



SAINT LOUIS UNIVERSITY

PRIVATE USE OF SAINT LOUIS UNIVERSITY RESEARCH FACILITIES POLICY

1.0 INTRODUCTION

Saint Louis University (the "University") may make its research facilities available for a limited time to private parties, including University-affiliated faculty members, to provide opportunities for advancing the University's mission of research and technology transfer.

2.0 PURPOSE

This policy provides guidelines to help ensure that private use of University research facilities is properly managed in order to protect the University's tax-exempt status and eliminate or minimize potential conflicts of interest, misuse of University resources, and legal liability.

3.0 POLICY

Requests for private use of University research facilities will be evaluated on a case-by-case basis. The following guidelines shall be considered in the decision-making process:

- A. **Faculty Start-up Company:** For any commercial entity in which a University employee or student has a significant financial interest (see Saint Louis University's Conflict of Interest in Research policy), the employee or student must have submitted a conflict of interest disclosure form to his/her chairperson, division head, or director, and must have an approved conflict-of-interest-management plan in place.
- B. **License Requirement:** The commercial entity must have a license or license option to University-owned intellectual property that is either executed by or approved by the Saint Louis University Office of Innovation and Intellectual Property.
- C. **Advancing the University's Mission of Research and Technology Transfer Objectives:** Approval of a request to use the University's research facilities is more likely when this use clearly benefits the University's technology development, licensing, technology transfer, research, and similar initiatives.

- D. **Financing of University Research Facility:** An important factor in determining the use of any University space by a private party is whether the University facility has been financed in whole or in part by tax-exempt debt and/or by direct or indirect costs from federal research grants. In such instances, the University must predetermine if such proposed use constitutes a “private use” in excess of the limits placed upon the University by the Internal Revenue Code, and/or whether the proposed private use is permitted under the federal guidelines for federally-sponsored research at academic institutions.
- E. **Duration and Scope of the Use of the University’s Research Facility:** The University generally limits any license for research space to third persons for a limited time to provide opportunities for pre-incubator and proof of concept research. The expectation is that the duration of the license will extend no longer than two years, including any renewal, absent extraordinary circumstances.
- F. **Rates for Use of Space and Equipment:** The University shall charge fair market value rates for the use of space or equipment. The University Property Manager is responsible for establishing such rates after consultation with the appropriate administrators.
- G. **Restriction of Leasing Contiguous Space:** The University’s Conflict of Interest in Research Policy restricts leasing space contiguous to a faculty member’s University-assigned space. The proposed use of University facilities may not unduly limit or restrict access to University-owned equipment or facilities by University employees or students.
- H. **Purchasing:** The University shall not allow a licensee to use the University’s tax-exempt status for purchasing. All financial and business activities of the licensee and the University shall be clearly separated and transparent.
- I. **Ethical Conduct of Research:** The University will require any licensee or leasee to conduct its research and activities consistent with the Ethical and Religious Directives for Catholic Health Care Services approved by the National Conference of Catholic Bishops.

4.0 PROCEDURES

The terms and conditions of any private use of University research facilities shall be set forth in a proposed University Research Facilities License Agreement (template attached).

4.1 A person who desires to use University research facilities must submit the attached transmittal form to the appropriate department head or dean for review and approval.

4.2 The appropriate department head and dean shall forward the proposed agreement, along with the transmittal signifying their approval of the request, to the Associate Provost for the Responsible Conduct of Research and the University Property Manager.

4.3 The Associate Provost for the Responsible Conduct of Research and the University Property Manager will review the proposed agreement and submit a recommendation for approval and any comments to the University's Provost.

4.4 Any material changes to the model University Research Facilities License Agreement must be reviewed and approved by the Office of the General Counsel. These procedures shall be followed for both new contract proposals and contract renewals.

APPROVAL SIGNATURES

This policy has been approved by:

Date: 10/23/06

Joseph Weixlmann, Ph.D.
Provost
Saint Louis University

REVISION HISTORY

| EFFECTIVE DATE | REVISION NUMBER | MODIFICATION |
|---------------------|-----------------|--------------|
| Added upon approval | 1.0 | New Document |

RESEARCH FACILITIES LICENSE AGREEMENT

BETWEEN

SAINT LOUIS UNIVERSITY

AND

COMPANY

THIS AGREEMENT between *{insert COMPANY name}* (hereafter referred to as the "COMPANY"), a small-business concern organized as a corporation under the laws of the State of *{insert state}* and having a principal place of business at *{insert address}*, and Saint Louis University (hereafter referred to as SLU), a not-for-profit corporation of the State of Missouri, having a principal place of business at 221 North Grand Boulevard, St. Louis, Missouri, 63103, is entered into for the purpose of licensing the use of certain SLU research laboratory space and equipment to COMPANY for use in conjunction with its research and development as described in Exhibit A, which is incorporated herein by reference.

1. LABORATORY SPACE AND EQUIPMENT AGREEMENT. SLU agrees to license the LABORATORY SPACE and EQUIPMENT to COMPANY as specified in Exhibit B on the terms outlined therein.
2. SLU's Principal Investigator is Dr. *{insert name}*.
3. SITE OF PERFORMANCE. The site of performance is in room *{insert room number}* in *{insert building name}* at SLU.
4. TERM. Subject to paragraph 9, the initial term of the license shall be for twelve (12) consecutive months from the date of signature of the last-to-sign authorized signatory. The license may be renewed for an additional 12 months period at a mutually agreed upon monthly rate, contingent upon (i) the COMPANY having fully paid the entire amount owed for the initial 12 months period of the licensee and (ii) provided that neither party has provided the other party with 30-days prior written notice of its intent not to renew the license.
5. PAYMENTS. SLU shall provide to the COMPANY a monthly license fee invoice which shall be due and payable on the first day of the month to which the invoice applies. All license fees shall be by checks made payable to Saint Louis University in U.S. dollars net of taxes or impost of any kind and sent to the attention of: Property Manager, Saint Louis University, 221 North Grand Blvd., DuBourg Hall – Room 210, St. Louis, MO 63103.
6. TAXES. COMPANY shall pay all taxes and assessments which are now or may subsequently be imposed or assessed upon or with respect to the Premises and the remainder of the Building, except as otherwise provided in this Agreement. COMPANY shall pay prior to delinquency all taxes and assessments imposed or assessed upon or with respect to the operation of COMPANY'S business or to the furnishings, fixtures, equipment and other property of COMPANY placed in the Premises. For the purpose of determining such amount, figures supplied by the City Assessor or other taxing authority as to the amount so assessed shall be conclusive. Should any governmental taxing authority acting under any

law, ordinance or regulation, levy, assess or impose a tax excise and/or assessment (other than an income or franchise tax) upon or against the rentals payable by COMPANY or SLU either by way of substitution for or in addition to any existing tax on land and buildings or otherwise, COMPANY shall be responsible for and shall pay such tax, excise and/or assessment, or shall reimburse SLU for such amount, as the case may be, as additional rent, on or before the date that any fine, penalty or interest would be added for non-payment.

