# Research Facility Use Agreement

This Research Facility Use Agreement (“Agreement”), effective as of MMM DD, 2022 (the “Effective Date”), is entered into by and between University of Guelph located at 50 Stone Road East, University of Guelph, ON N1G 2W1 (“University”) and Company Name, a private company with its principal place of business at Company Address (“User”).

**WHEREAS**, at the request of User, University is willing to grant to User permission to use the equipment and facility owned by University described in Appendix “A” (the “Facility”) for User’s self-directed research and/or development projects described in Appendix “A” (“Purpose”); and

**NOW THEREFORE**, in consideration of the following mutual undertakings and commitments, the parties agree as follows:

# Permission to Use the Facility

* 1. University grants User a limited permission to use the Facility only for the Purpose:
	2. User’s rights to use the Facility shall commence on the Effective Date and continue until the earlier of \_End Date\_ (“End Date”) or the date of termination in accordance with Section 10.9.
	3. User’s use of the Facility shall be supervised by [Robert Swan] (“User Supervisor”) in accordance with the terms of this Agreement. If, for any reason, this individual is unable to continue to serve as User Supervisor and a successor acceptable to both University and User is not available, University may terminate this Agreement as provided in Section 10.9.
	4. User shall provide to University a list of all User employees and other agents (together, “User Personnel”) whom User intends to allow to use the Facility before such use commences. No User Personnel shall be permitted to use the Facility until User has identified such User Personnel to University. Further, no User Personnel shall be permitted to use the Facility until User has demonstrated to University’s satisfaction that the User Supervisor and each of the User Personnel has the qualifications, training and expertise necessary for safe use of the Facility and to carry out the Purpose including, but not limited to, laboratory safety training, introductory bio-safety training, WHMIS training (University is entitled to require User Personnel to provide documentary evidence of such qualifications, training and expertise before allowing User Personnel access to use the Facility and carry out the Purpose).
	5. User shall ensure that the User Supervisor and User Personnel: (i) are in good standing with the User (User will notify University immediately of any change in employment status of User Supervisor and User Personnel), (ii) do not allow unauthorized persons to use the Facility; and, (iii) carry identification (and display when requested by University staff) when using the Facility and follow any sign-in procedures.
	6. User, User Supervisor, and User Personnel are prohibited from accessing or using any University premises (except of those available for use by the general public) or any University facilities and equipment other than the Facility.
	7. During the terms of this Agreement, User may request the opportunity to use the Facility. Such requests shall be directed to the University representative who is designated to receive notices under this Agreement on behalf of University. Upon receiving a request from User to use the Facility, but subject always to University’s own requirements to use the Facility as the first priority, University shall use reasonable efforts to schedule times for the User to use the Facility. User Personnel shall use the Facility only in accordance with the scheduled times, and only when a University representative or his/her designate is able to respond promptly to any emergency (e.g. injury, fire) that may arise at the Facility. User Personnel shall not carry out the Purpose alone or outside of normal working hours on regular working days (i.e. weekdays between 8:30 a.m. to 4:30 p.m., excluding statutory holidays in Ontario), unless permitted in writing by the University representative (email exchange acceptable), subject to an assessment of the work and completion of an appropriate safety plan for working alone or outside of normal working hours on regular working days and compliance with University policy.

