

**BAMA TECHNOLOGY INCUBATOR
FACILITY USE AGREEMENT**

This Agreement is made this ____ day of _____, 20__, by and between **The Board of Trustees of The University of Alabama**, a public corporation, for and on behalf of The University of Alabama and its Bama Technology Incubator (“University”) and _____ **Company (“COMPANY”)**.

WHEREAS, the University is a comprehensive, publicly supported institution of higher education with a tripartite mission of education, research, and outreach, the Bama Technology Incubator (BTI) is a program/facility designed to execute these missions in support of technology transfer and economic development in Alabama, the region, and the nation. The BTI program includes provisions for short-term use of University facilities by research partners who may occupy office space and research laboratories in conduct of mutually beneficial research and technology development activities. The interaction with external research organizations which are technology based and use advanced technology, logistics, and strategic business investments is important for a broad educational experience for University’s undergraduate and graduate students; and

WHEREAS, COMPANY is an [insert state] [insert business form] that is engaged in research and development in the area of [insert description] and has [describe connection of UA, e.g., license, sponsored research, etc.]; and

WHEREAS, COMPANY is interested in occupying physical space in University’s AIME facility in order to promote that interaction;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the parties do hereby agree to the use of certain designated University facilities by COMPANY on the terms and conditions set out below.

WITNESSETH:

The University does hereby grant and give its consent and permission for COMPANY to use and occupy for the purposes set out in this Agreement the following described laboratory and/or office space located in the AIME Building on The University of Alabama campus, to wit: Room [number] for 100% occupancy and various conference rooms when permission is granted by University in accordance with AIME policies and procedures for reserving conference rooms within the AIME facilities.

COMPANY will accept the rooms in their "as-is" condition. The rooms listed above have initially been allocated for COMPANY use. University may, however, at its sole discretion, re-allocate different rooms to COMPANY from time to time, but will notify COMPANY 30 days in advance with respect to such different room assignments. Upon notification by, COMPANY will be required promptly to move all of its belongings to its newly assigned room(s) and surrender its old room(s) to the University in accordance with this Agreement. If COMPANY

fails to move promptly, then University may move its belongings to the new rooms at COMPANY'S sole expense.

The University's consent and permission is given subject to and dependant upon COMPANY agreeing to the following terms and conditions:

1. Nature of use. COMPANY must use the accommodation for office space for office purposes only, or if a lab is provided for laboratory purposes, and only for the business stated in Attachment A. Retail use in any form is not permitted. Company may not carry on a business that competes with the University mission of providing facilities, mentoring, strategic and operational support for high-tech startup companies. Violation of any of these terms is cause for immediate termination of this Agreement by University pursuant to section 3.

COMPANY may carry on its business only in its name or in another name that University approves in writing in advance. COMPANY may use the University address as its business address.

2. Term. This Agreement is a month-to-month agreement, and will be extended automatically for successive periods until terminated by COMPANY or by University. University reserves the right to increase monthly space utilization and other fees, but will provide COMPANY with at least 30 days notice of any such increases. **The maximum stay for COMPANY in the designated space is not to exceed 5 years.** If University is no longer able to provide the services and accommodation at the facility stated in this Agreement then this Agreement and COMPANY occupancy at the University facility will end immediately and COMPANY will only have to pay standard fees up to the date that it ends and for the additional services it has used.

3. Termination. Consistent with the month-to-month nature of this Agreement either party can terminate this Agreement and occupancy of University space at any time by giving at least 30 days notice to the other. Any such notice may be given at any time, and need not be given at the end of a monthly period.

University may end this Agreement and occupancy of the University space immediately by giving COMPANY written notice if:

- COMPANY is in arrears in any of its payment obligations to University for a period of 30 days or more, unless COMPANY has written approval by either the University Vice President for Research to defray some or all of its payment obligations;
- University has a reasonable basis to believe that COMPANY may not be able to pay fees to University on time;
- COMPANY is in breach of one of its obligations that cannot be remedied or as to which University has given COMPANY notice to remedy but which COMPANY has failed to remedy within 14 days of that notice, or;
- COMPANY conduct, or the conduct of someone who is at the University facility with COMPANY permission or at COMPANY invitation, is incompatible with ordinary office use or space use as specified by University.

If University terminates this Agreement for any of those reasons, COMPANY is liable for all of the outstanding obligations that COMPANY may owe University, and COMPANY must:

- pay for any additional services that COMPANY has used, and
- indemnify University against all costs and losses that the University may incur as result of the termination.

When this Agreement terminates, COMPANY shall vacate the accommodation immediately, leaving it in the same condition as it was when COMPANY took it, reasonable wear and tear excepted. If COMPANY leaves any of its property in the University facility, then COMPANY hereby agrees that University may dispose of it as abandoned property at COMPANY'S sole risk and expense without University being liable for it or for any proceeds that University receives from selling it. COMPANY shall be responsible for any costs of disposal that University may incur as a result of COMPANY leaving property in the University facility.

If COMPANY continues to use the University facility after this Agreement has ended, then COMPANY is responsible for any direct, indirect or consequential cost, loss, claim or liability that University incurs as a result of COMPANY'S failure to vacate on time. In addition, University reserves the right to assess COMPANY a surcharge of up to 100% of its normal fee, in addition to standard space utilization and other fees, if COMPANY continues to use the accommodation after this Agreement terminates.

4. University/COMPANY Point of Contact (POC). University's POC shall be Dr. Dan Daly, Room 105 AIME Building, Box 870204, Tuscaloosa, AL 35487-0207, (205) 348-3502, dan.daly@ua.edu.

COMPANY's POC shall be _____ .

5. Office Services. So long as COMPANY is in compliance with this Agreement, University will provide the following office services during normal operating hours, Monday through Friday:

- mail pick-up and delivery;
- normal cleaning (usually provided in the evening, after normal operating hours). COMPANY is responsible for any additional cleaning above what is normally provided.

So long as COMPANY is in compliance with this Agreement, University will provide the following services 24 hours per day, 7 days per week:

- access to COMPANY accommodation;
- heating and air conditioning;
- lighting and electrical power;
- use of rest room facilities;
- use of meeting and conference rooms, subject to availability and advance reservations; and
- unreserved outdoor parking, subject to your purchase of an appropriate parking tag.

So long as COMPANY is in compliance with this Agreement, the following services are available for an extra charge in accordance with University published rates, which are subject to change from time to time:

- telephone sets, line and usage;
- internet access;
- photocopying;
- voicemail;
- use of animal facilities;
- use of on-campus laboratory space;
- cell phones;
- computers;
- custodial services;
- maintenance;
- Supply Store;
- food service;
- motor pool; and
- A/V equipment and other rentals.

COMPANY will adhere to all applicable University policies relating to the provision of the services listed above. It shall be the responsibility of COMPANY to become familiar with applicable University policies and to make COMPANY'S employees familiar with such policies.

6. Fees for services. The standard fee, as set out in Attachment A hereto and as may be modified as provided above, is payable in advance, in full, by the 10th day of each month. For a period of less than a month, the fee will be apportioned on a daily basis. COMPANY agrees to promptly pay (a) all sales, use, excise and any other taxes and license fees imposed on it by any governmental authority (and, at University request, will provide to University evidence of that payment); and (b) any taxes paid by University to any governmental authority that are attributable to the University facilities provided hereunder, including, without limitation, any gross receipts, space utilization and occupancy taxes, or tangible personal property taxes.

Fees for additional services, as set out in Attachment B hereto and as may be modified as provided above, are invoiced in advance on the 10th day of each month and payable by the 1st day of the following month.

If COMPANY does not pay fees when due, University may charge 10% interest on the amounts outstanding. If COMPANY is in arrears in its obligations to us for a period of 30 days or more, University may immediately terminate COMPANY'S agreement and occupancy at the University facilities, as provided in section 3.

