MASSACHUSETTS INSTITUTE OF TECHNOLOGY
MIT.NANO
THIRD PARTY USE – EQUIPMENT AND FACILITIES

This Agreement is entered into effective as of the ____ day of _____ 2019 (the "Effective Date") by and between the **Massachusetts Institute of Technology** ("MIT"), a Massachusetts non-profit corporation, which operates MIT.nano, and **NAME** ("ACRONYM" or "User"), ENTITY Location and type. When used in this Agreement, "Party" refers to either User or MIT, as the context dictates, and "Parties" refers to User and MIT jointly.

BACKGROUND

A. User requires access to specialized equipment and/or facilities as part of its research to test certain technologies, products, equipment and/or materials.

B. MIT operates its nanotechnology facility at MIT Building 12, 60 Vassar Street, Cambridge, MA, 02139 ("MIT.nano") primarily for the research and educational activities of MIT's students, faculty, other employees, fellows and affiliates, including the MIT laboratories, departments and centers (collectively, the "MIT DLCs"}.

C. MIT allows MIT.nano to be used by external parties, provided such use does not interfere with the MIT DLCs, is appropriate use of the equipment and/or facilities and is authorized by MIT.nano staff.

D. User desires to use certain equipment and/or facilities at MIT.nano (collectively, the "Facilities"), and MIT has agreed to permit User to use the Facilities subject to the terms and conditions set forth below.

The Parties, therefore, hereby agree as follows:

1. **Terms of Use.**

1.1. User has requested permission to use the {NAME OF TOOL} and/or {FACILITY}, which is located at MIT.nano. The Facilities may only be used for User's research and development purposes. Use of any of the Facilities for the fabrication of materials or devices for commercial distribution or sale is prohibited. Commercial distribution or sale shall mean any transaction, activity or event involving the transfer of materials or products for consideration. For purposes of this Agreement, development or fabrication of a prototype shall not be considered a commercial sale.

1.2. User will be permitted to use the Facilities only during pre-determined times, as agreed to by MIT. The hours will be determined by the proficiency level of the User by the authorized MIT.nano staff, and based upon availability, following scheduling of MIT DLCs, who will receive first priority for scheduling purposes.

1.3. Each Authorized Individual, as set forth in the attached **Exhibit A**, will be subject to, and required to comply with, MIT's rules, regulations, policies and procedures governing health, safety and personal conduct in connection with use of MIT.nano, including, without limitation, https://policies.mit.edu/policies-procedures/90-relations-and-responsibilities-within-mit-community and policies posted on the MIT.nano website specific to the Facilities used hereunder, as may change from time to time. An Authorized Individual's access to MIT.nano is a privilege and may be revoked at any time by MIT.

1.4. As a prerequisite to access, Authorized Individuals may need to participate in special training, involving software and hardware needed to operate certain MIT.nano equipment. User will be

advised by MIT.nano staff of any special training required at the time Facilities' use is approved.

1.5. Project Terms

a) **Description of Work**. A description of the work proposed to be performed at MIT.nano, along with the other information required in the MIT.nano ("User Project Application") shall be provided by the User prior to the execution of this Agreement, with approval being a condition precedent to entering into this agreement. Each approved User Project Application is attached hereto and incorporated herein as **Exhibit B** (the "Authorized Project"). Exhibit B may only be amended or supplemented by the completion of a separate User Project Application and written approval by MIT.nano (each, an "Authorized Project"). All Authorized Projects will be incorporated into, and otherwise subject to, this Agreement. USER shall inform the MIT.nano management of any potentially hazardous or harmful activities or dangerous byproducts from any of its activities described hereunder.

b) **Reasonable Efforts**. The User acknowledges that the User retains ultimate responsibility for its own project progress and development. User fully understands and agrees that any work done, or services provided by MIT.nano employees are on a reasonable efforts basis and subject to the disclaimers set forth in Section 5 herein. User accepts full responsibility for the progress (or lack thereof) and results of the project(s) conducted at MIT.nano.

