FACILITIES USE AGREEMENT

This FACILITIES USE AGREEMENT is made and entered into as of __________ (the “Effective Date”), by and between _______________ (“Company”) and University of Southern California, on behalf of its USC John D. O’Brian Nanofabrication Laboratory (“USC”). The parties agree as follows:

1. **Use of Facility.** Subject to the terms and conditions hereof, USC agrees to provide to Company reasonable access to and use of the facility of the USC USC John D. O’Brian Nanofabrication Laboratory located at 1002 Childs Way, Los Angeles, CA (the “Facility”) and the equipment located therein as provided by USC (the “Equipment”) (such access and use, the “Services”).

2. **Training.** Prior to entering or using the Facility, all persons designated by the Company to use the Facility for purposes of this Agreement (“Company Representatives”) shall: (i) complete the required USC laboratory safety and training classes and pass the user qualification test administered by USC (for which training and testing USC shall bill Company at its standard rates); and (ii) attend and pass the general safety class if required by USC and may be offered by the USC Environmental, Health, and Safety Department. Notwithstanding Company’s selection of the Company Representatives, USC reserves the right to remove from the Facility, or prohibit the use thereof by, any such Company Representative if USC reasonably believes that the Company Representative poses a credible threat of harm to other Company Representatives or USC or its employees or representatives.

3. **Term.** The term of this Agreement shall be one (1) year commencing on the Effective Date, unless earlier terminated in accordance with the terms of this Agreement. This Agreement may be renewed upon mutual written agreement of the parties hereto. Except as otherwise provided herein, this Agreement may be terminated by either party upon thirty (30) days’ advance written notice to the other party. Upon termination, Company shall pay USC all outstanding amounts due and owing to USC through the date of termination.

4. **Supplies; Expenses.** With the exception of standard Stock materials and supplies that are general use, available to all Facility users, and provided by the Facility, the Company shall be responsible for supplying and maintaining all items for its own use that are not Stock Items and that are particular to Company’s needs.

5. **Maintenance; Repair.** USC shall use commercially reasonable efforts to maintain the equipment located at the Facility. Company shall be financially responsible for all repairs of the Equipment located at the Facility to the extent caused by Company, or its employees, representatives, or agents, ordinary wear and tear excepted. Company assumes complete liability for any tooling, articles or material furnished by USC to Company in connection with this Agreement while in Company’s actual or constructive possession, whether temporary or permanent, and Company 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 Company of any tooling, articles, or material in connection with this Agreement shall not, unless otherwise expressly provided, be construed to vest title thereto in Company.

6. **Fees and Payment.** Company agrees to pay to USC the following fees (collectively, the “Services Fee”): (1) initial access fee in the amount of Six Hundred Dollars ($600), which
includes five (5) hours of cleanroom time; (2) an hourly fee in the amount of Fifty Dollars ($50); and (3) $______ per person required to receive the training and testing pursuant to Section 2 above. Such fee shall be charged with respect to all time that a Company Representative is in the Facility, regardless of the activity of the Company Representative. All fees are due thirty (30) days from the date of USC’s invoice which shall include all other charges due and owing by Company to USC including, without limitation, those with respect to all Stock Items and other materials and supplies used or consumed by Company during the previous month; provided that USC may bill for such Stock Items and other materials and supplies on a quarterly basis in its sole discretion. Company shall pay sales, use and other taxes that are applicable to Company’s purchase of the Service. If payments are not received within thirty (30) days of the date of invoice, a late payment charge equal to the lower of (i) one and one-half percent (1.5%) per month and (ii) the maximum rate permitted by law will be added to the amount due.

7. **Disclaimer of Warranties.** 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 SERVICES WILL MEET COMPANY’S REQUIREMENTS, THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICES 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). ADDITIONALLY, USC SHALL NOT BE LIABLE FOR DAMAGE TO COMPANY’S EQUIPMENT THAT IS LOCATED AT THE FACILITY, REGARDLESS OF THE CAUSE OF SUCH DAMAGE. USC’S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT BE IN EXCESS OF THE TOTAL AMOUNT ACTUALLY PAID BY COMPANY TO USC IN THE PREVIOUS TWELVE MONTHS UNDER THIS AGREEMENT.

8. **Compliance.** Company shall comply with, and be subject to, all USC protocols, policies, and procedures with respect to the Services and Facility. Upon notice to Company, USC may limit or prohibit the use of certain equipment by Company, either on a permanent or temporary basis. Company agrees that it will not use the Facility in a manner that would violate any laws, infringe the rights of others or interfere with other users of the Facility. If, in the sole opinion of USC, Company violates any Facility protocols, policies and procedures, USC may immediately terminate this Agreement.

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.** Company 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 Company’s use of the Services and the Facility and any actual or alleged breach or default of any agreement, promise, representation or covenant under this Agreement by Company, 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 Company to indemnify USC from or against the grossly 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 made to the 
corresponding addresses indicated below:

If to USC: USC John D. O’Brian Nanofabrication Laboratory  
1002 Childs Way  
Los Angeles, California 90089  
Attention: Director

If to Company: ________________________________  
______________________________  
Attn: ________________________________  
Fax: ________________________________

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

12. **Insurance.** Company shall maintain insurance policies that cover Company’s activities 
under this Agreement and the activities of Company’s employees, agents and representatives, 
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 $2 million annual aggregate. All of Company’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. Company will name USC as an additional insured on each such policy. 
Company shall provide USC with a certificate of insurance evidencing such coverages. In 
addition, Company will provide USC thirty (30) days advance written notice of any cancellation 
or reduction in coverage or limits.

13. **Ownership of Intellectual Property.** Except with the respect to the right to use the 
Services, USC does not, directly or by implication, by estoppel or otherwise, grant to Company 
any rights or licenses, and Company shall not have any ownership rights in any intellectual or 
tangible property of USC, including the Services. USC (or its licensors, as applicable) shall 
retain title to and all rights in all intellectual property provided by USC, including, but not 
limited to, any know-how related to the Services, 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 Services. The Services shall not 
constitute “work for hire.”

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 the receiving party 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 parties 
disclose the confidential
information of either party shall not include information that: (i) at the time of disclosure was already 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, from which third party the receiving party obtained the information.

15. **Dispute Resolution.** Any legal proceedings will be initiated in the courts of the County of Los Angeles, State of California. The prevailing party in any action brought to enforce the terms of this Agreement, or in any action arising out of this Agreement, may recover from the other party its costs and attorneys’ fees.

16. **General Provisions.** Company shall not assign this Agreement without the express written consent of USC. This Agreement (i) is governed by the laws of the State of California, without reference to its principles of conflicts of laws; (ii) constitutes the entire and exclusive set of terms and conditions for transactions contemplated by this Agreement; (iii) supersedes any prior or contemporaneous written or oral agreements relating to the subject matter hereof; and (iv) may only be modified or amended by a writing signed by both parties. 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. The captions of sections herein are intended for convenience only, and the same shall not be interpretive of the content of such section. 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. 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, acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, acts of government, including eminent domain, failure of the Internet, terrorist acts, failure of third party(ies), utility power failure, or failure of communication lines.

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

COMPANY

UNIVERSITY OF SOUTHERN CALIFORNIA

By: _________________  
Name:  
Title:

By: _________________  
Name:  
Title: