

GENERAL USE AND FEE AGREEMENT

THIS GENERAL USE AND FEE AGREEMENT is made and entered into as ____, 2022 (the “Effective Date”) by and between University of Southern California (“USC”), a California nonprofit public benefit corporation, on behalf of its John .D. O’Brien Nanofabrication Laboratory at the USC Viterbi School of Engineering and _____ (“Institution”). The parties agree as follows:

1. **Use of Facility.** Subject to the terms and conditions hereof, USC agrees to provide to Institution use of, and access to, the facility and equipment of the John .D. O’Brien Nanofabrication Laboratory located at 1002 Childs Way, Los Angeles, CA (the “Facility,” and such use and access, the “Service”).
2. **Training.** Prior to entering upon or using the Facility, all persons designated by the Institution to use the Facility (“Institution Representatives”) shall (i) complete the required training and pass the user qualification test administered by USC, and USC shall bill the Institution for such training and testing at its standard rates, and (ii) attend the safety class offered by the USC Career and Protective Services Department.
3. **Term; Renewals; Termination.** The term of this Agreement is one year commencing on the Effective Date unless earlier terminated in accordance with the terms of this Agreement. This Agreement may be renewed upon mutual agreement of the parties hereto. Except as otherwise provided herein, this Agreement may be terminated by either party upon written notice to the other party. Upon termination, Institution shall pay USC all outstanding amounts due and owing to USC through the date of termination.
4. **Supplies; Expenses.** USC shall supply Institution with a list of items that are normally stocked by USC at the Facility (“Stock Items”). Institution shall pay USC for all Stock Items and other materials and supplies used or consumed by Institution, which shall be billed to Institution at USC’s standard cost plus 30% acquisition fee; provided, that USC shall supply cleanroom garments to Institution at USC’s expense. Institution shall be responsible for supplying and maintaining all items for its own use that are not Stock Items including, without limitation, tooling, such as boats, covers and other equipment that are particular to Institution’s needs.
5. **Maintenance; Repair.** USC shall use commercially reasonable efforts to maintain the equipment located at the Facility. USC shall be financially responsible for the repair of equipment located at the Facility to the extent that the need for such repair was not caused by the acts or omissions of Institution. Institution assumes complete liability for any tooling, articles or material furnished by USC to Institution in connection with this Agreement and Institution agrees to pay for all such tooling, articles or material spoiled by it or not otherwise accounted for to USC’s satisfaction. The furnishing to Institution of any tooling, articles, or material in connection with this Agreement shall not, unless otherwise expressly provided, be construed to vest title thereto in Institution.
6. **Fees and Payment.** Institution agrees to pay the fees listed on Exhibit A attached hereto. All fees are due thirty (30) days from the date of USC’s invoice which shall include all other charges due and owing by Institution to USC including, without limitation, all

Stock Items and other materials and supplies used or consumed by Institution during the previous month; provided that USC may bill for such Stock Items and other materials and supplies on a quarterly basis in its discretion. Institution shall pay sales, use and other taxes that are applicable to Institution's purchase of the Service. If payments are not received within thirty (30) days of the date of invoice, a late payment charge of the lower of one percent (1%) per month and the maximum rate permitted by law will be added to the amount due.

7. **Warranties: Disclaimer.**

a. Institution acknowledges that it has inspected the Facility, finds the Facility suitable for its use, and hereby accepts the Facility "AS IS" in the condition existing as of the date Institution first enters upon and uses the Facility, subject to all defects, hazards, and dangers of any kind whatsoever, whether known or unknown, or apparent, latent, or concealed, and further subject to all applicable federal, state, and local laws, ordinances, and regulations. Institution hereby acknowledges that neither USC nor any representative of USC (i) has made any representation or warranty to Institution as to the condition of the Facility, or the suitability of the Facility for Institution's purposes; or (ii) is under any obligation to inspect or prepare the Facility or to advise Institution as to the condition of the Facility or the suitability of the Facility for Institution's purposes.

b. EXCEPT AS OTHERWISE SET FORTH HEREIN, USC DISCLAIMS ANY AND ALL EXPRESS WARRANTIES, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY, OR OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND. USC DOES NOT WARRANT THAT THE SERVICE WILL MEET INSTITUTION'S REQUIREMENTS, THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE, QUALITY, ACCURACY, PURPOSE OR NEED. IN NO EVENT WILL USC BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY NATURE IN CONNECTION WITH, ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT OR STRICT LIABILITY, OR OTHERWISE, EVEN IF USC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ADDITIONALLY, USC SHALL NOT BE LIABLE FOR DAMAGE TO INSTITUTION'S EQUIPMENT THAT IS LOCATED AT THE FACILITY, REGARDLESS OF THE CAUSE OF SUCH DAMAGE, OR FOR ANY LOSS WHATSOEVER OF INSTITUTION DUE TO ANY DISCONTINUED SERVICE PROVIDED FOR HEREIN. USC'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT BE IN EXCESS OF THE TOTAL AMOUNT PAID BY INSTITUTION TO USC IN THE PREVIOUS TWELVE MONTHS UNDER THIS AGREEMENT.