2. **User Representations and Warranties.** User hereby represents and warrants to MIT that:

2.1. User will only use MIT.nano for the Authorized Project(s). No other use of the Equipment is permitted.

2.2. Only Authorized Individuals will access MIT.nano and use the Facilities.

2.3. User will not bring on site to MIT, or use in the course of its access to, or use of the Facilities, any radioactive, biological and/or other hazardous materials, without the prior written consent of a MIT.nano staff member and will comply with any terms and conditions of such consent, such as restrictions on use, storage and handling.

2.4. User will not bring on site to MIT electrical tools or appliances of any kind (other than a personal laptop) or high valued personal property.

2.5. User will not store any materials or other property at MIT unless in assigned storage locations, which may be subject to an additional fee. In the event the User receives permission to store any materials or other property at MIT, User will, at its sole cost and expense, remove all of its materials and property upon the earliest of (a) the time permitted by the written consent, (b) the completion of the activities to which the materials and property relate and (c) termination of this Agreement. In no event will MIT be responsible for any loss or damage to any of User's materials and property that are stored or otherwise used on MIT premises.

2.6. User will have all right, title and interest in and to the materials it uses in the course of its use of the Facilities.

2.7. User's use of the Facilities will not violate any applicable law, rule or regulation or any of User's contracts with third parties or infringe any third-party rights, including, without limitation, any patent.

3. **Use Fees.** In consideration of use of the Facilities, User shall pay MIT a fee according to the MIT.nano Facility Rate Chart, reflected on MIT.nano website. Fees will be due and payable within 30 days following the receipt of MIT's invoice and shall be paid in US Dollars, excluding taxes, withholding or impost of any kind.

4. **Intellectual Property Rights; Confidentiality**
Definition. For purposes of this Agreement, "Intellectual Property" means inventions, whether or not patentable, and copyrightable materials, including, without limitation, software and databases.

4.1. Ownership.
Intellectual Property conceived, first reduced to practice, developed, produced or composed solely by User personnel in the course of using MIT.nano Facilities will be owned by User ("User's Inventions").

4.2 Confidentiality.

4.2.1 User accepts sole risk for the protection of User's Inventions and other proprietary materials while using the Facilities, considering the open and shared nature of the Facilities. MIT.nano will provide guidance regarding measures that may be taken to safeguard or isolate User's Inventions and proprietary materials while using the Facilities. MIT makes no assurances, and disclaims all responsibility, with respect to the protection of any confidential information or intellectual property of the User.

4.2.2 Users are expected to respect the confidentiality of the activities and materials of other Users while at the Facilities. Users are not permitted to handle other users' property, capture images showing individuals, including other users, or make copies of any property or materials of other users, or of MIT property, without the prior authorization of such individual.

5. **Disclaimer of Warranties.** MIT HEREBY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO GOODS, SERVICES AND/OR INFORMATION PROVIDED HEREUNDER; THE FUNCTION, CONDITION OR AVAILABILITY OF THE FACILITIES; AND ANY RESULTS OBTAINED FROM USE OF THE FACILITIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.

6. **Limitation of Liability.**

6.1 User Safety
6.1.1 While the User will be informed regarding MIT's general safety policies prior to being allowed to use the Facilities, MIT assumes no responsibility for User's personal safety. It is expected that User will operate all instruments and equipment in a safe and professional manner, consistent with the operating instructions and the Facilities' polices.

6.1.2 User understands that use of the Facilities may involve exposure to potentially hazardous conditions or other risks, including, but not limited to, chemical, mechanical, electrical, thermal, and radiation hazards. User knowingly and voluntarily assumes such risks, on its own behalf and on behalf of its Authorized Individuals.

