

Facilities Use Agreement between NUS and external organisations

The following document provides a draft legal template for Facilities Use Agreement for non-NUS researchers. The Facilities Use Agreement seeks to ensure that employers and host institutions continue to exercise appropriate responsibility for the safety of their researchers when they are working on our premises, to ensure a safe work environment for everyone. After initial registration, the Admin Manager will follow up with researcher's host organisation to ensure appropriate legal agreement is in place.

ST JOHN'S ISLAND NATIONAL MARINE LABORATORY NATIONAL UNIVERSITY OF SINGAPORE RESEARCH FACILITIES USE AGREEMENT

This RESEARCH FACILITIES USE AGREEMENT (the "Agreement"), effective as of _____ (the "Effective Date"), is executed by and between _____ (the "User"), having a principal place of business at _____, and the National University of Singapore, having its registered office at 21 Lower Kent Ridge Road, Singapore 119077 ("NUS"), acting through its Tropical Marine Science Institute ("TMSI").

This Agreement sets out the Parties' mutual understanding regarding the use of the facilities and/or equipment (collectively the "Facility") by the User at St John's Island Marine Laboratory ("SJINML"), which is a Facility owned by NUS.

(NUS and the User may hereinafter be individually referred to as "Party" and collectively as "Parties" in this Agreement.)

1. TERM OF USE

The User's use of the Facility shall commence on _____ (the "Commencement Date") and continue through _____ (the "End Date"), unless otherwise extended or terminated as provided in Clause 15, provided the User has complied with User obligations as set forth in this Agreement.

2. PURPOSE, LICENCE AND RESTRICTIONS ON USE

a. The User's access and use of the Facility shall be for the specific purposes only. The Facility shall not be used for any other purpose(s). The use of the Facility shall not result in the generation of hazardous materials or hazardous waste, unless a written request with necessary details has been made to NUS and expressly permitted by NUS, subject to additional terms and conditions as prescribed by NUS.

b. NUS shall allocate the designated space for the User (the "Allocated Space"). Any requirement for more space at SJINML shall be subject to availability and written approval by NUS.

c. This Agreement shall not be construed as giving the User exclusive right to the occupation of the Allocated Space. The legal right to possession and control over the Allocated Space remains vested in NUS throughout the term of this Agreement. NUS retains the right to grant permission to other parties to use the Facility or any part thereof at its sole discretion.

d. The User's use of the equipment furnished by NUS is limited to the equipment and uses set out in the Equipment Standard Operating Protocols, which will be made available on-site.

e. The User's access to and use of the Facility is subject to guidelines defined in the SJINML Research User Handbook (Appendix B), and such guidelines will be monitored by the respective laboratory managers overseeing research facilities.

f. The User shall not commence or carry out any work involving animals covered under the Animals & Birds (Care and Use of Animals for Scientific Purposes) Rules ("animal work") unless and until the project involving such animal work has been approved by the NUS Institutional Animal Care and Use Committee ("NUS IACUC"). The User shall adhere to all applicable NUS policies, rules, guidelines, SOPs and procedures (particularly, but not limited to, those prescribed by NUS IACUC, TMSI and NUS Veterinarians), pertaining to the animal work. The Users shall also act in accordance with all instructions given by NUS IACUC, NUS Veterinarians and TMSI staff on animal welfare, care and husbandry.

3. FEES AND COSTS

The monthly fee charged to the User for use of the Facility shall be:

a. The daily/annual fee shall be \$ _____*.

b. For daily rate, user shall pay NUS as indicated above, on a monthly basis. NUS shall submit an invoice to User once a month (or within two (2) weeks of last date of use), and the User shall pay such invoice within thirty (30) days of the invoice date.

c. For annual fee, the User shall pay NUS in advance, within thirty (30) days of the Commencement Date.

d. Separate charges apply for use of special equipment, services and accommodation at SJINML. The User will be informed of fees payable by the relevant manager in charge. NUS shall submit an invoice to User once a month (or within two (2) weeks of last date of use), and User shall pay such invoice within thirty (30) days of invoice date.

e. All fee payments by User shall be made payable to the "National University of Singapore".

f. For effective notice of payment, all invoices shall be sent to:

[User to insert details]

Payments shall be sent to: [insert details]

*NUS reserves the right to adjust bench fees, with new rates taking into effect at the beginning of each financial year. User will be notified by 1 February of each year, of changes expected from 1 April of the new financial year.