1. **Fees and Costs.**
	1. User shall pay the fees for use of the Facility which are outlined in Appendix “A” (“Usage Fees”). If desired by User, technical assistance in utilizing the Facility may be provided by University personnel subject always to the schedules of University personnel. The hourly rate for technical assistance provided by University personnel is set out in Appendix “A” (“TA Fees”). In addition, User shall pay for the cost of any University-supplied consumables used by User.
	2. **Invoicing.** University shall keep an accurate record of User’s use of the Facility, technical assistance provided to User, and of User’s consumption of consumables. At the end of each month, University shall prepare and send an invoice to User specifying the Usage Fees and TA Fees, and the costs of consumables used by User during the month then ending. User shall pay the invoices rendered by University in accordance with the terms of such invoices, provided that:
		1. all payments shall be made by cheque (or, if directs, by electronic funds transfer in accordance with UNIVERSITY's written instructions) within thirty (30) days after the date of receipt of each invoice; and,
		2. if payment is made by cheque, each cheque shall be made payable to the “University of Guelph”, reference the name of the Principal Investigator, invoice number and be delivered to Research Financial Services, Level 4 - University Centre, 50 Stone Road East, University of Guelph, Guelph, Ontario N1G 2W1.
2. **Compliance.**
	1. User, User Supervisor and User Personnel shall comply with any provincial, federal or local laws and any regulations, including regulations specific to University, pertaining to the use of the Facility. University reserves the right, at its sole discretion, to determine and monitor the manner of User’s compliance for any matter pertaining to use of the Facility. User shall permit unannounced access to the Facility by University personnel in order to ensure compliance with this Agreement and any applicable laws, regulations or ordinances.
	2. User, User Supervisor and User Personnel shall comply with all rules, policies and procedures of University applicable to User’s use of the Facility and the Purpose.
	3. Prior to commencing any activities in the Facility that require special permits, licenses, certifications or approvals, User shall obtain any such necessary permits, licenses, certifications or approvals at their expense and shall provide copies to University.
	4. User shall not make such uses of the Facility that use or results in the generation of hazardous materials or hazardous waste without further written agreement of University.
	5. User shall ensure that User Personnel execute any and all documents required by University to access and use the Facility, and to implement the provisions of this Agreement.
	6. User shall promptly comply with all requests by University for information related to the use of the Facility as University deems necessary for its compliance with provincial, federal or local laws and regulations, and all rules, policies and procedures of University applicable to User’s use of the Facility and the Purpose.
3. **Damage to Facility.** User shall reimburse University for any damage, clean-up or waste-related expenses incurred by University, including disposal, shipping, damages, equipment repair and/or replacement and/or other costs or penalties resulting from User’s use of the Facility. University shall use its reasonable judgment in determining whether damaged Facility or other property should be repaired or replaced.
4. **Confidentiality.** User shall be solely responsible for securing and maintaining the confidentiality of any of User’s proprietary or confidential information possessed or used at the Facility. User is prohibited from accessing or attempting to access any research data or other confidential information possessed or maintained by any University researcher, any sponsor of research at the Facility, or any other user of the Facility. User shall cooperate with all inquiries, restrictions, and limitations made by University from time to time for the protection and management of confidential information at the Facility.

1. **Intellectual Property.** Notwithstanding University’s Policy on Intellectual Property, University does not assert any disclosure obligation or ownership claim with respect to intellectual property that is generated solely by User, User Supervisor or User Personnel in the course of carrying out the Purpose and entirely outside of any University employment, enrollment of User Supervisor or User Personnel, or University research.
2. **Relationship between the Parties.** All work performed by User using the Facility shall be under User’s and User Supervisor’s sole direction and control and shall be entirely independent of any University activities or research. This Agreement does not establish a partnership or joint venture between the parties. This Agreement does not confer any intellectual property license or license option of any kind with respect to any intellectual property. Neither party is, or shall represent itself to be, the agent of the other for any purpose.

# Warranty Disclaimer; Limitation of Damages

* 1. **No Warranty.** User shall be solely responsible for its activities while using the Facility, and agrees that it does so at its own risk.User acknowledges and agrees that the Facility is provided for User’s use on “as is, where is” basis without warranty of any type or kind, including any warranty that either is merchantable or fit for the Purpose or for any other particular purpose. User assumes the entire risk that the Facility does not satisfy User’s needs or expectations in any respect, regardless of whether any defect or deficiency is caused in whole or in part by University’s negligence or other fault.
	2. **Limitation of Damages.** University shall have no liability to User or any other person or entity under any circumstance for any incidental, special, consequential, punitive or exemplary damages, or for loss of profits, revenues, or other economic loss, direct or indirect, and regardless or whether or not University knew or had reason to know of the possibility of such damages in advance. Without limiting the generality of the foregoing, University shall have no liability under any circumstance for breach of this Agreement in any amount which exceeds the total of all Usage Fees and TA Fees which University has received from User hereunder.

# Indemnification and Insurance

* 1. **Indemnification.** User shall indemnify, defend and hold harmless University and its affiliates, officers, employees, agents, and insurers from and against all costs (including, but not limited to, reasonable attorneys’ fees and litigation costs), claims, disputes, litigation and judgments, whether alleging bodily injury, property damage, economic loss, or other harm, which arise from or in connection with: (i) User’s use of the Facility: (ii) breach by User of this Agreement: and, (iii) the Purpose and the design, production, manufacture, sale, use, lease, or promotion of any product, process, service or data developed by User, directly or indirectly, as a result of the Purpose.
	2. **Insurance.** User shall at all times maintain in force comprehensive general liability insurance (including product and completed operations coverage), written on an occurrence basis, of not lessthan Five Million Dollars ($5,000,000.00) per occurrence and annual aggregate, and any other insurance as the circumstances warrant that a prudent person would deem necessary to cover any liabilities that may arise under this Agreement. Each such insurance policy or policies shall name University as an additional insured, and User shall provide a certificate of insurance as evidence of such coverage if requested by University.

