

FACILITY USE AGREEMENT
(AMLCI Cleanroom Research and Prototyping Facility)

This Facility Use Agreement (“**Agreement**”) is made and entered into as of the last date of signature below (the “**Effective Date**”), by and between KENT STATE UNIVERSITY (“**KSU**”) through its Advanced Materials and Liquid Crystal Institute (“**AMLCI**”) and [COMPANY], a [STATE] [corporation/LLC], with a principal place of business located at [COMPANY ADDRESS] (“**Company**”) to specify the terms and conditions by which KSU grants to Company permission to use certain facilities owned by KSU conditioned upon Company’s compliance with the terms and conditions stated in this Agreement. KSU and Company referred to herein as a “**Party**” or collectively as the “**Parties.**”

WHEREAS, KSU is the owner of that certain building commonly referred to as the Liquid Crystal Materials Science Building (the “**Facility**”) located on its Kent Campus, and the Cleanroom Research and Prototyping Facility (the “**Premises**”) located in the Facility.

WHEREAS, Company desires to access and use the Premises solely for the purpose of [DESCRIPTION OF RESEARCH], in accordance with the terms and conditions of this Agreement (the “**Permitted Use**”).

NOW THEREFORE, the parties agree as follows:

1. **FACILITY USE:** KSU grants to Company the limited and revocable permission to enter upon the Premises in accordance with the terms of this Agreement, together with the right to access and use the entryways and common area bathrooms in the Building (“**Common Areas**”) under the direction of [INSERT LAB DIRECTOR NAME] (“**Lab Director**”) for sole purpose of conducting the Permitted Use. Company shall have exclusive access to a secured office in the Building as defined in the SOW in Attachment A.
2. **PURPOSE OF USE AND SCOPE OF WORK:** The Facilities will be used by Company to perform the work as outlined in the Scope of Work (“**SOW**”) attached hereto and incorporated herein as Attachment A. Any changes to the SOW or with respect to the intended use shall be subject to the prior written approval of the Lab Director.
3. **COMPANY’S ACCESS TO AND USE OF EQUIPMENT:** The dates and times that KSU permits Company to use the Facility shall be as follows: Monday through Friday, 8 am – 5 pm, excepting federal and state holidays. Other hours may be available upon prior written approval of the Lab Director.

Company agrees, to maintain a logbook, in a format acceptable to KSU, that documents the usage and time of Facility use. The logbook may be reviewed periodically by the Lab Director and will be used to adjust final payment to KSU for use of the Facility.

Company shall use the Facility in a safe and professional manner and in accordance with the procedures and policies established by KSU at <https://flashtrain.kent.edu/Account/Login.aspx> and all rules and directions from KSU personnel, including Lab Director, regarding use of the Facility. Company further acknowledges that all of its employees accessing the Premises have completed the on-line “Cleanroom Research and Prototyping Facility” class at: [<https://www.kent.edu/cde/user-training-cleanroom-research-and-prototyping-facility>] and

has reviewed all safety documents provided by the KSU including relevant MSDS documentation. New training is required for users who are inactive for more than one quarter or when deemed necessary by KSU laboratory manager.

Company employees will not be allowed to use KSU Facilities for any purpose other than those set forth in this Agreement. KSU shall be responsible for coordinating the use of the Facilities by Company and others. KSU will exercise prompt and reasonable efforts to coordinate use of the Facilities as available. Company shall schedule use of the Facility through the AMLCI scheduling application in infinity.kent.edu.

The activities of Company shall not infringe upon, delay or conflict with the normal operations of the Facility or KSU, and in particular, shall not interfere with use of the Facility in connection with KSU's primary academic mission. The Lab will determine priority of Facility repairs and may limit Facility availability during repairs, or at other times deemed necessary by the Lab in its sole discretion.

Company shall take proper care of the Facility and Premises made available for its use and shall preserve the Premises in good order and condition during the time the Premises is in Company's use. Company shall be liable to KSU for any loss or damage other than normal wear and tear to Premises.

Company acknowledges that portions of the Building are occupied by KSU and its employees, agents, and licensees and that nothing herein shall in any way be construed to give Company access to any other portion of the Building, except for the Premises and Common Areas as expressly set forth herein, nor shall anything herein be construed to give Company any right to interfere with KSU or its employees, agents, and licensees. **No legal title or any other interest in real estate shall be deemed or construed to have been created or vested in Company by anything contained in this Agreement.**

No KSU personnel will participate in or be involved in Company's work in the Premises, except to the extent of their responsibilities for routine cleaning, maintenance, repair and oversight of the Premises and this Agreement for the benefit of KSU. In this instance, KSU personnel will provide approximately 2 hours of user training to Company's personnel prior to the use of the Premises.

4. **COMPANY PERSONNEL:** Company assumes full responsibility for the actions and omissions of its agents and employees. Company warrants that its employees who will use the Facility have the qualifications necessary for safe operation of the Facility and have completed all necessary Environmental, Health and Safety training to operate the equipment as outlined in this Agreement. KSU, in its sole discretion, may require Company to provide documentary evidence of such qualifications before allowing access to Facility. Such employees shall complete any additional training required by the Lab Director. Company employees shall comply with all rules and regulations adopted by KSU regarding the use of Common Areas, including but not limited to restrooms, entrances, exits and other areas of the buildings that support the Premises.