7. SLU POLICIES AND PROCEDURES. COMPANY agrees that its employees and representatives working in the LABORATORY SPACE and other SLU premises will comply with all rules, policies and procedures established by SLU including, but not limited to, any applicable Conflict of Interest policies and the Ethical and Religious Directives for Health Care Services approved by the National Conference of Catholic Bishops as amended from time to time. Additionally, COMPANY agrees to comply with all applicable federal, state, and legal requirements in connection with its use and occupancy of the Premises.
8. PATENT RIGHTS. Except as otherwise agreed to in writing by the COMPANY and SLU:
 - a. Inventions and discoveries made solely by COMPANY'S employees arising out of or related to research conducted by the COMPANY using the LABORATORY SPACE during the term of this Agreement and any resulting intellectual property rights shall be the property of the COMPANY. SLU shall have no claim to such inventions, discoveries, and intellectual property rights under SLU's Patent Policy or otherwise. Inventions and discoveries made solely by COMPANY employees not arising out of or related to the SLU-funded research described in Exhibit A to this agreement using the LABORATORY SPACE and any resulting intellectual property rights shall be the property of COMPANY.
 - b. Inventions and discoveries made jointly by SLU employees and COMPANY employees arising out of or related to research conducted by the COMPANY using the LABORATORY SPACE during the term of this Agreement, and any resulting intellectual property rights, shall be assigned by the inventors to their employing institution and such jointly made inventions and discoveries and intellectual property rights shall be jointly-owned by SLU and by COMPANY. In such event, SLU shall have sole responsibility for filing, prosecuting, and maintaining patents covering such jointly-owned intellectual property rights in consultation with COMPANY. COMPANY and SLU will each be responsible for paying one-half (50%) of all of the billing invoices received by SLU from the law firm that relate to the cost of filing, prosecution, and maintenance of those patents that are jointly-owned by SLU and COMPANY. SLU will timely provide to COMPANY copies of joint patent-related patent correspondence and legal billing invoices and keep COMPANY timely appraised on patent-related matters throughout the course of the patent prosecution and lifetime of the patent.
 - c. COMPANY shall have an exclusive option to negotiate with SLU for an exclusive worldwide license (with right to sublicense) for SLU'S interest in the patents that are jointly owned by SLU and the COMPANY under commercially

reasonable terms relative to the subject technology and related intellectual property rights. The exclusive license option exercise period shall extend for a period of three (3) months beginning on the date that a full U.S. Patent Application or a Provisional U.S. Patent is filed with the USPTO for an invention that is jointly owned by SLU and the COMPANY. To exercise its exclusive option rights, the COMPANY will send a written notice of option exercise during the option exercise period to SLU at its Notice Address (Section 14). If the COMPANY exercises its exclusive option rights then SLU and COMPANY shall, beginning on the date of the written option exercise notice sent by the COMPANY to SLU, have an additional three (3) months in which to negotiate and mutually execute an Exclusive License Agreement. It is understood by the parties hereto that one of the provisions of the Exclusive License Agreement between the COMPANY and SLU will require that, effective on the Effective Date of the Exclusive License Agreement between SLU and the COMPANY, the COMPANY will (i) fully reimburse SLU for all documented payments made by SLU prior to the Effective Date for invoiced patent costs relating to the exclusively licensed patent rights jointly owned by SLU and the COMPANY, and, (ii) beginning on the Effective Date of the Exclusive License Agreement, reimburse SLU for 100% of all billing invoices received by SLU for the patent costs related to the jointly owned patents exclusively licensed by the COMPANY from SLU. Except as specifically provided in this section 7, SLU shall have no claim to the COMPANY'S undivided rights and interest in discoveries and intellectual property that are jointly-owned together with SLU, under SLU'S Patent Policy or otherwise.

9. LOST OR DAMAGED COMPANY PROPERTY. SLU is not responsible for security, theft, lost or damaged property of COMPANY or third persons brought onto the COMPANY-licensed SLU research facilities. COMPANY agrees to release, waive, indemnify, and hold SLU harmless from any and all claims for property loss, casualty, or theft incurred by COMPANY, its employees, agents, and licensees or invitees, notwithstanding any alleged negligence or wrongful acts or omissions alleged against SLU. In recognition of COMPANY'S responsibility pursuant to this paragraph 8, COMPANY may establish reasonable security procedures to safeguard COMPANY – owned equipment and property located in the LABORATORY SPACE as long as such procedures do not violate the provisions of paragraph 9 herein.
10. ALTERATIONS TO PREMISES. COMPANY is precluded from making any alterations or improvements to the COMPANY'S licensed SLU LABORATORY SPACE and EQUIPMENT without first obtaining prior written approval from the Dean. SLU-owned equipment shall not be removed from the premises. COMPANY shall not pledge or encumber the licensed SLU LABORATORY SPACE and/or EQUIPMENT. Additionally COMPANY shall not use the licensed SLU LABORATORY SPACE and/or EQUIPMENT for any purpose other than as specified in Exhibit B.
11. REPRESENTATIONS AND WARRANTIES. COMPANY agrees that SLU is providing the space and equipment furnished pursuant to this License AS IS and that SLU has not extended and does hereby fully disclaim all express and implied warranties in the space

