



## EQUIPMENT USE AGREEMENT - EXTERNAL

[For use by Texas Children's Hospital personnel]

### User Information

Name of User: \_\_\_\_\_

User's Employer: \_\_\_\_\_

Rice Faculty Sponsor/Advisor Name (User's sponsor): \_\_\_\_\_

Rice Sponsor Department: \_\_\_\_\_

### Equipment

Equipment to be Used ("Equipment"): \_\_\_\_\_

Purpose of Equipment Use (Project #, Fac Fund #, or COA) ("Research"): \_\_\_\_\_

Period of Equipment Use ("Research Period"): \_\_\_\_\_

### Equipment Use Agreement

User desires to use the Equipment in the facility for the Research during the requested Research Period on such dates and at such times as shall be coordinated with and approved by (the "Approved Schedule") a representative of the Genetic Design and Engineering Center (GDEC), and in consideration thereof, User and User's Employer hereby acknowledge and agree as follows:

**Usage Scope:** User shall only use the Equipment for the Research during the Research Period per the Approved Schedule, and any changes thereto shall be coordinated with and approved by a representative of the GDEC. The GDEC reserves the right to terminate the Research and User's use of the Equipment or facilities at any time if the GDEC, in its discretion, determines that the Research or the User's use of the facilities or Equipment is no longer appropriate at Rice.

**Qualification and Standard of Care:** Prior to using the Equipment, User shall have the necessary knowledge, abilities, training, skills and experience to use the Equipment in the proper manner and for their intended purpose. User is responsible for specifically confirming to User's sponsor that User is so qualified prior to using the Equipment. When using the Equipment and the facilities, User shall act in a professional manner, consistent with prevailing industry standards and practices.

**Compliance with Law and Rice Policy:** When using the Equipment, User shall comply with all applicable federal, state and local statutes, regulations, codes and ordinances, as well as all applicable Rice and Rice GDEC policies and procedures. When using the Equipment, User and User's Employer shall have all licenses and permits necessary to conduct the Research.

**Usage Costs and Expenses:** User and User's Employer shall be responsible and liable for any and all costs and expenses related to User's use of the Equipment and the performance of the Research. The GDEC will determine the costs and expenses applicable to User's use of the Equipment for the performance of Research during the Research Period, and will provide User and User's Employer with an invoice therefor. User and User's Employer shall be responsible and liable for the payment of invoiced amounts per the Approved Schedule even if dates and times are not fully utilized. Exceptions may be made at the GDEC's discretion if User cancels the Approved Schedule with more than 2 business days prior written notice. User's sponsor and sponsor's department will assist the GDEC upon the GDEC's request with respect to any billing or collection efforts related to User or User's Employer. Payment shall be made promptly to Rice to the attention of the GDEC, but in no event later than 30 days after receipt of an invoice therefor.

**Liability for Damage or Loss:** User and User's Employer shall be responsible and liable for any and all costs, expenses or charges that Rice or the GDEC may incur or assess for the repair or replacement of the Equipment as a result of damage or loss caused by User's intentional or negligent acts or omissions.

**Intellectual Property Ownership:** Intellectual property and data resulting from User's Research shall be owned by User and/or User's Employer in accordance with User's Employer's policies. Research data not removed by User from the Equipment or related systems upon the completion of the Research may be removed, relocated or destroyed at the Rice GDEC's discretion.

**Independent Contractor Relationship:** User's and User's Employer's relationship to Rice and the Rice GDEC hereunder shall be that of an independent contractor. Nothing in this Agreement, nor any performance hereunder, is intended or shall be construed to create a partnership, joint venture or other business enterprise, or a relationship of agency or employment, between User or User's

Employer, on the one hand, and Rice or the Rice GDEC, on the other hand. User and User's Employer shall not use Rice's name or logos in any manner or media (including, but not limited to, press releases, promotions, advertisements or solicitations) without the prior written approval of Rice.

**Liability Limitation:** Rice and the Rice GDEC make no representations or warranties of any kind, express or implied, concerning the use of the Equipment or the results of the Research, including, but not limited to, representations and warranties as to merchantability, fitness for any particular purpose, and non-infringement. Rice and the Rice GDEC shall not be liable for any direct, indirect, incidental, consequential, special or other economic damages, such as loss of anticipated business or profits, suffered by User or User's Employer in connection with the use of the Equipment or the results of the Research.

**Indemnification:** User and User's Employer shall indemnify, hold harmless, protect and defend Rice and its trustees, officers, employees and representatives, including, but not limited to, the Rice GDEC (the "Indemnified Parties") for, from and against any and all demands, claims, suits, damages, losses, liabilities, costs and expenses, including, but not limited to, court costs and attorneys' fees (the "Indemnified Matters"), of any nature whatsoever (including, but not limited to, property damage or loss, bodily injury or death), to the extent directly or indirectly arising out of or in connection with User's use of the Equipment or User's performance of the Research or other obligations under this Agreement. The indemnification obligations under this paragraph shall apply whether the Indemnified Matters are due in part to the concurrent fault or negligence of the Indemnified Parties or others, but shall not extend to such concurrent fault or negligence. The defense obligations under this paragraph shall be with attorneys approved by Rice, which approval shall not be unreasonably withheld.

**Insurance:** Prior to User's use of the Equipment, a certificate of insurance shall be provided to the Rice GDEC (for review and approval by Rice's Risk Manager) evidencing workers compensation, commercial general and automobile liability insurance coverage, each with minimum limits of \$1MM per occurrence and bearing endorsements waiving rights of subrogation against Rice, and with the commercial general and automobile coverage also bearing endorsements naming Rice as an additional insured. Exceptions may be made at the Rice GDEC's discretion (after review with and approval by Rice's Risk Manager).

**Power and Authority; Enforceability:** User and User's Employer represent and warrant to Rice and the Rice GDEC that (i) User and User's Employer have the power and authority to execute, deliver and perform User's and User's Employer's obligations under this Agreement, (ii) the execution, delivery and performance of this Agreement have been duly authorized by User's Employer, and (iii) this Agreement constitutes the legal, valid and binding obligation of User and User's Employer, enforceable against them in accordance with its terms.

**Entire Agreement; No Assignment; No Amendment; No Waiver:** This Agreement constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, understandings and negotiations, with respect to the subject matter hereof. This Agreement (i) may not be assigned or transferred, in whole or in part, by operation of law or otherwise, by either party without the prior written consent of the other parties, and (ii) may not be amended or modified, by course of conduct or otherwise, except in a writing duly executed by each of the parties. Any waiver of any provision of this Agreement shall be in writing duly executed by the waiving party.

**Governing Law; Jurisdiction and Venue:** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas (without regard to the conflicts or choice of law principles thereof). The parties irrevocably consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction sitting in Harris County, Texas, shall be an appropriate and convenient place of venue to resolve any dispute with respect to this Agreement.

### Signature

By signing below, User and User's Employer represent that they have read and understand the provisions of this Agreement, and that they agree to use the Equipment for the Research during the Research Period per the Approved Schedule, upon and subject to the provisions hereof.

User's Employer: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

User Signature: \_\_\_\_\_

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

User's Sponsor Signature: \_\_\_\_\_

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

GDEC Representative Signature: \_\_\_\_\_

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