

UNIVERSITY TEMPLATE AGREEMENT INSTRUCTIONS
AND APPROVAL COVER SHEET

Caution – If payment under this Agreement will be made to a person who is not a U.S. citizen, then prior to completing this cover sheet and the agreement please contact the Payroll Office at (251) 460-6471 to speak with the person coordinating payments to international visitors. Failure to obtain the necessary documents will result in a delayed payment at minimum.

- I. The originating University department should complete the Template Agreement and send to the other party or parties for signature, with instructions to return it to the originating University department. Original or scanned manual signatures and electronic signatures are acceptable.
- II. It is not necessary to complete the Request for Approval to Engage Consultant or Authorization to Provide Services forms for this Agreement.
- III. After the signed Agreement has been signed by the other parties and returned to the originating University department, the following approval section should be completed.

Originating University Department _____
Other Party or Parties _____

To the best of your knowledge, are there any USA employees who have a relationship, financial or otherwise, with a party involved in this transaction or with an employee, representative, or agent of a party in this transaction? Yes No

IF “YES,” YOU MUST SUBMIT THIS AGREEMENT THROUGH THE AGREEMENT APPROVAL AND TRACKING SYSTEM.

Source FOAPAL _____

Is the source FOAPAL an externally sponsored project fund? Yes No

IF “YES,” YOU MUST SUBMIT THIS AGREEMENT THROUGH THE AGREEMENT APPROVAL AND TRACKING SYSTEM.

I am aware of and approve all business terms of this agreement and certify that no changes have been made to the University-approved template attached hereto.

I am aware of and approve all business terms of this agreement and certify that no changes have been made to the University-approved template attached hereto.

Department Head Printed Name Department Head Signature Date

- IV. Email this cover sheet and the template agreement to Donna Tipps (dtipps@southalabama.edu) for signature with instructions as to whom the agreement should be returned.

Facilities Use Agreement Between

(Name of Company)

and

University of South Alabama

for access to

(Name of school/department)

THIS FACILITIES USE AGREEMENT (“Agreement”) made and entered into as of _____, 20____, by and between the University of South Alabama, hereinafter referred to as the “UNIVERSITY,” for use of _____, and _____, a company organized under the laws of the State of _____, hereinafter referred to as “COMPANY.”

WITNESSETH:

WHEREAS, COMPANY is a new venture founded on the basis of technology discovered at and licensed from UNIVERSITY;

WHEREAS, UNIVERSITY owns certain space that will assist COMPANY to develop its business;

WHEREAS, COMPANY wishes to have access to and to use such space in order to further develop its business, as further described in **Exhibit A** (“Purpose”);

WHEREAS, UNIVERSITY wishes to provide such facilities for a limited period of time under the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and of the following mutual promises, covenants, and conditions and any sums to be paid, COMPANY and UNIVERSITY agree as follows:

1. **Use of Facility.** UNIVERSITY hereby grants COMPANY the right to use space (and equipment in the same (“Equipment”)) as specified in **Exhibit B** (the “Facility”) in its _____ (the “Facility Building”) in accordance with the terms and conditions of this Agreement for a period of _____ months, beginning _____, 20____ (the “Use Period”). This license to use the Facility is limited to use in connection with the Purpose.

2. **Termination of Use.** Upon the expiration of the Use Period (including any extensions thereof) or earlier termination as provided for herein, COMPANY will vacate the Facility, will return any keys or access cards to UNIVERSITY, will ensure that the Facility is in good order and condition (ordinary wear and tear, alterations

approved by UNIVERSITY, damage by casualty or conditions existing as a result of UNIVERSITY's acts excepted), and will have no further rights to use the Facility.

3. COMPANY's Use of Facility.

(a) Only COMPANY employees, temporary contractors, and consultants ("Company Personnel") as listed on Exhibit C shall be permitted to have access and to use the Facility. The list of Company Personnel may be amended from time to time upon written approval by UNIVERSITY. All Company Personnel, in consideration for the right to access Facility, agree to sign a confidentiality and invention disclosure agreement in the form attached as Exhibit E (each a "Confidentiality Agreement").

(b) COMPANY may from time to time bring visitors to the Facility. Visitors must be accompanied at all times by Company Personnel and COMPANY will utilize commercially reasonable efforts to ensure that such visitors are bound by obligations of confidentiality with respect to UNIVERSITY Confidential Information (as defined in Section 6).

(c) Any modifications to the Facility will be at the expense of COMPANY and must have the written approval of UNIVERSITY. COMPANY shall have no ownership right to any fixtures previously installed in the Facility. UNIVERSITY shall have no liability for any costs related to COMPANY's equipment.

(d) COMPANY may not grant access to, except as provided in Section 3(b) above, or sublicense or assign the right to use, the Facility to any third party.

(e) COMPANY may not charge any UNIVERSITY account for materials or services, except as provided for in a sponsored research agreement or contract.

(f) COMPANY must provide chemical inventories electronically to the Office of Safety and Environmental Compliance, if applicable. This enables the UNIVERSITY Fire Marshal to update memory sticks in each associated building Knox Box.

(g) COMPANY shall be permitted to use UNIVERSITY core facilities, equipment, and services as an external client upon terms and conditions, including rates, directly negotiated between the COMPANY and the provider of such core facility, equipment, or service. For avoidance of doubt, the Division of Laboratory Animal Medicine is not a core facility or service available to external clients.

(h) The parties acknowledge that Company Personnel include UNIVERSITY employees. Such UNIVERSITY employees will be deemed to act in their capacity as Company Personnel during their use and occupancy of the Facility. Furthermore, in light of the potential for confusion, COMPANY agrees to take reasonable steps to ensure that, except as otherwise permitted by UNIVERSITY policy, such employees do not use their employee status for the benefit of the COMPANY.

(i) Upon reasonable notice, COMPANY shall provide access to UNIVERSITY, subject to the confidentiality obligations of Section 6, to the Facilities and insurance records necessary to prove COMPANY's compliance with the terms of this Agreement. Should such inspection raise concerns that COMPANY is in violation of applicable EHS policies, then COMPANY's use of the Facility can be suspended immediately by UNIVERSITY until resolution of potential violation(s) is accomplished to UNIVERSITY's satisfaction. COMPANY's sole recourse in the event of such suspension shall be the refund of applicable usage fees for any periods of suspension lasting more than five (5) business days.

(j) COMPANY will use the Facility only for the Purpose set forth in **Exhibit A** as it may be amended by the Parties from time to time.

(k) COMPANY will disclose to UNIVERSITY any inventions made while in the Facility in order to ensure compliance with Section 7 below.

4. UNIVERSITY Obligation/Disclaimers.

(a) The UNIVERSITY cannot provide COMPANY with hazardous waste disposal. COMPANY must establish contracts for waste disposal with permitted and insured service providers.

(b) Equipment such as fume hoods and biosafety cabinets owned by the UNIVERSITY and leased to tenants will be tested and certified by the Office of Safety and Environmental Compliance.

(c) UNIVERSITY shall provide COMPANY with information technology (IT) support, when required, as set forth in **Exhibit D**.

(d) UNIVERSITY shall have no liability for or obligation to Company Personnel.

5. Usage Fee. In consideration for use of the Facility, COMPANY will pay to UNIVERSITY a usage fee found in **Exhibit B**. The first installment shall be payable thirty (30) days from the date of this Agreement. All subsequent installments shall be paid in advance on or before the first day of the quarter. For purposes of this Agreement, a quarter shall be considered a three-month interval regardless of the day or the month in which such quarter commences. Each installment payable to UNIVERSITY by COMPANY shall be paid in lawful money of the United States, to the following payee, or as UNIVERSITY may otherwise designate from time to time by written notice given to COMPANY:

USA Properties
ATTN: Rent Control Clerk
775 N. University Blvd., Suite 150
Mobile, Alabama 36608
E-mail: usaproperties@southalabama.edu
Phone: 251-460-6100

6. Confidential Information.

(a) COMPANY agrees to treat all non-public information, which includes information related to patentable technology, that is disclosed to it, or its employees, visitors, or agents, either deliberately or inadvertently, by employees or persons affiliated with the UNIVERSITY as confidential information ("UNIVERSITY Confidential Information") if the disclosure is made within the Facility or Facility Building, including but not limited to, common areas and work areas. The Parties agree that such disclosures will not be deemed a public disclosure for purposes of patentability analysis.

(b) UNIVERSITY agrees to treat as confidential any COMPANY information that is either (i) marked as confidential at the time of disclosure or that is (ii) unmarked (e.g. orally disclosed) but treated as confidential at the time of disclosure, and is designated as confidential in a written memorandum sent to the recipient's primary representative within thirty (30) days of disclosure, summarizing the information for which confidentiality is sought sufficiently for identification.

(c) The receiving party shall not use such confidential information except as explicitly authorized in writing by the other party and will keep such information confidential until (i) the confidential information enters the public domain through no fault of the receiving party, or (ii) the information must be disclosed by law despite the reasonable efforts of the recipient to prevent such disclosure.

7. Intellectual Property.

(a) Subject to Section 7(b) below, this Agreement does not grant a party to this Agreement any right to intellectual property created solely by the other party in the course of use of the Facility. Rights to intellectual property arising from work funded by third-party sponsors will be governed by the terms of such funding. If an invention arises that is not governed by third-party funding, inventorship shall be determined in accordance with patent law (if patentable) or by mutual agreement between the parties (if not patentable), taking into account the role and contributions of individuals involved in such discovery. In the case of a joint invention, the parties agree to negotiate a joint invention agreement that shall provide for the sharing of patent costs, income, and invention management responsibilities.

(b) University Freedom to Operate: In the interest of ensuring that the privileged presence of COMPANY in the Facility and Facility Building does not create the possibility that COMPANY will generate intellectual property that incorporates UNIVERSITY Confidential Information or block ongoing research and commercialization efforts of researchers in the Facility or Facility Building, COMPANY agrees that it will disclose a summary, on a confidential basis, to the UNIVERSITY's Office of Commercialization and Industry Collaboration of any patent filing that claims a priority date that falls within the period of COMPANY's occupancy of Facility and for a period of twelve (12) months thereafter. The Parties will work together to determine if the patent application is based on or incorporates UNIVERSITY Confidential Information disclosed to COMPANY while in the Facility or Facility Building (including information inadvertently disclosed by non-Company Personnel) and falls outside of the Purpose. If such is the case, then COMPANY will, upon demand by UNIVERSITY, either (i) name the applicable UNIVERSITY employees or affiliated UNIVERSITY personnel, including students, as inventors on the patent application, or (ii) grant UNIVERSITY a non-exclusive, worldwide, royalty free, perpetual license, with the rights to grant sublicenses, to the extent necessary to ensure that the UNIVERSITY, on behalf of the researchers in the Facility or Facility Building, has the unrestricted right to continue to advance the technology or research to which the UNIVERSITY Confidential Information implicated in COMPANY's invention pertains.

8. No Agency. Each party to the Agreement shall act as an independent employer and shall not act as the agent, employee, or servant of the other party. Accordingly, UNIVERSITY personnel (including employees, students, or agents) while engaged in UNIVERSITY business shall not be considered the employee(s) or agents of COMPANY, and the employees of COMPANY shall not be considered employees or agents of the UNIVERSITY. Neither party shall enter into any contract or agreement with a third party that purports to obligate or bind the other party. Specifically, neither party's students, employees, or agents shall be entitled to worker's compensation benefits from the other party as a result of any duty or obligation to be performed under this Agreement.

9. Assignment. This Agreement is not assignable. This Agreement contains the entire understanding of both parties as to the subjects covered herein and shall not be altered, amended, or modified except by an agreement in writing executed by the duly authorized officials of both parties.

10. Use of Name. Neither party will have any right or obligation to publicize any item or action under this Agreement and will obtain the other party's written authorization before making any public statement

pertaining to either party's performance under this Agreement. Neither party may use the name of the other party for advertising or other promotional purposes without prior written permission. A party may make such public disclosure that it believes in good faith to be required by law in which case such party will give the other party reasonable opportunity to review the proposed disclosure and will use best efforts to accommodate such reviewing party's comments.

11. Termination. This Agreement shall terminate upon the first of the following to occur (i) the expiration of the Use Period, (ii) upon ninety (90) days' written notice of termination by either party to the other at any time during the Use Period, or (iii) as a result of COMPANY's breach of any term of this Agreement provided it has received written notice of such breach and given twenty (20) business days to cure such breach.

12. Governing Law. The laws of Alabama shall govern the validity and interpretation of the provisions, terms, and conditions of the Agreement.

13. Waiver. Failure to insist upon compliance with any of the terms and conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall remain at all times in full force and effect.

14. Force Majeure. In the event that COMPANY or UNIVERSITY shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental laws or regulations, riots, insurrection, the act, failure to act, or default of the other party, war, or other reason beyond their control, the period for the performance of any such act shall be extended for a period not to exceed the period of such delay.

15. Indemnification. COMPANY agrees to indemnify, defend, and hold harmless the UNIVERSITY against any claims, damages, expenses of any nature (including reasonable attorney fees), obligations, or suits connected with the use of the Facility or the Equipment and arising out of or caused by acts or omissions of COMPANY or its assigns, invitees, lessees, servants, employees, or agents, or any of them, except any claims, damages, obligations, or suits arising solely out of negligent acts by the UNIVERSITY or its assigns, invitees, lessees, servants, students, employees, or agents, or any of them. In the event any such claim is made or lawsuit initiated, the UNIVERSITY shall promptly notify COMPANY in writing and the UNIVERSITY shall reasonably cooperate in the defense of such lawsuit and permit COMPANY or its insurance carrier to participate in the defense of such claim or lawsuit.

