

Core Research Facilities Master Agreement

University of Massachusetts Amherst
Core Research Facilities

UMass Contact: James Chambers
Email: jjchambe@umass.edu

Client Name:
Address:
C/S/Z:
Client Contact:
Telephone:
Email:

Introduction

The University of Massachusetts Amherst (“UMass”) has highly specialized research expertise, advanced equipment and other resources that provide UMass with research and analytical capabilities that are not widely available. These specialized capabilities are organized into a number of “core” research facilities, each having specialized equipment, resources and facilities staff. UMass makes the capabilities of these core facilities available to other institutions and companies, in furtherance of its public service, research, educational and economic development missions. UMass does so in a manner that is consistent with its status as a tax-exempt institution of higher education.

The Client has expressed interest in using the services of the UMass core research facilities on an ongoing basis, and UMass has offered to enter into this Master Agreement so that use of the core facilities in individual instances can be greatly simplified.

The Agreement

This Agreement, effective as of _____, 20____ (“Effective Date”), provides the terms under which UMass agrees to provide certain Core Research Facilities Services (“CRFS”) to _____ (“Client”).

1. **Orders.** The Client can order specific tests, analyses and/or services using the specific Order forms provided by each of the CRFS (“Order”) attached as Exhibit A.
2. **Order Management.** The Technical Contact for the relevant CRFS will acknowledge receipt and acceptance of the Order, and will provide an estimate of when the work will be completed. In some cases, Order acknowledgement and acceptance may be delayed to complete the export control review described in Section 18 below.
3. **Contacts.** The CRFS Technical Contact and the Client Technical Contact named in the Order will consult with one another in the course of the work to best meet the Client’s needs. The Client may contact the CRFS Business Manager regarding any billing, service or administrative matters. Each party will notify the other party of any change in Contact.
4. **Materials.** Where the Client is to provide UMass with materials for testing or other use, these will be listed in the Order (“Materials”). Client remains at all times responsible for the risk of loss to Materials. The Client will provide Materials in amounts reasonably sufficient for the work to be done, and will also provide UMass with information on the stability and toxicity of the Materials, and instructions on their proper storage and safe handling. If available, export control classification and material safety information will be provided (in the form of a Material Safety Data Sheet or MSDS). The Client will transport and deliver the Materials in compliance with all applicable laws and regulations. Upon completion of the Order, UMass will dispose of any unused Materials or return them to the Client, either of which shall be done at Client’s request and at Client’s expense.

5. Reports. If applicable, upon completion of an Order, UMass will furnish a report containing the test results, image analyses, etc. as specified in the Order. All data and test results contained in the report are the property of Client.
6. Payments. Client agrees to pay the service fees set forth in the Order. Services will be billed according to the current UMass pricing at the time of a request for services. All payments are due no later than thirty (30) days from receipt of the invoice. Payments will be made in U.S. Dollars and will be net of taxes, duties or withholding of any kind. Payments will be made in accordance with the payment instructions provided in the invoice.
7. Intellectual Property. Each party will retain ownership of its own intellectual property. UMass will not claim ownership of any rights to Materials provided by the Client and recognizes that the Client will own intellectual property rights in the data and results from the services provided. UMass will not retain data and results once provided to Client, but will delete or destroy them as applicable. UMass will retain all rights in any new technologies, methodologies, processes and procedures that may be developed by UMass personnel that do not rely on or encompass Materials.
8. Publications. UMass, in keeping with its academic mission, may publish as it sees fit regarding new technologies, methodologies, processes and procedures that may be developed by UMass personnel. However, UMass will not have the right to publish Client's data and results arising from an Order, unless the Client consents in writing to such publication in advance.
9. Confidentiality. Client will not disclose confidential information to UMass under this Agreement. Notwithstanding the foregoing, any information regarding the Materials, the data and results from work hereunder shall be confidential information of Client which UMass shall hold in confidence.
10. Safety Procedures. If an employee or agent of the Client visits or is present on any UMass premises or facilities ("Visitor") as an observer, the Client agrees they will observe and obey all applicable UMass policies and procedures as instructed by UMass. If Visitor is to perform any work or intends to use any equipment in the facilities, then Visitor must complete and comply with the Core Facility Visitor Form attached as Exhibit B. Client acknowledges and agrees that UMass may refuse access to potentially hazardous facilities if such Visitor is unwilling or unable to comply.
11. Use of Premises. Client accepts complete liability for all acts and omissions of any Visitor, whether such acts and omissions are negligent, grossly negligent, or intentional, and Client agrees to defend, indemnify, and hold harmless the Indemnitees to the full extent described in Section 14 below. Client further agrees that the Visitor will be covered by Client's workers' compensation or other insurance in compliance with applicable Federal and state laws, including liability insurance with limits of at least one million dollars (\$1,000,000) per occurrence. The Client agrees that such insurance will be primary and that the UMass's insurance will be non-contributing. The Client agrees to provide proof of such insurance upon request.
12. Representation. UMass represents that it will carry out Orders in a manner consistent with academic standards. THE FOREGOING REPRESENTATION IS IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF A PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT.
13. Limitation of Liability. IN NO EVENT WILL UMASS BE LIABLE FOR ANY LOST PROFITS, LOSS OF USE, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, EVEN IF UMASS HAS BEEN ADVISED OF THE

POSSIBILITY OF THOSE DAMAGES. NOTWITHSTANDING THE FOREGOING, IN NO EVENT WILL THE LIABILITY OF UMASS ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID UNDER THE APPLICABLE ORDER. If UMass commits a breach of the representation set forth in Section 12, its sole responsibility, and Client's sole remedy, shall be for UMass to repeat the ordered service.

14. Indemnification. Client will defend, indemnify, and hold harmless UMass and its trustees, officers, faculty, students, employees, and agents and their respective successors, heirs and assigns (the "Indemnitee") against any liability, damage, injury, loss, or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon Indemnitee in connection with any claims, suits, actions, demands or judgments ("Claims") arising out of or resulting from the activities to be carried out pursuant to this Agreement or the manufacture, distribution, use, sale or other disposition by the Client, or its distributors or customers, of any Materials, data, results or reports that are the subject of an Order, including without limitation actions in the form of tort, warranty, or strict liability and regardless of whether the action has any factual basis.
15. Term; Renewals. Unless terminated earlier by a party under Section 16 below, this Agreement will begin on the Effective Date and will continue for a period of one calendar year ("Term"). The Term will automatically renew for a successive one calendar year period unless a party objects by written notice to the other party before thirty (30) days of the expiration of the then-current Term. However, this Agreement will not automatically extend beyond the date that is two (2) years from the Effective Date.
16. Termination. If either party defaults in the performance of any of its material obligations under this Agreement, the non-defaulting party may give written notice of the default to the defaulting party. Unless the default is corrected within thirty (30) days after receipt of the notice, the notifying party may terminate this Agreement immediately upon written notice. Further, Client may terminate an Order at any time upon written notice to UMass and agrees to pay UMass for any expenses incurred prior to the notice of termination.
17. Survival. The obligations of the parties under Sections 4, 6, 7, 8, 9, 11, 12, 13, 14, 17, 19, 20 and 22 survive the expiration or termination of this Agreement.
18. Export Control. The parties agree to comply with all U.S. laws and regulations relating to the transfer, export, or re-export of items and information, including, but not limited to, the Export Administration Regulations (EAR), 15 CFR Parts 730-774, and the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130. Client shall notify UMass's Office of Research Compliance (rescomp@umass.edu) in writing prior to disclosure of any items or information subject to export controls and having an export control classification more restrictive than EAR99. Office of Research Compliance will coordinate arrangements for receipt of export-controlled items or information with the Client Technical Contact. These arrangements must be completed prior to receipt of export-controlled items or information, and acceptance of the Order will be contingent on implementation of these arrangements. The Client is solely responsible for determining the correct U.S. Export Control Classification Number (ECCN) or United States Munitions List (USML) category of items or information to be disclosed as necessary to comply with export controls.
19. Use of Names. Neither party may use the name or logo of the other party in any advertising or product promotional materials. Except as otherwise required by applicable laws, rules or regulations, each party agrees that it will not use the name or logo of the other party or of any employee of the other party in any press release or public announcement without the prior written approval of the other party. With permission, the Client agrees to credit the use of the UMass facilities in any related publication.

20. Governing Law. This Agreement is governed by, construed, and interpreted in accordance with the laws of the Commonwealth of Massachusetts.
21. Status. In the completion of all Orders hereunder, UMass shall be deemed to be and shall be an independent contractor.
22. Entire Agreement. This Agreement, together with any Orders and the Core Research Facilities Visitor Form, if applicable, constitutes the entire Agreement between the parties with respect to the core research facility services that are the subject hereof, and may be modified only by a written instrument signed by both parties that references this Agreement. Without limiting the foregoing, this Agreement shall not be amended or superseded by terms or conditions on any purchase order or other business form used by the Client. In the event of a conflict between the terms of this Agreement, any Order or form, the terms of this Agreement control.

Each party has executed this Agreement by providing the signature of its duly authorized representative below.

Client

University of Massachusetts Amherst

By:

By:

Name:

Name: Kathryn Ellis

Title:

Title: Director, UMass Innovation Institute

Date:

Date: