

External Use Agreement for University of Texas at Arlington, Nanotechnology Research and Teaching Facilities - NanoFab

This NanoFab Use Agreement (“Agreement”) is made effective as of _____, _____, between _____ (“Customer”) and the Board of Regents of the University of Texas System for the use and benefit of The University of Texas at Arlington (“University”).

Whereas, Customer desires to use the Nanotechnology Research and Teaching Facilities (“NanoFab”) and equipment on the terms and conditions set forth herein, and

Whereas, the University desires to make its NanoFab facilities and equipment available on the terms and conditions set forth herein, and

Whereas, University has appointed a NanoFab Director and staff (“NanoFab Management”) to operate and maintain the NanoFab in the best interests of University.

Therefore, for good and valuable consideration the University and Customer agree as follows:

1. Description of Facilities and Equipment Available for Customer Use.
 - a. Customer may use those NanoFab facilities and equipment according to the fees set forth on the attached NanoFab Facilities and Equipment Fee Schedule (“Fee Schedule”), a copy of which is attached hereto and made a part hereof, and incorporated herein. University through NanoFab Management reserves the right to modify the fees set forth in the Fee Schedule on September 1 of each year or upon 30 days’ notice to Customer.
 - b. NanoFab Management has the sole authority to schedule and reschedule access to NanoFab facilities and equipment for all users as needed to accommodate existing research contracts and grants.
 - c. Customer understands that funded research contracts and grants officially recognized by University’s Office of Sponsored Projects and performed by University faculty will have priority in NanoFab access.

2. Fees.

See Fee Schedule for associated fees.

- a. Customer agrees to fill out a daily log stating the equipment used and duration of usage and provide this usage information to NanoFab Management upon leaving the NanoFab each day.

- b. Customer agrees to provide payment within 30 days upon receipt of invoice.
- c. Customer utilization of or consultation with staff must be preapproved by NanoFab Management on a case-by-case basis and in accordance with the Fee Schedule.

3. Compliance with all Rules and Regulations.

Customer agrees to abide by all NanoFab rules and regulations pertaining to the facilities and equipment. In this regard, Customer acknowledges that it has read and understood the NanoFab Safety Manual and Operating Procedures (“Safety Manual”) and the NanoFab Rules (“Rules”) and has read, understood, and signed the Agreement to Follow Laboratory Safety Procedures and Release of Liability (“Release”). A copy of the Safety Manual, Rules, and Release are attached to this Agreement, incorporated herein, and made a part hereof. Customer understands that Safety Manual and Rules may be updated or modified periodically by NanoFab Management. Customer will be given copies of any updated Safety Manual and/or Rules. Customer acknowledges that upon receipt of these updated versions, the revised Safety Manual and/or Rules will supersede any previous versions and that Customer will have the same duties, obligations and responsibilities in regards to this updated version as to the version attached to this Agreement.

Customer also agrees to the following:

- a. Customer agrees to attend a safety training tour of the NanoFab before beginning use of the lab.
- b. Customer agrees to attend any additional safety training required by NanoFab Management
- c. All equipment, facilities, supplies, consumables, chemicals, gasses, or other items provided by Customer must first be reviewed and approved by NanoFab Management on a case-by-case basis.
- d. Any modification of NanoFab equipment or facilities must first be reviewed and approved by NanoFab Management on a case-by-case basis.
- e. Customer agrees to follow NanoFab equipment utilization protocols and housekeeping rules.
- f. Customer agrees to leave equipment in a condition ready for the next user, in accordance with NanoFab protocols.
- g. Customer agrees to report any problems with the equipment immediately to the NanoFab manager.

4. Authorized Uses of Facilities.

NanoFab facilities may only be used for research and development activities. In no case may Customer offer for sale any device or product manufactured utilizing NanoFab facilities. If University discovers that Customer has sold, offered for sale, or plans to sell any device or product manufactured utilizing NanoFab facilities, University has the right to immediately bar Customer access to the NanoFab facilities and terminate this Agreement per the provisions of Section 6.b.

5. Patents, Copyrights, and Technology Rights.

Title to all inventions and discoveries made solely by an employee of a company, while conducting research under an external users' contract, shall reside as dictated by company policy.

6. List of Persons Authorized by Customer to Use the Facilities.

If Customer is a corporation, partnership, proprietorship, or other business or non-profit entity, Customer agrees to furnish NanoFab Management, upon execution of the Agreement, a list of Customer's officers, agents or employees authorized to use NanoFab facilities and equipment on Customer's behalf ("Customer Users"). Customer understands that persons not on such list will not be permitted to use NanoFab facilities or equipment on behalf of Customer unless Customer provides written authorization and an updated list reflecting Customer's authorization of such person(s). All persons authorized to use NanoFab facilities or equipment on behalf of Customer shall be required to read and comply with the Safety Manual and Rules and shall also be required to read and sign a separate Release before using NanoFab facilities or equipment. In addition:

- a. Access to the NanoFab is restricted electronically and the Customer Users using the Lab must obtain a UTA Mav Express Card ID to activate the lock. This lock will record the entry of all users as a method of keeping track of Lab use.
- b. At the conclusion of the Customer's association with UTA, the Mav Express Card must be terminated and released back to the University.
- c. All Customer Users agree to be photographed and monitored remotely by video or other electronic means when present in the NanoFab or the NanoFab vicinity.
- d. Customer Users must follow all parking permit regulations.
- e. Customer shall require all its officers, agents or employees authorized to use NanoFab facilities and equipment on

Customer's behalf to sign a Release and Indemnification Agreement, attached hereto as Appendix A ("Release").