16. Insurance. COMPANY shall provide evidence of general liability insurance coverage, workers' compensation insurance coverage, and property insurance in amounts sufficient to satisfy its indemnification obligations made herein. Proof of adequate insurance will be a pre-condition for UNIVERSITY's execution of this Agreement and will be subject to UNIVERSITY's approval, in its sole discretion. Continuous insurance coverage is an ongoing condition of this Agreement. COMPANY shall list UNIVERSITY as an additional insured under its policy, and such policy will waive subrogation rights. COMPANY may contact UNIVERSITY's Risk Management Office to assist it in securing the necessary coverage [POC: Connie Cook, Director, Risk Management, cgcook@southalabama.edu]

17. Disclaimer of Liability. The Facility and Equipment is being provided to COMPANY on an "as is" basis, and COMPANY uses them at its own risk. UNIVERSITY makes no warranties or representations or covenants regarding the Facility or the Equipment. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL UNIVERSITY BE LIABLE IN TORT, CONTRACT, OR OTHERWISE FOR ANY DAMAGES IN ANY FORM, WHETHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL, ARISING OUT OF THIS AGREEMENT OR

OTHERWISE IN CONNECTION WITH COMPANY'S USE OF THE FACILITY, EQUIPMENT, OR DESIGNATED SPACE, EVEN IF UNIVERSITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18. Relationship of the Parties. It is understood by UNIVERSITY and COMPANY that this Agreement constitutes a Facilities Use Agreement and that the relationship of the parties hereto in respect of the Facility and the Equipment is that of licensor and licensee and not that of landlord and tenant.

19. Survival. Those terms that by their nature necessarily survive termination of this Agreement shall survive, including, but not limited to, those provisions dealing with confidentiality, intellectual property, insurance, and indemnification.

20. Notices. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

To UNIVERSITY:

USA Properties
ATTN: Executive Director
775 N. University Blvd., Suite 150
Mobile, Alabama 36608

To COMPANY:

With a copy to:

Office of General Counsel
University of South Alabama

IN WITNESS WHEREOF, the parties have hereunto signed this Agreement in their official capacities on the day and the year last listed below.

UNIVERSITY OF SOUTH ALABAMA

COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

Purpose and Activity of Facility

Purpose and Scope of Activity: *Please insert a description of the activity in enough detail so as to provide meaningful information to the Office of Safety and Environmental Compliance and/or Research Compliance and Assurance for purposes of safety and environmental matters.*

List below any hazardous chemical, biological, or isotopic materials to be used or produced in the Facility in conjunction with the COMPANY activities described above.

Chemical	Typical Amount within the Facility

Biological Hazard	Typical Amount within the Facility

Isotopes	Typical Amount within the Facility

List below any capital equipment to be brought into the Facility by the COMPANY.

Equipment	Description

Exhibit B

Description of Facility & Usage Fee

The Facility is located in Room _____ of _____.
(Name of Building)

The Facility has a physical address of: _____

The Facility will include a combination of dedicated space and shared and common space as outlined in the following table:

DEDICATED SPACE			
Space	Description	Room Number	Square Feet
Total Dedicated			
SHARED/COMMON SPACE			
Total Shared			
GRAND TOTAL			

An annual Usage Fee of \$_____ will be assessed, based on a standard usage of \$_____ per square foot for office space and \$_____ per square foot for laboratory space, payable quarterly at the beginning of each calendar quarter. First payment will be pro-rated as necessary.

In addition, the COMPANY will have access to shared equipment listed in the following table (“Equipment”):

Equipment Description	Equipment Brand/Model	Equipment Location

Exhibit C

COMPANY Personnel

Full Name	Phone	Email

Exhibit D

IT Service & Support

UNIVERSITY hereby grants COMPANY, performing work considered part of the UNIVERSITY's mission, limited access to certain UNIVERSITY networking and infrastructure resources, as described below, solely for use in connection with the Purpose.

Description of Access Rights:

Company Personnel will be given "Affiliate" status. Such access shall include:

- Phone system
- Wired (Ethernet) and wireless (wi-fi) access to the USA network (which includes Internet access), subject to the relevant policies identified below and subject to available network resources (switch ports and wireless access points). Should additional switches or wireless access points be required, COMPANY will be charged for those resources at standard departmental rates.

UNIVERSITY will provide limited support to Company Personnel. Such support shall be in the following manner:

- Basic connectivity troubleshooting via submission of a help request to Academic Computing Center.

Description of Uses Not Covered by Access Rights:

UNIVERSITY will generally not provide support for the following:

- Desktop support
- Server storage
- Server Administration
- Server hardware and data storage

COMPANY may contract with individual UNIVERSITY IT units to provide deskside support, server resources, and support to be charged to COMPANY at standard rates of that IT unit.

COMPANY Obligations:

COMPANY shall only use the UNIVERSITY's network as expressly permitted in this **Exhibit D**.

COMPANY and Company Personnel shall be subject to all UNIVERSITY policies related to use of the UNIVERSITY network, including, but not limited to, the Acceptable Use Policy and the Data Network Infrastructure Policy.

Remedies for Misuse or Other Violations:

UNIVERSITY reserves the right to revoke, without notice, access to the network by COMPANY or any Company Personnel as a result of their unauthorized use of the network and/or a violation of any of UNIVERSITY policies.

Exhibit E

EMPLOYEE CONFIDENTIALITY AND INVENTION DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND INVENTION DISCLOSURE AGREEMENT (this “**Agreement**”) is made and entered into by and between the University of South Alabama, with an address of 307 University Blvd. N, Mobile, AL 36688 (“UNIVERSITY”), and _____, with an address at _____ (“EMPLOYEE”).

WITNESSETH:

WHEREAS, UNIVERSITY has licensed space to EMPLOYEE’s employer through a Facilities Use Agreement (the “FUA”), and as a condition of access has required EMPLOYEE to sign this Agreement, which is an attachment thereto, in order to ensure that UNIVERSITY Confidential Information and freedom to operate are protected;

NOW THEREFORE, the UNIVERSITY and EMPLOYEE agree as follows:

1. Definitions. All capitalized terms not herein defined shall have the meaning set forth in the FUA.

2. Confidentiality.

(a) EMPLOYEE agrees to treat all non-public information, including information related to patentable technology, that is disclosed to him/her, orally or in writing, either deliberately or inadvertently, by employees or persons affiliated with the UNIVERSITY as confidential information (“UNIVERSITY Confidential Information”) if the disclosure is made within the Facility or Facility Building, including, but not limited to, common areas and work areas. The Parties agree that such disclosures will not be deemed a public disclosure for purposes of patentability analysis.

(b) The EMPLOYEE will not disclose or use UNIVERSITY Confidential Information until the Confidential Information enters the public domain through no fault of the EMPLOYEE.

3. Intellectual Property. In the interest of ensuring that the privileged presence of EMPLOYEE in the Facility and Facility Building does not create the possibility that EMPLOYEE will generate intellectual property which incorporates UNIVERSITY Confidential Information, EMPLOYEE agrees that it will disclose to UNIVERSITY any invention that claims a priority date that falls within the period of EMPLOYEE’s occupancy of Facility and for a period of twelve (12) months thereafter. The Parties will work together to determine if the invention is based on or incorporates UNIVERSITY Confidential Information disclosed to EMPLOYEE while in the Facility or Facility Building (including information inadvertently disclosed by non-Company Personnel) and falls outside of the Purpose. If such is the case, then EMPLOYEE will, upon demand by UNIVERSITY, either (a) name the applicable UNIVERSITY employees or affiliated UNIVERSITY

personnel, including students, as inventors on the patent application or joint authors of the copyrighted work, or (b) grant UNIVERSITY a non-exclusive, worldwide, royalty free, perpetual license, with the rights to grant sublicenses, to the extent necessary to ensure that the UNIVERSITY, on behalf of the researchers in the Facility or Facility Building, has the unrestricted right to continue to advance the technology or research to which the UNIVERSITY Confidential Information implicated in EMPLOYEE's invention pertains.

4. No Agency. EMPLOYEE acknowledges and agrees that each party to the FUA is acting as an independent employer and shall not act as the agent, employee, or servant of the other party. Accordingly, UNIVERSITY personnel (including employees, students, or agents) while engaged in UNIVERSITY business shall not be considered the employee(s) or agents of COMPANY, and the employees of COMPANY shall not be considered employees or agents of the UNIVERSITY. Neither party shall enter into any contract or agreement with a third party that purports to obligate or bind the other party. Specifically, neither party's students, employees, or agents shall be entitled to worker's compensation benefits from the other party as a result of any duty or obligation to be performed under this Agreement.

IN WITNESS WHEREOF, the parties have hereunto signed this Agreement in their official capacities on the day and the year last listed below

UNIVERSITY OF SOUTH ALABAMA

EMPLOYEE

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____