COE policy on the use of College laboratory facilities by faculty developed start-up companies. 10/16/2017

The College of Engineering wants to encourage entrepreneurship amongst its faculty, staff, and students and towards that end is supportive of partnerships with faculty developed start-up companies. In the event that faculty have developed their own start-up entity, it may be beneficial to both the faculty member and the college to provide access to university facilities including a portion of the faculty member’s assigned laboratory space. Such activities demonstrate translation of novel research into technologies that improve the quality of life for our stakeholders, stimulate economic development in the state, and can provide professional development opportunities.

Guidelines:

If a COE faculty member has initiated a formally recognized corporate entity (such as an LLC or similar entity), they may request access to College laboratory facilities in order to perform initial stage research to demonstrate feasibility or translatability of the concept. Development of Intellectual Property (IP) must follow Board of Regents policy on Ownership and Commercialization of Inventions and Discoveries (BOR Policy 3.10) and Intellectual Property (BOR Policy RP-4.4).

Faculty, on behalf of their corporate entity, may sign a lease agreement that follows current UNL procedures (see attached for the current document) and must receive approval for use of space by their Department Chair, College Dean, and the Assistant Vice Chancellor for Facilities. Sufficient laboratory space must be available and the lease agreement must not negatively impact other research activities of the unit. The presumption is that the space to be leased is that which is already assigned by the College to the faculty member leading the start-up.

Lease agreements will be made typically for a 1 year period after which the start-up entity should either graduate to incubator space (such as at Nebraska Innovation Campus) or identify alternate space for activities. Lease rates will follow current UNL guidelines, currently at $20 / ft2 per month and will be conveyed from the company through the College to UNL Facilities Planning and Construction.

Utilization of laboratory equipment will be permitted on a bulk use term based on the needs of the company and equipment available in the laboratory. An assessment of reasonable costs, following a core-facility approach, will be made by the COE Dean’s office in cooperation with the faculty member and incorporated into the lease agreement and paid at the time of rent payment.

To be included in the lease agreement are:

Exhibit A: Information on the company – name and mailing address, personnel who will use the space, a brief description of the company’s research to be conducted.

Exhibit B: Details of the space requested – building and room number, square footage, equipment to be utilized by the company. An estimate of equipment use time and cost are to be incorporated into Article 5 below.

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (“**Lease**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_ by and between **The Board of Regents of the University of Nebraska**, a public body corporate and governing body of the University of Nebraska, 3835 Holdrege Street, Lincoln, Nebraska 68583 (the “**Landlord**”) and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (the “**Tenant**”).

FOR VALUABLE CONSIDERATION, the parties agree as follows:

1. **Lease and Premises Description**. Landlord is or shall be the owner of certain real property and improvements located in the City of Lincoln, Lancaster County, Nebraska as depicted and legally described on Exhibit A attached hereto and incorporated herein (“**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**”). Landlord hereby leases to Tenant up to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ square feet of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and the improvements located thereon (the “**Premises**”). Tenant agrees that no representations, statements, or warranties, expressed or implied, have been made by or on behalf of Landlord respecting the condition of the Premises or the use that may be made of the Premises. Tenant further agrees that no promises to alter, decorate, repair or improve the Premises, either before or after the execution hereof, have been made by Landlord or its agents or representatives to Tenant unless the same are contained herein or made a part hereof. In no event shall Landlord be liable for any defect in such Premises or for any limitation on its use. Tenant accepts the Premises in its “as is” condition, without warranty from Landlord.
2. **Term**. The term of this Lease shall commence on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and shall terminate on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ unless sooner terminated as provided herein. The lease may be renewed by negotiation and mutual consent of both parties.
3. **Rent**. Lessee covenants and agrees to pay Lessor as rent for the premises and equipment without notice or demand and without any deduction, set-off, recoupment, or counter claim, rent in the amount of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“Base Rent”) payable monthly, due in advance on the first day of every month covered by the terms of this lease, commencing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and to be sent via the U. S. Postal Service, addressed to Landlord in accord with the provisions for "Notice" under this Agreement. Rent for any partial months shall be prorated at a daily rate.
4. **Use**. Tenant shall use and occupy the Premises solely for the purpose of conducting the business of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Tenant shall not, without the prior written consent of Landlord, use the Premises for any other use or purpose.
5. **Use of Tenant Equipment and Other Facilities**. Subject to reasonable availability and the use by fully qualified personnel, Landlord may grant the right to the Tenant to use equipment or other facilities of Landlord as identified in Exhibit B. Tenant shall pay to UNL a fee of $X / hour or $X per month for the estimated time of use of the laboratory equipment. User shall keep a record of hours of use of the laboratory equipment and if the use exceeds the estimated hours per month, will so advise UNL and pay the difference in the usage fee for the monthly period. The Tenant shall be required to adhere to Landlord policies, regulations and standards including cleanup requirements. Tenant shall be charged for all consumables utilized by the Tenant.
6. **Tenant Responsibilities**. During the term of this Lease, Tenant shall:
   1. **Insurance**. Maintain in full force and effect at its own expense, general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about the Premises. Such insurance shall be in the comprehensive general liability form, or commercial general liability form, including but not limited to, general liability, automobile liability, and liability related to loading and unloading, collapse, explosion, and elevators. Such public liability insurance shall also provide contractual liability insurance which shall specifically refer to and cover the obligation of the Tenant to defend, indemnify and hold harmless the Board of Regents of the University of Nebraska, its officers, employees and agent. Such insurance shall afford protection for injury or death of a single person to the limit of not less than $3,000,000 for any one occurrence, and to the limit of not less than $1,000,000 for property damage. In addition, Tenant shall procure and maintain workers compensation insurance covering all employees of the Tenant working on or in connection with the activities described herein, in accordance with the Nebraska worker compensation laws, and carrying an “All States” endorsement during the entire term of this Lease.

The Landlord shall not be responsible for any loss of or damage to Tenant’s personal property. Tenant, at its own expense, will maintain insurance with respect to its improvements and personal property which are part of the Premises against loss by fire, lightning, and other perils covered by the standard all-risk endorsement, in an amount equal to at least 100% of the full replacement value thereof, with no deductions for depreciation, and shall maintain insurance against such other hazards and in such amount as is customarily carried by landlords and operators of similar properties and as Landlord may require for its protection.

All insurance described in this section shall be obtained from a reliable insurance company authorized to do business in the State of Nebraska, insuring Tenant, with the “Board of Regents of the University of Nebraska” as an additional insured. Tenant shall provide Landlord with certificates of insurance, executed by an authorized representative of an insurer duly licensed and operating within the State of Nebraska, certifying to the existence and enforceability of all required insurance during any and all times Tenant uses or occupies the Premises. Upon request by Landlord, the Tenant shall promptly furnish for examination at any time all contracts of insurance required herein. Tenant agrees that it will not do, or permit to be done, anything in or upon any portion of Premises, or bring or store anything in or on University of Nebraska property, which conflicts with the conditions of any insurance policy related to the Premises.

Tenant and Landlord shall require all contractors and sub-contractors providing equipment, materials, or services directly to Tenant and/or Landlord to obtain, maintain, and keep in force during the time in which they are involved in the performance of the services: primary third party liability insurance, automobile liability insurance, workers’ compensation insurance coverage, and if applicable, professional liability coverage. Upon Landlord’s request, Tenant shall deliver evidence of satisfactory insurance from all contractors and sub-contractors of Tenant within ten (10) days of Landlord’s request.

* 1. **Personal Property**. Be solely responsible for risk of loss with respect to all personal property, signs and leasehold improvements of Tenant which may be on or about the Premises.
  2. **Tenant’s Maintenance**. Be solely responsible for the maintenance of the Premises. Tenant agrees to keep and maintain, or cause to be kept and maintained, the Premises in a neat and clean state of appearance and in good operating order, repair and condition. Tenant shall promptly repair and maintain the interior portions of all improvements located on the Premises.
  3. **Security**. Securely lock all doors and accesses and secure all utilities on the Premises before leaving the Premises unattended, and reimburse Landlord for any damage resulting from the failure of Tenant to secure the Premises as herein provided.
  4. **Compliance with Laws**. User agrees to keep the Premises in a clean, safe and sanitary manner and further agrees to obtain any necessary licenses or permits as required by any applicable governmental authority and to conform with such licenses or permits and applicable laws, rules, and regulations. All established University of Nebraska-Lincoln (UNL) policies, regulations, and safety standards shall also be applicable to the Premises. User also agrees to follow UNL’s smoke-free campus policy which prohibits smoking on the Premises and within ten feet of the building entrance.

User shall use, store, handle, dispose of, generate, or transport to or from the Premises any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials” or “toxic substances” under any applicable laws, ordinances or regulations. Tenant shall, at all times, comply with all federal, state and local laws, ordinances and regulations relating to industrial hygiene or to environmental conditions on, under or about the Premises. Tenant shall not install, use or incorporate into the Premises any asbestos or asbestos containing materials.