7. Termination.

- a. Either party shall have the right to terminate this Agreement on thirty (30) days' notice to the other.
- b. University through NanoFab Management shall have the right to immediately terminate this Agreement and suspend Customer's use of NanoFab facilities and equipment in the event:
 - i. Customer's account is more than 30 days past due; or
 - ii. Customer fails to comply with any of the conditions or rules contained in the NanoFab Safety Manual, Rules, or Release; or
 - iii. Customer fails to comply with the terms of this Agreement; or
 - iv. Customer fails to follow the restrictions on use of the facility described in Sections 3 and 4; or
 - v. Customer fails to comply with relevant University policies, rules or procedures.

Such determination shall be in the sole discretion of NanoFab Management.

- c. The term of this Agreement is for _____ [year(s) or months] from the date set forth in the first paragraph. The parties may, upon mutual written agreement, extend the term of this Agreement by executing an amendment to this Agreement.

8. Care and Maintenance of Equipment and Facilities.

Customer agrees that in the event it damages any NanoFab facilities or equipment either by misuse or accident, Customer will bear the sole financial responsibility for such damage. Determination of damage and repair costs will be established by NanoFab Management on a case-by-case basis and communicated to Customer in a timely manner. Customer agrees to make payment to University to cover damages and/or repairs within fourteen (14) days of receiving cost estimate from NanoFab Management.

9. Insurance.

Customer shall maintain the following insurance policies for at least the specified limits during the terms of this Agreement:

- a. Workers' Compensation Insurance with Statutory Limits and Employer's Liability Insurance of \$100,000 (one hundred thousand dollars) per accident and employee covering all Customer Users.
- b. Commercial General Liability, including contractual liability, of at least \$1,000,000 (one million dollars) per occurrence and in the aggregate.
- c. Pollution Liability Insurance of at least \$1,000,000 (one million dollars) per claim. Policy must extend to the NanoFab.
- d. Customer's Property Insurance policy shall be endorsed to cover the business personal property contained within the NanoFab, including machinery and equipment.

The General Liability and Pollution Liability policies shall name University, the Board of Regents of The University of Texas System ("Board") and their officers and employees as Additional Insureds. A Waiver of Subrogation in favor of University and the Board is required on the Workers' Compensation and Property policies, and thirty (30) day notice of cancellation is required on all policies.

The policies listed above shall be kept in force during the entire term of this Agreement.

Certificates of insurance verifying the foregoing requirements shall be provided to NanoFab Management prior to obtaining access to the NanoFab facilities.

10. Indemnification.

Customer shall also indemnify, defend, and hold harmless NanoFab Management, University, The University of Texas System, their Regents, officers, agents, and employees on demand for, from, and against any and all losses, liabilities, suits, judgments, obligations, fines, penalties, claims, costs and expenses (including reasonable attorney's fees) because of (i) Customer's violation or alleged violation of any federal or state copyright or similar laws; or (ii) personal injury or death to any person or property damage in connection with this Agreement or arising from Customer's use of the NanoFab facility.

11. Personal Property.

Customer, not University, is responsible for loss, theft of, or damage to any personal property of Customer or its authorized users, located within the NanoFab facility or on University property.

12. Limitation on Warranties.

UNIVERSITY HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES CONCERNING NANOFAB EQUIPMENT OR FACILITIES. UNIVERSITY DOES NOT GUARANTEE THE ACCURACY OF ANY TEST RESULTS CUSTOMER MAY OBTAIN FROM USING NANOFAB EQUIPMENT OR FACILITIES. UNIVERSITY DOES NOT GUARANTEE THE PROCESSES, MATERIALS, OR OTHER COMPONENTS CUSTOMER MAY UTILIZE. UNIVERSITY DOES NOT GUARANTEE THAT EQUIPMENT WILL BE FUNCTIONAL AT ALL TIMES. UNIVERSITY DOES NOT GUARANTEE THAT STAFF WILL BE AVAILABLE AT ALL TIMES.

13. Limitation of Liability.

EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, THE UNIVERSITY SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR (A) PERSONAL INJURY OR PROPERTY DAMAGE; (B) LOST PROFITS, WORK STOPPAGE, LOST DATA, COMPUTER HARDWARE OR SOFTWARE DAMAGE, FAILURE OR MALFUNCTION, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND; (C) DAMAGES (REGARDLESS OF THEIR NATURE) CAUSED BY CUSTOMER'S FAILURE TO FULFILL ITS RESPONSIBILITIES AS SET FORTH IN THIS AGREEMENT; OR (D) DAMAGES OCCASIONED BY OR CAUSED BY OTHERS BEYOND THE CONTROL OF THE UNIVERSITY. CUSTOMER'S REMEDIES PROVIDED IN THIS AGREEMENT ARE EXCLUSIVE.

14. General Provisions.

- a. Assignment. This Agreement may not be assigned by Customer without the prior written consent of University.
- b. Force Majeure. University shall not be responsible for any delays or failure to provide access the facilities and equipment due to acts of God, strikes, or other disturbances, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, or other causes of any kind beyond the control of University.
- c. Governing Law. This Agreement shall be governed by the laws of the state of Texas.
- d. Entire Agreement. This Agreement represents the entire understanding of the parties and may not be modified except by written agreement of the parties and supersedes all prior written and/or oral agreements.

- e. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.
- f. Notices. Each notice, request, approval, or demand given or required to be given or obtained pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if deposited in the United States mail, first class, postage prepaid, and addressed to the address of the intended recipient set forth below or to such other address as such party may designate by notice given pursuant to this section:

If to the University:

For technical matters:

Attention: Nader Hozhabri, Ph. D.
NanoFab Research and Teaching Facility
The University of Texas at Arlington
PO Box 19072
Arlington, TX 76019-0072

For contractual matters:

Kelly Davis
V.P. for Business Affairs and Controller
The University of Texas at Arlington
Box 19119
Arlington, TX 76019

And to:

The University of Texas System
Real Estate Office
210 W. 6th
Austin, TX 78701
Attention: Executive Director

If to the Customer:

Attention: _____

- g. Authority. The person(s) signing this Agreement on behalf of Customer represents and warrants to University that he/she/they have the legal authority to sign this Agreement on behalf of Customer and to bind Customer to the covenants and conditions of this Agreement. If the individual/s is/are not so authorized, he/she/they shall be

Make Payment to:

The University of Texas at Arlington
Attn: Director, NanoFAB
PO Box 19072
Arlington, TX 76019-0072
Telephone: 817-272-1536
Email address: nanofab@uta.edu

CUSTOMER

Signature

Date

Printed Name:

Title:

Address:

Telephone Number:

Email Address:

APPENDIX A

Release and Indemnification Agreement

INSTITUTION:

The University of Texas at Arlington
500 S. Cooper St.
Arlington, TX 76019

PARTICIPANT:

Name: _____
Address: _____

DESCRIPTION OF ACTIVITY:

Access to and use of The University of Texas at Arlington NanoFab

DATES(s): _____

I, the above named participant, am eighteen years of age or older and have voluntarily requested to participate/engage in the above Activity. I acknowledge that the nature of the Activity may expose me to hazards or risks that may result in my illness, personal injury or death, and I understand and appreciate the nature of such hazards and risks.

IN CONSIDERATION OF MY PARTICIPATION IN THE ACTIVITY, I HEREBY ACCEPT ALL RISK TO MY HEALTH AND OF MY INJURY OR DEATH THAT MAY RESULT FROM SUCH PARTICIPATION, AND I HEREBY RELEASE THE ABOVE NAMED INSTITUTION, ITS GOVERNING BOARD, OFFICERS, EMPLOYEES AND REPRESENTATIVES FROM ANY LIABILITY TO ME, MY PERSONAL REPRESENTATIVES, ESTATE, HEIRS, NEXT OF KIN, AND ASSIGNS FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION FOR LOSS OF OR DAMAGE TO MY PROPERTY AND FOR ANY AND ALL ILLNESS OR INJURY TO MY PERSON, INCLUDING MY DEATH, THAT MAY RESULT FROM OR OCCUR DURING MY PARTICIPATION IN THE ACTIVITY, WHETHER CAUSED BY NEGLIGENCE OF THE INSTITUTION, ITS GOVERNING BOARD, OFFICERS, EMPLOYEES, OR REPRESENTATIVES OR OTHERWISE. I further agree to indemnify and hold harmless the Institution and its governing board, officers, employees, and representatives from liability for the injury or death of any person (s) and damage to property that may result from my negligent or intentional act or omission while participating in the described Activity.

I HAVE CAREFULLY READ THIS AGREEMENT AND UNDERSTAND IT TO BE A RELEASE OF ALL CLAIMS AND CAUSES OF ACTION FOR MY INJURY OR DEATH OR DAMAGE TO MY PROPERTY THAT OCCURS WHILE PARTICIPATING IN THE DESCRIBED ACTIVITY AND IT OBLIGATES ME TO INDEMNIFY THE PARTIES NAMED FOR ANY LIABILITY FOR INJURY

**OR DEATH OF ANY PERSON AND DAMAGE TO PROPERTY CAUSED BY
MY NEGLIGENT OR INTENTIONAL ACT OR OMISSION.**

PARTICIPANT

Signature: _____ Date: _____

Printed name: _____

WITNESS

Signature: _____ Date: _____

Printed name: _____