**EQUIPMENT / INSTRUMENTATION USE AGREEMENT**

THIS RESEARCH EQUIPMENT / INSTRUMENTATION USE AGREEMENT (Agreement), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ (Effective Date), is by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Company), a corporation duly organized under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_ with a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and The City University of New York (CUNY), on behalf of the Graduate School & University Center Advanced Science Research Center (ASRC), located at 85 Saint Nicholas Terrace, New York, New York 10031. Company and CUNY are each a party and collectively, the parties.

1. Purpose.

The ASRC is a research facility dedicated to collaborative, interdisciplinary work in neuroscience, nanoscience, photonics, structural biology and environmental science. Its core facilities house state-of the-art equipment and instrumentation designed to support investigation into these and related disciplines. Subject to relevant federal, state and local law, regulation, CUNY policy and the terms and conditions set forth below, CUNY makes certain ASRC property available to non-ASRC scientists, as a service to the research community.

This is to acknowledge CUNY’s receipt of Company’s request to use the instrumentation and equipment located at the ASRC \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Facility).

1. ASRC’s contact at Company for purposes of notice and coordination shall be \_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
2. Company’s contact at ASRC for purposes of notice and coordination shall be \_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Company and Company’s scientists (collectively, Users) understand and agree to the following terms and conditions.

1. Access.
2. Access to and use of the Facility is subject to availability, which is determined in ASRC’s sole discretion. As non-ASRC researchers, students or staff, Users understand and acknowledge that ASRC scientists conducting research within the scope of their service to CUNY have priority over Users’ access to equipment or instruments in the Facility.
3. Users understand and agree that the time during which they may access the Facility shall be determined by the ASRC, and may be terminated in ASRC’s discretion. See CUNY Policy Manual 4.02 <http://policy.cuny.edu/wp-content/uploads/sites/6/page-assets/general-policy/Policy-4.02-Facilities-Use-approved-by-BOT-120417.pdf>. ASRC may immediately terminate Users’ access to all areas of the building in its sole discretion in the event of continued nonpayment or if Users breach any of the warranties or representations set forth in Paragraph 5 below.
4. Compensation.
5. In consideration for its use of Facility equipment and instrumentation, Company shall pay ASRC $\_\_\_\_\_\_\_\_\_\_\_\_, in accordance with the fee and cost schedule set forth in Exhibit A. CUNY may increase its per diem fees for space and services annually after the first year of the term, and shall provide at least 30 days written notice thereof.
6. ASRC shall submit all invoices for fees and costs incurred directly to \_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Accounts Payable, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

C. Payment to the “Graduate Center Auxiliary Enterprise Corporation” within 30 days of receipt of ASRC’s invoice shall be by credit card, money order, certified or bank check, or via ACH payment sent to

The Graduate Center Auxiliary Enterprise Corporation

The Graduate School and University Center

365 Fifth Avenue, New York New York 10016-4309

Reference: ASRC \_\_\_\_\_ Facility / \_\_\_\_\_[User]\_\_\_\_\_

Attn: Auxiliary Enterprises, OSEEP Room 9113

|  |  |
| --- | --- |
| ABA Routing #: | 021000089 |
| Bank Name: | Citibank |
| Bank Address: | 1065 Avenue of Americas, NY NY 10018 |
| Bank Telephone: | 917.746.4468 |
| Bank Fax: | 646.374.3708 |
| Account Name: | CUNY Graduate School and University Center Auxiliary Enterprises Corp. |
| Account Number: | 6797888429 |

Any amounts due and owing by Company to ASRC shall bear interest at the rate of 1.5% per month or portion thereof, until such amount is paid.

1. Term.

The term of this Agreement shall commence on the Effective Date and, unless earlier terminated or extended by mutual written agreement of the parties, shall expire \_\_\_\_\_\_\_ from the Effective Date. Either party may terminate this Agreement for any or no reason on 60 days prior written notice to the other party without further liability to other than payment for fees, costs and materials used to date, as set forth in Exhibit A.

1. User Obligations.
2. Users represent and warrant that they have received and understand information about the safe use of the ASRC Facility, including its safety training and User policies. Users represent that they are trained in Facility safety protocols and the prudent operation of the particular equipment and instruments required by their work; maintain health insurance and all appropriate licenses, approvals and certifications, and state that their knowledge of laboratory practices is sufficient to permit the safe pursuit of their research objectives at the Facility. Users agree to abide by all ASRC equipment use and safety provisions, relevant CUNY policies and procedures, and shall comply with any supplemental training or testing that CUNY may require for continued access to the Facility.
3. Users shall be responsible for: (i) obtaining all approvals, authorizations and human subject informed consent required by federal, state or local law before their research begins; (ii) maintaining the integrity of their data and findings; and (iii) ensuring that Facility equipment and instruments are operated in a safe and professional manner, and used only under scientific supervision within the scope of the stated research objectives. Users shall immediately notify the ASRC if they receive or become aware of information reasonably suggesting any unanticipated Facility equipment or instrumentation effect occurring during their research, including but not limited to injury or malfunction.