and equipment subject to this AGREEMENT including, but not limited to, warranties of merchantability, fitness for a particular purpose, use and enjoyment, and habitability.

12. **TERMINATION.** This AGREEMENT may be terminated by either party upon thirty (30) days prior written notice being given to the other party hereto. SLU may, however, immediately terminate this agreement for the following reasons: (i) failure to pay the license fee required in paragraphs 1 and 5 in a timely manner, (ii) failure to obtain the required authorization to alter the premises required in paragraph 9, (iii) any lapse or failure to maintain the insurance coverage required in paragraph 12, and (iv) whenever, in SLU's judgment, the COMPANY'S continued use or occupancy of the Premises violates applicable laws, including health or safety standards, or creates a serious risk of harm or danger to the University and its employees, licensees, or invitees.

12. **INDEMNIFICATION.** COMPANY and SLU agree to defend, indemnify, and hold each other harmless from all losses, expenses (including attorney's fees), costs, liabilities, damages, or claims (hereafter collectively "losses") arising out of any claim of whatsoever nature relating to the gross negligence, wrongful acts, or omissions of COMPANY or SLU and their respective trustees, officers, employees, agents, representatives, and independent contractors, including, but not limited to, claims for bodily injuries, death, or damage to property. Both parties agree to promptly notify the other party of claims or losses covered by this indemnity. SLU and COMPANY agree that (i) the indemnitee promptly notifies the indemnitor in writing after the indemnitee receives notice of any Claim, and (ii) indemnitor is given the opportunity, at its option, to have sole control of the defense and trial of any Claim and any related settlement negotiations, and (iii) the indemnitee reasonably cooperates with indemnitor in the defense of any such Claim.

13. **INSURANCE.** COMPANY shall obtain and maintain during the term of this AGREEMENT comprehensive general liability insurance with coverage of not less than \$1,000,000 per occurrence and \$3,000,000 in the annual aggregate. COMPANY will also maintain normal property, casualty, and theft insurance coverage during the term of this AGREEMENT. SLU shall be named as an additional insured on all appropriate policies. Additionally, COMPANY shall maintain workers' compensation insurance on its employees permitted hereunder to work on the University's premises, in such amounts as required by any and all U.S. Government and State of Missouri laws and regulations. A certificate of insurance coverage shall be provided by COMPANY to SLU at the inception of this license Agreement (before COMPANY moves into the mutually agreed SLU research facilities) and annually on the anniversary of the effective date, and at such other times during the course of this AGREEMENT as may be reasonably requested in writing by SLU. COMPANY may not terminate or reduce its insurance coverage below the agreed upon amounts as long as this AGREEMENT is in force.

14. **USE OF NAMES.** Neither party will use the name of the other party in any advertising or other form of publicity without obtaining the prior written permission of the other party. This AGREEMENT does not create any agency, employment, joint employer, joint venture, or partnership between COMPANY and SLU. Neither party will have the right, power, or authority to act for the other party in any manner whatsoever.

15. NOTICES. Any notices required to be given or that shall be given under this Agreement shall be in writing delivered by first class mail to the Parties as follows:

Saint Louis University

Office of the Provost
DuBourg Hall – Room 106
221 North Grand Boulevard
St. Louis, MO 63103

COMPANY, Inc.

Attn:
Title
Address

With copies to:

Office of the Vice President & General Counsel
Attn:
221 North Grand Boulevard
DuBourg Hall – Room 219
St. Louis, MO 63103

Saint Louis University
Property Manager
221 North Grand Boulevard
Dubourg Hall – Room 210
St. Louis, MO 63103

In the event notices, statements, and payments required under this agreement are sent by certified or registered mail by one party to the other party at its above address, they shall be deemed to have been given or made as of the date so mailed, otherwise as of the date received.

16. AMENDMENTS. This AGREEMENT may not be amended except by a written Amendment executed by a duly authorized representative of each of the parties.

17. ASSIGNMENT. This AGREEMENT may not be assigned by either party without the prior written consent of the other party.

18. CONFIDENTIALITY. Both parties and any other person signing on behalf of both parties, including their agents, employees, and servants, hereby agree to not directly or indirectly disclose to any third party the terms of this AGREEMENT, except as may be required by law. Notwithstanding the foregoing, the terms of this AGREEMENT may be disclosed by either party upon prior written notice being given to the other party of a purchaser or bona fide potential purchaser of the interests of either party.

19. FORCE MAJEURE. If either party is unable by force majeure to perform its obligations under this AGREEMENT, it is agreed that performance of such obligations by such party so far as they are affected by force majeure shall be excused from the inception of any such inability. The term "force majeure" as used in this AGREEMENT shall mean any act, event, cause, or occurrence rendering a party unable to perform its obligations, which act is not within the reasonable control of such party. In no event shall either party be liable to the other party for incidental, consequential, or other damages resulting from an act of force majeure.

20. WAIVERS/SEVERABILITY. Failure by either party to enforce one or more of the provisions contained herein shall not be deemed or construed to constitute a waiver of default or waiver of any other violation or breach of any the terms contained herein. If

any provision of this AGREEMENT is declared invalid or unenforceable, such provision shall be modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability and/or invalidity of any provision shall not affect any other provision of this AGREEMENT, and this AGREEMENT shall continue in full force and effect and may be construed and in force as if such provisions had not been included or had been modified as above provided, as the case may be.

21. INTEGRATION. This AGREEMENT supersedes any and all other agreements between the parties hereto with respect to the subject matter hereof, either oral or written, and contains the entire agreement of the parties with respect to the subject matter hereof.
22. DISPUTE RESOLUTION. Any dispute regarding the enforcement, interpretation, or application of the terms of this Agreement, which cannot be resolved through good-faith negotiations between knowledgeable senior representatives of each of the parties, shall be resolved by a court of competent jurisdiction in the City of St. Louis, State of Missouri, in accordance with Missouri law regardless of choice of law statutes or principles.
23. GOVERNING LAW. The validity and interpretation of this AGREEMENT and the legal relation of the parties to it shall be governed by the laws of the State of Missouri and the United States of America.

COMPANY

Name
Title

Date

SAINT LOUIS UNIVERSITY

{Name}

Date

Provost

Acknowledged by:

{Insert name}, Ph.D.
Principal Investigator

Date

EXHIBIT A
DESCRIPTION OF RESEARCH

EXHIBIT B
LABORATORY SPACE, EQUIPMENT and FINANCIAL TERMS

**RESEARCH FACILITIES LICENSE AGREEMENT
TRANSMITTAL SHEET**

Requestor: _____

Department Head: _____

Dean: _____

Is the attached agreement related to a faculty start-up company?

Yes No

If so, has a Conflict of Interest Management Plan been approved?

Yes No

If so, has a license or license option been approved?

Yes No

New Agreement Renewal

REVIEWED BY:

Director, Office of Innovation and Intellectual Property (if applicable):

Associate Provost, Responsible Conduct of Research:

University Property Manager:

APPROVED:

Provost:
