

External User Term Sheet

For purposes of this Agreement the following terms and conditions will govern use of and access to the User Research Facilities at The Pennsylvania State University, University Park campus (“University”). The term “User” as described herein shall mean the name of organization and authorized individual(s) who shall be granted access to University facilities following signature of both parties to this Agreement.

1. Background

User represents that an authorized official of User has read, understood and agreed to the terms of this Appendix A and has been provided information from the University regarding the use of the University laboratory facilities, including the Laboratory Usage and Safety Manual, and has reviewed and understands such information and has been given the full opportunity to ask the University any questions it may have about such information.

A description of the work proposed to be performed shall be provided by User prior to the commencement of such work hereunder. No deviation from said statement of work will be permitted unless agreed to in writing by University. The User acknowledges that it retains ultimate responsibility for its project progress and development and that The Pennsylvania State University does not in any way warrant or assure a particular project(s) result(s) or the results will be commercially viable, successful or useful. The User and institution fully understands and agree that any work done, or services provided by the University are on a reasonable efforts basis. The University does not warrant or guarantee any results from a given project. The User accepts full responsibility for the progress, results, and costs of its project.

2. Status of User Employees/Agents

The User understands that its agents and employees are not employees or agents of The Pennsylvania State University and that The Pennsylvania State University provides no Worker’s Compensation or liability insurance coverage for the User’s benefit. The User’s employees/agents are deemed to be acting as a representative and employee of User for all purposes during work on a project in the University laboratory facilities. The user is responsible for promptly notifying the facilities billing office in writing if any employee/agent ceases to be under contract to the user. The user is responsible for all fees and costs incurred by such user representative until such time as notice is received by the facilities billing office.

3. User Safety

While the User will be informed regarding general safety policy prior to being allowed to use the laboratory facilities, the User assumes primary responsibility for the personal safety of its employees/agents. It is expected that the User will operate all instruments and equipment in a safe and professional manner, consistent with the operating instructions and the laboratory facilities rules. The User represents that its employees’ and agents’ knowledge of microfabrication processing and cleanrooms is adequate to permit the safe pursuit of the research work in conjunction with the User’s specific project.

University shall have the right to immediately prohibit further use by any employee or agent of User if University, in its sole discretion, believes that User has breached this representation with regard to any particular employee or agent.

4. Liability

The User shall defend, protect, indemnify and hold the University, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement (including damage to property of the University) except in such instances where a court of competent jurisdiction has determined that such liability, loss, expense, attorney's fees or claims for injury and damages are caused solely by the negligent or intentional acts or omissions of The Pennsylvania State University. The University shall have no liability with respect to any loss, damages or claims incurred by the User or its employees/agents in connection with the User's use of the facilities described. In addition the User hereby releases and holds harmless The Pennsylvania State University, its officers, employees, and agents from any and all loss or damage to User's or its employees' and agents equipment or property, however caused. All such agents and employees must have their own worker's compensation, health and accident insurance and liability insurances. The Pennsylvania State University will not be responsible for any medical expenses that the user may incur and User agrees to bear full responsibility for any liability resulting there from. The University shall have the right to request a Certificate of insurance, when University deems appropriate. The User hereby agrees that the University shall be included as an Additional Insured under the User's general liability insurance. User shall maintain, throughout the period of User's access to University's facilities, Commercial General Liability insurance with limits not less than \$1 million combined single limit per occurrence, which policy shall name University as an "additional insured", and statutory workers' compensation insurance (or may qualify as a self-insurer subject to the regulations of the Commonwealth of Pennsylvania). User shall provide evidence of such insurance to University prior to access being granted to User. The user's company will be held responsible for all expenses incurred as a result of negligence or misuse of any equipment by the company's representatives.

5. Warranties of User

The User hereby warrants that it:

- a.) has read the Laboratory Usage and Safety Manual,
- b.) has had the opportunity to ask any questions he/she might have about the procedures, policies, rules and/or guide lines of the User Research Facilities,
- c.) has received and understands the answers to those questions,
- d.) has been provided with the University fee structure for the use of laboratory facilities,
- e.) has fully read and agrees with the terms and conditions of this Appendix A, and
- f.) has obtained any necessary export licenses under Commerce Department or Department of State regulations and any other necessary regulatory approvals, to perform the work set forth in paragraph 3 above.

6. Confidentiality & Intellectual Property

Any confidential or proprietary information exchanged between the parties shall be governed by the terms of the Academic Research Services Order. Users are reminded not to: 1) disclose to University any of its trade secrets or confidential information, or 2) ask University to conduct research which is covered by User's patents or patent applications, absent a prior written and non-enabling disclosure to University identifying that proprietary information.

Authorized Users for Company

1. _____
Name Signature

2. _____
Name Signature

3. _____
Name Signature

4. _____
Name Signature

5. _____
Name Signature

Authorized Company Representative
Date:

Authorized PSU Representative
Date:

Return to:
User Research Facilities Billing Office
130 Land and Water Building
University Park, PA 16802
T: 814-863-0627