1. Users acknowledge that they are solely responsible for the progress and results of their research project and that ASRC MAKES NO PROMISES OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ABOUT THE OUTCOME, RESULTS OR SUCCESS OF THEIR WORK, INCLUDING WITHOUT LIMITATION WARRANTIES WITH RESPECT TO THE ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH RESULTS, REPORTS AND OTHER MATERIALS.
2. Users will not under any circumstances schedule time for access to or use of the Facility by any other person or entity under Users’ name; give out Users’ name or password for use of the Facility by any other person or entity; provide others with Users’ access swipe card, or otherwise enable other users to access to the Facility at any time.
3. Users certify that where appropriate, The Graduate Center Advanced Science Research Center \_\_\_\_\_\_\_\_\_\_ Facility will be acknowledged in any scientific publications or presentations that result from work performed at the Facility or with Facility staff.
4. Materials / Duty of Care.
5. ASRC may make available to Users biological, chemical or other materials supplied to the ASRC by third party manufacturers, at cost. Materials supplied in this fashion may have hazardous properties. ASRC IS SUPPLYING THOSE MATERIALS TO COMPANY WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. THERE ARE NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS.
6. Users shall exercise due care in the operation, use and maintenance of all Facility equipment and instrumentation, and shall not use them in any manner that would be in breach of applicable law, regulation or governmental directive, or that would violate the terms of a manufacturer’s warranty or operational standards for use of the equipment. Users shall maintain the equipment in good condition, repair, appearance and working order as when first made available for use, ordinary wear and tear excepted. ASRC, BEING NEITHER MANUFACTURER OR SUPPLIER, SHALL NOT BE LIABLE FOR STOPPAGE, LOST DATA, COMPUTER HARDWARE OR SOFTWARE DAMAGE, FAILURE OR MALFUNCTION.
7. Intellectual Property.
8. All documents, data, information, biological, chemical or other materials controlled by Users and all associated intellectual property rights shall remain the exclusive property of the Company and/or Users, in accordance with Company policy. CUNY and Company shall each retain all right, title and interest in any tangible or intellectual property, patent, patent application, trade secret, know-how, technical information, data or other proprietary right that was owned by that party before the Effective Date, and no implied license grant or assignment, by estoppel or otherwise, shall be inferred from this Agreement.
9. CUNY shall make no claim to intellectual property created by Company based on Users’ use of the Facility without contribution of ASRC staff or use of CUNY proprietary or confidential information.
10. Company warrants and represents that it has the right to use, without liability to others, the ideas, inventions, works, processes, designs and methods that it will employ during its research project and further warrants that it will not knowingly infringe any patent, copyright, trade secret or other proprietary right of any third party.

8. Confidential Information.

1. The phrase ‘confidential information’ includes all information that Company or ASRC treats as confidential or proprietary, whether or not labeled confidential. Confidential information of a disclosing party shall not include information that is (i) known to the receiving party at the Effective Date and not subject to prior confidentiality obligation of the receiving party; (ii) publicly known at the Effective Date or later publicly known under circumstances involving no breach of this Agreement; (iii) disclosed to others by disclosing party without restriction as to disclosure and/or commercial use; (iv) disclosed to the receiving party by a third party as a matter of right and without restriction on such disclosure, or (v) independently developed by the receiving party, as evidenced by its written records.
2. Each party shall take reasonable measures to avoid disclosure and unauthorized use of the other party’s confidential information. Without limiting the foregoing, each party shall take at least those measures it employs to protect its own confidential information. If one party becomes legally compelled to disclose any confidential information that it received from the other party, the receiving party shall provide the disclosing party prompt written notice, cooperate with the disclosing party in seeking an appropriate remedy and furnish only that portion of the confidential information that is legally required to be disclosed.