4. CARE & MAINTENANCE

The User shall at all times ensure proper care of the Facility and keep it in good condition and good working order. The User shall also maintain the Facility in a clean and safe condition over the period of use, and upon termination of the Agreement, surrender the Facility in as good a condition as received, normal wear and tear accepted.

5. DAMAGE TO FACILITY AND INDEMNITY

a. The User where permitted to bring in hazardous material, shall be responsible for any damage to the Facility and shall be liable for all costs and expenses in rectifying the damage, or for the clean-up or waste-related expenses incurred by NUS, including without limitation, costs pertaining to disposal, shipping, damages, equipment repair and/or replacement and/or other costs or penalties incurred by NUS as a result of the use of the Facility by the User.

b. The User is fully responsible for his/her own equipment and shall maintain such equipment in safe working order.

c. The User shall indemnify and keep NUS indemnified against all losses, claims, demands, actions, proceedings, damages, costs or expenses (including all legal fees) and any other liability arising in any manner whatsoever (the "Consequences") from (i) the User's employees, agents, or students access and use of the Facility; (ii) the installation, operation or use of any of the User's equipment or material in the Facility; (iii) any animal or plant brought into the Facility by the User; (iv) any breach of the Agreement by the User and/or breach of undertakings by the User's employees, agents or students; (v) breach of law, save where the Consequences arise from and/or have arisen as a result of negligence or wilful default of NUS.

d. The User shall submit a separate damage deposit of \$_____, which shall be applied towards the costs of any NUS expenses beyond reasonable wear and tear that may result from the use of the Facility by User. For the avoidance of doubt, the User's liability for damages shall not be limited or capped to the amount of its damage deposit. Any unused portion of the User's damage deposit shall be returned to User.

6. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

a. Intellectual property developed solely by employees or agents of User in the Facility shall be the exclusive property of User. Intellectual Property jointly developed by employees and/or agents of User and employees, agents and/or students of NUS in the Facility shall be jointly owned by User and NUS. Disposition of such jointly owned intellectual property shall be determined by the terms of a separate agreement between the Parties. Nothing in the foregoing grants any rights to NUS' share of any jointly held intellectual property to User.

b. In the case of intellectual property developed by User which constitutes an improvement or new method of use with respect to equipment within the Facility, User hereby grants to NUS a perpetual, royalty-free right and license to use such intellectual property in combination with such equipment for research purposes.

7. COMPLIANCES

- a. The User, its employees, agents and personnel acting on its behalf shall comply with Singapore laws regulations, policy directives and other requirements in Singapore, as amended from time to time, governing the operation and use of the Facility. In addition, the User shall adhere to all applicable NUS policies, rules, guidelines and procedures, pertaining to the use of the Facility. NUS reserves the right, at its sole discretion, to determine and monitor the manner of User's compliance for any matter pertaining to use of the Facility.
- b. The User shall permit unannounced access to the Facility by NUS personnel, any National Research Foundation personnel and its authorised representatives and any third party nominated by NUS. User shall promptly comply with all requests by NUS for information related to the use of the Facility as NUS deems necessary for its compliance with any regulatory policies and laws and/or any legal obligations NUS may have to any third party.
- c. For avoidance of doubt. NUS' permission to the User to access and use the Facility shall not be construed as NUS' endorsement of any activities. Prior to commencing any activities in the Facility that require special permits, licenses or certifications, the User shall obtain the necessary permits, licenses or certification at its own expense and shall consult NUS on procuring such licenses permits or certifications, which may require the Facility owners acknowledgement or approval. The User shall provide NUS with copies of the relevant permits, licenses or certification.
- d. User shall comply with Singapore laws and regulations controlling the export of technical data, computer software, laboratory prototypes, animals and all other export controlled commodities.
- e. User may be required to attend user meeting convened and conducted by NUS to provide feedback in relation to the use of the Facility.

