

## **Berkeley Research Infrastructure Commons Access Agreement**

This facilities access agreement ("**Agreement**"), effective as of [effective date] ("**Effective Date**"), is by and between The Regents of the University of California, a California public corporation, solely on behalf of, and limited to, its Berkeley campus ("**University**"), and [Company Name] ("**Company**"), a [jurisdiction name] [entity type] having a principal place of business at [address]. "**Party**" hereinafter refers to each party individually and "**Parties**" refers to the parties collectively.

### **Background**

1. University has core facility recharge centers with published rates (collectively, "**Research Infrastructure Commons**" or individually, "**RIC**").
2. [Shared User Facility Name] ("**Shared User Facility**") is a RIC with facilities, and University provides non-University parties access to such facilities, under certain circumstances and when such access is consistent with University's educational, research, and public service activities.
3. Company would like University to provide Access to Shared User Facility as set forth in this Agreement.

In consideration of the conditions and terms set forth in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

### **Agreement**

#### **1. Access**

University will allow Company to access the Shared User Facility subject to the following:

**1.1. Company Access to Shared User Facility:** University will allow Company to access the Shared User Facility for the sole purpose, and in the manner specified in the attached and incorporated **EXHIBIT B** ("**Access**"). Access will not include sponsored research undertaken by University for Company, or collaborative research conducted by University with Company.

#### **1.2. Company Users**

To the extent Access involves Company's personnel having access to facilities and/or use of equipment, whether on-site or remotely (each such person, a "**Company User**"), each Company User is subject to the following:

**1.2.1.** Company User must enter into a three-party RIC Company User Agreement among University, Company and Company User, in a form substantially the same as the attached **EXHIBIT E**.

**1.2.2.** University will require Company User to be individually certified by University before Company User can Access the Shared User Facility.

**1.2.3.** Company will require Company User to be properly trained in Shared User Facility procedures, safety, and equipment operations by completing Shared User Facility orientations, and pass any required University safety exam before Company User can Access the Shared User Facility under EXHIBIT B.

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**1.2.4.** The Parties understand that while University staff of Shared User Facility will make reasonable efforts to provide training to Company User, the ultimate responsibility for safe Access to Shared User Facility is the responsibility of Company and Company User.

**1.3. Company Responsible for Compliance with Laws and Regulations:** Company agrees that it is solely responsible for full compliance with any legal and regulatory requirements and the terms and conditions of any funding source pertaining to its Access to Shared User Facility. Company represents and warrants that it has acted and will act in full compliance with all applicable laws, regulations, and the terms and conditions of any funding source pertaining to its Access to Shared User Facility.

## 2. Property Rights

### **2.1. Exception to University Patent Policy to allow for Company ownership of Company Inventions:**

The parties understand and agree that the University Patent Policy requires non-University personnel to sign an intellectual property agreement as a condition of utilizing University research facilities, and such agreement requires visitors to disclose and assign to the University all rights in inventions developed during their use of University research facilities. The University of California Office of the President has approved an exception to the University Patent Policy to permit Company to own Company Inventions as defined below.

**2.2. Company Inventions:** Subject to Article 3, the following inventions shall be owned by Company and are "**Company Inventions**":

**2.2.1.** any new invention or discovery conceived solely by Company prior to the Effective Date and first actually reduced to practice solely by Company Users in the performance of Access to Shared User Facility;

**2.2.2.** any new invention or discovery conceived solely by Company Users in the performance of Access to Shared User Facility and first actually reduced to practice solely by Company after the Effective Date and without the use of University facilities or resources; and

**2.2.3.** any new invention or discovery conceived and first actually reduced to practice solely by Company in the performance of the Access to Shared User Facility.

Company will ensure that Company Users do not conduct any activities beyond the scope of the permitted Access. Inventions made outside of the scope of the permitted Access are subject to University's Patent Policy and University's obligations to external sponsors as deemed appropriate in the University's sole discretion.

**2.3. Data and Materials:** Subject to Article 3, Company owns the data and material generated by Company Users in the conduct of the permitted Access. Unless otherwise agreed in writing by the Parties, University will not use such data and materials.

**2.4. University Intellectual Property:** Company agrees that this Agreement does not grant Company any right, title or interest in or to any intellectual property owned by University.

## 3. Payments

Company will pay University the fees in accordance with the attached **EXHIBIT C** which is incorporated as part of this Agreement ("**Agreement Fees**").

**4. Indemnification**

Company will defend, indemnify and hold University, its officers, agents, and employees, harmless from and against any and all liability, loss, expense, including reasonable attorney’s fees, or claims for injury or damages arising out of the performance of this Agreement caused by or resulting from the negligent or intentional acts or omissions of the Company, its employees, officers or agents.

**5. Survival**

Any termination or expiration of Agreement will not affect the rights and obligations set forth in the following provisions of Agreement: Section 2 (Property Rights), Section 4 (Indemnification), Section 6 (RIC Standard Terms).

**6. RIC Standard Terms**

RIC Standard Terms specified in the attached **Exhibit A** are incorporated as part of this Routine Services Agreement.

**7. Representations**

Each person signing Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute Agreement. Each Party represents and warrants to the other that the execution of Agreement and the performance of such Party’s obligations hereunder have been duly authorized, and that Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

In witness whereof, the duly authorized Parties have executed Agreement as of the Effective Date.

[Long Company Name]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**The Regents of the University of California**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**Berkeley Research Infrastructure Commons**  
**Standard Terms**

These Standard Terms are used for Berkeley Research Infrastructure Commons' Access Agreement and Routine Services Agreement. The terms "**Company Users**", "**Shared Access Facility**", and "**Access**" are defined in, and applicable to, the Access Agreement.

**1. Priorities**

Research Infrastructure Commons are shared by University faculty, students, staff and researchers as well as Company Users. The Parties agree that University work will have priority over work performed by, or for non-University users. Accordingly, University will not be responsible for any delays incurred by Company caused by any such University priority.

**2. Term and Termination**

**2.1. Start:** The term of Agreement will commence on Effective Date and terminates one (1) year from Effective Date or an [end date], whichever is later ("**Term**").

**2.2. Termination Without Cause:** Either Party can terminate Agreement at any time, without cause, with ten (10) days' written notice to the other Party. If Agreement is terminated without cause, then Company will pay University the pro rata Agreement Fees through the date of termination, and all costs and non-cancelable obligations incurred by University up to and including the termination date. In no event will any capacity fees that are included in Agreement Fees be refundable.

**2.3. Failure to Pay:** University will have the right to terminate Agreement without notice if Company fails to pay Agreement Fees in accordance with EXHIBIT C.

**2.4. Survival:** Any termination or expiration of Agreement will not affect the rights and obligations set forth in the following provisions of this Exhibit A: Paragraph 2.4 (Survival), Section 4 (Disclaimer of University Warranty), Section 5 (Limitation of Liability), Section 7 (Confidential Information), Section 8 (Use of Names and Trademarks), Section 10 (Data Security and Privacy), and Section 11 (Miscellaneous).

**3. Notices**

All notices under Agreement must be in writing and must be mailed or delivered by hand or recognized overnight delivery service to the Party to whom such notice is being given. Any such notice will be considered to have been given when received by the Party to whom notice is given, or upon receipt by the sending Party of written confirmation of refusal of delivery by the Party to whom notice is sent. The address and representatives for each Party for all such notices are listed in **EXHIBIT D**.

**4. Disclaimer of University Warranty**

EXCEPT AS EXPRESSLY SET FORTH OTHERWISE IN THIS AGREEMENT, THE UNIVERSITY MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO THE SHARED USER FACILITIES, THE ACCESS, THE SERVICES, THE DELIVERABLES, OR THE RESULTS OBTAINED BY COMPANY, OR PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,

AND NON-INFRINGEMENT. COMPANY ACKNOWLEDGES THAT THE FACILITIES, THE SERVICES, THE DELIVERABLES, AND THE RESULTS ARE PROVIDED ON AN "AS IS" BASIS AND WITHOUT WARRANTIES OF ANY KIND. COMPANY FURTHER ACKNOWLEDGES THAT IT USES SUCH FACILITIES, SERVICES, DELIVERABLES, AND RESULTS AT ITS OWN RISK. THE UNIVERSITY WILL BEAR NO RESPONSIBILITY FOR THE SUCCESS OR FAILURE OF THE SERVICES, DELIVERABLES, OR RESULTS.

## 5. Liability Limitation

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, WHETHER IN WARRANTY, TORT, CONTRACT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR LOSS OF GOOD WILL, WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE.

## 6. Insurance

Company agrees to keep in full force and effect during the term of Agreement, at the expense of Company, insurance ("**Insurance**") as follows:

**6.1. Liability:** Commercial Form General Liability Insurance with minimum limits as follows:

- Each Occurrence: \$1,000,000
- Products/Completed Operations Aggregate: \$1,000,000
- Personal and Advertising Injury: \$1,000,000
- General Aggregate: \$2,000,000

**6.2. Workers Comp:** Proof of Workers Compensation as required by law.

**6.3. Auto:** If a Company User or representative of Company will be driving on University property, then Business Automobile Insurance with coverage of \$1,000,000 per occurrence.

**6.4. Named:** Regents of the University of California will be named as additional insured on the General Liability and, if applicable, Business Automobile insurance of Company.

**6.5. Claims-form:** If the Insurance is written in a claims-form, it will continue for three (3) years following termination of Agreement.

**6.6. Certificate:** Upon execution of Agreement, and before any work may commence in Shared User Facility by Company Users, Company will furnish University with a Certificate of Insurance ("**Certificate of Insurance**") evidencing compliance with the insurance provisions of Agreement and requiring thirty (30) days advance written notice to the University of any modification, change, or cancellation with respect to the Insurance.

**6.7. Not a Limit:** Compliance with the Insurance requirements of Agreement will not be construed to limit the liability of Company.

## 7. Confidential Information

**7.1. Confidentiality: "Confidential Information"** is defined as non-public information that: (i) a Party considers confidential or proprietary; and (ii) is clearly marked "Confidential" or "Proprietary" at the time it is disclosed to the receiving party. If a Party discloses Confidential Information orally, the disclosing Party will indicate its confidentiality at the time of disclosure and will confirm such in writing within ten (10) days of the disclosure. Each Party agrees to use the Confidential Information solely in connection with Agreement and not for any purpose other than as authorized by the Agreement. The receiving Party will not disclose the disclosing Party's Confidential Information to any third party without prior written approval from the disclosing Party. The receiving Party's confidentiality and use obligations will extend for a period of one (1) year from the date of receipt of the disclosing Party's Confidential Information.

**7.2. Non-Confidential Information:** The Parties agree that information will not be deemed Confidential Information and the receiving Party will have no obligation to hold in confidence such information which: (i) was legally in its possession or known to the receiving Party without any obligation of confidentiality prior to receiving it from the disclosing Party; (ii) is, or subsequently becomes legally and publicly available without breach of Agreement by the receiving Party; (iii) is legally obtained by the receiving Party from a third party without any obligation or confidentiality; or (iv) is independently developed by or for the receiving Party without use of the Confidential Information as demonstrated by competent evidence.

**7.3. Exceptions:** If the receiving Party is required by law to disclose Confidential Information of the disclosing Party, the receiving Party will notify the disclosing Party, to the extent permitted by law, so that the disclosing Party may seek a protective order or other appropriate remedy. Notwithstanding anything to the contrary in this Agreement, Company acknowledges and agrees that the University is subject to compliance with the requirements of the California Public Records Act, Government Code Section 6250 et seq. and that any confidential information or the terms or conditions of this Agreement may be subject to disclosure pursuant thereto (or other similar applicable law) in the absence of applicable statutory exemptions for such confidential information.

## **8. Use of Names and Trademarks**

Company will not use the name of the University of California ("UC"), any abbreviation thereof, any name of which "University of California" is a part, or any trademarks or logos of the University ("University Marks"), in any commercial context (including, without limitation, on products, in media including websites, and in advertisements), or in cases when such use may imply an endorsement or sponsorship of Company, its products or services. All such uses of University's name and trademarks must receive prior written consent from The Regents of the University of California through the Office of Business Contracts and Brand Protection, who can be reached at BCBP@berkeley.edu. At all times, Company agrees to comply with California Education Code Section 92000.

University Marks are and will remain exclusively the property of the University. Company will not, either directly or indirectly, obtain or attempt to obtain during the Term hereof or at any time thereafter, any right, title or interest in or to University Marks, and

Company hereby expressly waives any right which it may have in University Marks. Company recognizes the University's exclusive ownership of University Marks.

## **9. Export Control and Biohazardous Materials**

Company will not provide to University any materials and/or information that are export-controlled under the International Traffic in Arms Regulations (22 CFR 120-130), the United States Munitions List

(22 CFR 121.1), or Export Administration Regulations (15 CFR 730-774); controlled on a military strategic goods list; Select Agent(s) under 42 CFR Part 73, et seq.; or subject to regulations governing access to such Export Materials ("**Export Materials**"). If Company desires to provide any Export Materials to the University, Company must provide written notification that identifies such Export Materials, including their export classification to the University contact in EXHIBIT D and receive confirmation and approval from University, prior to disclosure.

## 10. Data Security and Privacy

**10.1. Definition:** For the purpose of Agreement, "**Data Protection Law**" means applicable laws relating to privacy and data protection, including in the case of University, the Family Educational Rights and Privacy Act ("**FERPA**"), and other applicable U.S. federal and California state laws on privacy and data protection; and in the case of Company, Company's applicable national and local laws on privacy and data protection. In the event any Protected Information is revealed, shared, or exchanged between the Parties, each Party agrees to comply with its obligations under all applicable Data Protection Law, and as required under Agreement. To the extent that any laws or regulations of the home country or region of a Party has extra-territorial application such as to impose legal obligations on the other Party or its conduct outside such home country or region, the other Party upon request will provide reasonable assistance to such other Party in satisfying such obligation as necessary to implement Agreement. Such reasonable assistance shall not include legal advice or opinion.

**10.2. Protection:** Company agrees to protect the privacy and security of personally identifiable information or data identifiable to an individual ("**Protected Information**"). Company shall implement, maintain and use internationally recognized commercial data security standards regarding administrative, technical and physical security measures that meet or exceed these requirements, including information access and computer system security measures, to preserve the confidentiality, integrity and availability of the Protected Information. Company shall not access, use or disclose Protected Information other than for the sole purpose granted by the University as necessary to carry out the Services, or as required by applicable U.S. law, or as otherwise authorized in writing by University. Company shall inform University of any confirmed or suspected unauthorized access or disclosure of Protected Information immediately upon discovery, both orally and in writing, and fully cooperate with University in investigating and remedying the effects of such breach.

**10.3. Non-Disclosure:** Neither Party shall use or disclose Protected Information for any purposes except as contemplated by Agreement or as required by applicable U.S. law (such as pursuant to a subpoena or, for the University, the California Public Records Act), or as otherwise authorized in writing by the other Party. In the event of expiration or termination of this Agreement, the requirements of this Section will continue to apply to any Protected Information which continues to be stored, processed, or used by either Party following termination of this Agreement.

## 11. Miscellaneous

**11.1. Governing Law:** This Agreement will be governed by and interpreted according to the laws of the State of California, without regard to its conflict of laws provisions. Parties agree and consent to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought will be exclusively in the County of Alameda.

**11.2. Relationship of Parties:** The relationship of the Parties under Agreement is that of independent contractors. Nothing herein will create, or be construed to be, a joint venture, association,

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partnership, franchise or other form of business relationship. At no time will the employees, agents or assigns of one Party be considered the employees of the other Party for any purpose, including but not limited to workers' compensation purposes.

- 11.3. Force Majeure:** If any Party fails to timely perform its obligations (other than payment obligations) under Agreement because of natural disasters, labor disputes, strikes, actions of governmental authority, acts of terrorism or war, whether actual or threatened, judicial orders, epidemics, quarantine, public health or travel restrictions or other causes beyond the reasonable control of the Party obligated to perform, then that Party's performance will be excused for the duration of such force majeure event. In the event of force majeure, the Parties may agree to alternative methods of performance that mitigate the effect of force majeure, subject to mutual agreement as to the terms thereof (including the payment of additional amounts).
- 11.4. Assignment:** Neither Party can assign or transfer Agreement without the written consent of the other Party.
- 11.5. Severability:** In the event any portion of Agreement is declared illegal, unenforceable, invalid or void by a court of competent jurisdiction, such portion will be severed from Agreement, and the remaining provisions will remain in full force and effect.
- 11.6. Integration:** This Agreement, including any exhibits and addenda, constitutes the entire understanding and agreement between the Parties as to all matters contained herein, and supersedes all prior agreements, representations and understandings of the Parties. The Parties may utilize their standard forms of purchase orders, invoices, quotations and other such forms in administering Agreement, but any of the terms and conditions printed or otherwise appearing on such forms will not be applicable and will be void. Modifications, including additions or revision of any terms and conditions may only be made by a written agreement signed by both Parties that expressly states in the title of such document an intent to amend Agreement.
- 11.7. Waiver:** No waiver of any provision of Agreement will be effective unless made in writing and signed by the waiving Party. The failure of any Party to require the performance of any term or obligation herein, or the waiver by any Party of any breach of Agreement, will not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.
- 11.8. Counterparts:** This Agreement may be executed in two or more counterparts, which may be transmitted via facsimile or electronically, each of which will be deemed an original and all of which together will constitute one instrument.
- 11.9. Headings:** Article and Section headings used in Agreement are for convenience of reference only, are not part of Agreement and will not affect the construction of, or be taken into consideration in interpreting, Agreement.



