Novel Devices Laboratory
University of Cincinnati
933 Rhodes Hall
Cincinnati, OH 45221-0030
(513) 556-4990

FACILITY USE AGREEMENT

FOR

UNIVERSITY OF CINCINNATI'S NOVEL DEVICES LABORATORY

This facility use agreement (the "Agreement"), effective as of the date of the last signature hereon ("Effective Date"), is entered into by and between the **UNIVERSITY OF CINCINNATI**, a state institution of higher education organized under Section 3361 of the Ohio Revised Code, having its primary business address at 2614 McMicken Circle, 625 University Pavilion, Cincinnati, OH 4522 ("UC"), and
_____, located at
_____ ("User").
UC and User are sometimes collectively referred to herein as "Parties" or individually as a "Party."

WHEREAS, User desires to conduct certain research more fully described herein (the "Research") and requires laboratory access and equipment in order to conduct such Research; and

WHEREAS, UC operates certain resources, which include laboratory space and equipment necessary for User to conduct its Research; and

WHEREAS, UC desires to permit User access to certain facilities and use of certain equipment under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The preamble and recitals above are incorporated into and made a part of this Agreement.

2. UC Responsibilities.

(a) UC shall permit some or all of the Research to be conducted utilizing certain equipment and facilities (the "Facility") in conformance with all applicable federal, state, and local laws and regulations and this Agreement. The Facility and equipment covered by this Agreement are more thoroughly described in the attached Exhibit A, which is incorporated herein by reference. UC shall maintain general liability insurance coverage in accordance with applicable law and regulations. Such coverage may be satisfied by self-insurance. UC shall maintain such coverage for the duration of this Agreement. UC shall have no obligations to obtain or assist with any regulatory approvals specific to the Research.

(b) UC shall designate a UC employee to act as principal investigator ("PI") and point of contact for User during the term of the Agreement. The PI shall be ultimately responsible for the Facility and for ensuring the Research conducted by User complies with UC policies, rules, and procedures. The PI for this Agreement is Jason Heikenfeld.

3. User Responsibilities. User shall conduct the Research in accordance with applicable law, UC policies and rules, and this Agreement. The Research is more fully described in Exhibit B, which is attached hereto and incorporated by reference. User represents and warrants that any material or device involved in the performance of the Research has been manufactured according to Good Manufacturing Practices and in accordance with all regulatory requirements for such manufacturing. If User desires to engage any UC employees in conducting Research, then User agrees it shall execute UC's standard Sponsored Research Agreement. User shall abide by all requirements and instructions from UC's faculty and staff with regard to Research conducted at the Facility and acknowledges that the right to conduct Research at the Facility may be withdrawn if Research interferes with UC faculty, staff, or student research activities. User agrees that neither it nor its employees, contractors or agents shall access the UC network and/or UC networked resources. In the event that User or its employee, contractors or agents requires network or internet access in order to conduct Research at the Facility, then User agrees that it shall agree to sign UC's standard Data Security Rider on behalf of itself and its employees, contractors or agents requiring such access to the UC network or networked resources.

4. Compensation. User shall pay UC for use of the Facility during the term of the Agreement (the "Fee") as set out in the Fee Schedule attached hereto as Exhibit C and incorporated herein by reference. The entire Fee is due and payable by User upon the earlier of 30 days following the Effective Date of this Agreement or the date that User first enters the Facility to begin conducting Research. Any unpaid Fee shall be subject to an interest charge as specified in Ohio Revised Code § 126.30. User acknowledges that the Fee is non-refundable when the Agreement is terminated in accordance with Section 8.

5. Facility Access and Use. User shall have reasonable access to the Facility in order to carry out its Research, but User shall not have open and free access to the Facility. User shall coordinate access with UC faculty and staff responsible for the Facility, and UC shall have the right to ban or exclude any individual from the Facility if UC reasonably determines that the individual poses a health or safety risk to UC employees or students or if the individual violates any of UC's policies, rules, procedures, or standards of conduct. UC makes no guarantees that any specific area, space, or equipment in the Facility will be available to or set aside for User. User may use such space and equipment available in the Facility, but only to the extent that such use does not interfere with UC faculty, staff, or student use of the space or equipment at the Facility for UC research, education, or other institutional purposes. If User requires dedicated space for personnel or equipment, then User may negotiate a separate license or lease with UC.

