# BOSTON COLLEGE

# FACILITIES USE AGREEMENT FOR EXTERNAL USERS

This Facilities Use Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Effective Date”) is entered into by and between Trustees of Boston College, a Massachusetts nonprofit educational corporation having its principal place of business at 140 Commonwealth Ave., Chestnut Hill, MA 02467 (hereinafter referred to as “***BC***”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “***User***”).

 Whereas, BC’s research facilities and equipment are available primarily for the research activities of BC’s students, faculty and other employees; and

 Whereas, User desires to use certain BC research facilities and/or equipment, and BC has agreed to allow User to use such facilities and/or equipment subject to the terms and conditions set forth in this Agreement.

Now, therefore, BC and User hereby agree as follows:

1. Scope of Work. Attached hereto is a scope of work (referred to herein as the “***Scope of Work***” or “***SOW***”) setting forth a description of the User’s research, the BC facilities and/or equipment the User intends to utilize, the names of the User’s employees and students who will be conducting the research, and such other information as requested by BC. For the term of this Agreement and subject to the terms and conditions of this Agreement, the User shall be permitted to use the facilities and/or equipment as made available by BC solely for the purposes as set forth in the SOW. In the event of a conflict between the terms of this Agreement and the terms of the SOW, the terms of this Agreement shall prevail.
2. Fees. User shall pay BC the fees as set forth in the SOW or as otherwise established by BC for the facility or equipment. Fees will be billed monthly and will be due and payable within 30 days following the date of invoice.
3. Term. Unless earlier terminated in accordance with the terms of this Agreement, the term of this Agreement shall cover the period commencing on the Effective Date until such time as specified in the SOW, or if no such time is specified in the SOW, then from one year of the date of the Effective Date. The term of this Agreement shall automatically renew for a successive one-year terms unless either party notifies the other party prior to the expiration of the then current term of its election to terminate the Agreement. This Agreement may be immediately terminated by BC upon written notice if User breaches its obligations under this Agreement, User fails to comply with BC policies applicable to usage of the facilities and/or equipment, or in the event User’s continued use of the facilities and/or equipment presents a risk to safety or the facilities and/or equipment. In addition, BC may terminate this agreement for any reason upon 30 days written notice.
4. Conditions of Use. User acknowledges and agrees to the following conditions on use of the facilities and/or equipment:
	1. Only the User’s employees and students identified on the SOW or subsequently approved in writing by BC (“Authorized Personnel”), and for whom an Authorized Personnel Export Control Addendum has been received by BC, may use the facilities and/or equipment.
	2. All Authorized Personnel must (i) satisfactorily complete any training relating to BC facilities procedures, safety and equipment operation as specified in the SOW or as may be requested by BC from time to time, and (ii) comply with BC’s rules, regulations, policies and procedures governing health, safety and personal conduct in connection with use of the BC facilities and/or equipment.
	3. User may not bring on to BC property or use in the course of its access to or use of the facilities and/or equipment any hazardous materials, toxins or biological agents without the prior written approval of BC, with such approval at BC’s sole discretion. The User shall comply with any terms and conditions of such approval, such as restrictions on use, storage and handling.
	4. User is responsible for any loss, theft or destruction of, or damage to, the facilities and/or equipment while utilized by the User. The User must notify BC in writing immediately of any such loss, theft or damage. The User will, upon BC’s request, reimburse BC’s expenses in making repairs or replacing the facilities and/or equipment.
	5. The User agrees that that BC instructional and research programs will take precedence over any activities associated with this Agreement, and that all scheduling shall be subject to BC’s approval at its sole discretion.
	6. The User agrees not to disclose any BC information that BC identifies as confidential or export-controlled or that User knows or otherwise should reasonably know is confidential or export-controlled, including without limitation, any equipment manuals and specifications.
5. Intellectual Property. BC shall not make any claim to Intellectual Property conceived, first reduced to practice, developed, produced or composed solely by User and User’s Authorized Personnel in the course of using BC’s facilities and/or equipment under this Agreement unless (i) such Intellectual Property was created with the support or contribution of any BC employee, student, visiting or adjunct faculty member, or any other person subject to BC’s Intellectual Property Policy (provided that the support referred to in the foregoing does not include the performance of services by BC non-faculty employees as set forth in the SOW), or (ii) BC and the User have otherwise agreed in writing. For purposes of this Agreement, “***Intellectual Property***” means inventions, whether or not patentable, and copyrightable materials, including, without limitation, software and databases.
6. Compliance with Law; Export Controls.
	1. User hereby represents and warrants to BC that User’s use of the facilities and/or equipment will not violate any applicable law, rule or regulation or any of User’s contracts with third parties, or infringe any third party’s rights, including, without limitation, any third party’s patent or other intellectual property rights.
	2. The facilities and/or equipment utilized under this Agreement, including any software, documentation, and any related technology or technical data included with such facilities and/or equipment, may be subject to U.S. export control laws and regulations, including, but not limited to, the Export Administration Regulations and the International Traffic in Arms Regulations. The User shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings, required under such, prior to and during User’s use of the facilities and/or equipment.