9. Indemnification.

1. Users assume all risks and liability arising from their use of and access to the Facility, and acknowledge that they will be financially liable for damage to equipment or other property resulting from their negligence or willful misconduct. Users understand that use of Facility equipment and instrumentation may involve exposure to potentially hazardous conditions including but not limited to chemical, mechanical, electrical, thermal and radiation hazards. Users release, indemnify, and hold harmless CUNY, its agents and employees from any and all claims, damages, costs (including reasonable attorney’s fees) and liabilities arising out of Users’ use of the Facility, except to the extent that such claims, damages, costs and liabilities directly arise from the negligence or willful misconduct of CUNY, its agents or its employees.
2. ASRC has no responsibility for Users’ personal property, including but not limited to materials, devices, notebooks, chemicals, glassware or other supplies, or any intellectual property or proprietary or confidential information residing therein.
3. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOST PROFITS, LOST OPPORTUNITIES OR ANY OTHER INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES IRRESPECTIVE OF THE THEORY UNDER WHICH SUCH ACTION IS BOUGHT.

10. Insurance.

Company shall maintain during the term of this Agreement the following minimum insurance coverage with companies satisfactory to CUNY, at no cost to CUNY:

A. Workers' Compensation Insurance: New York State Workers' Compensation coverage limits on behalf of all Company employees on ASRC’s premises or using Facility equipment or instrumentation.

B. Employer's Liability Insurance: $1,000,000 per accident on behalf of all Company employees on ASRC premises or using Facility equipment or instrumentation, for whom Workers' Compensation coverage is not a statutory requirement.

C. Commercial General Liability: $1,000,000 combined single limit for bodily injury and property damage, with an aggregate minimum of $3,000,000. Such insurance shall name The City University of New York, the City of New York and the State of New York, and those additional persons or entities required by CUNY from time to time, as additional insureds.

D. Umbrella or Excess Liability Insurance: Coverage of not less than $5,000,000.00. Such insurance shall name The City University of New York, the City of New York and the State of New York, and those additional persons or entities required by CUNY from time to time, as additional insureds.

Company shall furnish a certificate of insurance and endorsements to CUNY immediately on request. Such policies must provide that insurance coverage may not be cancelled or modified without advance written notice to CUNY. Failure to provide insurance as required in this Paragraph 10 is a material breach of contract entitling CUNY to immediately terminate this Agreement.

11. Export Controls.

Company agrees to comply fully with all relevant export laws and regulations of the United States, including, but not limited to, the U.S. Export Administration Regulations, administered by the Department of Commerce, Bureau of Industry and Security (U.S. Export Controls). Without limiting the generality of the foregoing, Company expressly agrees that it will not export, directly or indirectly, re-export, divert, or transfer any direct product of the equipment and instruments made available to it under this Agreement to any destination, company, or person restricted or prohibited by U.S. Export Controls.

12. Miscellaneous.

1. This Agreement shall be governed by the laws of the State of New York, without regard to its choice of law rules. The parties unconditionally submit to the exclusive jurisdiction of New York courts, state and/or federal, in all matters relating to this Agreement.
2. In executing this Agreement, the parties intend to create an independent contractor relationship. Nothing herein shall be construed as creating a partnership, a joint venture, an agency or other relationship.
3. Neither party shall assign its rights or obligations under this Agreement, in whole or in part, by operation of law or otherwise, without the prior express written consent of the other party. Any purported assignment in violation of this section shall be null and void.

## This Agreement and attached Exhibit A sets forth the entire agreement between the parties with respect to its subject matter and is intended to supersede all prior written or oral negotiations, understandings and agreements. No change, modification, extension or termination of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of the parties. The failure of either party to enforce at any time any provision of this Agreement shall in no way be construed to be a waiver of that provision or affect the validity of this Agreement or affect the right of either party to enforce each provision in accordance with the terms of this Agreement.

## The provisions of this Agreement which by their nature or intent are to survive the termination or expiration of this Agreement shall so survive and continue in effect.

1. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but together shall constitute one and the same instrument. The Agreement may be delivered electronically or by facsimile transmission, and the parties agree that pdf or facsimile signatures are legal, valid and enforceable as originals.

IN WITNESS WHEREOF, the parties, by their authorized representatives, have executed this Agreement on the dates set forth below.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ THE CITY UNIVERSITY OF NEW YORK

GRADUATE SCHOOL & UNIVERSITY CENTER

ADVANCED SCIENCE RESEARCH CENTER

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Name:

Title: Title: Vice President, Finance & Administration

Dated: Dated:

Read and acknowledged:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Principal Scientist

**EXHIBIT A**

I. Schedule of fees and costs

* website link (if available & updated)
* hourly / bulk rate
* equipment / instrument / supply / support costs
* payment schedule

II. Detailed statement of work

* specific facilities and equipment required
* schedule of usage
* activities to be performed
* timetable for (duration of) performance
* special instructions or handling requirements

III. Disposition of material / samples / specimens

* End of term
* Accomplishment of research objectives
* Depletion of materials