6. Confidential Information.

(a) For purposes of this Agreement, "Confidential Information" means any information of User or UC, whether of a technical, business, operational, or other nature, including this Agreement, trade secrets, products, services, operations, promotional material, developments, proprietary rights or business affairs, together with any inventions, and any information, data and results collected, prepared, developed or generated pursuant to this Agreement.

(b) During the term of this Agreement and for a period of two (2) years after the termination of this Agreement, the Parties shall not, without prior written consent, disclose to any third party (except third party consultants) any Confidential Information not owned by such Party, and shall use Confidential Information solely for purposes of performing obligations under this Agreement. Each Party shall restrict the dissemination of Confidential Information to only those persons within its organization who have a need to know, and shall ensure that they are aware of the obligation of confidentiality required by this Agreement. Each Party shall use at least the same care and discretion in maintaining the confidentiality of the Confidential Information of the disclosing party as the receiving Party uses with its own most sensitive confidential information.

(c) Information disclosed by a Party will not be deemed to be Confidential Information if, at the time of disclosure it was (i) in its entirety in a unified form, in the public domain or subsequently so becomes a part of the public domain through any means other than a breach by the recipient of its obligations under this Agreement; (ii) known to the recipient, in its entirety in a unified form at the time of disclosure; (iii) disclosed in its entirety in a unified form to the recipient by a third party who has the right to do so and who does not impose any restriction upon the recipient regarding the use of such information or the maintenance of its confidentiality; or (iv) is independently

developed without the benefit of Confidential Information (and such independent development can be properly demonstrated).

(d) If either Party is legally required to disclose Confidential Information for any reason, including but not limited to subpoena, court or agency order, or regulation, then the receiving Party shall promptly notify the disclosing party in writing after receiving notice of such requirement prior to making the required disclosure (except where such prior notice to the disclosing party is or would be prohibited by a government regulator or agency), and the receiving Party shall make every effort to minimize the extent of any disclosure. For the avoidance of doubt, UC shall not be required to maintain the confidentiality of Confidential Information to the extent that it determines that disclosure is required by law, including requests under the Ohio Records Act set forth in Section 149.43 of the Ohio Revised Code.

(e) Notwithstanding the foregoing, User's Confidential Information shall only include information and materials that are appropriately marked as 'confidential' at the time of their provision to UC, or if provided visually or orally, are promptly reduced to writing and identified as 'confidential.'

7. Intellectual Property. Each Party shall retain all right, title and interest in any patent, patent application, trade secret, know-how, trade mark and other intellectual property that was owned by such Party prior to the date of this Agreement or arising outside of the Research, and no license grant or assignment, express or implied, by estoppel or otherwise, with regard thereto is intended by, or shall be inferred, from this Agreement.

8. Term and Termination. This Agreement shall commence on the Effective Date, and shall continue in effect for one year, unless terminated earlier as set forth in this Section 8. Either Party may terminate this Agreement with thirty (30) days' written notice if the other Party breaches any provision of this Agreement and does not remedy the breach within the 30-day notice period. UC may terminate this Agreement immediately (a) for safety concerns or for violations of applicable law or UC policies, rules, procedures and standards of conduct; (b) if the Research interferes with UC faculty or student research; or (c) if otherwise required by law, policy, rule, or regulation.

9. Compliance with Law.

(a) Each Party agrees that it shall fully comply with all applicable laws, rules and regulations, including U.S. federal and state governmental, legal, regulatory, and professional requirements in connection with its obligations under this Agreement. Furthermore, User agrees to comply with all UC policies, rules, procedures and standards of conduct.

(b) Each Party agrees to timely notify the other Party in the event that it has identified potential violations of laws or regulations associated with its performance hereunder and to describe the nature of such potential violation. In the event that any part of this Agreement is determined to violate any law, regulation, or UC policies or rule, the Parties agree to negotiate in good faith revisions to the provision(s) that are in violation. In the event the Parties are unable to agree to new or modified terms as required to bring the entire Agreement into compliance, then either Party may terminate this Agreement immediately upon written notice to the other Party.

(c) User represents and warrants it is not currently, nor has been, excluded, debarred, suspended, or otherwise declared ineligible to participate in a federal procurement or non-procurement program. User agrees it shall immediately notify UC in writing if any of these events occurs or if it becomes a party to any investigation that may result in such exclusion or debarment. In the event User or its personnel is listed by a federal or state agency as being excluded, debarred, suspended, or otherwise ineligible for federal or state program participation, this Agreement shall automatically terminate.

(d) User represents and warrants that the Research does not and shall not include any equipment, materials or information that are import or export controlled under the International Traffic in Arms Regulations as set out in 22 C.F.R. §§ 120-130 ("ITAR"), the Export Administration Regulations as set out in 15 C.F.R. §§ 730-774 ("EAR"), or that bears 500 series or 600 series Export Control Classification Numbers (ECCNs) under applicable U.S. federal law.

10. Independent Contractors. The Parties to this Agreement understand and agree that no agency, employment, partnership or joint venture is created by this Agreement, and the businesses operated by User and UC are separate.

The Parties further agree that neither Party is the general agent of the other, and no representation shall be made by either Party that would create apparent agency, employment, partnership or joint venture. Neither Party shall have the authority to act for the other in any manner, nor create obligations or debts that would be binding upon the other. Neither Party shall use, nor authorize others to use, the name, symbols, or marks of the other Party in any advertising or publicity material or make any form of representation or statement that would constitute an express or implied endorsement of any product or service, without prior written approval.

11. Indemnification by User. User agrees to defend, indemnify and hold harmless UC and its directors, officers, trustees, faculty, staff and other employees, students, agents and affiliates (collectively, the "Indemnitee(s)") from and against any and all liabilities, losses, damages, claims, actions, demands, suits, costs and expenses, including reasonable attorney fees ("Claims"), relating to, arising out of, or resulting from the actions, conduct, negligence, reckless or willful misconduct or omissions of User or its employees or agents in connection with the Research. Such indemnity shall not apply to any Claims that are caused by the negligence, reckless or willful misconduct of one or more of the Indemnitees.

12. UC Responsibility. UC shall be solely responsible for its negligent acts or omissions in the performance of its activities hereunder. The Parties agree that UC is not responsible for the actions of students. The Parties agree that this Section is only a statement setting forth the limited responsibility of UC solely for its own acts of judicially determined negligence or willful malfeasance, and is not and shall not be construed as any contractual or other obligation to defend, indemnify, or hold harmless User or any third party. In conjunction with executing this Agreement, User shall sign the Liability Waiver attached hereto (and incorporated herein by reference) as Exhibit D.

13. Insurance. User shall, at its sole cost and expense, procure and maintain commercial general liability insurance in amounts not less than $1,000,000 per occurrence and $3,000,000 annual aggregate. Such commercial general liability insurance shall name the University of Cincinnati and its Board of Trustees, officers, employees, agents and volunteers as an additional insured and shall also provide contractual liability coverage for User's indemnification obligations herein. User shall provide evidence of workers' compensation coverage if such coverage is required under Ohio Revised Code Chapter 4123. All insurance shall be on an occurrence basis and have an AM Best "A" or better rating, provide thirty (30) days' advance written notice of cancellation, material change or non-renewal, in favor of UC endorsed on to coverage. Any insurance policy shall be on a primary basis, noncontributory with any other insurance coverages and/or self-insurance carried or maintained by UC. Coverage shall be primary to the Additional Insureds and not contributing with any other insurance or similar protection available to the Additional Insureds whether other available coverage be primary, contributing, or excess. Waiver of subrogation shall be granted in favor of UC. Prior to using the Facility for Research, User shall provide UC with a Proof of Insurance acceptable to UC. Notwithstanding the foregoing, the insurance requirements in this Section shall not be construed as a limitation on User's liability or a limitation on User's indemnification obligations set forth herein.

14. Governing Law and Venue. This Agreement shall be construed and interpreted according to the laws of the State of Ohio without reference to any conflict of law principles. Any disputes arising out of or under this Agreement shall be litigated in those courts of Ohio having proper jurisdiction over the matter and the parties.

15. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be deemed made and given three (3) days after sending, if mailed by registered or certified mail, postage prepaid, return receipt requested, or one (1) day after sending, if sent by express courier service. All notices must be sent to the address set forth in the preamble.

16. Assignment and Delegation. This Agreement, and all rights, duties and obligations hereunder, may not be assigned or delegated by either Party without the prior express written consent of the other Party.

17. Survival. The respective rights and obligations of the Parties set forth in Sections 6, 7, 9, and 11-14 shall survive the termination or expiration of this Agreement.

18. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties, and all prior agreements between the Parties with respect thereto are superseded. No amendment or modifications shall be binding unless in writing and duly executed by authorized representatives of UC and User.

19. Severability. If in any case one or more of the provisions or part thereof contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining parts of the provision and the remaining provisions of this Agreement will remain in full force and effect, and such invalid, illegal and unenforceable provisions shall be reformed and construed so that it will be valid, legal and enforceable to the maximum extent permitted by law.