In addition to any other remedies that UA BTI has under this Agreement or applicable law, University may withhold any or all services (including denying COMPANY access to the facilities provided hereunder) during any period that COMPANY is in breach of this Agreement.

7. Care of and Improvements to Premises. COMPANY must take good care of all areas of the University facilities allocated to COMPANY hereunder, including University equipment, fittings and furnishings that Company uses. COMPANY shall be liable for any damage caused by it, its employees, or other representatives, or by those who visit the University facilities with COMPANY permission or at COMPANY invitation. COMPANY will not make any alterations, additions, improvements, or changes in the University facilities provided hereunder, nor will COMPANY make changes to the outside of the building or permit the same to be changed, without first obtaining the written consent of the University prior to the commencement of the work. No signs of any character shall be erected on the Premises or exterior of the building until the consent thereto in writing is first obtained from the University. COMPANY may not install any cabling, IT or telecom connections without University written approval in advance, which University may refuse at its absolute discretion.

8. University's Responsibilities. University agrees to keep all air conditioning equipment, electrical wiring, water pipes, water closets, drains, sewer lines and other plumbing on said Premises in good order and repair and will make such repairs, modifications, and replacements as may be required. In the event repairs are required COMPANY shall promptly notify the building manager of the need for repair and the nature of the problem. The University shall respond to request for repairs in a reasonable manner based upon the seriousness of the problem or repair, availability of parts or materials, and workforce availability and other scheduling issues. COMPANY agrees to pay for all repairs that result from the neglect or abuse of the Premises by COMPANY or any of its employees, invitees, or guests.

9. Taxes. COMPANY shall be responsible for paying and discharging any taxes, rents, charges or fees levied against the operation of its business or any of its personal property or equipment placed upon or installed in the Premises.

10. Condition of Premises. Nothing herein contained shall be construed as a warranty that said Premises are in good condition or are fit or suitable for the use or purpose for which they are used and occupied. The University has made no representations or promises with respect to the Premises except as herein expressly set forth and the Premises is provided in an AS IS condition. COMPANY or Company representative has examined the Premises and accepts the same in the physical condition in which the same now exists except as otherwise expressly provided herein.

11. Requirements of Law and University Policy. COMPANY must comply with all relevant laws and regulations, including the rules and regulations of The Board of Trustees of the University of Alabama and The University of Alabama. These rules and regulations include but are limited to compliance with export control regulations, the use of human subjects in research, use of animals in research, biohazards, and biosafety, and the rules of BTI set out on Attachment C.

Without in any way limiting the foregoing obligation of COMPANY, COMPANY agrees to practice good product stewardship by providing University with MSDS sheets for all the chemicals in the incubator laboratory and by complying with all University Environmental Health and Safety regulations. In addition, COMPANY will be responsible for all Product Stewardship costs including handling, transportation, and disposal of all chemicals.

COMPANY must not do anything that may interfere with the use of any University facilities by others, cause any nuisance or annoyance, or cause loss or damage to University buildings or facilities. COMPANY acknowledges that (a) the foregoing terms are a material inducement to University in order to execute this Agreement and (b) any violation by COMPANY of the foregoing terms shall constitute a material default by COMPANY hereunder, University to immediately terminate this Agreement pursuant to section 3. COMPANY agrees to indemnify, defend and hold University harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses that may arise during or after the term of this Agreement arising or resulting from any violation by COMPANY of any state, local or federal law or regulation.

12. Site and Security Rules and Regulations. COMPANY shall at all times comply with all applicable University rules and policies regarding site and security rules and regulations in effect in for the University facilities provided hereunder. Any keys or entry cards ("badges") that University allows COMPANY to use remain University property at all times. COMPANY may not make any copies of them or allow anyone else to use them University consent. Any loss must be reported to the University immediately, and COMPANY must pay the cost of replacement keys or cards and for changing locks, if required.

