



Services Agreement

UNIVERSITY OF COLORADO BOULDER Regents of the University of Colorado, a body corporate, acting on behalf of the University of Colorado Boulder ("University") Address: 3100 Marine Street, UCB 585 Boulder, CO 80303-1058 Tel: 303.492.0800 Email: industry@colorado.edu	CUSTOMER: Address: Tel: Email:
JILA Keck Lab and Clean Room Manager – David Alchenberger Department: JILA (10106) Tel: 303.492.2389 Email: alchenbd@jila.colorado.edu	Rate: Subject to change with thirty days notice Labor Rate: \$ per hour Materials Cost: \$ Payment due: Invoiced upon completion of Services. Terms NET 30 from date of Invoice.
Services / facilities to be provided ("Services"):	Invoices to be sent to:
Deliverables ("Deliverables"): Labor and Consultation	Make checks payable to: Regents of the University of Colorado Remit to: University of Colorado Boulder UCB 585 Boulder, CO 80309
Performance Period:	

Terms and Conditions

- Purpose.** Customer desires to obtain the Services and Deliverables identified above. This Agreement is established to cover the full costs associated with providing this Service.
- Deliverables and Results.** Title to Deliverables will reside in Customer. ("Deliverables" is defined in the informational matrix above.) Customer shall grant and hereby grants to University the transferable right to use Results for academic, educational and research purposes. ("Results" mean any analysis, data or information created in the performance of this Agreement.) For clarity, title to (i) the methodology, procedures, and processes utilized in performing the Services, and, (ii) excepting Deliverables, all intellectual property created or developed, including without limitation any inventions and discoveries conceived or first reduced to practice, computer software, and works developed, whether or not protectable by patent or copyright, by University in the performance of the Services, resides and will reside in University.
- Payment.** Customer shall pay University the Rate in accordance with the terms listed above. Any payments not made within 30 days of receipt of invoice are subject to a 6% per annum interest charge.
- Export Controls.** Customer shall not provide any export controlled information, items or commodities to University without the prior written agreement of CU-Boulder's Export Control Officer.
- Governmental Immunities.** Regardless of governing law, venue, or jurisdiction, with respect to the University's status, rights, and obligations as a state institution and the governmental and sovereign immunities afforded the University as a state institution, including, without limitation, under the Colorado Governmental Immunity Act, CRS §§ 24-10-101 et seq., the laws of the State of Colorado control. This Paragraph is governed and construed in accordance with the laws of the State of Colorado.
- Liability.** Each party agrees to be responsible for the negligent acts or omissions of its employees, officers, or directors except that the University's liability is expressly limited by and subject to the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., and the Eleventh Amendment to the U.S. Constitution and nothing shall be construed as a waiver of such immunities. Customer is solely responsible for any liability arising out of Customer's use of or reliance upon Deliverables or anything generated from the Deliverables. In delivering Services, the University may decide to utilize students. Any such participating students are covered by the University's general liability and workers' compensation insurance.
- Confidential information** ("Information") is information that is not generally known to the public from which a party may derive economic value as long as it is kept confidential by a party using reasonable means. Information includes, but is not limited to, any and all information, data, technical and non-technical materials, designs, processes, product samples and specifications, financial or business information, whether or not patentable, furnished by one party of this agreement ("disclosing party") to the other ("receiving party"), either directly or indirectly, in writing or tangible form, and clearly marked "Proprietary" or "Confidential," or which if disclosed orally or visually, is reduced to writing by the disclosing party, clearly marked Proprietary or Confidential and transmitted to the receiving party within 15 days of disclosure. For absence of doubt, this agreement shall not be considered Information.

A receiving party's obligations to protect the Information of the disclosing party shall not include information that:

- at the time of disclosure had been previously published or was otherwise in the public domain through no fault of receiving party;
- becomes public knowledge after disclosure unless such knowledge results from a breach of this agreement;
- was already in receiving party's possession prior to the time of disclosure as evidenced by written records kept in the ordinary course of business or by proof of actual use thereof;



Services Agreement

- is independently developed without use of the disclosing party's Information;
- is not disclosed or subsequently reduced to writing and labeled with an appropriate proprietary legend within 15 days of disclosure;
- becomes known to receiving party from a source other than the disclosing party in a manner that does not knowingly breach an obligation of confidentiality owed to the disclosing party; or
- is approved for release or use by written authorization of the disclosing party.

7.1 The receiving party's duty to protect the Information in accordance with the terms of this agreement will extend 3 years from the completion of the agreement, notwithstanding agreements by the party to extend the term of the agreement. All written documents containing Information and other material in tangible form received by either party under this agreement shall remain the property of the disclosing party, and such documents and materials, together with copies of excerpts thereof, shall promptly be returned to disclosing party upon request, except one copy may be retained for archival purposes.

7.2 Notwithstanding the foregoing, the receiving party may disclose Information as required by law, court order, or government regulation provided however, that the receiving party provides notice to the disclosing party to provide disclosing party with an opportunity to minimize or oppose such disclosures. Sponsor acknowledges that University is subject to the Colorado Open Records Act (C.R.S. §§ 24-72-201 et seq.) ("CORA") and that University's obligations under CORA supersede its obligations under this provision. Appropriately marked Information shall be treated by University as confidential/proprietary to the extent permitted under CORA.

7.3 Either party may decline to accept Information provided under this agreement prior to its disclosure and nothing herein obligates either party to disclose its own Information.

8. In performance of the Services, University employees may become aware of non-public information regarding Customer. Such employees may not purchase or sell any Customer securities, while in possession of material non-public information regarding the Customer, or otherwise obtain profit for himself or herself; or directly or indirectly "tip" others who might make an investment decision on the basis of that information. Customer agrees to mark any material non-public information as "confidential".

9. **Customer Use of University Facilities.** University will provide Customer with the ability to utilize University facilities for such Service under the following terms:

Use Details. University will provide Customer with reasonable access to laboratory or other work space, equipment and supplies, as the University deems appropriate. University may set forth training and operational requirements for access. The University reserves the right to reasonably modify, change or revise the space, equipment and supplies that Customer uses. The date(s) and hours of use shall be as directed by the University. The University reserves the right to revoke at any time access to facilities or equipment. Use shall not interfere in any manner with the University's research, operations, or another third party use authorized by the University.

Compliance/Safety. Customer may use the facilities, equipment and supplies only for authorized purposes consistent with project and only to the extent that those purposes or functions for which the equipment was safely designed. Customer shall immediately notify the University in the event of any problems with the facilities, equipment or supplies. Customer shall refrain from use of the facilities, equipment or supplies if functionality or safety of the facilities, equipment or supplies can be, or in fact is, reasonably questioned. Customer agrees to comply with all applicable local, state, and federal law, in addition to all applicable University policies, rules and regulations. Customer agrees to review and abide by any and all applicable laboratory safety/operations plan/rules as provided by University prior to use and to follow all rules and directions from University personnel regarding use.

Authorized Persons. Customer agrees to furnish University with a list of Customer's officers, agents, or employees authorized to use University facilities and equipment on Customer's behalf. University may deny access to any person not on such list unless Customer provides written authorization and an updated list reflecting Customer's authorization of such person(s). University has the right to deny access to any individual, even if on such list of authorized persons, for failure to following training and operational requirements established by University.

Damages. Customer shall take the facility space and equipment "as is." University makes no guarantees that the space or equipment is fit for Customer's purposes. Customer shall be responsible for and promptly reimburse the University upon invoice for any damage or additional clean-up costs due to Customer's use, in addition any direct expenses paid in advance.

Responsibility and Release. Customer agrees to assume all risks, both known and unknown, and be fully responsible for its use, including, but not limited to, any resulting personal injury or loss, bodily injury (including death), damage to or loss of, or destruction of any property. The University will be responsible for the negligent acts and omissions of its officers, agents, employees and representatives with respect to any obligations under this Agreement, to the extent consistent with C.R.S. 24-10-101, et seq., as amended. Except for the foregoing, CUSTOMER HEREBY RELEASES AND DISCHARGES THE REGENTS OF THE UNIVERSITY OF COLORADO, AND THEIR MEMBER OFFICERS, AGENTS, EMPLOYEES AND ANY OTHER PERSONS OR ENTITIES ACTING ON THEIR BEHALF, AND THE SUCCESSORS AND ASSIGNS FOR ANY AND ALL CLAIMS, DEMANDS, COSTS AND EXPENSES, AND CAUSES OF ACTION WHATSOEVER, EITHER IN LAW OR EQUITY, ARISING OUT OF CUSTOMER'S USE.



Services Agreement

Insurance and Indemnification. Customer shall maintain, at its own expense and for the duration of any and all use: General Liability coverage with limits of not less than \$1,000,000 combined single limit; where applicable, auto coverage for owned and non-owned auto liability with limits of not less than \$1,000,000; where applicable, workers' compensation coverage at required statutory limits; and where the non-university group will distribute, or will contract with the university to distribute, alcoholic beverages on university premises, Host Liquor Liability insurance with limits of not less than \$1,000,000. All insurance policies shall name the Regents of the University of Colorado, a body corporate, as additional insured. The certificate Holder shall be: The Regents of the University of Colorado, University Risk Management, 1800 Grant Street, Suite 700, Denver, CO 80203-1187. Certificates must be provided at the time the *use agreement* is executed and shall be sent via e-mail to: URM@CU.EDU. Policies shall be primary to all other coverage that may be concurrently in effect. All policies shall be underwritten by a company licensed to do business in the State of Colorado.

Contractor agrees to indemnify and hold harmless The Regents of the University of Colorado, its officers, administrators, agents, employees, and students from and against any and all claims or demands or damages in any way arising from Contractor's use of university facilities. Indemnification shall not be limited and shall include any liability or payment (including costs and attorney's fees) by reason of any damages or bodily injury (including death) sustained by any person or persons or on account of damage to property, including the loss or use thereof arising out of or in connection with the use.

10. Disclaimer and Limitation on Warranties. CUSTOMER UNDERSTANDS AND AGREES THAT UNIVERSITY EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM OR RELATED TO THIS AGREEMENT AND CONCERNING THE WORK. UNIVERSITY DOES NOT GUARANTEE THE ACCURACY OF ANY RESULTS OR DELIVERABLES. IN NO EVENT WILL UNIVERSITY, ITS OFFICERS, AGENTS OR EMPLOYEES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Termination. Either party may terminate this Agreement upon 30 days' prior written notice to the other. Customer shall be responsible for all costs and any non-cancellable obligations incurred by the University up to the date of termination. University shall return any prepayment by Customer in excess of such sums.

12. Entire Agreement. This Agreement contains the entire and only agreement between the parties in respect to the subject matter. Should processing of this Agreement require issuance of a purchase order or other contractual document, all terms and conditions of such a document are hereby deleted in entirety and superseded by this Agreement. This Agreement may not be amended in any manner except by an instrument in writing signed by the duly authorized representatives of each of the parties.

<p>By an Authorized Official of University:</p> <p>_____</p> <p style="text-align: right;">_____</p> <p style="text-align: right;">Date</p> <p>Printed Name: _____</p> <p>Title: _____</p>	<p>By an Authorized Official of Customer:</p> <p>_____</p> <p style="text-align: right;">_____</p> <p style="text-align: right;">Date</p> <p>Printed Name: _____</p> <p>Title: _____</p>
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