**EXHIBIT B**  
**Berkeley Research Infrastructure Commons**  
**Access Agreement**  
**Shared User Facility**

University agrees to give Company and the Company Users named below Access to Shared User Facility as follows:

[Note to campus from RPAC: this Exhibit, including location must be completed with specificity in order to effect the intent of the IP provisions in this Agreement.]

Recharge Center:

Specific description of:

1. Location
2. Instruments permitted to be used
3. Activities permitted to be conducted
4. Number and names of Company Users
5. Activity frequency, schedule of use, deadlines, etc
6. Facility Fee Schedule: [add link to internet page setting forth Facility Fee Schedule.]
7. Special considerations

**University's Authorized Acknowledgement:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT C**  
**Berkeley Research Infrastructure Commons**  
**Access Agreement**  
**Fees**

[Each Shared User Facility will have its own fee schedule]

[If Shared User Facility charges a Capacity Fee (an annual charge Company pays to be able to schedule Access), this should also be included here.]

Company will pay University the service fees posted on the Shared User Facility's Fee Schedule. Fees for the Shared User Facility may be modified from time to time by University in its sole discretion, and any modified fees will be applicable as and when provided in the Shared User Facility Fee Schedule.

1. Agreement Fees (i.e., Rates/Cost):

[If the Shared User Facility charges a Capacity Fee (an annual charge a Company pays to be able to schedule Access), this should also be included here.]

2. Payment Schedule:

3. Terms of Payment:

[Please consider setting up terms requiring payment in full before (or at the same time that) deliverables are provided, so that UC has leverage to get the final payment from the Company.]

If all services are provided before UC receives final payment, it may be difficult to collect outstanding fees from the Company.

Also, if UC is performing services before payment is due, consider running a credit check on the Company, to determine whether the Company pays its debts on-time.]

4. Limitations of Charges (if any):

5. Company Invoicing Address:

6. Form of Payment:

[Usually check made payable to "UC Regents" or wire transfer, unless otherwise specified in an invoice.]

**EXHIBIT D**  
**Berkeley Research Infrastructure Commons**  
**Access Agreement**  
**Notices**

[Each Shared User Facility will have its own notice schedule]

University's authorized representative for all notices pursuant to Agreement and for contract execution:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

University's representative for all other purposes:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Company's authorized representative for contract execution:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Company's representative for all other purposes:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**EXHIBIT E**  
**Berkeley Research Infrastructure Commons**  
**Company User Agreement**

COMPANY USER name: \_\_\_\_\_

University, Company, and Company User agree as follows:

Company User named above understands and agrees that:

1. Company User will be allowed Access to Shared User Facility to conduct activities in accordance with, and limited to, Agreement between University and Company, dated \_\_\_\_\_, 20\_\_\_\_ (the "**Access Agreement**"). Termination of the Access Agreement, for any reason, will terminate Company User's Access to Shared User Facility.
2. Company User must be properly trained in Shared User Facility procedures, safety, and in equipment operation by completing the Shared User Facility training and/or orientation seminar(s), and pass the safety exam before entry to the Shared User Facility will be permitted. The Parties understand that while the staff and management of Shared User Facility will make reasonable efforts to provide training to users, ultimate responsibility for safe use of the Shared User Facility rests with Company User and Company.
3. At all times, Company User will comply with Shared User Facility rules and procedures.
4. Company User's activities are subject to conditions approved in advance by the University and Shared User Facility management. This Company User Agreement does not give rise to any joint research project between or among Company, Company User or University. Company User is entering this Company User Agreement as an employee or representative of Company only.
5. Company User agrees s/he will not participate in activities at University beyond the scope of the permitted Access.
6. Company User understands that this Company User Agreement does not grant Company User any right, title or interest in or to intellectual property owned by University.
7. Subject to the terms of Access Agreement, Company User will release and hold harmless University, its officers, agents and employees from any and all claims, damages, costs (including reasonable attorneys' fees) and liabilities arising out of the Company User's use of Shared User Facility.
8. At all times, Company User will comply with Shared User Facility campus, city and state mandates relating to COVID-19, including physical distancing, face coverings and hand washing hygiene protocols, and any COVID-19 mandates.
9. Company User will abide by all other applicable terms and conditions of the Access and Service Agreement.

AGREED:

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**[Company User]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[Company]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**The Regents of the University of California**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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COVID-19 Addendum to Agreement