

## LABORATORY AND EQUIPMENT LICENSE AGREEMENT

This laboratory and equipment license agreement (“Agreement”) is entered into by and between Northeastern University (“University”) and \_\_\_\_\_ (“Licensee”) as of the \_\_\_ day \_\_\_\_\_, 20\_\_\_\_.

### RECITALS

**WHEREAS**, the University has a laboratory called \_\_\_\_\_ (the “Laboratory”) and the Licensee desires to obtain a license to access and share use of the Equipment (defined below) in the Laboratory;

**WHEREAS**, Licensee desires the license so that \_\_\_\_\_ (“User”) can access and use the Equipment in the Laboratory on the terms and conditions in this Agreement;

**WHEREAS**, the University desires to provide to Licensee for User’s use a short-term, limited license to the Equipment in connection with research, educational and/or public service efforts of University; and

**WHEREAS**, the Licensee requires the use of the Equipment for the performance of Licensee’s research or other educational or public service-related activities.

**NOW THEREFORE**, in consideration of the premises and for other good and valuable consideration, the sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. License of Equipment. Subject to the terms and conditions of this Agreement, University hereby grants to Licensee a non-exclusive license to use the equipment described on Exhibit A, attached hereto and incorporated herein by this reference (“Equipment”). Except for the limited non-exclusive license granted by this Agreement, all rights, title and interest in and to the Equipment shall remain with the University.
2. License Fee. Licensee shall pay to the University for all costs for the use of the Equipment, including without limitation any assistance of laboratory staff in accordance with the rates set forth on Exhibit B, attached hereto and incorporate herein. Such payment shall be due and payable to the University on the date hereof or within 30 days of the date of any invoice. In the event that the University is required to undertake collection procedures or legal action for the collection of past due payments, the University shall also recover interest at 1 ¼% per month, collection and court costs and reasonable attorneys’ fees.
3. Laboratory Supplies; Use of Equipment. Licensee shall be solely responsible for providing all of its miscellaneous laboratory supplies and consumables for use in the Laboratory, as well as the maintenance, loss of, or damage to any of its miscellaneous laboratory supplies and consumables. In the event that the University provides any

miscellaneous laboratory supplies and consumables to the Licensee or User, License shall pay the University for all miscellaneous laboratory supplies and consumables used by the Licensee or User, as well as be responsible for the maintenance, loss of, or damage to any such miscellaneous laboratory supplies and consumables. The University shall send the Company an invoice for such supplies and consumables to be paid by the Company within thirty (30) days of receipt of an invoice. Licensee shall ensure that User uses the Equipment in a safe manner and in compliance with all applicable laws.

4. Term; Termination. This Agreement shall commence on the date first written above and automatically \_\_\_\_\_, unless otherwise agreed to in writing by the parties. The parties may renew this Agreement for an additional time period by written notice of such renewal to Licensee and Licensee's payment of rental amounts to University thereunder. Either party may terminate this Agreement at any time by providing fifteen (15) days prior written notice to Licensee. University may immediately terminate this Agreement upon breach of this Agreement by Licensee provided, however, no termination or expiration of this Agreement shall relieve any unpaid payment obligation of Licensee to University under this Agreement. Upon any termination or expiration of this Agreement, Licensee shall be responsible for the prompt return of the Equipment to the University in a form and manner acceptable to the University.
5. Replacement Costs. In the event of any damage to the Equipment or Laboratory which results from the negligent use of the Equipment by, or willful misconduct of, the User, Licensee shall pay to the University an amount equal the cost to repair or replace, as determined by the University, the Equipment or Laboratory.
6. Warranties; Disclaimers. The University hereby disclaims any and all warranties, whether express or implied, including, without limitation, the warranties of merchantability, non-infringement and fitness for a particular purpose with respect to the Equipment. In addition, the University makes no representation as to the correctness, accuracy or reliability of the Equipment. The University licenses the Equipment to the Licensee on an "as is" basis with all faults.
7. Limitation of Liability; Indemnification. Licensee, on behalf of User and for itself, knowingly assumes all risks and responsibilities relating to or arising out of use of the Equipment by User. The use of the Equipment may involve exposure to potentially hazardous conditions, including but not limited to, chemical, mechanical, electrical, thermal and radiation hazards. Licensee, on behalf of User and for itself, hereby releases and forever discharges the University from any and all claims, demands, suits actions causes of action, liabilities, damages or other losses and potential losses related to, arising from or in connection with this Agreement or Licensee's use or possession of the Equipment. Licensee shall defend, indemnify and hold harmless the University from and against any and all claims, demands, suits, actions, causes of action, liabilities, damages, or other losses asserted against, incurred by or paid by the University arising under or relating to or in connection with this Agreement or the use or possession of the Equipment by User. In no event shall the University have any liability arising under or in connection with this Agreement for any consequential, incidental, special or other

indirect damages of any kind whatsoever, including without limitation lost profits, even if the University has knowledge of the likelihood of such damages. Notwithstanding any provision in this Agreement, the maximum liability of University under this Agreement shall not exceed an amount equal to the amount paid by Licensee for use of the Equipment six months prior to the date of the event giving rise to such liability.

8. Governing Law; Export Control. This Agreement and any dispute arising therefrom shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its conflicts of law principles. Licensee hereby certifies that the User identified below are foreign nationals who would be prohibited or restricted by U.S. laws and regulations from using the Equipment.
9. Entire Agreement; Miscellaneous. This Agreement constitutes the entire agreement between the parties hereto with the respect to the subject matter hereof. Any amendment to the terms of this Agreement must be in writing and signed by the duly authorized representatives of both parties. In the event of any conflict or inconsistency between this Agreement and any attachment, rider, schedule or exhibit hereto, the terms hereof shall govern and control.
10. Confidentiality. Licensee shall not access, use or disclose any of the information provided by University to Licensee in connection with this Agreement (collectively, "Confidential Information") except to the extent of the prior written consent of University in each case. Licensee shall protect the Confidential Information against unauthorized access, use and disclosure using the same degree of care, but no less than a reasonable degree of care, Licensee uses to protect the confidential information of Licensee against such unauthorized access, use and disclosure.
11. Orientation. Licensee shall ensure that User accepts all training of the University with respect to the University's procedures, and safety and equipment operation, including all environmental, health and safety protocols, prior to possession or use of Equipment. Licensee will ensure that User operates all instruments and equipment in a reasonable and safe manner. Ultimate responsibility for the safe use of such Equipment remains with the Licensee. Licensee acknowledges and agrees that the University will refuse access to the Equipment to any User who is unwilling or unable to comply.
12. Scheduling. The schedule of use of any equipment shall be determined by the respective Laboratory Director. The schedule shall be maintained and made at the Laboratory Director's sole and unfettered discretion.
13. Services Provided to the Laboratory. The University reserves the right to interrupt, curtail, stop or suspend the furnishing of services provided for in this Agreement when necessary by reason of accident or emergency, or of repairs, alterations, replacements or improvements in the reasonable judgment of the University desirable or necessary to be made, or of difficulty or inability in securing supplies or labor, or of strikes, or of any other cause beyond the reasonable control of the University, until said cause has been

removed. The University shall have no responsibility or liability for any such interruption, curtailment, stoppage, or suspension of possession or use of services.

14. Inability to Perform; Exculpatory Clause. Except as otherwise expressly provided in this Agreement, this Agreement and the obligations of Licensee to pay any fees or charges hereunder and perform all other covenants, agreements, terms, provisions and conditions hereunder on the part of Licensee to be performed shall in no way be affected, impaired or excused because the University is unable to fulfill any of its obligations under this Agreement if the University is prevented or delayed from doing so by reason of strikes or labor troubles or other similar or dissimilar cause whatsoever beyond the University's reasonable control. In each instance of inability of the University to perform, the University shall exercise reasonable diligence to eliminate the cause of such inability to perform.
15. Insurance. Licensee shall take out and maintain at its sole expense, during the term of this Agreement: (i) Commercial General Liability Insurance naming the University as additional insured, subject to a combined single limit of at least Two Million U.S. Dollars (\$2,000,000) each occurrence and Four Million (\$4,000,000) in the aggregate for bodily injury and property damages, and from time to time thereafter in such higher amounts, as may be reasonable required by the University as are customarily carried by responsible office and laboratory tenants in the City of Boston; (ii) so-called contents and improvements insurance adequately insuring all property belonging to or removable by Licensee and/or User and situated in the Laboratory; (iii) worker's compensation insurance providing for the payment of statutory benefits required by law covering the persons employed by the Licensee, including without limitation, the User; and (iv) employer's liability insurance with a minimum limit of Two Million U.S. Dollars (\$2,000,000). Such insurance shall name the University as an additional insured where required by the University and provide that the insurance shall not be cancelled without at least thirty (30) days' prior written notice to each insured named therein. Licensee shall provide to the University original copies of the policies provided for in this Section 15 issued by the respective insurers or, at the option of University, certificates or binders of such policies setting forth in full the provisions thereof and issued by such insurers.
16. Waiver of Subrogation. Any insurance carried by Licensee with respect to Equipment or occurrences thereon shall include a clause or endorsement denying to the insurer rights of subrogation against the University to the extent rights have been waived by the insured prior to occurrences of injury or loss. Licensee on behalf of itself and User, notwithstanding any provisions of this Agreement to the contrary, hereby waives any rights of recovery against the University for injury or loss due to hazards covered by insurance containing such clause or endorsement to the extent of the indemnification received thereunder.
17. Requirements of Law; Fines and Penalties. Licensee shall, at its own expense, comply with municipal, state and federal laws, ordinances, rules and regulations including, without limitation, federal export control laws and the obligation to obtain any licenses, permits, and governmental approvals required with respect to and arising out of

Licensee's use of Equipment. Licensee shall pay any fines or penalties assessed for failure to comply with such laws, ordinances, rules or regulations, and shall pay any expenses, legal or otherwise, incurred by the University due to Licensee's failure to so comply.

18. Rules and Regulations. Licensee and User will faithfully observe such rules and regulations as the University hereafter at any time or from time to time may make and may communicate in writing to Licensee and/or User, and which in the reasonable judgment of the University shall be necessary for the reputation, safety, care or appearance of the Laboratory, the Equipment, the building housing the Laboratory, and the land on which it is situated (together, the "Property"), or the preservation of good order therein, or the operation or maintenance of the Property, or the comfort of any tenants or others in the Laboratory or the building housing the Laboratory, provided, however, that in the case of any conflict between the provisions of this Agreement and any such rules and regulations, the provisions of this Agreement shall control, and provided further, that nothing contained in this Agreement shall be construed to impose upon the University any duty or obligation to enforce such rules and regulations or the terms, covenants or conditions in any other lease, license or occupancy agreement as against any other tenant or occupant and the University shall not be liable to Licensee or User for violation of the same by any other tenant or occupant, its servants, employees, agents, visitors, invitees or licensees. Consistent with this provision, University shall be entitled to require that the Licensee and User promptly remove any of its employees and/or agents from the Property who University reasonably believes are in violation of any rules, regulations or policies of the University in general or of the Property in particular. University rules, regulations and policies to which Licensee and User are required to comply may be viewed on the University website <http://www.northeastern.edu/policies/> but are not all-inclusive and may change, from time to time. Accordingly, it shall be Licensee's responsibility to ensure that it and User remain current and comply with the University's published rules, regulations and policies, as well as with whatever other rules, regulations or policies are otherwise required and imposed by the University with the appropriate informative notice.
19. Prohibited Items. Licensee shall not bring nor permit to be brought any radioactive, hazardous, inflammable, combustible or explosive fluid, material, chemical or substance (except such as are related to Licensee's use of Equipment, provided that Licensee obtains prior written permission from the Laboratory Director for such usage, storage and handling, which shall be consistent with applicable legal standards) or take any action with respect thereto in violation of, or in a manner that would give rise to liability under any applicable law, including without limitation, M.G.L. c. 21C or 21E. Licensee shall coordinate with and notify in writing the Laboratory Director and the University's Office of Environmental Health and Safety with respect to the use, storage or handling of any radioactive, hazardous, inflammable, combustible or explosive fluid, material, chemical or substance.
20. Assignment. Licensee covenants and agrees that neither this Agreement nor any interest herein will be assigned, pledged, encumbered or otherwise transferred (whether

voluntarily or by operation of law), without prior written consent of the University in every case, which consent shall be at the University's sole and unfettered discretion.

21. Description of Work. A description of work to be performed using the University's Equipment at the Laboratory shall be provided by Licensee prior to the commencement of such work hereunder. No substantive deviation from said statement of work will be permitted unless agreed to in writing by the Laboratory Director.
  
22. Intellectual Property. University shall make no claim to co-own Licensee-created intellectual property based solely on Licensee's use of the University's Laboratory and Equipment. However, Licensee and the University acknowledge that the commercial viability of any device or technique developed at the Laboratory and/or through possession or use of Equipment is subject to the existing intellectual property rights of the University and other third-party rights holders. The University makes no guarantee that devices or techniques developed using Equipment and/or at the Laboratory are not covered by its own or a third party's intellectual property. Licensee and the University further acknowledge that the University may claim partial ownership of intellectual property that Licensee co-develops with University staff or personnel.
  
23. Survival. The provisions of sections 2, 3, 5 through 9, 17, 19, 22 and 23 shall survive the expiration or termination of this Agreement.

**IN WITNESS HEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above:

**NORTHEASTERN UNIVERSITY**

**[NAME OF OTHER PARTY]**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**READ and ACKNOWLEDGED:**

**[NAME OF USER]**

\_\_\_\_\_

\_\_\_\_\_  
Date

## **SCHEDULE A**

[The George J. Kostas Nanoscale Technology and Manufacturing Research Center, established in 2005 through a generous gift from Mr. George J. Kostas ('43), is the primary user facility for micro and nanofabrication at Northeastern University. The 7,000 sq. ft. user facility includes cleanroom space down to Class 10 and houses instruments for micro- and nanofabrication processes and characterization studies, including metrology. Non-cleanroom lab space includes chemical hoods; device-testing areas with a full range of electrical test instruments and design areas.

The facility provides support and materials based on user fees and have capabilities for processing 3,4, and 6-inch wafers as well as smaller parts at lower cost. Applications range from nanoelectronics, nanodevices, sensors energy storage, and NEMs to exploration studies in fundamental science and engineering. The facility is supported by highly trained, talented cordial staffs with a combined 75 years of fabrication and characterization experience who will assist the users with their process development. Exhibit B contains a list of equipment that is available for access]

## EXHIBIT B

### NU College of Engineering External User Fee (\$/hr) effective Oct 1<sup>st</sup> 2015

Clean Room Charges	\$56.32
Staff assistance	\$156.00
4 Point Probe Manual	\$25.60
Anatech SP-100 Plasma System	\$64.00
Brewer Spinner	\$25.60
Bruce Anneal Furnace	\$76.80
Carl Zeiss 1540 Cross Beam	\$192.00
Dek-tak 3030/3ST	----
E-beam Evaporator	\$76.80
Electrical Probe Station	\$38.40
Electroplating Bench: Bay 3	----
Laurell Spinner	\$25.60
LC Technologies Glove Box	\$64.00
Lift Off Bench: Bay 2	----
Micro Automation 1006	\$61.44
MIE wire Bonder	\$51.20
Mini Brute furnace	\$64.00
MRC 8667	\$64.00
Nabity	\$12.80
Nanonex NX2000	\$153.60
Nanospec	----
Optiphot 200 Fluorescence Microscope	\$12.80
Oxford Plasma Lab System	\$153.60
PANalytical/Philips X'Pert Pro	\$51.20
Parks Scientific XE-70	\$89.60
Perkin Elmer 2400	\$64.00
PGT Shara	\$12.80
Pioneer 800	\$12.80
Quintel 4000 Mask Aligner	\$76.80
SCS Parylene Coating	\$512/run
Supra 25 SEM	\$102.40
Thermal Evaporator	\$71.68
Tousimus Dryer	\$64.00
Unaxis PlasmaTherm 790	\$128.00
UV spectrophotometer	\$76.80
Veeco Microtech Ion Mill	\$128.00
Wet Etch bench: Bay 1	---

XACTIX e1	\$51.20
Zygo NuView 6000	\$51.20
Zyvex Nanomanipulator	\$128.00
Sputter Coater System	\$25.60