



CERES (CELL ENGINEERING RESEARCH EQUIPMENT SUITE FACILITIES USE AGREEMENT

This Facilities Use Agreement (“Agreement”) is entered into and effective as of XXXXX (“Effective Date”) by and between **Worcester Polytechnic Institute** (“WPI”), on behalf of its CERES facility (the “CERES”) and **XXXXXX** (“COMPANY”) (each individually a “Party” and collectively the “Parties”).

WHEREAS, WPI owns and operates, or lawfully controls the use of the CERES facilities, laboratory space and equipment located at 50 Prescott Street, Worcester, MA 01609 (the “Facilities”), and

WHEREAS, COMPANY is a user of CERES and desires to use the Facilities in connection with the activities offered within

WHEREAS, WPI desires to permit COMPANY’s use of the Facilities pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Permitted Use.** This Agreement permits COMPANY the temporary use of the Facilities as outlined in the Facility Usage Agreement (Attachment A). Company may use the facility without being accompanied by CERES staff after they have been trained, as outlined in the on-boarding procedures.
2. **Term and Termination.**
 - 2.1. The term of this Agreement shall commence upon the Start Date of the usage of the suite (Start Date) and shall terminate upon written notice.
 - 2.2. WPI reserves the right to terminate this Agreement immediately for any violation of the Agreement by COMPANY or any individual for whom it is responsible or if WPI determines in its sole discretion, at any time after the Start Date, that COMPANY’s use of the Facilities presents an imminent danger to public health and/or safety. WPI shall not be liable for any damages (monetary or otherwise) suffered by the COMPANY as a result of such termination.
3. **Facilities Use Fee.**
 - 3.1. In consideration of COMPANY’s use of the Facilities as set forth hereunder, COMPANY agrees to pay WPI’s costs and expenses through its usage fees as outlined in the approved rate sheet (Attachment B).



4. COMPANY's Responsibilities.

4.1. COMPANY shall appoint a representative ("COMPANY Liaison") who shall have the authority to represent COMPANY during the Term of the Agreement. COMPANY's Liaison is XXXXXX

4.2. COMPANY shall at all times use and occupy the Facilities in an orderly manner in full compliance with all state and federal laws, rules, regulations and requirements applicable to its use of the Facilities and equipment. COMPANY is responsible for the conduct of COMPANY's agents, employees, officers, members and any party or individual over whom COMPANY exercises control or who enters the Facilities as a result of COMPANY's invitation or activities while at the Facilities. COMPANY agrees to provide proper levels of supervision for its activities and participants. WPI reserves the right to request any person to leave the Facilities or WPI premises if WPI determines that the person has violated any of WPI's rules or regulations or any provision of this Agreement.

4.3. COMPANY understands that use of the Facilities may involve exposure to potentially hazardous conditions, including, but not limited to chemical, mechanical and electrical hazards. COMPANY shall plan and perform its activities at the Facilities in such a way so as to ensure the safety of COMPANY's employees, agents, representatives and invitees as well as the safety of others. COMPANY shall operate all instruments and equipment in a safe and professional manner and only after having been appropriately trained, consistent with the equipment operating instructions and WPI's safety practices, policies and procedures. COMPANY represents that its employees' and representatives' knowledge of general laboratory practice is advanced enough to permit safe use of the Facilities and equipment. COMPANY shall ensure that its employees, agents, representatives and invitees cooperate and adhere to WPI's safety practices, policies and procedures while at the Facilities or on WPI's premises.

4.4. As part of its use, COMPANY shall not test, use or bring into the Facilities any chemicals or solutions unless approved in advance writing by the Director. COMPANY shall provide the Director with the appropriate environmental and safety information for such chemicals or solutions as required by law. WPI reserves the right to decline to provide access and use of the Facilities if such chemicals or solutions imposes undue risk. COMPANY shall bear the responsibility for and costs of disposal of any such chemicals or solutions.

