

**MICROELECTRONICS LABORATORY AT MIT LINCOLN LABORATORY FACILITY USER TESTING  
PROGRAM AGREEMENT**  
*WITH ACCESS ADMINISTERED BY MIT.nano*

This Microelectronics Laboratory User Testing Program Agreement (the “Agreement”) is entered into effective as of the \_\_\_\_\_, 2021 (the “Effective Date”) by and between the Massachusetts Institute of Technology (“MIT”), a Massachusetts non-profit corporation, which operates the Microelectronics Laboratory at MIT Lincoln Laboratory (the “ML” or the “Facility”), owned by the U.S. government, with general administrative assistance provided by MIT.nano, and \_\_\_\_\_ (“User”), a \_\_\_\_\_. 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. The ML is semiconductor research and fabrication facility at MIT Lincoln Laboratory (“MITLL”) in Lexington, Massachusetts, with production-class automated 200mm wafer process equipment and operations providing specialized integrated circuits, devices, and research in the national interest. It is unique among non-commercial research facilities in the U.S. having broad technology capabilities and control necessary for many-layered complex circuits along with flexibility to customize devices and materials. It provides an important fabrication option where commercial facilities are unable or unwilling to meet the testing need.
- B. The ML is comprised of government-owned equipment, procured primarily for the research activities conducted by MITLL, in its role as a Federally Funded Research and Development Center (“FFRDC”). It is staffed with trained technicians who are expected to execute the fabrication tasks within the ML.
- C. MITLL and MIT.nano agree, when ML capabilities are not in use for FFRDC-related research, it would be of significant benefit for use by MIT’s students, faculty and other employees, as well as third parties (collectively, the “Users”), for approved and appropriate research and education-related purposes.
- D. ML has Trusted Foundry accreditation and ISO 9001 certification.
- E. Users who desire to use the ML can request services through MIT.nano. MIT.nano, and ML will determine, at their sole discretion, whether the services requested will be provided to User. Any approved ML services will be provided subject to the terms and conditions set forth below.
- F. Because MIT.nano and MITLL are not separate legal entities, this will be a two-party agreement and any contractual protections set forth hereunder shall include MIT.nano and MITLL.

The Parties, therefore, hereby agree as follows:

**1. Permission to Use the Services Offered by ML.**

- 1.1. When User desires to use the ML for a particular use or type of uses, User shall complete a [MIT.nano user inquiry form](#) for permission to obtain services from the ML (each, a “Request”).
- 1.2. Following receipt of the Request, MIT.nano and MITLL staff will determine whether the ML is appropriate for the proposed use and whether the proposed use complies with (a) MIT’s policies for use of the Facility, including, but not limited to, MITLL’s FFRDC contract, (b) MIT’s then current health, safety and process protocols and (c) the terms and conditions of this Agreement.

MIT.nano will notify the User contact identified on the Request whether the Request has been approved.

- 1.3. If MIT.nano notifies User that the Request has been approved, User may submit materials to the ML for services, through the MIT.nano webpage. Services will be accommodated in the following order of priority: 1) MITLL use of ML for FFRDC-related research must always take precedence; 2) use by MIT Departments, Laboratories and Centers; 3) MIT.nano members, and; 4) all other external users, on a first-come, first-served basis.

## 2. **ML Terms of Use.**

- 2.1 The ML may only be used for research and development purposes. Fabrication of materials or devices by the ML for sale is prohibited.
- 2.2 MIT will not agree to any time constraints to provide the services to User at ML, other than it will use best efforts, subject to Sections 1.3 and 12.7 herein. Testing outcomes are also limited to best effort results, following concurrence on fabrication approach with User. Further, U.S. national security and MIT LL mission requirements shall take precedence over User's requirements under this Agreement. MIT may terminate, suspend or delay User's testing services (collectively, the "Planned Service Change(s)") whenever such action is in the best interests of MIT LL. MIT.nano will notify User, in writing, of the Planned Service Change. MIT will not be liable to User, or any third party, for any costs or consequences resulting from the Planned Service Change, including any direct, indirect or consequential damages.
- 2.3 MIT LL's technical ML staff will perform the fabrication work within the ML. MIT LL reserves the right to prohibit any User observers during the performance of the services and/or place limitations on the number and timing of any User observers. MIT.nano staff with appropriate training may have onsite privileges, including inspection, subject to separate written guidelines developed by MITLL and MIT.nano.
- 2.4 The services will not involve expansion of the capabilities and capacities of MITLL, even if User agrees to finance the expansion.
- 2.5 All information generated by, or resulting from, tests or services performed under this Agreement, are confidential pursuant to 10 U.S.C. § 2539b(b) and may not be disclosed outside MIT and the U.S. government, without written consent of User.

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

- 3.1. User, as of the date hereof, is duly organized and validly existing in good standing under the laws of the State of \_\_\_\_\_.
- 3.2. User is not foreign-owned or a subsidiary of a foreign-owned entity.
- 3.3. The official executing this Agreement on behalf of User has the requisite authority to do so.
- 3.4. User will only use the Facility for purposes identified in an approved Request.
- 3.5. User represents that it has provided MIT with complete and accurate information regarding the materials to be submitted for the ML's services, and that User is authorized to send the materials to MIT for the purpose described in the approved Request.

- 3.6. User will not send materials for services by ML until directed to do so by MIT.nano, nor will User bring on site to MIT any hazardous materials, without the prior written consent of MIT.nano. User will comply with any terms and conditions of such consent, such as restrictions on services, storage, packaging, and handling.
- 3.7. In the event the User receives permission to store any materials or other property at MIT temporarily, User will, at its sole cost and expense, remove all of its materials and property upon the earliest of (a) the time contemplated by the written consent, (b) the completion of the activities to which the materials and property relate and (c) termination of this Agreement. Further, upon completion or termination of the services, and receipt by the User of notification of such completion or termination, the User will promptly remove any test items from MITLL's premises at its own cost. If User fails to remove the test item from MITLL's premises in a timely manner, MITLL will remove and/or dispose of the test item and User agrees to reimburse MIT/MITLL for any and all costs associated with its removal and/or disposal.
- 3.8. User's activities within the Facility will not involve human or animal subjects.
- 3.9. User will maintain all right, title and interest in and to the materials or other property it submits for services at the ML. Notwithstanding the foregoing, User acknowledges that scraps or broken wafers or other materials may result during the execution of the ML's services. User shall permit MITLL to dispose of such scraps in accordance with its typical procedures and in accordance with 10 USC §2539b(b), as described in Section 2.5 above.
- 3.10. **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.
- 3.11. User's use of the Facility 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.
4. **Use Fees.** In consideration of use of the Facility and ML staff time, User shall pay MIT a fee for each service User requests. The amount of the fee shall be determined based on MIT.nano's standard fee schedule in effect at the time User undertakes the activity, and User's status as a member (or non-member) of MIT.nano. Fees will be calculated for each service request and due prior to execution of such service. Fees shall be paid in US Dollars, excluding taxes, withholding or impost of any kind, in accordance with the wire transfer instructions attached hereto as **Exhibit A**.
5. **Term.** Unless earlier terminated, in accordance with the terms of this Agreement, this Agreement will be in effect for a period of \_\_\_\_\_ commencing on the Effective Date.
6. **Disclaimer of Warranties.** MIT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND AND HEREBY DISCLAIMS ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO: SERVICES AND/OR INFORMATION PROVIDED HEREUNDER; THE FUNCTION, CONDITION OR AVAILABILITY OF THE ME,L AND; ANY RESULTS OBTAINED FROM USE OF THE ML, 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, OR THAT SERVICES WILL OTHERWISE BE ERROR-FREE.

7. **Limitation of Liability.**

7.1. User understands and acknowledges that there are risks in use of the services provided by, or as an observer of, the Facility, and User voluntarily and knowingly accepts total responsibility and assumes all risk for loss of personal injury or illness (including death), or damage to property, arising from visiting the Facility or services provided at the Facility and from its interpretation and use of the results obtained from the Facility, to the extent permissible by law. User specifically releases MIT and the U.S. government from liability therefor.

7.2. TO THE EXTENT PERMISSIBLE BY LAW, IN NO EVENT WILL THE GOVERNMENT, MIT, OR THEIR RESPECTIVE MEMBERS, TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, STUDENTS, OR POSTDOCTORAL FELLOWS, BE LIABLE FOR MULTIPLE DAMAGES OR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER INDIRECT OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF USE OR LOST PROFITS, REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED, HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY OF THE FOREGOING.

8. **Indemnity.** User shall indemnify, defend and hold harmless MIT, the U.S. government, their respective members, trustees, officers, employees, students and postdoctoral fellows, and their respective successors, assigns and heirs, from and against any and all claims, liabilities, actions, losses, damages, costs and expenses, of whatever nature or kind, which may be caused, directly or indirectly, from User's visit to the Facility, storage of any materials at or in transit to or from the Facility, or use of the Facility's services and any deliverables, including, but not limited to, property damage, personal injury, illness, or death, other than damages and liabilities arising out of the gross negligence or willful misconduct of MIT's staff, fellows and students.

9. **Insurance.** User shall maintain, during the term of this Agreement, Commercial General Liability Insurance, with minimum limits of One Million Dollars (\$1,000,000), naming MIT as an additional insured, and shall provide MIT with an insurance certificate and 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 10 days' advance notice of any early termination or non-renewal of the coverage contemplated hereby. Any claims-made coverage must be maintained for at least one (1) year following the termination of this Agreement. User shall include in its property insurance policy covering the materials, devices, or other property sent for services at the ML, "all risk" property insurance, to include a waiver of the insurer's right of subrogation against MIT. While the foregoing waiver of right of subrogation is in effect, User shall look solely to the proceeds of its property insurance policy to compensate User for any insured loss covered by its property insurance, to the extent permissible by law. In the event User elects to self-insure (or has a high deductible for its property insurance), User waives its right of recovery for any damage to or loss of any property transferred to MIT for services at the Facility, to the extent permissible by law. User is also required to furnish evidence of workers' compensation (statutory limits) for any site visits (approved by MITLL at its sole discretion) to the Facility, to observe services requested hereunder, and must waive its workers' compensation insurer's right of subrogation for such visits.

10. **Termination.**

10.1. 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 circumstances beyond the Party's reasonable control preclude continuation of this Agreement.

- 10.2. MIT may terminate this Agreement by providing notice to User if MIT ceases offering access to the Facility to external parties.
- 10.3. Sections 3, 4, 6, 7, 8, 9, 10, 11, and 12 and any party's obligation to pay the other any accrued, but unpaid, amount will survive termination of this Agreement.
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:

Massachusetts Institute of Technology  
77 Massachusetts Avenue,  
MIT.nano, Building 12-4221  
Cambridge, MA 02139 USA  
Attention: Administrative Officer

If to USER:

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) includes and incorporates by reference the Background information, (ii) represents the entire understanding between the parties with respect to its subject matter, and (iii) 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, or delay in performance of, 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 or order, pandemic, 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. **Amendments.** Amendments or changes to this Agreement must be in writing and signed by duly authorized representatives of the Parties.

12.9. **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. 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.

12.10. **Use of Name.** Neither Party shall use the name (including abbreviations or variants), mark or logo of the other Party in any public announcement, advertisement, marketing or promotional materials, or other public disclosure (except to the extent required by applicable law or regulation) without the prior written consent of the other Party (in the case of MIT, MIT's Technology Licensing Office).

**ACCEPTED AND AGREED TO:**

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY**

**[INSERT USER NAME]**

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

Name:

Its:

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

Name:

Its:

## EXHIBIT A

INSTRUCTIONS FOR MAKING WIRE TRANSFERS IN USD ONLY TO MIT	
Name of bank to which funds are to be wired:	Bank of America, NA
Bank address:	100 Federal Street Boston, MA 02110
Wire Payment ABA Routing Number:	026 009 593
Swift Code:	BOFAUS3N
DDA Account Number:	# 004632424694 (MIT Incoming Wire)
ACH ABA Routing Number:	011 000 138

**Please provide as much information as possible to identify the objective of the wire transfer, such as MIT Contact name, MIT department, MIT account number, project title or descriptor, to facilitate identification of the incoming wire transfer.** If there is limited space, the MIT Contact name and Project title are probably the minimum information needed to identify the objective for the wire transfer.

Please send any remittance advice to [wire-transfers@mit.edu](mailto:wire-transfers@mit.edu). Where remittance is not available, please provide your company name, the name of the bank or party wiring the money, the amount of the wire, the MIT Contact name, Project title and/or account number to which this money should be transferred, and the date when the wire is expected to be made. Please include a contact name at the MIT department in case of questions and the date when the wire is expected to be made.

If User is a government entity, please see <https://vpf.mit.edu/wire-transfer-payments> *Make a wire transfer on behalf of a government entity.*