User shall be solely responsible for the proper use, storage, and disposal of hazardous substances, materials, or wastes on the Premises or in any commons area, including the reporting to governmental authorities and cleaning up of spills or releases of such sub-stances, materials, or wastes as required by applicable laws, rules, and regulations. In addition, the User shall immediately notify UNL-EHS of any spill or release, even if it is one that is not required to be reported, and the User shall ensure that the cleanup is satisfactory to both UNL-EHS and applicable governmental authority.

User is permitted to generate, use and maintain its confidential business data, reports and files (“Information) on the Premises and upon request by the User to UNL, UNL may permit the User to use and maintain locked doors and cabinets to ensure privacy and confidentiality of such information.

* 1. **Rules**. Comply with all rules established from time to time by Landlord for the use of the Premises. Written notice of any amendments or additions to the rules shall be given by Landlord to Tenant.

1. **Restrictions on Tenant**. During the term of this Lease, Tenant shall not:
   1. **Unlawful Use**. Make or permit any use of the Premises in violation of any law, ordinance or governmental or municipal regulation or order, or which may be dangerous to persons or property.
   2. **Alterations and Improvements**. Make any improvements or alterations to the Premises without submitting plans and specifications for such improvements or alterations to Landlord and securing Landlord’s prior written consent. Tenant shall pay all costs of such improvements and alterations, shall provide evidence of such payment to Landlord upon request, and shall hold Landlord harmless from any costs, liens or damages.
   3. **Waste**. Commit or permit any waste of the Premises, nor any public or private nuisance on the Premises.
   4. **Landlord’s Insurance**. Commit or permit any act to be performed on the Premises or any omission to occur which will increase the insurance rate on the building or which will be in violation of any insurance policy carried on the Premises by Landlord.
2. **Landlord Access and Inspection**. Landlord, its employees and its agents, shall have the right at any reasonable time or times, to enter and inspect the Premises and to make at its own expense any necessary repairs, alterations, additions and improvements, structural or otherwise, provided that such work shall not be carried on in such manner as to deny Tenant the reasonable use of the Premises; and such improvements, alterations or additions shall not materially change the general appearance, location or area of the Premises.
3. **Parking**. Parking shall be coordinated through UNL Parking Services at 402-472-1800.
4. **Casualty Loss**. If the Premises are destroyed or damaged by fire or other casualty so as to render the Premises unsuitable for occupancy, and Landlord elects not to reconstruct or repair the Premises, Tenant may terminate this Lease by giving written notice to the Landlord of such termination within 30 days after such destruction or damage, which termination shall be effective as of the date of such destruction or damage. Landlord shall have no obligation to reconstruct or repair the Premises in the event of a fire or other casualty.
5. **Assignment and Subletting**. Tenant shall not be permitted to assign or sublease the Premises.
6. **Landlord May Assign**. Landlord’s rights to assign this lease are and shall remain unqualified. No assignment by Landlord shall release Landlord of any of its obligations under this Lease for any time prior to the date of the assignment.
7. **Surrender**. On the last day of the term of this Lease or on the earlier termination of this Lease, the Tenant shall peaceably surrender the premises in good condition and repair, reasonable wear and tear excepted, consistent with the Tenant’s duty to make repairs as provided in this Lease. Upon the termination of this Lease, Tenant shall return all keys and leave undisturbed on the Premises all improvements and non-trade fixtures, which shall be deemed to be the property of Landlord. Tenant shall remove from the Premises all trade fixtures and other personal property of Tenant. If the Premises are not surrendered at the end of this Lease or on the earlier termination of this Lease, the Tenant shall indemnify the Landlord against any loss or liability resulting from delay by the Tenant in surrendering the Premises. The provisions of this section shall survive the termination of this Lease.
8. **Tenant Default and Landlord Remedies**. Tenant shall be in default under this Lease if it (a) vacates or abandons the Premises, or (b) breaches any agreements, terms, covenants or conditions which this Lease requires Tenant to perform, and such breach continues for a period of thirty (30) days after notice from Landlord to Tenant (each an “**Event of Default**”). If any one or more Event of Default occurs, then Landlord has the right, at its option, to terminate the Lease in accordance with applicable law. Such remedy is not exclusive and is in addition to any other remedies now or later allowed by law.
9. **Termination.** This Agreement may be terminated by Landlord or Tenant by providing at least 30 days’ written notice.
10. **Miscellaneous.** 
    1. **Notices**. All notices required to be given hereunder shall be in writing, and, if intended for Landlord, shall be served upon Landlord or one of the officers or other authorized representative of Landlord personally, or shall be mailed by registered or certified mail, postage prepaid, to the following address:

John Jensen

Manager of Real Estate Properties

University of Nebraska-Lincoln

1901 “Y” Street

Lincoln, NE 68588-0605

All notices required to be given hereunder shall be in writing, and, if intended for Tenant, shall be served upon Tenant or one of the officers or other authorized representative of Tenant personally, or shall be mailed by registered or certified mail, postage prepaid, to the following address:

Name:

Address:

Either party shall have the right to change its mailing address by notice being served, by registered or certified mail, of such change.

* 1. **No Waiver**. No waiver by Landlord of a default by Tenant shall be implied and no express waiver shall extend to any default other than that specified therein and then only for the period and to the extent specifically stated. The failure of Landlord to insist upon strict performance by Tenant of any of the covenants, conditions and agreements of this Lease shall not be deemed a waiver of any of the Landlord’s rights or remedies and shall not be deemed a waiver of any subsequent breach or default by Tenant of any covenant, condition or term of this Lease.
  2. **Rights Cumulative**. All rights, options and remedies of Landlord and Tenant contained in this Lease shall be construed and held to be cumulative and no one of them shall be exclusive of the other. Landlord and Tenant shall each have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity whether or not stated in this Lease.
  3. **Entire Agreement**. This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties hereto. This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
  4. **Amendment**. No amendment of this Lease shall be valid unless it is in writing and is signed by the parties or by their duly authorized representatives, and unless it specifies the nature and extent of the amendment.
  5. **Governing Law; Severability**. This Lease shall be construed and enforced in accordance with the laws of the State of Nebraska. If any clause or provision hereof should be determined to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the express intention of the parties hereto that the remainder of this Lease shall not be affected thereby; and it is also the express intention of the parties hereto that in lieu of each clause or provision of this Lease which may be determined to be illegal, invalid, or unenforceable, there may be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
  6. **Representations**. No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this Lease. Neither party has relied on any verbal representations, agreements, or understandings not expressly set forth in this Lease.
  7. **Duplicate Originals**. This Lease may be executed in several duplicate originals, but all copies shall be only one agreement.
  8. **Captions, Headings, or Titles**. All captions, headings or titles in the paragraphs or sections of this Lease are inserted for convenience of reference only and shall not constitute a part of this Lease as a limitation of the scope of the particular paragraphs or sections to which they apply.
  9. **Attorney’s Fees and Expenses**. Tenant shall pay all reasonable attorney’s fees and expenses which Landlord incurs in enforcing any of the obligations of Tenant under this Lease, or in any litigation or negotiations with Tenant in which Landlord shall, without its fault, become involved through or on account of this Lease.
  10. **Time**. The time of performance of all of the covenants, conditions and agreements of this Lease is of the essence.
  11. **Relationship**. It is expressly understood that Landlord shall not be construed or held to be a partner or associate of Tenant in the conduct of its business; it being expressly understood that the relationship between the parties hereto is and shall remain at all times that of landlord and tenant.
  12. **Examination of Document**. The submission of this Lease for examination is not a reservation of or option for the Premises, and this Lease becomes effective only upon execution and delivery by both the Landlord and Tenant.
  13. **Brokers**. Landlord and Tenant each represent to the other that they have not entered into any agreement or incurred any obligation in connection with this transaction which might result in the obligation to pay a brokerage commission to any broker other than has been previously disclosed to the other in writing.
  14. **Damage**. The Tenant will keep Equipment and Facilities in good repair, appearance, and condition, normal and reasonable wear and tear excepted. If the Equipment and Facilities are not in good repair at the end of the Lease term, the Tenant will make such repairs or may cause such repairs to be made as are necessary to put the Equipment and Facilities in a state of good repair, appearance, and condition. The Tenant will make said repairs within a reasonable time to return the state of Equipment and Facilities to that at the beginning of the Lease agreement, normal wear and tear excepted.

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DEPARTMENT: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Department Chair

COLLEGE OF ENGINEERING

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

Dean, College of Engineering

THE BOARD OF REGENTS OF THE

UNIVERSITY OF NEBRASKA

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

T. Mark Miller

Assistant Vice Chancellor, FPC

Corporate partner

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

Name:

Title:

**EXHIBIT A: Company information**

**EXHIBIT B: Laboratory facilities information**