 Neither User nor, to the best of its knowledge, any of its directors, trustees, officers, employees, or agents (a) is currently the subject of any investigation by Department of the Treasury - Office of Foreign Assets Control ("OFAC") or any other governmental entity imposing economic sanctions or trade embargoes ("Sanctions Investigation(s)"); (b) is currently the subject of any investigation by the Department of Commerce - Bureau of Industry and Security (BIS), the Department of State – Directorate of Defense Trade Controls (DDTC), or any other governmental entity imposing export controls (“Export Control Investigation(s)”); or (c) is directly or indirectly owned or controlled by any entity or person who is currently the subject of a Sanctions or Export Control Investigation.

User shall promptly notify BC if or when (a) it or any of its subsidiaries, or any of its subsidiaries' directors, trustees, officers, employees, or agents becomes the subject of any Sanctions or Export Control Investigation, or (b) any entity or person who directly or indirectly owns or controls User becomes the subject of any Sanctions or Export Control Investigation.

User acknowledges that BC may, in its sole discretion, deny access to BC facilities and/or equipment to anyone based on concerns related to export controls and sanctions compliance. BC will not obtain U.S. Government licenses on behalf of external users, and therefore any Authorized Personnel requiring a license will be denied access to BC facilities and equipment.

User will reasonably cooperate with and provide any information that is reasonably requested by BC in order to ensure compliance with U.S. export control and sanctions laws and regulations, including, but not limited to, information necessary to determine the U.S./foreign person status of Authorized Personnel, in accordance with relevant export control regulations. User will be solely responsible for ensuring that requested information provided to BC regarding User’s Authorized Personnel is complete and accurate, and recognizes that BC will use the provided information to make access and use determinations in compliance with U.S. export control and sanctions laws and regulations. User will take such actions as reasonably requested by BC to meet applicable regulatory requirements, including, but not limited to, completion of the Authorized Personnel Export Control Addendum to this Agreement for all Authorized Personnel.

1. Disclaimer of Warranties; Limitation of Liability; Indemnification; Insurance.
	1. BC HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE FACILITIES, EQUIPMENT, GOODS, SERVICES AND INFORMATION PROVIDED HEREUNDER, THE FUNCTION, CONDITION OR AVAILABILITY OF THE BC FACILITIES AND/OR EQUIPMENT AND ANY RESULTS OBTAINED FROM THEIR USE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.
	2. User understands and acknowledges that there are risks in use of the BC Facilities and/or Equipment, and User voluntarily and knowingly accepts total responsibility and assumes all risk for injury to Authorized Personnel or other persons or loss of or damage to property arising from its use of the BC facilities and/or equipment, and releases BC from liability therefor.
	3. IN NO EVENT WILL BC, ITS TRUSTEES, OFFICERS, EMPLOYEES, STUDENTS, OR AGENTS BE LIABLE FOR MULTIPLE DAMAGES OR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES OF ANY KIND IN CONNECTION WITH THE USER’S USE OF THE BC FACILITIES AND/OR EQUIPMENT, INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND INJURY TO PERSONS OR LOSS OF OR DAMAGE TO PROPERTY, REGARDLESS OF WHETHER BC WAS ADVISED, HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY OF THE FOREGOING.
	4. User shall indemnify, defend and hold harmless BC, its members, trustees, officers, employees, students, and agents, and their respective successors, assigns and heirs, from and against any and all claims, liabilities, actions, losses, damages, costs and expenses of whatever nature or kind, which may arise, directly or indirectly, from the use of the BC facilities and/or equipment under this Agreement, including but not limited to property damage, personal injury or death.
	5. Further, the User agrees to secure and maintain Comprehensive General Liability Insurance, with Blanket Contractual Coverage, in an amount not less than $1 million, and Worker's Compensation as required by law. The User shall provide other such insurance as required by the Boston College Office of Risk Management. If requested by BC, the User shall also provide BC with a certificate of insurance evidencing the required insurance referenced above and naming BC as an additional insured for this activity.
2. Use of Name.User may reference Boston College and the name of the facilities and/or equipment it used in describing User’s research; provided however, that no such reference shall state or imply endorsement by BC of User or User’s research. Except as set forth in the foregoing, User shall not use the name "Boston College" or “BC” (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify BC or any BC school, unit, division or affiliate (“***BC Names***”) except with the prior written approval of, and in accordance with restrictions required by, BC.
3. Miscellaneous.
	1. Any notice under this Agreement may be delivered in person, or sent by fax (with the original sent promptly by ordinary mail), by electronic mail, by registered or certified mail, postage prepaid, or by recognized delivery service, using the most recent contact information provided by the recipient (by means of notice complying with this paragraph), and such notice shall be deemed to have been given when so delivered, sent by fax or electronic mail, or mailed.
	2. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. User may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of BC.
	3. If any provision of this Agreement or portion thereof is determined by a court or arbitrator of competent jurisdiction to be invalid or unenforceable, any enforceable portion of the provision and the remainder of this Agreement will remain in effect and the parties will request the court or arbitrator to reform the provision to a form that is valid and enforceable and reflects as closely as possible the intent of the original provision.
	4. BC and User are independent contractors, and neither is an agent, joint venturer or partner of the other. Neither party has authority to take on any obligation, liability or expense on the other’s behalf or to act in any other manner on behalf of the other or in its name.
	5. The validity and interpretation of this Agreement and the legal relationship of the parties to it will be governed by the laws of the Commonwealth of Massachusetts, without giving effect to the conflict of laws provisions thereof.
	6. BC shall not be liable for any failure to perform as required by this Agreement if the failure to perform is caused by circumstances reasonably beyond BC’s control, including but not limited to labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, restrictions arising from export control or sanctions regulations, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, theft, weather events, pandemics, public health emergencies or other occurrences, and/or any BC closure related to any of the foregoing circumstances.
	7. This Agreement (i) represents the entire understanding between the parties with respect to its subject matter and (ii) supersedes all contemporaneous and previous statements, representations, agreements and understandings between the parties, however expressed, that relate to the subject matter of this Agreement.Amendments or changes to this Agreement must be in writing and signed by duly authorized representatives of the Parties.This Agreement and any amendment hereto may be executed in counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument. If this Agreement or any amendment is executed in counterparts, no signatory hereto will be bound until all Parties have duly executed a counterpart of this Agreement.

The parties have executed this Agreement under seal as of the date first above written.

TRUSTEES OF BOSTON COLLEGE

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

[insert name of User]

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

SCOPE OF WORK

This Scope of Work (“SOW”) is incorporated into, and governed by the terms and conditions of, the Facilities Use Agreement For External Users by and between Trustees of Boston College (“BC”), and [insert company/institution name of External User].

Instructions: This Scope of Work (SOW) template should be filled out by the BC representative (e.g. facility director/manager), in consultation with the potential external user, and appended to the Facilities Use Agreement for External Users. Please direct any questions to Joshua Z. Rappoport, Ph.D., Executive Director, Research Infrastructure at rappopoj@bc.edu

Please note that all work performed in BC core facilities and recharge centers should always be appropriately acknowledged. If you are publishing or presenting data acquired in BC core facilities and recharge centers, please include the following statement in the Acknowledgement section of your manuscript/poster/presentation:

"The authors would like to thank the Boston College <insert facility name> for assistance with the work presented in this paper/poster/presentation\*."

\* Delete as appropriate

**Core Facility/Recharge Center Name, Address, and Phone Number**:

**Director/Manager (individual filling out form) Name and Contact Information**:

**External User Company/Institution Name, Address, and Phone Number**:

**Representative of External User Company/Institution Name and Contact Information**:

**Background**: *Please replace with a brief description of the research plan, and contributions and expectations from external user and BC facility/staff.*

**Details of proposed Utilization**: *Please replace with a list of all materials, reagents, instruments, and procedures to be provided by external entity and/or BC facility/staff.*

**Expected Timescale**: *Please replace with a description of the expected timescale for each step/phase of the work described above.*

**Prices and Quotation**: *Please replace with a list of all appropriate estimated costs associated with the work described above, including facility access, instrument utilization, labor, consumables, and reagents.*

Names of External User’s Authorized Personnel (all must be employees or students of the External User unless otherwise agreed by BC):

AUTHORIZED PERSONNEL EXPORT CONTROL ADDENDUM

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (User) designates the below individual is an Authorized Personnel, pursuant to the Facility User Agreement executed between User and Boston College:

The following information is required for all Authorized Personnel who will use the facility, in order to ensure compliance with U.S. export control and sanctions regulations:

Name:

Citizenship(s) (list all that apply):

Countries of Lawful Permanent Residence Status (list all that apply):

If the Authorized Personnel is a protected individual as defined in 8 U.S.C. 1324b(a)(3) (e.g., an individual who has been granted asylum or refugee status in the U.S.), indicate which special category status they hold:

Current Affiliated Institutions(s) (list all that apply):

I certify on behalf of User that the above information is accurate and complete. I recognize that this information will be used to determine eligibility for facility use and exposure to equipment and technology that could be restricted under U.S. export control and sanctions laws and regulations.

Name & Title:

Signature:

Date

*[Duplicate this addendum as necessary for additional Authorized Personnel.]*