authorized to do business in the state of Washington, and in an amount of at least one million dollars ($1,000,000) per single occurrence, two million ($2,000,000) aggregate limit. This insurance coverage must be primary and non-contributory, and Company agrees to name as an additional insured on such policy, WSU, its officers, employees and agents.

**5.** **Indemnification**.

**5.1** Company hereby agrees to indemnify, defend, and hold WSU, its employees, and agents, harmless from any and all liability, loss, damages, (including consequential damages), costs, or expenses, including attorneys' fees, on account of injuries to persons or property of WSU or of Company or any other person rightfully within the Facility for any purpose whatsoever, where the injuries are caused by the act, omission or negligence of Company, its agents, its employees, or its invitees, or by any person in the Facility or WSU premises with Company’s consent, other than WSU, its agents, or employees or where such injury occurs as a result of the violation of the provisions of this Agreement by any such person.

**6. Surrender and Holding Over**

**6.1** Upon termination of this Agreement, either by lapse of time or otherwise, Company shall peaceably surrender the Facility in good condition and repair, except for ordinary wear and tear. Company shall remove all personal property (including all hazardous materials) installed by Company upon such termination and shall repair all damage to the Facility caused by such removal. Company will provide documentation that hazardous materials decontamination has been accomplished in accordance with Federal, State, Local, and University laws, regulations, policies and procedures. Company will have no right to remain in possession of all or any part of the Facility after the expiration of the Term.

**6.2** If Company remains in possession of all or any part of the Facility after the expiration of the Term, with the express or implied consent of WSU, (i) such use will be deemed to be a use for which the Company will be billed at the discretion of WSU; (ii) such use will not constitute a renewal or extension of this Agreement for any further Term; and (iii) such use may be terminated by WSU upon the earlier of thirty (30) days prior written notice or the earliest date permitted by law. In such event, monthly Charge may be increased to an amount equal to one hundred fifty percent (150%) of the rate indicated in Article1.2 or as determined by WSU. Such use will be subject to all other terms, conditions, and covenants contained in this Agreement.

**6.3** Company shall indemnify WSU against all liabilities and damages sustained by WSU by reason of such retention of possession, including, but not limited to, any reasonable amounts due to or reasonable losses of WSU occasioned by any third party to whom WSU has agreed to allow access to the Facility. The provisions of this article shall not constitute a waiver by WSU of any re-entry or other rights of WSU under this Agreement or by law.

**7. Termination**

**7.1** Either WSU or Company may terminate this Agreement with not less than thirty (30) days prior written notice to the other. If WSU terminates because Company has violated the terms of this Agreement, or because Company participants, employees, or attendees have violated laws or WSU policies, the Company is obligated to make full payment of all fees under this agreement. Otherwise, termination by WSU shall result in a pro rata refund of the applicable fee, based on the portion of the use period that was actually used but less any expenses incurred by WSU.

**8. Research and Intellectual Property Rights**

**8.1** Company acknowledges that Company is responsible for Company’s Research and that WSU neither warrants nor assures Company’s project success. WSU makes no prior claims to inventions developed in the Facility solely by Company employees and/or representatives during the period of Company use unless it determined that WSU has a basis for an intellectual property claim, besides the use of WSU’s facilities, on the Company project. WSU makes no additional provisions, outside of WSU Policies and Procedures and Faculty Manual, to protect Company’s intellectual property. Company agrees not to provide its proprietary information to WSU staff or other Facility users; WSU will consider entering into non-disclosure agreements, on a case-by-case basis, if WSU needs to know Company’s proprietary information in order to determine whether or not the Facility can safely accommodate the proposed process or material.

**8.2** Should WSU require the protection of WSU or WSU Sponsor’s intellectual property and/or any rights associated to such intellectual property, Company agrees to enter into non-disclosure agreements or other required agreements to ensure Company understands the requirements for use of the Facility and the nature of the work conducted in such Facility.

**9. Notices**

**9.1** If any employees of WSU are, or are to become, owners, officers, directors, employees, board members, or otherwise in another management position or participating in the day-to-day operations of Company, Company understands and agrees to promptly notify WSU within 10 days at orso@wsu.edu.

**9.2** Any notice or communication required or permitted under this Agreement shall be delivered by overnight courier, or by registered or certified mail, or postage prepaid, by personal hand-carried delivery, or by electronic mail and addressed to the party to receive such notice at the address given below or such other address as may hereafter be designated by notice in writing. Notice given hereunder shall be effective as of the date of receipt of such notice:

**WSU:**

Name/Title: Office of Research Support & Operations Phone: (509) 335-9661

Address: Lighty Bldg. Ste. 280 Fax: (509) 335-0890

Address: PO Box 641060 E-mail: orso@wsu.edu

City/State/Zip: Pullman, WA 99164-1060

**COMPANY:**

Name/Title: Phone:

Address: Fax:

Address: E-mail:

City/State/Zip:

**10. Governing Law**

**10.1** The laws of the state of Washington shall govern the terms of this Agreement.

**11. Complete Agreement**

**11.1** This Agreement, including all exhibits, supersedes any and all prior written or oral agreements and there are no covenants, conditions or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved by the authorized representatives of the parties.

WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed as of the date set forth herein by their duly authorized representatives.

**WASHINGTON STATE UNIVERSITY [Company]**

Name: Name:

Title: Authorized Institutional Official Title:

Date: Date:

**I have read and understand this Agreement and the obligations it communicates:**

Name: [Lead PI of WSU Lab] Name: [Chair of WSU Department]

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:

Date: Date:

**Attachment A— Research/Testing Plan**

[A Research/Testing Plan (RTP) must include, at a minimum, (1) a description of the research which will take place within the WSU Facility, (2) a description of how the WSU Facility will be used, (3) the necessary approvals for the proposed research, (4) the identification of any special equipment or materials needed for the research, and (5) a disposal plan for all research-related materials. Further, the individual contacts noted below for WSU should be listed in the RTP.]

Training Coordinated through: [Name of WSU individual--Chair/Director recommended]

Facility scheduling and Access: [Name of WSU individual--Can be WSU Professor or administrator]

Operating Hours Outside of Normal WSU Operating Hours: [List hours which are outside of WSU normal operating hours for the Facility which the Company wishes to have access to the Facility.]

WSU Chemicals Representative: WSU Environmental Health and Safety Office

List Company Individuals that will utilize the WSU Facility: [Names of Company individual(s)]