4.5. COMPANY shall not make modifications to the Facilities or equipment. At the end of each day's use, COMPANY shall leave the Facilities in the same condition as it was prior to any use made or activities therein by COMPANY. COMPANY shall be solely responsible for all damages to the Facilities or the buildings, grounds and equipment of WPI arising out of COMPANY's acts or omissions or use of the Facilities, and shall promptly reimburse WPI the actual cost of repairing or replacing any such damaged property.

5. Release and Indemnity.

5.1. COMPANY shall be responsible for any of its guests, agents, servants, members, invitees, employees, officers, and visitors on, in and around the Facilities. COMPANY releases and discharges WPI, its trustees, officers, agents and employees (collectively "WPI") from any and all liabilities for any loss, injury or damages to any person (whether or not the injured person is an employee or agent) or property (whether or not the property belongs to COMPANY) caused or resulting from the COMPANY's use, maintenance and occupancy of the Facilities or the common areas on the premises of which the Facilities are a part. COMPANY shall indemnify, defend and hold harmless WPI from and against any and all liabilities, actions, claims, damages, losses or expenses incurred, asserted or imposed against WPI by reason of any accident, injury (including death), or damage to any person or property howsoever caused, arising from or connected with COMPANY's use of the Facilities or any act or omission of COMPANY, its officers, directors, agents,



or employees in connection with this Agreement. The insurance requirements set forth in paragraph 6, below, are not intended to limit a COMPANY's indemnification obligations hereunder.

6. **Insurance.** At all times during its use of the Facilities, COMPANY, at its sole cost and expense shall obtain and maintain the following liability insurance with the following minimum limits:

Commercial General Liability insurance policy in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate;

Statutory workers' compensation for all its employees, with employers' liability of meeting state-mandated minimums; and

Excess/Umbrella Liability insurance policy in an amount of not less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

General Liability and Excess Liability policies shall include Worcester Polytechnic Institute as an additional insured and may not be cancelled prior to ten (10) days after the expiration of this Agreement without the express written approval of WPI. All policies are to be primary and non-contributory and the General Liability and Excess Liability policies should include a waiver of subrogation in favor of Worcester Polytechnic Institute. All carriers must have a rating of A, or better, as determined by AM Best or equivalent. These insurance requirements are not intended to limit a Party's indemnification obligations hereunder. Certificates of insurance evidencing the policies required herein shall be provided to WPI prior to date of first use of the Facilities. If COMPANY fails to provide said insurance certificate in satisfactory form and substance as aforesaid two (2) weeks prior to the date of Suite use, WPI shall have the right at any time thereafter to terminate this Agreement (without providing prior written notice to COMPANY, but with providing to COMPANY such simultaneous or subsequent notice, oral or written, as may be practicable under the circumstances) and to take immediate possession of the Facilities (and access thereto and egress there from).

Deleted: ,

7. **General Provisions.**

- 7.1. The terms contained herein constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior communications and agreements, either oral or written. Both parties reject any and all pre-printed terms and conditions contained on any purchase order or other ordering document which are part of a general form and were not specifically negotiated by the parties. This Agreement may be amended only by mutual written agreement of the parties. Any provision of this Agreement, including but not limited to indemnities, insurance requirements, waivers of liability and warranties, that by its very nature or context is intended to survive any termination, cancellation or expiration hereof shall so survive. The waiver of any breach or default under this Agreement shall not constitute a waiver of (i) any other right or remedy hereunder; or (ii) any subsequent breach or default. If in any instance any provision of this Agreement shall be determined to be illegal, invalid or unenforceable under any applicable law, such shall be deemed separable from, and shall in no way affect or impair the validity or enforceability of, the remaining provisions of this Agreement.
- 7.2. Each party shall act only as an independent contractor and not as an employee, agent, servant, or representative of the other. Nothing contained herein shall be construed as preventing either party from developing, acquiring, marketing, selling, supporting or maintaining products or services similar to or competitive with products of the other, or from entering into agreements with others, provided that in so doing, there is no breach of the terms of this Agreement.



- 7.3. Nothing contained herein is to be construed as WPI providing permission, a recommendation or an inducement to use or practice any product, process, equipment or formulation by COMPANY. COMPANY is not permitted to state or imply in any publication or other published announcement that WPI has approved any product that is or might be manufactured, sold, or otherwise distributed by COMPANY.
- 7.4. In connection with the execution of this Agreement, COMPANY shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion or physical or mental handicap. COMPANY agrees to comply with all applicable federal and state statutes prohibiting discrimination in employment including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, Section 504 of the Rehabilitation Act of 1973, and Massachusetts General Laws chapter 151B, section 4(1).
- 7.5. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, excluding its conflict of law rules. All disputes arising out of this Agreement are subject to the exclusive jurisdiction of the state and federal courts located in Worcester County, Massachusetts, and the Parties hereby submit to the personal jurisdiction of the venue of those courts.
- 7.6. **Force Majeure.** Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.
- 7.7. **Notices.** Any notices given under this Agreement will be in writing and delivered by mail, hand or by facsimile, addressed to the parties as follows:

If to COMPANY:

If to WPI:

Andrew Penniman
100 Institute Road
Worcester, MA 01609
apenniman@wpi.edu

- 7.8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement. Each party acknowledges that an original signature or a copy thereof transmitted by facsimile, PDF or other electronic means shall constitute an original signature for purposes of this Agreement.



IN WITNESS WHEREOF, the parties have caused their duly authorized officers or representatives to execute this Agreement.

End User

WORCESTER POLYTECHNIC INSTITUTE

By: _____

By: _____

Name: _____

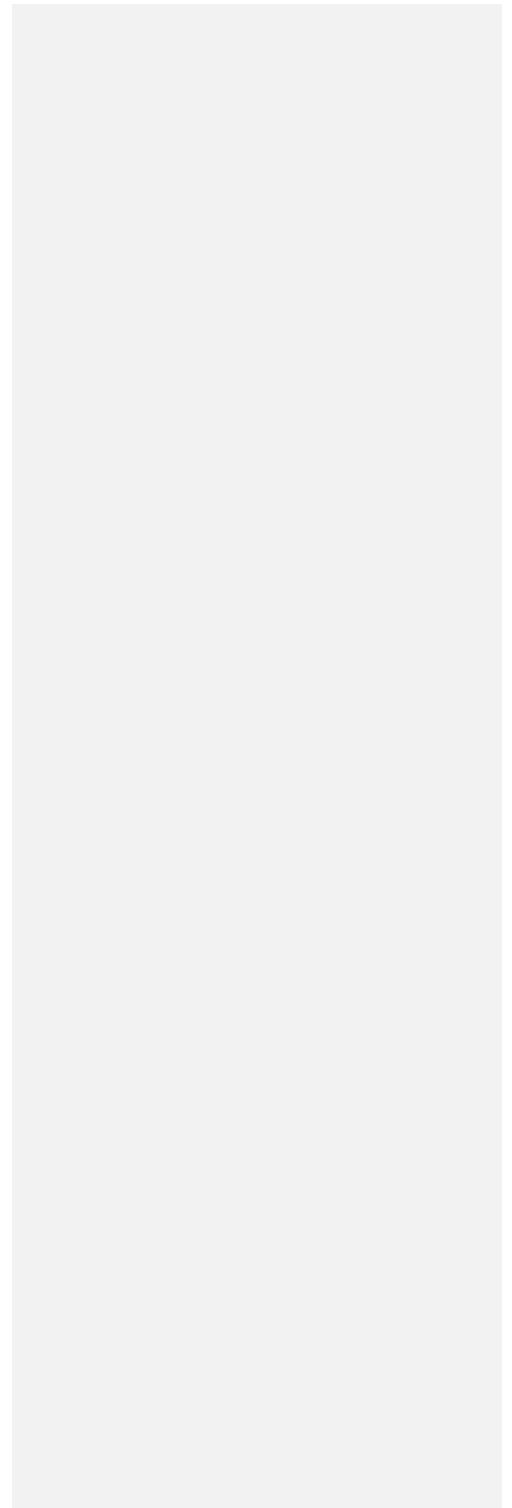
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____





Attachment A

FACILITIES USE AGREEMENT

STATEMENT OF PERMITTED USE

This Statement of Permitted Use (“SPU”) is governed by the terms of the Facilities Use Agreement (“Agreement”) in effect between [NAME OF COMPANY] (the “Company”) and Worcester Polytechnic Institute (“WPI”) and dated [DATE]. The purpose of this document is to define the activities, schedule and permitted use of WPI’s CERES (the “Facilities”).

1. **Permitted Use.** This Agreement permits the Company the temporary use of the Facilities during the Term for the purposes set forth in the Lab Usage Agreement and in this Exhibit A and no other.

1.1. **Purpose of Use:** [description of use here or reference to Member Agreement]

2. **Facilities Use Fees & Expenses.**

Fees: Company agrees to pay WPI’s costs and expenses through the Usage Fees outlined on the rate sheet in Attachment B. **Expenses:** Company agrees to reimburse WPI for any additional consumable costs outside of the fees associated with using the equipment alone.

WPI shall submit an invoice to COMPANY for the Expenses which is due and payable within thirty (30) days receipt of an invoice from WPI.

3. **Contact Information**

Company Liaison:

[NAME]
[ADDRESS]

Phone:
Email:

WPI Coordinator:

[NAME]
[ADDRESS]

Phone:
Email:



Attachment B

CERES Rates

Service / Equipment	Federal Rate (per hr)	Internal / Outside University Rate (per hr)	External Rate (per hr)
CytoFLEX S V4	\$ 45.00	\$ 45.00	\$ 125.00
CytoFLEX S V2	\$ 33.00	\$ 33.00	\$ 80.00
epMotion	\$ 32.00	\$ 32.00	\$ 75.00
QX200	\$ 38.00	\$ 38.00	\$ 150.00
Keyence BZX810	\$ 20.00	\$ 20.00	\$ 70.00
Cytation5	\$ 25.00	\$ 25.00	\$ 55.00
H1M2	\$ --	\$ --	\$ 40.00
ECHO 525	\$ --	\$ --	\$ 200.00

Assistance / Training / Set Up Rates via Grad Student	Federal Rate (per hr)	Internal / Outside University Rate (per hr)	External Rate (per hr)
CytoFLEX S V4	\$25.00	\$25.00	\$50.00
CytoFLEX S V2	\$25.00	\$25.00	\$50.00
epMotion	\$25.00	\$25.00	\$50.00
QX200	\$25.00	\$25.00	\$50.00
Keyence BZX810	\$25.00	\$25.00	\$50.00
Cytation5	\$25.00	\$25.00	\$50.00
H1M2	\$25.00	\$25.00	\$50.00
ECHO 525	\$25.00	\$25.00	\$50.00

Assistance / Training / Set Up Rates via Lab Tech	Federal Rate (per hr)	Internal / Outside University Rate (per hr)	External Rate (per hr)
CytoFLEX S V4	\$45.00	\$45.00	\$100.00
CytoFLEX S V2	\$45.00	\$45.00	\$100.00
epMotion	\$45.00	\$45.00	\$100.00
QX200	\$45.00	\$45.00	\$100.00
Keyence BZX810	\$45.00	\$45.00	\$100.00
Cytation5	\$45.00	\$45.00	\$100.00
H1M2	\$45.00	\$45.00	\$100.00
ECHO 525	\$45.00	\$45.00	\$100.00