

WAKE COUNTY

SPECIAL EQUIPMENT LOAN AND USE AGREEMENT

This Special Equipment Loan and Use Agreement (“Agreement”) is made this ____ day of _____, 20____, by and between _____ (“SPONSOR”) and North Carolina State University, on behalf of its Department of _____, Campus Box _____, Raleigh, NC 27695 (“NC STATE”).

1. Subject to the terms and conditions of this Agreement, the SPONSOR loans the equipment listed in the attached Schedule A (the “Equipment”) to NC STATE.
2. This Agreement begins on _____ and ends on _____. At the end of this period, this Agreement is automatically renewed on an annual basis, unless written notice of termination is provided by either party at least 90 days prior to the end of the initial term or any subsequent renewal term.
3. SPONSOR and NC STATE agree that each party’s performance of this Agreement constitutes full consideration and that NC STATE is not obligated to pay for use of the Equipment.
4. The Equipment will be operated in a location of NC STATE’s choosing on the campus of NC STATE. NC STATE is responsible for the safekeeping of the Equipment and for providing adequate and appropriate space, use of a building or other structure, ventilation, and/or power supply as may be reasonably necessary for the use of the Equipment. If SPONSOR is aware of any special power supply, ventilation, space or other needs for the proper and safe operation and/or maintenance of the Equipment, then SPONSOR will supply written specifications and instructions in this regard at the beginning of the loan period described in Paragraph 2, above.
5. NC STATE agrees not to sell, assign, loan, pledge or otherwise encumber or suffer a lien upon or against any interest in this Agreement or the Equipment.
6. Upon prior approval by the NC STATE’s Lab Director having jurisdiction over the space where the Equipment is located, and provided it does not interfere with ongoing NC STATE projects, SPONSOR’s personnel may utilize the Equipment for demonstrations of the Equipment’s use. SPONSOR is solely responsible for any and all injuries, damages, losses, liabilities, or claims (collectively “Claims”) resulting from such demonstrations. SPONSOR will indemnify and hold harmless NC STATE, its employees, students, and officers from any and against all such Claims.
7. Subject to and in accordance with all laws, rules, and regulations governing the purchase of goods and services by NC STATE and subject to terms and conditions of sale acceptable to SPONSOR (which, however, may not be less favorable to NC STATE than those terms and

conditions that are generally available to other purchasers of similar equipment from SPONSOR), NC STATE has the option to purchase the Equipment at the fixed prices detailed in Schedule A, but only under any of the following events or circumstances:

- (a) SPONSOR declares its intention to remove the Equipment, and either:
 - (1) NC STATE is under contract with a third party under which contract, use of the Equipment is either necessary or useful; or
 - (2) The Equipment is necessary or useful for the completion of a research project being conducted by a student toward the completion of a degree program.
- (b) SPONSOR fails to provide service on the Equipment.
- (c) SPONSOR fails to carry liability insurance on the Equipment.
- (d) SPONSOR is acquired by a non-related party.
- (e) By mutual agreement of the parties.
- (f) Bankruptcy of SPONSOR.

The purchase of the Equipment must be completed within a reasonable time of the applicable event or circumstance, it being understood that the parties will use their best efforts to conclude such negotiations within 90 days.

At the termination of this Agreement, SPONSOR, at its sole discretion, may donate the Equipment to NC STATE. NC STATE, in its sole discretion, has the option to accept or reject the donation.

8. Failure by either party to perform according to the terms of this Agreement, except for reasons beyond the control of the party, will constitute a default under this Agreement.

In the event of a default as specified above and failure by SPONSOR or NC STATE to remedy such default within a period of 30 days after receipt of written demand from the other party, SPONSOR or NC STATE may, at its respective option as may be applicable, take either or both of the following actions:

- (1) Terminate the Agreement immediately and arrange for the return of the Equipment, which return shall be at the nonperforming party's expense; and/or
- (2) Proceed with appropriate legal action in a court of competent jurisdiction.

9. At the expiration or termination of this Agreement, and where the Equipment is neither purchased by NC STATE nor donated to and accepted by the NC STATE under Paragraph 6, SPONSOR is responsible for all reasonable costs and expenses incurred in removing the Equipment from NC STATE's campus. SPONSOR shall not be obligated to return the premises to the condition that existed prior to the Loan of the Equipment.

10. SPONSOR must defend, at its own expense, any action brought against NC STATE to the extent that (i) it is based on a claim that the Equipment supplied by SPONSOR infringes a United States Patent, and (ii) it relates to an approved use of the Equipment in a Research Project. SPONSOR will pay any costs that are attributable to any such claims, but such defense

and payments are conditioned on the following: (a) that SPONSOR shall be notified promptly in writing by NC STATE of any notice of such claim; (b) that SPONSOR shall have sole control of the defense of any action on such claim and all negotiation for its settlement or compromise; and (c) should the Equipment become or, in SPONSOR's opinion, be likely to become, the subject of a claim of infringement of a United States Patent, that NC STATE shall permit SPONSOR, at SPONSOR's option and expense, to procure for NC STATE the right to continue using the Equipment, to replace or modify the Equipment so that it becomes noninfringing, or to discontinue the loan of the Equipment and accept its return. SPONSOR shall have no liability to NC STATE under any provisions of this clause with respect to any claim of patent infringement based upon the combination of the Equipment supplied under the Agreement with machines or devices not supplied by SPONSOR. The foregoing states the entire liability of SPONSOR with respect to infringement of patents by the Equipment or any parts thereof.