13. Liens. COMPANY shall not allow any lien for work, labor, service, or material to be filed against the facilities provided hereunder or to any improvement which may hereafter be made upon the same. Any such lien or other encumbrance so filed shall be discharged or removed by COMPANY within thirty (30) days of the filing or attaching, in default of which University may discharge said lien in full without obligation to inquire into the validity of the lien, and COMPANY shall promptly reimburse University for all sums expended in securing discharge of lien. COMPANY shall have the right to contest such lien or encumbrance with due diligence, but in such event, shall first notify University and at University's request shall furnish surety bond with a Company that is satisfactory to University to protect University in event contest is unsuccessful.

14. Assignment and Subletting. COMPANY may not allow another person, company or organization that is not listed on Attachment A to occupy or use all or part of University facilities without the prior written consent of the University, which consent may be given or withheld in the University's absolute discretion. Any contemplated use or occupancy by any other person, organization or company that is to take the place of COMPANY use of the University facilities or is to result in the person, organization or company paying COMPANY a fee for the use is strictly prohibited.

15. Indemnification. For purposes of this Agreement, the term "Persons Indemnified" includes the University, its affiliated foundations and each of their respective trustees, directors, officers, employees, and agents.

COMPANY shall indemnify, hold harmless and defend each person or entity of the Persons Indemnified from and against any and all loss, damage or liability resulting from demands, claims, suits, or actions of any character presented or brought for any injuries (including death) to persons and for damages to property caused by or arising out of any negligent (including strict liability), wanton, or intentional act or omission of COMPANY, any of its subcontractors,

invitees, anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, in any way associated or connected with the performance of COMPANY's business activities and operations or its obligations under this Agreement in whatever manner the same may be caused, and whether or not the same be caused by or arise out of the joint, concurrent, or contributory negligence of any person or entity of the Persons Indemnified. The foregoing indemnity shall include, but not be limited to, court costs, attorney's fees, costs of investigation, costs of defense, settlements, and judgments associated with such demands, claims, suits or actions. The indemnity provided in this Section is intended for the benefit of Persons Indemnified.

In addition to COMPANY's indemnity obligations set forth above, COMPANY shall be liable for the costs of repair or replacement of University property which is directly damaged by any negligent (including strict liability), wanton or intentional act or omission of COMPANY hereunder. COMPANY shall not, however, be liable for any property damage caused by or in connection with any defect in the facilities provided hereunder, or the drains, plumbing, wiring, electric equipment or appurtenances, or caused by or growing out of fire, wind, leaks, seepage, rain or other cause beyond the reasonable control of COMPANY.

16. Insurance. COMPANY, at its own expense, shall obtain and maintain in full force and effect, without interruption during the term of this Agreement, the following minimum levels of insurance:

(A) COMPANY shall obtain workers' compensation insurance covering the legal liability of COMPANY and its subcontractors, if any, under the applicable worker compensation or occupational disease laws for claims for personal injuries and death resulting therefrom to COMPANY and its employees. If required by law, COMPANY and its subcontractors, if any, shall also obtain a minimum of \$1,000,000.00 of Employers' Liability insurance.

(B) General liability insurance covering the legal liability (including liability assumed contractually, whether incidental or not) of COMPANY and its subcontractors, if any, who may be engaged in the work, for claims for personal injuries (including death) and property damage resulting therefrom the work or activities to be performed by COMPANY or its subcontractors in an amount not less than \$1,000,000.00 for any one occurrence.

(C) Automobile liability insurance covering the legal liability (including liability assumed contractually, whether incidental or not) of COMPANY and its subcontractors, if any, who may be engaged in the work, for claims for personal injuries and death resulting therefrom and for property belonging to others than COMPANY caused by highway licensed vehicles of or used by COMPANY or its subcontractors in an amount not less than:

- \$1,000,000.00 for any one person
- \$1,000,000.00 for bodily injury for any one occurrence
- \$ 500,000.00 for property damage for any one occurrence

Within fourteen (14) days after the effective date of this Agreement, COMPANY shall submit to the University, certificates of insurance evidencing the coverages prescribed by this Section and certifying that such policies have been endorsed as required by this Section.

The provisions requiring COMPANY to carry insurance shall not be construed as waiving, restricting, or limiting any liability imposed upon COMPANY under this Agreement, whether or not the same is covered by insurance. It is the intent of the parties, however, that to the extent there is in force insurance coverage available to cover the legal and contractually assumed liability of COMPANY, any payments due as a result of such liability shall be made first from the proceeds of such policies to the extent of the coverage limits.

17. Access to Premises. The University and its representatives shall have the right to enter upon the Premises at all reasonable times for the purpose of inspecting same or for making repairs, additions or alterations, or for the purpose of exhibiting same to others.

18. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed duly given upon actual delivery if delivery is by hand (against receipt) or on the third day following the date on which each such notice is deposited, postage prepaid, in the United States mail, certified, return receipt requested or on the next business day after being sent by a nationally recognized overnight courier service which provides signed acknowledgements of receipt. All notices shall be directed to the other Party at the address indicated in paragraph 4 above, or to any other address as the Parties may designate by notice delivered pursuant to this provision.

19. No Waiver. No delay or omission of the exercise of any right by either party shall impair any such right or shall be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or condition of this Agreement by either party shall not be construed by the other party as a waiver of a subsequent breach of the same covenant, term or condition. All remedies provided for herein shall be construed as cumulative and shall be in addition to every other remedy otherwise available to the parties.

20. Amendment. This Agreement may be amended only by a writing duly executed by both parties.

21. Counterparts. This Agreement may be executed in multiple counterparts (no one of which need contain the signatures of more than one party hereto so long as each party hereto executes at least one such counterpart), each of which shall be deemed an original and all of which, when taken together, shall constitute and be one and the same instrument.

22. Captions. The paragraph headings of this Agreement are for convenience only and are not intended, and shall not be construed to alter, limit or enlarge in any way the scope or meaning of the language contained in this Agreement.

23. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Alabama, without regard to conflicts of law principles.

Any claims against the University arising out of this Agreement shall be submitted to the Alabama State Board of Adjustment.

IN WITNESS WHEREOF, the University and COMPANY have duly executed this Agreement as of the day and year first above written.

COMPANY

Witness

By: _____

Name: _____

Title: _____

Date: _____

**THE BOARD OF TRUSTEES OF
THE UNIVERSITY OF ALABAMA
FOR AND ON BEHALF OF
THE UNIVERSITY OF ALABAMA**

Witness

By: _____

Name: Donald J. Benson, Ph.D.

Title: Vice President for Research

Date: _____

AGREEMENT AS TO CONTENT

By: _____

Name: Daniel T. Daly, Ph.D.

Title: Director, AIME &
The Bama Technology Incubator

Date: _____

**Attachment A:
Bama Technology Incubator Facility Use Agreement**

Client Details

| | |
|----------------------|--|
| Company Name | |
| Contact Name / Title | |
| Telephone | |
| E-mail | |

Nature of the Business

| |
|--|
| |
|--|

Initial Space Allocation

| | |
|---|--|
| Number of Rooms | |
| Room Numbers Initially Allocated | |
| Total Square Footage initially allocated | |

Space Utilization fee per calendar month:

\$ _____ per sq. foot x _____ total sq. feet = \$ _____ space utilization fee per month.

Cash Performance Bond paid: \$ _____

Initial period for which the agreement lasts

Start Date (MM/DD/YYYY): _____

End Date (MM/DD/YYYY): _____

On behalf of (*Company Name*)

**The Board of Trustees of The University
of Alabama, on behalf of The University
of Alabama and its Bama Technology
Incubator**

Signed: _____
Name: _____
Title: _____
Date: _____

Signed: _____
Name: Donald J. Benson, Ph.D.
Title: Vice President for Research
Date: _____

**Attachment B:
Bama Technology Incubator Facility Use Agreement:
Additional Fees**

| |
|--|
| UNIVERSITY OF ALABAMA PHONE CHARGES |
|--|

One-time Installation Charges

| | |
|-----------------------|----------|
| Multi-line set | \$ 75.00 |
| Multi-line set add-on | \$ 75.00 |
| Analog phone | \$ 50.00 |
| Modem or fax line | \$ 50.00 |
| Ethernet connection | \$ 50.00 |
| | |

***Includes phone set as well as the necessary line & jack activation charges.**

Monthly Line Charges

| | |
|---------------------------------------|----------|
| Fax or modem line | \$ 20.00 |
| Multi-line set – 2 lines | \$ 46.00 |
| - additional lines on same instrument | \$ 2.50 |
| Analog instruments, each line | \$ 22.00 |

Voice Mail

| | |
|----------------------|---------------------------|
| Mailbox | \$15.00 / month |
| Automated Attendants | Starting at \$15.00/month |

Long Distance Charges

Long distance calls will be billed at current University of Alabama rates.

Computer Networking

- \$200.00 per outlet activation charge
- \$100.00 per outlet per month rental charge

| |
|----------------------|
| OTHER CHARGES |
|----------------------|

University Dept of Chemistry Stockroom:

- A separate account is established in which BTI companies can charge purchases from the Stockroom. These charges will then be invoiced to the companies for reimbursement.
- Any COMPANY wishing to use this service shall complete the safety training course offered by the UA Environmental Health and Safety (EHS) Dept.
- The COMPANY will have procedures in place with EHS for receipt and tracking of chemical purchases, as well as for waste disposal.
- The COMPANY shall use chemicals purchased from the UA Chemistry Stockroom for research purposes only and shall not incorporate said chemicals into any commercial product.

**Attachment C:
Bama Technology Incubator Rules**

BUILDING SECURITY

- Company personnel must carry a badge with them at all times.
- If Company employee loses or forgets his/her university issued identification, employee can obtain a temporary badge from the BTI Administrative Assistant (AA).
- ALL visitors must be escorted at ALL times when not in the host's area, and escorted out of the building when leaving.

UTILITIES

- Please help BTI conserve energy. Turn off lights when leaving conference rooms and offices. Extremely energy-intensive equipment is not allowed.

NEW EMPLOYEE PROCEDURES/ BADGES

- New employees should pick up a set of new employee forms from the BTI Administrative Assistant (AA).
- The new employee form should be completed by the employee and company, and returned to the BTI AA. The BTI AA then needs to sign the form. UA keeps the original form.
- **Fee for lost badge:** There will be a fee for each badge payable to UA. The loss or theft of this badge should be reported immediately to the BTI AA. Badges must be turned in to UA upon termination of an employee.

ISSUING AND RETURNING KEYS

- Please see the BTI AA to receive or return a key. To obtain a key to your office you must fill out a key form, available at the AA desk. Write the exact room number of your office (not the suite number.) There is a fee for lost keys.
- All keys must be returned to the BTI AA upon graduation or termination of an employee. There is a fee for keys not returned (re-keying an office is charged to the Company).

PARKING

- UA parking will be available for purchase. A parking permit is required. The BTI AA will advise Company personnel in procedures to obtain a UA parking permit.
- Please do not park in visitor parking. There are a limited number of spaces, and these are reserved for visitors.

ALCOHOLIC BEVERAGES

- No alcoholic beverages are allowed in this building without prior authorization.

BICYCLES

- Bicycle racks are located in the front of the building. Please lock bicycles in the bicycle rack. If Company employees need to bring their bicycle into the building, please clean the bicycle and tires before it is brought into the building. Company

employees may store their bicycle only in Company's contained office space. **Under no circumstances should bicycles be stored in UA common areas, hallways, etc.**

ANIMALS

- No pets / animals of any kind are allowed in UA buildings, unless they have an approved protocol issued by the UA Animal and Care Use Committee.