20. No Waiver. No waiver of any obligation under this Agreement shall be valid unless in writing and signed by an authorized representative of the Party whose rights are prejudiced by such waiver. No delay or omission by any Party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by any Party of any of the obligations to be performed by another Party or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other obligation.

21. Counterparts/Electronic Signatures. This Agreement may be executed in one or more counterparts, all of which together will constitute only one Agreement. Counterparts may be delivered via facsimile, electronic mail (including .pdf) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

22. Force Majeure. UC shall not be responsible to User for failure to perform any of the obligations imposed by this Agreement, provided such failure shall be occasioned by fire, flood, explosion, lightning, windstorm, earthquake, subsidence of soil, failure or destruction, in whole or in part, of machinery or equipment or failure of supply of materials, discontinuity in the supply of power, governmental interference, civil commotion, riot, war, strikes, labor disturbance, transportation difficulties, labor shortage, or any cause beyond the reasonable control of UC.

23. Signing Authority. The undersigned are authorized to execute this Agreement on behalf of the Parties, and upon such execution, this Agreement shall be the legally binding obligation of the Parties, enforceable in accordance with its terms.

ACCEPTED AND AGREED:

USER	UNIVERSITY OF CINCINNATI
By: _____	By: _____
Name: `	Name:
Title:	Title:
Date:	Date:

EXHIBIT A

Description of Facility and Equipment

[List Facility name, Building and Room number]

[List Equipment]

EXHIBIT B

Description of Research

EXHIBIT C

Fee Schedule

EXHIBIT D

RELEASE FROM RESPONSIBILITY, ASSUMPTION OF RISK, AND WAIVER FOR VOLUNTEERS AND VISITORS

USER'S FULL NAME: _____

DATE OF BIRTH (MO/DAY/YR): _____

ADDRESS:
_____

LOCATION AND SPONSOR OF ACTIVITY: The University of Cincinnati Novel Devices Laboratory, Cincinnati, Ohio.

DATE(S) OF ACTIVITY: START DATE: _____ **END DATE:** _____

DESCRIPTION OF ACTIVITY:

Other lab specific activities (please specify):

I, the above named participant, am eighteen years of age or older and have voluntarily applied to participate in the above described activity. I acknowledge that the nature of the activity may expose me to hazards or risks that may result in my illness, personal injury, or death and I understand and appreciate the nature of such hazards and risks.

I agree to review any applicable laboratory safety procedures and protocols prior to participating in any laboratory activity and to follow all rules and directions from University personnel regarding use of the facilities and equipment.

I agree that if I am personally injured or suffer any loss of or damage to personal property, I will not attempt to claim coverage under any University insurance policy.

The University may seek to recover, and I agree to pay, the costs to replace or repair any equipment or other University property I damage while using the facilities, and I otherwise agree to be personally responsible for my own acts and for any medical care that may be rendered to me. I voluntarily assume the risk of damage to or loss of my personal property that may occur during my use of the facilities and equipment.

In consideration of my voluntary participation in this activity, I hereby accept all risk to my health and of my injury or death that may result from such participation and I hereby release the University of Cincinnati, its Board of Trustees, officers, employees and representatives from any liability to me, my personal representatives, estate, heirs, next of kin, and assigns for any and all claims and causes of action for loss of or damage to my property and for any and all illness or injury to my person, including my death, that may result from or occur during my participation in the activity, whether caused by negligence of the University of Cincinnati, its Board of Trustees, officers, employees, or representatives, or otherwise. I further agree to indemnify and hold harmless the University of Cincinnati and its Board of Trustees, officers, employees, and representatives from liability for the injury or death of any person(s) and damage to property that may result from my intentional act or omission while participating in the above described activity.

I HAVE CAREFULLY READ THIS AGREEMENT AND UNDERSTAND IT TO BE A RELEASE OF ALL CLAIMS AND CAUSES OF ACTION FOR MY INJURY OR DEATH, OR DAMAGE TO MY PROPERTY, THAT OCCURS WHILE PARTICIPATING IN THE DESCRIBED ACTIVITY AND IT OBLIGATES ME TO INDEMNIFY THE PARTIES NAMED FOR ANY LIABILITY FOR BODILY INJURY OR DEATH OF ANY PERSON AND DAMAGE TO PROPERTY CAUSED BY MY INTENTIONAL ACT OR OMISSION WHILE PARTICIPATING IN THE ABOVE DESCRIBED ACTIVITY.

Signature:_____ Date:_____

Print Name:_____