11. Subject to SPONSOR's compliance with NC STATE security procedures, NC STATE will allow SPONSOR to enter the premises where the Equipment is located during normal business hours for the purposes of inspecting the Equipment and determining whether NC STATE is in compliance with its responsibilities.

12. During the loan period described above, title to the Equipment remains with SPONSOR, and the Equipment will retain its status as personal property regardless of how it is installed.

13. SPONSOR warrants that the Equipment is suitable for the normal use for which it is designed and that it does not have any dangerous effects if used properly and safely. SPONSOR does not make any warranty or representation with respect to the suitability or safety of any processes developed or utilized by the NC STATE involving the Equipment.

14. The SPONSOR shall indemnify and save harmless NC STATE, its officers, its agents, and its employees from all loss, cost, and expense arising out of any liability or claim of liability for injury or damages to persons or property sustained or claimed to have been sustained by any one whomsoever, by reason of the use of the Equipment, whether such use is authorized or not, or by any act or omission of SPONSOR or any of its officers, agents, employees, guests, patrons, or invitees. SPONSOR shall pay for any and all damage to the property of NC STATE, or loss or theft of such property, done or caused by such persons.

15. The State or NC STATE auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with North Carolina General Statute §147-64.7 and Session Law 2010-194, Section 21.

16. If NC State provides the Contractor with personal identifiers as listed in N.C.G.S. §132-1.10 and in N.C.G.S. §14-133.20(b) or any other legally confidential information, Contractor hereby certifies that collection of this information from NC State is necessary for the performance of Contractor's duties and responsibilities on behalf of NC State under this Contract. Contractor further certifies that it shall maintain the confidential and exempt status of any social security number information, as required by N.C.G.S. §132-1.10(c)(1), and that it shall not re-disclose personally identifiable information as directed by State and Federal laws. Failure to abide by legally applicable security measures and disclosure restrictions may result in

the interruption, suspension and/or termination of the relationship with Contractor for a period of at least five (5) years from date of violation. If Contractor experiences a security breach, as defined in N.C.G.S. §75.61(14), relating to this information, in addition to the Contractor's responsibilities under the NC Identity Theft Protection Act, Contractor shall immediately notify NC State with the information listed in N.C.G.S. §75-65(d)(1-4) and shall fully cooperate with NC State. Contractor shall indemnify NC State for any breach of confidentiality or failure of its responsibilities to protect confidential information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of NC State data provided to Contractor pursuant to the Contract.

17. NC State has determined that Contractor is a school official with a legitimate educational interest under the Family Educational Rights and Privacy Act ("FERPA"). If NC State provides the Contractor with "personally identifiable information" from a student's education record as defined by FERPA, 34 CFR §99.3, Contractor hereby certifies that collection of this information from NC State is necessary for the performance of Contractor's duties and responsibilities on behalf of NC State under this Contract. Contractor further certifies that it shall maintain the confidential status of education records in their custody, and that it shall not re-disclose personally identifiable information as directed by FERPA. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with Contractor for a period of at least five (5) years from date of violation. If Contractor experiences a security breach relating to this information or if Contractor re-discloses the information, Contractor shall immediately notify NC State. Contractor shall indemnify NC State for any breach of confidentiality or failure of its responsibilities to protect the personally identifiable information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of NC State data provided to Contractor pursuant to the Contract.

18. Risk of property loss or damage is with the SPONSOR. Unless otherwise agreed upon by the parties to this agreement, the SPONSOR is responsible for obtaining and maintaining property insurance on the Equipment.

19. In the event any portion of this Agreement shall be finally determined to be invalid or unenforceable, such provisions shall be deemed void and the remainder of this Agreement shall continue in full force and effect.

20. SPONSOR shall furnish, without expense to NC STATE, all reasonable repair and maintenance required to keep the Equipment in satisfactory operating order.

21. NC STATE shall not, without SPONSOR's prior written consent, permit anyone other than its employees or students to use the Equipment.

22. Neither party may use the other party's name, trademarks, logos or other identifying symbols in any advertising or press release without the other party's written permission. However, SPONSOR shall be permitted to inform customers of its relationship with NC STATE.

23. This Agreement is to be construed in accordance with and governed by the laws of the State of North Carolina, without reference to its conflict of laws provisions.

24. This Agreement is binding upon and inures to the benefit of the parties and may be assigned only to the successors to substantially all of the assets of the respective parties. Any other assignment by either party shall require the prior written consent of the other party, which consent shall not be unreasonably withheld.

25. Any notices or other communications required to be given or which may be given under this Agreement must be in writing delivered by first-class mail, overnight mail service, facsimile, or email addressed to the parties as follows:

For NC STATE:

Campus Box _____
Raleigh, North Carolina 27695
Facsimile: _____
Email: _____

For SPONSOR:

Facsimile: _____
Email: _____

IN WITNESS WHEREOF, the parties have executed this agreement in duplicate originals, one of which is retained by each of the parties, effective the day and year first above written.

NORTH CAROLINA STATE UNIVERSITY

SPONSOR:

Project Coordinator
Date: _____

Name: _____
Title: _____
Date: _____

Director of Materials Management
Date: _____

SCHEDULE A