Upon request from one party, the other party shall provide valid, current proof of workers’ compensation coverage or equivalent protection for its employees.

# General

* 1. **Notices.** Any notice pursuant to this Agreement should be made in writing and delivered as follows:

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| --- | --- |
| **University Technical Matters** | **Company Technical Matters** |
| Name: Robert Swan | Name:  |
| Title: Pilot Plant Technician | Title:  |
| Address: 465 Gordon St. Guelph, ON N1G 2W1 | Address:  |
| Phone: 519 824 4120 x54123 | Phone:  |
| Email: rswan@uoguelph.ca | Email:  |
|  |  |
| **University Administrative Matters** | **Company Administrative Matters** |
| Name: Derek Vella | Name:  |
| Title: Director | Title:  |
| Address: 465 Gordon St. Guelph, ON N1G 2W1 | Address:  |
| Phone: 519 824 4120 x58894 | Phone:  |
| Email: dvella@uoguelph.ca | Email:  |

**Force Majeure.** Delay in performing an obligation under this Agreement (other than an obligation to pay money) is not a breach or default to the extent that the delay or failure is due to a cause beyond the reasonable control of the affected party.

* 1. **Applicable Law.** This Agreement shall be governed by and construed in accordance with provincial laws Ontario and the federal laws of Canada (without reference to its choice of law principles). The operation of this Agreement shall at all times be subordinate to federal regulatory requirements for the conduct of research at University.
	2. **Disputes.**This Agreement shall be deemed to have been executed in the Province of Ontario, Canada. Any justiciable dispute between University and Sponsor shall be determined solely and exclusively under the substantive law of the Province of Ontario by a court of competent jurisdiction in the Province of Ontario. Each party hereby agrees not to commence any action relating to this Agreement or its performance or breach in any other forum, and each party hereby irrevocably waives any claim or argument that a court in the Province of Ontario would lack jurisdiction or would constitute an inconvenient forum.
	3. **Use of Names.** User will not use the name, trade dress, or trademark of University in any publicity, advertising, or news release. User will not under any circumstances advertise or otherwise publicly state or imply that University has tested or approved any product, service, or process.
	4. **Modifications.** This Agreement may not be modified except in a written instrument signed by authorized representatives of both parties.
	5. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all previous negotiations and agreements, written or oral, between the parties with respect to the subject matter hereof.
	6. **Assignment.** Neither party may assign this Agreement.
	7. **Term and Termination.**
		1. This Agreement shall effective from the Effective Date and terminate on the End Date set forth in Section 1.2, unless it is extended for an additional period of time by written amendment to this Agreement signed by both parties, or it is terminated earlier as provided for in this Section 10.9.
		2. Either party may terminate this Agreement at any time without cause and without further obligation except for the payment by User for any User Fees, TA Fees or University-supplied consumables used by User prior to the termination date. Such “without cause” termination shall be effected by the terminating party providing at least ten (10) days’ prior written notice to the other party’s authorized representative at the address in Section 10.
		3. University may terminate this Agreement immediately for cause if:
1. User fails to make payment to University in accordance with the terms stated in Section 2 above and does not remedy the non-payment within thirty (30) days’ written notice from University; or
2. User fails to materially comply with the terms of this Agreement, provided that, at its sole discretion, University may allow a reasonable amount of time for User to remedy such noncompliance.
	* 1. Upon termination by either party for any reason, User shall promptly pay University any outstanding User Fees, TA Fees or University-supplied consumables used by User up to and including the date of termination. If User has prepaid for use of the Facility beyond the termination date, University shall promptly refund any such excess fees to User on a pro-rata basis subtracting any User obligations for clean-up, damage repair and/or replacement and other liabilities under Section 4. These obligations shall extend beyond the End Date or date of termination under this Section 10.9 and shall be extinguished only by written notice from University that such obligations have been satisfactorily met.
	1. **Survival**. Sections 4, 5, 6, 8, 9, 10.4, 10.5, and 10.9.4 shall survive any termination or expiration of this Agreement.
	2. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but which counterparts shall together constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the dates written below.

# University of Guelph [Company Name]

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# Name Anne Ingram Name: Company Contact

# Title Title

# Date: Date:

# Appendix “A”

**Description of Facility, Purpose and Fee**

**Equipment**: [Loading Dock, Pilot Plant 01 storage space, Video Jet Date coder]

**Location**: [GFIC pilot Plant 01 and Loading Dock]

**Purpose**: [Re-coding of material as per 2121202NVA – Sperri Recoding]

**User Fees**: [$1000.00] (“User Fees”)

**Technical Assistance Fees**: [$3975.00] (“TA Fees”)