8. **Restrictions and Compliance.**

a. Institution shall comply with, and be subject to, all USC and Facility protocols, policies and procedures affecting access to and use of the Facility now in effect or subsequently adopted by USC, including health and safety protocols, and rules, if any,

restricting availability of, access to and hours of use of the Facility. If, in the sole opinion of USC, Institution violates any USC or Facility protocols, policies and procedures, USC may immediately terminate this Agreement.

b. Institution will comply with all instructions, restrictions, policies and procedures of manufacturers affecting use of the Facility equipment, now in effect or subsequently adopted by such manufacturers. Upon notice to Institution, USC may limit or prohibit the use of certain equipment by Institution, either on a permanent or temporary basis. Institution shall not remove any Facility equipment or any other USC personal property from the Facility.

c. Institution shall not keep, store or discard, or permit any other persons to keep, store or discard, any personal property on or about the Facility. Before Institution brings any materials or chemicals of any kind into the Facility, they must be approved in writing by USC. Institution hereby agrees that USC shall not be liable for any damage or injury to any person, property or other interest of Institution, Institution Representatives or invitees, nor shall USC be liable for any damages to any property of Institution kept in or about the Facility, and Institution waives all claims against USC, its officers, agents, representatives and employees for damage to such property or for personal injury occurring in, upon or about the Facility arising at any time from any cause whatsoever.

d. Institution agrees that it will not use the Facility in a manner that will or could reasonably be expected to cause any waste, damage, or nuisance, or that will unreasonably disturb any other person on or near the Facility, or cause a cancellation of or rate increase in any property damage or liability insurance policy maintained by USC, if any, or violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction over Institution, USC or the Facility or any use thereof.

e. USC shall have the unrestricted right at all times to enter upon the Facility, to inspect and examine the same, and to perform any act that USC deems appropriate or necessary to meet its obligations, legal and otherwise. USC reserves the right at any time, and from time to time, to change the quantity, kind, or supplier of any services provided in support of the Facility or the Facility equipment.

f. Institution shall not use the Facility or equipment for production or manufacturing of goods for sale.

9. **Non-Exclusivity**. Nothing in this Agreement shall be construed to limit the freedom of USC to engage in similar agreements with other parties.

10. **Indemnification**. Institution agrees to hold harmless, indemnify and defend USC and its trustees, officers, employees and agents from and against all claims, demands, losses, damages, causes of actions, suits, liabilities and expenses (including, without limitation, reasonable attorneys' fees) arising out of or in connection with Institution's use of the Service and the Facility and any actual or alleged breach or default of any agreement, promise, representation or covenant under this Agreement by Institution, including without limitation claims by third parties relating to such third parties' equipment located at the Facility; provided that nothing herein shall be construed to require Institution to indemnify

USC from or against the negligent acts or willful misconduct of USC or its employees. The parties agree that this Section shall survive the termination of this Agreement.

11. **Notices.** Any notice under this Agreement must be in writing and shall be effective upon delivery by hand or three (3) business days after deposit with a nationally recognized courier or in the United States mail, postage prepaid, certified or registered, and addressed to USC or to Institution at the corresponding addresses indicated below:

If to USC: University of Southern California
John D. O'Brien Nanofabrication Laboratory
1002 Childs Way
Los Angeles, California 90089
Attention: Director

with a copy to: University of Southern California
Office of the General
Counsel Administration 352
Los Angeles, CA 90089-5013

If to Institution: _____

Institution shall notify USC in writing of any change to its address.

12. **Insurance.** Institution shall maintain insurance policies that cover Institution's activities under this Agreement and the activities of Institution Representatives, employees, and agents, including, but not limited to, workers compensation insurance and comprehensive general liability and errors and omissions liability, with minimum limits of insurance of \$1 million per claim and \$3 million annual aggregate. All of Institution's policies will be underwritten by insurers who maintain a minimum A.M. Best rating of A- and who are licensed to do business in the State of California. Institution will name USC as an additional insured on each such policy. Institution shall provide USC with a certificate of insurance evidencing such coverages. In addition, Institution will provide USC thirty (30) days advance written notice of any cancellation or reduction in coverage or limits.

13. **Ownership of Intellectual Property and Publication.**

a. Institution acknowledges and agrees that the intent of this Agreement is to confer upon Institution only the revocable and non-exclusive privilege to use the Facility as granted and restricted herein, and USC hereby expressly reserves and retains USC's entire interest in and to the Facility, together with all Facility equipment, and all modifications, enhancements, or improvements thereto, and all rights appurtenant thereto, including the rights to exclusive possession, dominion, entry and control over the entire Facility and the building within which the Facility is located. Except with respect to the right to use the Service, USC does not, directly or by implication, estoppel or otherwise, grant to Institution any rights or licenses in or to any intellectual property of USC. USC (or its licensors, as applicable) shall retain title to any all rights in all intellectual property provided by USC, including, but not limited to, any know-how related to the Service, USC equipment,

software or any other technology, including any derivative works thereof and any intellectual property developed, created or invented in connection with performance of the Service. The Service shall not constitute “work for hire.”

b. In the event that Institution’s work at the Facility results in data or procedures that are published by Institution, Institution shall acknowledge the Facility in such publication, in a form similar to “*Part of this work was performed at the John D. O’ Brien Nanofabrication Laboratory, supported by the University of Southern California.*”

14. **Confidentiality.** During the term of this Agreement, a party (in such capacity, the “Receiving Party”) may have access to the internal records, systems and methods of operating its business, trade secrets and other confidential or proprietary information of the other party (in such capacity, the “Disclosing Party”). The Receiving Party agrees that all such information is the exclusive property of the Disclosing Party, irrespective of whether such information was created or prepared by others. The Receiving Party further agrees that it will not, at any time, in any manner, directly or indirectly, disclose such information to any person or entity, or use such information other than in furtherance of the purposes of this Agreement. The confidential information of either party shall not include information which: (i) was previously known to the Receiving Party; (ii) was or becomes generally available to the public through no fault of the Receiving Party; (iii) was rightfully in the Receiving Party’s possession free of any obligation of confidence at, or subsequent to, the time it was communicated to the Receiving Party by the Disclosing Party; (iv) was developed by employees, contractors or agents of the Receiving Party independently of and without reference to any information communicated to the Receiving Party by the Disclosing Party; or (v) was communicated by the Disclosing Party to an unaffiliated third party free of any obligation of confidence. The parties agree that this Section shall survive the termination of this Agreement.

15. **Governing Law and Dispute Resolution.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the state of California, applicable to agreements made and to be wholly performed therein, and without regard to conflict of law principles. All disputes arising under or in connection with this Agreement shall be submitted to JAMS or successor organization for binding arbitration by a single arbitrator. The arbitrator shall be selected by JAMS in an impartial manner determined by it. The arbitration hearing will be commenced within one hundred eighty (180) days of the filing of this application with JAMS by any party hereto, and a decision shall be rendered by the arbitrator within thirty (30) days of the conclusion of the hearing. The arbitrator shall have complete authority to render any and all relief, legal and equitable, appropriate under this Agreement. The arbitrator shall award costs of the proceeding, including reasonable attorney’s fees, to the party determined to have substantially prevailed.

16. **General Provisions.**

a. Institution shall not assign this Agreement without the express written consent of USC.

b. This Agreement (i) constitutes the entire and exclusive set of terms and conditions for transactions contemplated by this Agreement; (ii) supersedes any prior or

contemporaneous written or oral agreements relating to the subject matter hereof; and (iii) may only be modified or amended by a writing signed by both parties.

c. In the event that any provision of this Agreement shall be determined to be partially void or unenforceable by any court or body of competent jurisdiction or by virtue of any legislation to which it is subject or by virtue of any other reason whatsoever, it shall be void or unenforceable to that extent only and no further, and the validity and enforceability of any of the other provisions of this Agreement shall not be affected.

d. The captions of sections herein are intended for convenience only, and the same shall not be interpretive of the content of such section.

e. No waiver by either party of any breach or default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

f. USC will not be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control including, but not limited to, pandemics or epidemics, government imposed quarantines, acts of war, acts of God, earthquake, fire, flood, embargo, riot, sabotage, labor shortage or dispute, acts of government, including eminent domain, failure of the Internet, terrorist acts, failure of any third party, utility power failure, or failure of communication lines.

g. Except as required by law or permitted by this Agreement, neither party shall use the name, logo, trademark, or symbol of the other party or its affiliates in any advertising or promotional material without the prior written consent of the other party.

h. The parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

IN WITNESS WHEREOF, the parties have caused their authorized representatives to execute and deliver this Agreement.

**UNIVERSITY OF SOUTHERN
CALIFORNIA, ON BEHALF OF ITS
USC VITERBI SCHOOL OF
ENGINEERING**

INSTITUTION

Signature

Signature

Printed or Typed Name

Printed or Typed Name

Title

Title

Date _____

Date _____

Exhibit A
Fees

Institution shall pay the following fees to USC:

Fee Structure is posted at,
<https://nanofab.usc.edu/tools-and-capabilities/user-fees/>