Company agrees to provide KSU, upon execution of this Agreement, a complete list of Company's personnel authorized to use the Facility on Company's behalf (to be attached hereto as Attachment B) and permitted users of the Facility will be limited to those employees authorized by Company. Company understands that persons not on such list will not be permitted to use the Facility unless Company provides KSU with a written authorization and an updated list reflecting Company's authorization for such persons.

Access to Premises will not be permitted by Company employees until each of Company’s employees accessing the Premises: (i) have executed and returned the Release form attached hereto as Attachment “C”; and, (ii) have completed the mandatory orientation and safety classes for each laboratory tool and process such employees will be using.

5. **INTELLECTUAL PROPERTY:** In the event an invention, whether or not patentable, is developed in connection with Company’s use of the Facility, disposition of the invention shall be determined as follows: (a) if the invention is developed solely by employees of Company, the invention will be owned by Company; (b) if the invention is developed by employees of Company and assistance provided by faculty, staff and/or students of KSU is limited to the operation of the equipment in the Premises in accordance with a Company-designed protocol, the invention will be owned by Company; and (c) in any case where faculty, staff and/or students of KSU participate in the research program which leads to an invention and participation is not pursuant to a Company-designed protocol, ownership of the invention shall follow inventorship as determined by U.S. patent law.

TERM AND TERMINATION. This Agreement shall commence on _____, 202_ (“Commencement Date”) and will terminate on the one (1) year anniversary of the Commencement Date (“Term”) and shall be renewable for additional periods upon written agreement signed by both Parties. Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated by either party upon thirty (30) days prior notice of termination, except that KSU may terminate this Agreement immediately and without notice at any time upon a breach of any material term or condition to be performed hereunder by Company. Late payments exceeding 60 (sixty) days from invoice shall be deemed a material breach of this Agreement.

6. **FEES FOR USE.** As consideration for KSU’s granting permission for Company to use the Facility, Company agrees to pay KSU a start-up fee of \$200 USD, as well as an hourly rate for the Premises use as provided in the schedule below. All consumable supplies necessary for the Permitted Use shall be provided by Company at its sole expense. Any KSU supplies used by Company, following prior approval of KSU for any such use, shall be replaced or reimbursed by Company. KSU reserves the right to change its hourly rate upon thirty (30) days’ prior written notice to Company. Company shall be responsible for all applicable taxes and license fees that may arise in connection with Company’s use of the Facility. Such fees shall be paid by check payable to “*Kent State University*” and sent to: *1425 Lefton Esplanade, Kent, OH 44242.*

Facility Use/Service:	Hourly Rate (*unless otherwise noted):
Facility training	\$150 USD
Facility use	\$50 USD
Front cleanroom including standard equipment to process simple cells	\$100 USD
More specialized tools (RIE, Lithography, Angstrom Sputter, ALD)	\$150 USD
Specialized processes performed by LCI staff	\$200 USD

Office space*	\$25 USD /person/ day
Consumables (as available)*	Calculated depending on use

7. **INSURANCE.** Company shall keep in full force and effect, at Company’s own expense during the period of Company’s use of the Facility pursuant to this Agreement:

- Commercial General Liability Insurance naming KSU as an Additional Insured, which shall include broad form property damage liability coverage, extended bodily injury coverage, independent contractors’ coverage, and contractual liability coverage, in an amount not less than \$1 million per occurrence, and \$3 million in the aggregate, naming KSU as an additional insured.
- Worker’s Compensation: statutory coverage with \$500,000 employer’s liability limits on all its employees working at the Premises.

In any event of loss or damage to the Building, the Premises and/or any contents, each party shall look first to any insurance in its favor before making any claim against the other party; and each party shall obtain, for each policy of insurance, provisions permitting waiver of any claim against the other party for loss or damage within the scope of the insurance, and each party, for itself and its insurers waives all insured claims against the other party.

A duly authenticated Certificate of Insurance, with a waiver of subrogation for KSU for worker’s compensation, shall be provided to KSU at least five (5) days prior to Company’s use of Facility and is included in this Agreement as Attachment D.

8. **INDEMNIFICATION:** Company assumes all risks incidental to its use of the Facility and Premises and shall be solely responsible for any and all accidents and injuries to persons (including death) and property damage arising out of or in connection with such activities caused by the actions, omissions or negligence of Company, its officers, employees, agents, or assigns, and hereby covenants and agrees to indemnify and hold harmless KSU and its respective officers, employees, affiliates, agents, and assigns, from any and all claims, suits, actions, damages and costs of every nature and description arising out of or relating to the use of Facility and Premises (including but not limited to all claims brought by employees, agents or others within Company’s control, supervision or responsibility and claims allegedly resulting in whole or in part from the negligence of the indemnified parties or from acts or omissions for which the indemnified parties otherwise would be strictly liable) or arising from any breach by Company or failure to comply with any of the terms and conditions of this Agreement. Company further agrees, upon request, to assume the defense and to defend, at its own cost and expense, any action brought at any time against KSU with respect to such claims, suits, and losses.

9. **NON-ASSIGNMENT.** Company shall not assign this Agreement, or any rights hereunder or delegate any obligations hereunder without the prior written consent of KSU. Any attempted assignment or delegation without the prior written consent of KSU shall be void and shall constitute a breach of this Agreement.

10. **NOTICES.** All notices, demands, requests, consents, certificates, waivers or other communications from either party to the other with respect to this Agreement shall be in writing and shall be effective if sent by

certified or registered United States mail, postage prepaid, return receipt requested, or by hand delivery with receipt obtained, or by overnight courier service providing receipted proof of delivery,

If to KSU:

Kent State University
Advanced Materials and Liquid Crystal Institute
800 E. Summit St.
Kent, OH 44242
Attn: Director, AMLCI

With a copy to:

Office of General Counsel
800 E. Summit St.
Kent, OH 44242
Attn: VP, General Counsel

If to Company:

Attn: _____

or to such other address as the party to receive notice may from time to time designate by written notice to the other in the manner above described.

11. **EXPORT CONTROL.** Company acknowledges that it is subject to United States laws and regulations controlling the export of technical data, computer software and other commodities and agrees not to export or allow the export or re-export of such data, software or other commodities in violation of such laws and regulations and that it will be solely responsible for any violation of such by Company.
12. **COMPLIANCE WITH LAWS.** Company shall, at its own expense, comply with all municipal, state, and federal laws, ordinances, rules, and regulations including, without limitation, the obligation to obtain any licenses, permits, and government approvals required in connection with the Company's use of the Facility. Company and its authorized personnel shall not use the Facility in any manner contrary to the laws and regulations of the United States of America or any agency thereof, including but not limited to U.S. Department of Commerce Export Administration Regulations and the U.S. Department of State Traffic in Arms Regulations.
13. **MISCELLANEOUS.** This Agreement shall be governed and construed in accordance with the laws of the State of Ohio. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable by a court with proper jurisdiction, the parties hereto shall consider such provisions amended and modified so as to eliminate such invalidity or unenforceability, and all other provisions of this Agreement shall remain in full force and effect. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting the within subject matter. No amendment or modification or alteration of the terms of this Agreement shall be binding unless in writing and executed by the Parties. Time is of the essence of this Agreement and the performance of all obligations hereunder. Notwithstanding anything to the contrary contained in this Agreement, nothing herein shall be construed to infer or imply that Company is a partner, joint venturer, agent, employee, or otherwise acting by or at the direction of AMLCI.

Nothing in this Agreement is intended to confer a third-party beneficiary right upon any person or entity.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have caused this Agreement to be executed the day and year first above written.

KENT STATE UNIVERSITY through its
Advance Materials and Liquid Crystal Institute

[COMPANY]

By: _____

Dr. Torsten Hegmann
Director

By: _____

Print Name: _____

Date: _____

Date: _____

Attachment "A"

LAB USER RELEASE

(AMLCI Cleanroom Research and Prototyping Facility)

I am an employee of **COMPANY** and have been approved by Company to participate in Company’s research (“**Research**”) in Kent State University’s AMLCI Cleanroom Research and Prototyping Facility (“**Lab**”).

I have taken and passed all applicable training for compliance and safety requirements for the Research as directed by Kent State University and I agree to follow the guidelines, regulations, and/or rules of the University, including all directives of the KSU Lab Administrator.

I understand and recognize that I am responsible for my own well-being. I fully understand and appreciate the potential dangers, hazards and/or risks, directly and/or indirectly inherent in participating in the Research. I agree to utilize all available safety measures including following the directives of the safety training and wearing all necessary protective gear if required. Further, I understand and voluntarily agree to assume any and all risks, which may include any and all foreseeable or unforeseeable harm, injuries, damages, or risks as a result of voluntarily participating in the Research.

In consideration for being allowed to access the Lab and participate in the Research, I agree to release and hold Kent State University, its trustees, agents, officers, employees, and students, harmless for any and all direct, indirect, special or consequential damages, or costs, legal and otherwise, which I may incur as a result of my access to the Lab and participation in the Research, even if due to the University’s negligence.

I affirm that I am 18 years of age or older. I have read the above terms of this Agreement/Release, and I understand and voluntarily agree to the terms and conditions and that I am giving up substantial rights including my right to sue. This Agreement/Release shall be binding upon the heirs, administrators, executors, and assigns of the undersigned. I acknowledge that I am signing the agreement freely and intend by my signature to be a complete and unconditional release of all liability to the greatest extent allowed by law.

Signature: _____ Print Name: _____ Date: _____

Signature: _____ Print Name: _____ Date: _____

Signature: _____ Print Name: _____ Date: _____

Signature: _____ Print Name: _____ Date: _____

Attachment "A"