6.2 IN NO EVENT WILL MIT, ITS MEMBERS, TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, STUDENTS, FELLOWS OR AFFILIATES, BE LIABLE FOR MULTIPLE DAMAGES OR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER INDIRECT OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSS OF OR DAMAGE TO PROPERTY, REGARDLESS OF WHETHER MIT WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY OF THE FOREGOING.

7. **Indemnity.** User shall release and indemnify, defend and hold harmless MIT, its members, trustees, officers, employees, students and affiliates and their respective successors, assigns and heirs, from and against any and all claims, liabilities, actions, losses, damages, costs and expenses (including reasonable attorneys' fees) of whatever nature or kind, which may be caused, directly or indirectly, from User's use of the Facilities (ordinary wear and tear excepted, collectively, the "Claims"), including, but not limited to, property damage, personal injury or death, except to the extent that Claims are caused by the gross negligence or willful misconduct of MIT's personnel, fellows or students.

8. **Insurance.** User shall maintain the following types and minimum limits of insurance during the term of this Agreement to cover all of User's Authorized individuals: (a) Workers' Compensation, statutory limits and (b) Commercial General liability, in the amount of One Million Dollars ($1,000,000), naming MIT as an additional insured. User shall provide MIT with an insurance certificate and additional insured policy endorsement, evidencing such coverage concurrent with execution of this Agreement. In the event that any policy referred to in the certificate expires during the term of this Agreement, User shall provide MIT with a new insurance certificate and policy endorsement showing then current coverage. User will provide MIT with at least 30 days' advance notice of any reduction to, or cancellation of, the coverage contemplated hereby. User shall look solely to the proceeds of its insurance policies to compensate User for any insured loss occasioned by fire, theft, vandalism, terrorism and malicious mischief or other insured casualty occurring to its property or personnel while User personnel or contractors are at MIT or using MIT.nano. User shall obtain a waiver of subrogation from its workers' compensation and property insurers against MIT, from any Claims arising from User's use of the Facilities.

9. **MIT.nano User Policy**
MIT and User each certifies that it will not, under any circumstances, schedule time for use of the Facilities in the User's name for another user (whether other user is qualified or not), give out the User's online facility Scheduling Tool User Name and/or Password for use by other users, or give other users access to the User's facilities access swipe card for any card reader access-controlled Facilities. MIT.nano staff reserve the right to deny future access to User in the event of willful breach of this policy. Anyone using any of the Facilities, including for observation purposes, must be a fully qualified MIT.nano User and Authorized Individual.

9.1 Acknowledgements

User agrees to provide a project title and brief description and summary of work accomplished during the year from the use of the Facilities resulting in presentations, publications and/or the submission of patent applications; the report should not contain confidential information, as it may be used in presentations to illustrate the range of research topics at MIT.nano. User also acknowledges that its identity may be made public in presentations and other materials describing MIT.nano, subject to any use of name restrictions provided to MIT.nano. User further agrees that, where appropriate, MIT.nano will be acknowledged in any of its sponsored publications or presentations, resulting from substantive work performed at MIT.nano, all in accordance with Section 4.3 herein. A sample acknowledgment follows: This work was carried out in part through the use of MIT.nano shared experimental facilities.

Intellectual contributions, such as design of the approach of sample preparation, data collection, data analysis, or interpretation, must be recognized with acknowledgement of facility staff. In the case of substantial engagement, such efforts should be considered a contribution deserving authorship.

10. **Term and Termination.**

10.1. Unless earlier terminated in accordance with this Section, this Agreement will be in effect for a period of one year, commencing on the Effective Date.

10.2. Either Party may terminate this Agreement by providing notice to the other if such other Party materially breaches this Agreement and does not remedy the breach within 30 days following

notice thereof, or if a force majeure event (as defined in Section 12.7 herein) makes it impossible for the continuation of this Agreement.

10.3. MIT may also terminate this Agreement by providing notice to User if MIT ceases offering access to MIT.nano to third parties or if MIT revokes an Authorized Individual's access to MIT.nano.

10.4. Authorized access for individuals may be suspended or revoked, if MIT.nano determines, in its sole discretion, that an Authorized User has violated this Agreement, facility use policies, or safety protocols.

11. **Notice.** Any notices given under this Agreement must be in writing and be addressed to the Parties at the addresses shown below or to such address as a Party may substitute for the address shown below by notice to the other. Notices must be delivered by hand or by commercial express courier service and will be deemed to have been given or made as of the date received.

If to MIT:	MIT.nano Massachusetts Institute of Technology 77 Massachusetts Avenue Building 12-4221 Cambridge, MA 02139 USA Attention: Administrative Officer
If to USER:	Company Address City State ZIP Attention: _____

12. **Miscellaneous.**

12.1. **Binding Effect; Assignment.** This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

12.2. **Severability.** If any provision of this Agreement or portion thereof is determined by a court or arbitrator of competent jurisdiction to be invalid or unenforceable, any enforceable portion of the provision and the remainder of this Agreement will remain in effect and the parties will request the court or arbitrator to reform the provision to a form that is valid and enforceable and reflects as closely as possible the intent of the original provision.

12.3. **Entire Agreement.** This Agreement (i) represents the entire understanding between the Parties with respect to its subject matter and (ii) supersedes all contemporaneous and previous statements, representations, agreements and understandings between the Parties, however expressed, that relate to the subject matter of this Agreement.

12.4. **Independent Parties.** MIT and User are independent contractors, and neither is an agent, joint venturer or partner of the other.

12.5. **Third Party Beneficiaries.** There are no third-party beneficiaries of this Agreement.

12.6. **Governing Law.** The validity and interpretation of this Agreement and the legal relationship of the Parties to it will be governed by the laws of the Commonwealth of Massachusetts and applicable U.S. Federal law, without giving effect to the conflict of laws provisions thereof.

12.7. **Force Majeure.** Neither Party will be liable to the other for failure to perform any of its obligations imposed by this Agreement if such failure is occasioned by fire, flood, explosion, lightning, windstorm, earthquake, hurricane, subsidence of soil, governmental interference, loss of power supply, failure or destruction of machinery or equipment (whether in whole or in part), civil commotion, riot, war, terrorism, strikes, labor disturbance or any other cause beyond its reasonable control.

12.8. **Export Controls.** User covenants and warrants that it will not disclose or provide to MIT any information or materials that constitute or contain information, technology or data identified on any U.S. export control list, including the Commerce Control List at 15 CFR 774 and the U.S. Munitions List at 22 CFR 121, unless and until it obtains MIT's prior written consent. User further covenants and warrants that it will not bring any export-controlled goods, software or technology to MIT without MIT's prior written consent.

12.9. **Amendments.** Amendments or changes to this Agreement must be in writing and signed by duly authorized representatives of the Parties.

12.10. **Counterparts.** This Agreement may be executed in two or more counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory hereto will be bound until all the Parties named below have duly executed a counterpart of this Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or electronically shall constitute delivery of a manually executed counterpart of this Agreement and shall have the same force and effect as a document bearing original signatures.

12.11. **Use of Name.** User shall not use the name of the Massachusetts Institute of Technology or any abbreviation, variation or adaptation thereof, or the name of any of MIT's members, trustees, officers, employees, students or affiliates or any trademark owned by MIT in any written material or for any promotional purpose or other public announcement or disclosure without the prior written consent of MIT's Technology Licensing Office.

ACCEPTED AND AGREED TO:

MASSACHUSETTS INSTITUTE OF TECHNOLOGY	**COMPANY NAME**
By: _____	By: _____
Name: Glen Shor	Name:
Its: Vice President for Finance	Its:

EXHIBIT A

Authorized Individuals

EXHIBIT B

User's Statement of Activities – Authorized Use of the Facilities