8. AUTHORIZED USERS

- a. The User shall not permit the Facility to be accessed or used by any person who is not an employee, agent or others acting on its behalf without prior written approval by NUS. For the avoidance of doubt, under no circumstances shall the User's use rights in the Facility be extended to unrelated organisations or parties for any purpose.
- b. NUS reserves the right to deny entry to the Facility or to immediately remove from the Facility, at its sole discretion, to any User personnel who NUS believes represents a safety or security risk to NUS.

9. ADDITIONS/MODIFICATIONS TO THE SPACE

- a. NUS shall own all permanent modifications, alterations and additions made to the Facility, whether made by User or NUS. User may furnish non-permanent equipment, tooling, test apparatus or other materials necessary for its use of the Facility, and such items shall remain the property of User. NUS shall not be responsible for any loss or damage to such items however occasioned.
- b. Except as specifically provided in this Agreement, the User shall not use NUS' equipment, tools, personnel or furnishings without permission. The User shall confer with relevant laboratory managers for access to equipment availability to avoid conflicts in the use of the Facility. In the event of an unavoidable conflict, NUS' uses related to research, teaching, and education shall take precedence.

10. NO TENANCY

The Parties agree and acknowledge that the User is not a tenant, and that the Parties' relationship is not a landlord-tenant relationship. As such, the User shall have no right to make any claim upon NUS for abatement of the fee, constructive eviction, rescission, or other claims to which a tenant would be entitled.

11. INSURANCE

The User [and User's parent organisation] shall at all times maintain and keep in force public liability insurance and insurance required under the Work Injury Compensation Act and other applicable legislation and for taking all other actions required as an employer for its employees utilizing the Facility.

12. REPRESENTATIONS AND LIABILITIES

a. The User shall be solely responsible for its activities while using the Facility, and agrees that it does so at its own risk. NUS makes no representations or warranties of any kind, express or implied, concerning the fitness or suitability of the Facility for any purposes.

b. NUS shall not be liable to the User or any other person for:

- (i) accidents, incidents or injuries sustained in the Facility;
- (ii) any loss or damage to property in the Facility; or
- (iii) any interruption, disruption or cessation in the User's use of the Facility by reason of
 - 1) any upgrading, retrofitting, necessary repair or maintenance of the Facility; or
 - 2) any damage or destruction to the Facility;

unless it is shown to be caused by the negligence or default of NUS.

c. To the fullest extent permitted by applicable law, in no event shall NUS be liable for any consequential damages, loss of profits, loss of income, loss of anticipated savings, third party claims or any type of indirect, special, consequential or incidental damages, even if advised of their possibility.

13. PUBLICITY

Neither Party shall use the name of the other, or that of any of its trustees, officers, faculty, students, employees or agents, or any trademark owned by the other in any advertising, or other forms of publicity, without the written permission of the other Party's authorised representative.

14. PUBLICATIONS OF RESEARCH FINDINGS AND ACKNOWLEDGEMENTS

a. All publications of any materials (via media releases, media interviews, speeches or videos etc.) by any User of the Facility that are related to work fully or partially undertaken at the Facility must include an acknowledgement of the National Research Foundation's support of SJINML in such form as may be determined by the National Research Foundation.

We propose you use the following format:

“[The authors] would like to acknowledge the St. John’s Island National Marine Laboratory for providing the facility necessary for conducting the research. The Laboratory is a National Research Infrastructure under the National Research Foundation Singapore.”

b. Users shall keep NUS informed of the creation of Intellectual Property, patents and publications arising from research that is performed using equipment that is maintained by SJINML. All peer-reviewed publications arising from research that is performed using equipment that is purchased, or maintained under SJINML shall be made publicly available no later than twelve (12) months after the official date of publication.

15. TERMINATION

a. This Agreement shall terminate on the End Date set forth in Clause 1, unless it is extended for an additional period of time by written amendment signed by both Parties, or it is terminated before that date as provided in this Clause 15.

b. Either Party may terminate this Agreement at any time without cause and without further obligation except for return of all borrowed equipment/materials and confidential materials to the appropriate party and payment by User for any use charges incurred prior to the termination date. Such “without cause” termination shall be effected by the terminating Party providing at least thirty (30) days’ prior written notice to the other Party’s authorised representative at the address in Clause 15.

c. NUS may terminate this Agreement immediately for cause if the User:

- (i) fails to make payment to NUS in accordance with the terms stated in Clause 3 above and does not remedy the non-payment within thirty (30) days’ written notice from NUS;
- (ii) fails to materially comply with the terms of this Agreement, provided that, at its sole discretion, NUS may allow a reasonable amount of time for User to remedy such noncompliance; or
- (iii) allows its insurance coverage or safety training certificates to lapse or terminate for any length of time.

d. Upon termination by either Party for any reason, the User shall promptly pay NUS any outstanding fees owed for use of the Facility up to and including the Termination date. If the User has prepaid for use of the Facility beyond the termination date, NUS shall promptly refund any such excess fees to User on a pro-rata basis subtracting any User obligations for clean-up, damage repair and/or replacement and other liabilities under Clause 5. These obligations shall extend beyond the End Date or date of termination under this Clause 15 and shall be extinguished only by written notice from NUS that such obligations have been satisfactorily met.

16. FORCE MAJEURE

a. No Party shall be liable for any failure to perform his obligations under this Agreement if the failure results from a Force Majeure Event (defined below), provided always that whenever possible the affected Party will resume that obligation as soon as the factor or event occasioning the failure ceases or abates. For purposes of this Agreement, a “Force Majeure Event” is an event that is a circumstance or event beyond the reasonable control of a Party which results in the Party being unable to observe or perform on time an obligation under this Agreement. Such circumstance or event shall include, without limitation, industrial action or labour disputes, civil unrest, war or threat of war, criminal or

terrorist acts, government action or regulation, telecommunication or utility failures, fire, explosion, natural physical disasters, epidemic, quarantine restrictions, and general failure of public transport.

b. The Party prevented or delayed in the performance of its obligations under this Agreement by a Force Majeure Event, shall give written notice thereof to the other Party specifying the matters constituting the Force Majeure Event, together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue.

c. If the Force Majeure Event shall continue for a period exceeding two (2) months from the date of the notice of such Force Majeure Event under Clause 16(b) above, either Party may at any time thereafter terminate this Agreement by written notice to the other Party.

17. CONFIDENTIALITY

a. Each Party agrees to hold in trust and confidence all information disclosed to it by the other Party, including, but not limited to, materials provided to it by the other Party during the course of collaborating on the Project under this Agreement, AND that is marked with the word "Confidential" or with words of similar import (collectively, the "Confidential Information").

b. The receiving Party shall not disclose all or any part of such Confidential Information to any third party or make any use of the same (except for the purpose of performing its obligations under this Agreement) without the prior written consent of the disclosing Party. The receiving Party agrees to restrict access to all such information within its institution to only such limited group of authorised employees or contractors who require such information in connection with the receiving Party's activities pursuant to this Agreement and who are contractually or otherwise obligated to keep such information confidential and are instructed to neither use nor disclose such information in a manner other than as permitted herein. This confidentiality obligation shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.

c. The confidentiality obligation shall not apply to any information which:

- (i) was previously known to the receiving Party without any obligation of confidentiality; or
- (ii) has been properly made available by a third party to the receiving Party under conditions which do not restrict further disclosure or subject to any obligations of confidentiality; or
- (iii) is or becomes part of the public domain through no fault of receiving Party or any of its employees or contractors; or
- (iv) is developed by the receiving Party independently of any Confidential Information of disclosing Party, as evidenced by written records; or
- (v) is required to be disclosed by court rule or governmental law or regulation, provided that the receiving Party gives the disclosing Party prompt notice of any such requirement and cooperated with the disclosing Party in attempting to limit such disclosure; or
- (vi) was disclosed by the receiving Party with the disclosing Party's prior written approval.

d. The receiving Party shall, upon the request of disclosing Party, return all Confidential Information (including all copies thereof) to the disclosing Party or destroy the same on disclosing Party's instruction, within thirty (30) days after the termination or expiration of the term of this Agreement, whichever earlier.

18. WAIVERS

Failure of any Party hereto to enforce any of the provisions of this Agreement, or any right with respect therein, shall in no way be considered a waiver of such provision, right or election, or in any way affect the validity of this Agreement, unless expressly waived in writing. The failure of either Party to terminate this Agreement for breach or default shall not be deemed to be a waiver of the right to do so for any concurrent or subsequent breach or default, or for the continuing breach or default of the other Party.

19. TAXES, FEES AND DUTIES

a. Each of the Parties shall be responsible for their own corporate and personal income taxes, customs, fees, duties, fines, levies, assessments and other taxes payable under the laws of Singapore by them or their employees in carrying out their obligations under this Agreement.

b. In the event that either of the Parties is compelled by the tax authorities to pay on behalf of the other Party any of the abovementioned taxes, fees, duties, fines, levies and assessments, the Party compelled to pay shall not do so without first informing the other Party of the compulsion by the tax authorities. Upon such payment being made the other Party shall promptly fully indemnify the other Party for the payment made to the relevant tax authority.

20. ASSIGNMENT

Neither of the Parties shall transfer nor assign the Agreement or any part, share or interest therein without the prior written consent of the other Party.

21. SEVERABILITY

The Parties agree that if for any reason any provision, term or condition contained herein shall be deemed illegal, invalid, unenforceable or defective, then in any such case, that provision, term or condition shall be severable from all the other provisions of this Agreement such that this Agreement is interpreted, construed and applied as though such severed provision, term or condition did not form part thereof.

22. NO PARTNERSHIP

Nothing in this Agreement shall be so construed as to constitute either Party to be the agent of the other or operate so as to create a partnership or joint venture between the Parties.

23. GOVERNING LAW

This Agreement shall be subject to, governed by and interpreted in accordance with the laws of the Republic of Singapore for every purpose and User agrees to submit to the exclusive jurisdiction of the Singapore courts.

24. DISPUTE RESOLUTION

a. Any disputes arising under or in connection with this Agreement shall be referred by the Parties to the Director TMSI and [insert designation for User] jointly or their nominees for amicable resolution.

b. Any dispute which cannot be resolved amicably within a period of sixty (60) days from the time of being referred to each Parties' representative as aforementioned, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force which rules are deemed to be incorporated by reference to this Clause. The language of the arbitration shall be English and the arbitral tribunal shall consist of one (1) arbitrator. Any award made hereunder shall be final and binding upon the Parties hereto and judgment on such award may be entered into any court or tribunal having jurisdiction thereof.

Research User Declaration: (Please tick boxes)

☐ I have read the above Agreement and agree to the conditions set out in this document

IN WITNESS WHEREOF, the authorised representatives of the Parties have executed this Research Facilities Use Agreement, effective as of the date set forth above.

RESEARCH USER

Name:

Organisation:

Address:

Signature:

Date:

Authorised Representative of User's Host Organisation:

Name:

Designation:

Address:

Signature:

Date:

NATIONAL UNIVERSITY OF SINGAPORE

Name of SJINML Officer:

Designation:

Signature:

Date: