

The University of Texas at Dallas

NANOTECH INSTITUTE FACILITIES USE AGREEMENT

This NanoTech Institute (“NanoTech”) Use Agreement (“Agreement”) is made effective as of _____, _____ (“Date”), between _____ (“Customer”) and the Board of Regents of The University of Texas System for the use and benefit of The University of Texas at Dallas (“University”).

RECITALS

- A. **WHEREAS**, Customer desires to use the NanoTech facilities and equipment on the terms and conditions set forth herein, and
- B. **WHEREAS**, the University desires to make its NanoTech facilities and equipment available on the terms and conditions set forth herein, and
- C. **WHEREAS**, University has appointed a Director and staff (“NanoTech Management”) to operate and maintain the NanoTech Institute in the best interests of the University.

AGREEMENT

THEREFORE, for good and valuable consideration the University and Customer agree as follows:

- 1. **Description of Facilities and Equipment Available for Customer Use.**
 - a. Customer may use those NanoTech facilities and equipment according to the fees set forth on the attached NanoTech Fee and Equipment Schedule (“Fee Schedule”), a copy of which is attached hereto and made a part hereof, and incorporated herein as Appendix A. University, through NanoTech Management, reserves the right to modify the fees set forth in the Fee Schedule on September 1 of each year or upon 30 days’ notice to Customer.
 - b. NanoTech Management has the sole authority to schedule and reschedule access to NanoTech facilities and equipment for all users as needed to accommodate existing research contracts and grants.
 - c. Customer understands that funded research contracts and grants officially recognized by University’s Office of Sponsored Projects and performed by University faculty will have priority in NanoTech access.
- 2. **Fees.**

The fees to be paid by Customer for the access granted under this Agreement are set forth on the attached Fee Schedule.

- a. NanoTech Management agrees to fill out a daily log stating the lab usage and duration of usage and provide this usage information to the Customer each day.
- b. Customer shall pay fees to University within thirty (30) days after receipt of invoice.
- c. Customer utilization of or consultation with NanoTech Management must be pre-approved by NanoTech Management on a case-by-case basis and in accordance with the Fee Schedule.
- d. Customer shall make all payments to University under this Agreement by check payable to “The University of Texas at Dallas,” and shall deliver payments to:

The University of Texas at Dallas
ATTN: Steve Collins, Manager of Research Programs
P.O. Box 830688, BE26
Richardson, Texas 75083-0688
Telephone Number: 972-883-6534
Email Address: scollins@utdallas.edu

3. Compliance with all Rules and Regulations.

Customer agrees to abide by all NanoTech rules and regulations pertaining to the facilities and equipment. In this regard, Customer acknowledges that it has read and understood the NanoTech Guidelines, UTD General Safety Manual (“Safety Manual” attached hereto as Appendix C, and the Release and Indemnification Agreement (“Release”) attached hereto as Appendix B. Customer understands that the NanoTech Manual may be updated or modified periodically by NanoTech Management. Customer will be given copies of any updated NanoTech Manual. Customer acknowledges that upon receipt of these updated versions, the revised NanoTech Manual will supersede any previous versions and that Customer will have the same duties, obligations and responsibilities in regards to this updated version as to the version attached to this Agreement.

Customer also agrees to the following:

- a. Customer agrees to attend a safety training tour of the NanoTech before beginning use of the lab.
- b. Customer agrees to attend any additional safety training required by NanoTech Management.
- c. All equipment, facilities, supplies, consumables, or other items provided by Customer must first be reviewed and approved by NanoTech Management on a case-by-case basis.
- d. Any modification of NanoTech equipment or facilities must first be reviewed and approved by NanoTech Management on a case-by-case basis.

- e. Customer agrees to follow NanoTech equipment utilization protocols and housekeeping rules as stated in the NanoTech Manual.
- f. Customer agrees to leave equipment in a condition ready for the next user, in accordance with the NanoTech Manual.
- e. Customer agrees to read and signify by signature that the Customer has read and understood the NanoTech Manual. A sample acknowledgement form is attached as part of Appendix C.
- f. For each Customer User as defined in Section 5, Customer agrees to provide University signed originals of the Release and Indemnification Agreement (“Release”), attached hereto as Appendix B, and the Agreement to Follow UTD NanoTech Safety Policies and to Conform with all Internal Operating Procedures, attached hereto as part of Appendix C, prior to any Customer User being allowed to enter and utilize the facility.

4. Authorized Uses of Facilities.

NanoTech facilities may only be used for research, development and testing activities. Customer will not offer for sale any device or product manufactured utilizing NanoTech facilities. If University discovers that Customer has sold, offered for sale, or plans to sell any device or product manufactured utilizing NanoTech facilities, University has the right to immediately bar Customer access to the NanoTech facilities and terminate this Agreement per the provisions of Section 6.b.

5. List of Persons Authorized by Customer to Use the Facilities.

If Customer is a corporation, partnership, proprietorship, or other business or non-profit entity, Customer agrees to furnish NanoTech Management, upon execution of the Agreement, a list of Customer’s officers, agents or employees authorized to use NanoTech facilities and equipment on Customer’s behalf (“Customer Users”). Customer understands that persons not on such list shall not be permitted to use NanoTech facilities or equipment on behalf of Customer unless Customer provides written authorization and an updated list reflecting Customer’s authorization of such person(s). Customer will require Customer Users to read and comply with the NanoTech Manual. In addition, Customer will inform all Customer Users of the following requirements:

- a. Access to the NanoTech is restricted electronically and the Customer Users using the facilities must be admitted by the NanoTech Management.
- b. All persons authorized to use NanoTech facilities or equipment on behalf of Customer shall be required to read and sign a separate Release and Indemnification Agreement in the form attached hereto before using NanoTech facilities or equipment; and

- c. All Customer Users must agree to be photographed or monitored remotely by video or other electronic means when present in the NanoTech or the NanoTech vicinity; and
- d. All Customer Users operating or parking vehicles on University property must follow all University regulations concerning vehicular traffic and parking.

6. Termination.

- a. Either party shall have the right to terminate this Agreement on thirty (30) days' notice to the other.
- b. University through NanoTech Management shall have the right to immediately terminate this Agreement and suspend Customer's use of NanoTech facilities and equipment in the event:
 - i. Customer's payment of fees under this Agreement are more than thirty (30) days past due; or
 - ii. Customer fails to comply with any of the conditions or rules contained in the NanoTech Safety Manual, Rules, or Release; or
 - iii. Customer fails to comply with the terms of this Agreement; or
 - iv. Customer fails to follow the restrictions on use of the facility described in Section 4; or
 - v. Customer fails to comply with relevant University policies, rules or procedures.

The determination whether one or more of the above-described events has occurred shall be in the sole discretion of NanoTech Management.

- c. The term of this Agreement is for _____ [year(s) or month(s) or week(s)] from the Date set forth in the first paragraph. The parties may, upon mutual written agreement, extend the term of this Agreement by executing an amendment to this Agreement.

7. Care and Maintenance of Equipment and Facilities.

Customer agrees that in the event it damages any NanoTech facilities or equipment, Customer will bear the sole financial responsibility for such damage. Determination of damage and repair costs will be established by NanoTech Management on a case-by-case basis and communicated to Customer in a timely manner. Customer agrees to make payment to University to cover damages and/or repairs within fourteen (14) calendar days of receiving cost estimate from NanoTech Management.

8. Insurance.

Customer shall maintain the following insurance policies for at least the specified limits during the term of this Agreement:

- a) Workers' Compensation Insurance with Statutory Limits and Employer's Liability Insurance with a limit of not less than of \$1,000,000 (one million dollars) per accident or disease.
- b) Commercial General Liability, including Contractual Liability, Personal and Advertising Injury, Completed Operations/Products Liability, Medical Expense of at least \$1,000,000 (one million dollars) per occurrence and in the aggregate.
- c) Customer's Property Insurance policy shall be endorsed to cover the customer's business personal property contained within the NanoTech, including machinery and equipment.

The General Liability policy shall name University, the Board of Regents of The University of Texas System ("Board") and their officers and employees as Additional Insureds. A Waiver of Subrogation in favor of University and the Board is required on the Workers' Compensation and Property policies, and thirty (30) day notice of cancellation is required on all policies. Customer shall furnish written evidence of the required insurance coverage to University at the time of contacting and also shall furnish written updates to University evidencing that insurance coverage upon written request from time to time.

The policies listed above shall be kept in force during the entire term of this Agreement.

9. Indemnification.

CUSTOMER SHALL ALSO INDEMNIFY, DEFEND, AND HOLD HARMLESS NANOTECH MANAGEMENT, UNIVERSITY, THE UNIVERSITY OF TEXAS SYSTEM, THEIR REGENTS, OFFICERS, AGENTS, AND EMPLOYEES ON DEMAND FOR, FROM, AND AGAINST ANY AND ALL LOSSES, LIABILITIES, SUITS, JUDGMENTS, OBLIGATIONS, FINES, PENALTIES, CLAIMS, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) BECAUSE OF (I) CUSTOMER'S VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL OR STATE COPYRIGHT OR SIMILAR LAWS; OR (II) PERSONAL INJURY OR DEATH TO ANY PERSON OR PROPERTY DAMAGE IN CONNECTION WITH THIS AGREEMENT OR ARISING FROM CUSTOMER'S USE OF THE NanoTech FACILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT. ;

10. Personal Property.

Customer, not University, is responsible for loss, theft of, or damage to any personal property of Customer or its authorized users, located within the NanoTech facility or on University property.

11. Limitation on Warranties.

UNIVERSITY HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES CONCERNING NANOTECH EQUIPMENT OR FACILITIES. UNIVERSITY DOES NOT GUARANTEE THAT EQUIPMENT WILL BE FUNCTIONAL AT ALL TIMES. UNIVERSITY DOES NOT GUARANTEE THAT STAFF WILL BE AVAILABLE AT ALL TIMES.

12. Limitation of Liability.

EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, THE UNIVERSITY SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR (A) PERSONAL INJURY OR PROPERTY DAMAGE; (B) LOST PROFITS, WORK STOPPAGE, LOST DATA, COMPUTER HARDWARE OR SOFTWARE DAMAGE, FAILURE OR MALFUNCTION, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND; (C) DAMAGES (REGARDLESS OF THEIR NATURE) CAUSED BY CUSTOMER'S FAILURE TO FULFILL ITS RESPONSIBILITIES AS SET FORTH IN THIS AGREEMENT; OR (D) DAMAGES OCCASIONED BY OR CAUSED BY OTHERS BEYOND THE CONTROL OF THE UNIVERSITY. CUSTOMER'S REMEDIES PROVIDED IN THIS AGREEMENT ARE EXCLUSIVE.

13. General Provisions.

- a. Assignment. This Agreement may not be assigned by Customer without the prior written consent of University.
- b. Force Majeure. University shall not be responsible for any delays or failure to provide access the facilities and equipment due to acts of God, strikes, or other disturbances, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, or other causes of any kind beyond the control of University.
- c. Governing Law. This Agreement shall be governed by the laws of the State of Texas.
- d. Entire Agreement. This Agreement represents the entire understanding of the parties and may not be modified except by written agreement of the parties and supersedes all prior written and/or oral agreements.
- e. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

- f. Notices. Each notice, request, approval, or demand given or required to be given or obtained pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if deposited in the United States mail, first class, postage prepaid, and addressed to the address of the intended recipient set forth below or to such other address as such party may designate by notice given pursuant to this section:

If to the University:

For technical matters:

The University of Texas at Dallas
ATTN: Steve Collins, Manager of Research
Programs
P.O. Box 830688, BE26
Richardson, Texas 75083-0688
Telephone Number: 972-883-6534
Email Address: scollins@utdallas.edu

For contractual matters:

Attention: B. Hobson Wildenthal
Executive Vice President and Provost
The University of Texas at Dallas
P.O. Box 830688, AD23
Richardson, Texas 75083-0688

and to:

The University of Texas System
Real Estate Office
210 W. 6th
Austin, Texas 78701
Attention: Executive Director

If to the Customer:

Attention: _____

- g. Authority. The person(s) signing this Agreement on behalf of Customer represents and warrants to University that he/she/they have the legal authority to sign this Agreement on behalf of Customer and to bind Customer to the covenants and conditions of this Agreement. If the individual(s) is/are not so authorized, he/she/they shall be personally liable for Customer's performance of its obligations under this Agreement.

- h. Customer Officers, Agents, and Employees. Customer's officers, agents and employees shall be bound by the same duties, obligations and responsibilities set forth in this Agreement as Customer.
- i. Taxes. Customer shall pay all personal property taxes assessed on the NanoTech equipment attributable to Customer's use of the equipment. Customer shall pay all real property taxes levied against the NanoTech facilities attributable to Customer's use of the facilities.

ATTACHMENTS TO BE INCLUDED:

Appendix A – NanoTech Fee and Equipment Schedule
Appendix B – Release and Indemnification Agreement
Appendix C – NanoTech General Operating Procedures and Laboratory Safety

CUSTOMER TO FURNISH:

List of Customer's officers, agents, or employees authorized to use NanoTech on Customer's behalf.

EXECUTED to be effective as of the Date specified in the introductory paragraph above.

**BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM
for the use and benefit of THE UNIVERSITY OF TEXAS AT DALLAS**

Florence Mayne
Executive Director
Real Estate Office
The University of Texas System

Date

Approved as to Content:

B. Hobson Wildenthal
Executive Vice President and Provost
The University of Texas at Dallas

Date

Steve Collins
Manager of Research Programs
The NanoTech Institute at The University of Texas at Dallas

Date

CUSTOMER

Signature
Printed Name:
Title:
Address:
Telephone Number:
Email Address:

Date

APPENDIX A
NANOTECH FEE AND EQUIPMENT SCHEDULE

Technical Services

Management	\$350/hour
Postdoctoral	\$150/hour
Technician	\$100/hour

Equipment and Facilities Use

Veeco/Digital Instruments NanoScope IV AFM/STM	\$250/hour
JY Horiba LabRam HR Micro-Raman Spectrometer	\$250/hour
Perkin Elmer LS 55 Luminescence Spectrometer	\$150/hour
Perkin Elmer Lambda 900 UV-Vis/NIR	\$150/hour
Leo 1530 VP Field Emission Scanning Electron Microscope	\$250/hour
Rigaku Rapid/DMAX X-ray Diffractometer	\$250/hour
Fuel Cell Technologies, Inc. Test Stations	\$250/hour
FTIR Spectrum GX spectrometer with AutoImage Microscope	\$150/hour
Instron 5500 Series MicroTester	\$150/hour
Perkin Elmer Diamond Differential Scanning Calorimeter	\$150/hour
Perkin Elmer DMA 7e/Perkin Elmer Diamond Dynamic Mechanical Analyzer	\$150/hour
Perkin Elmer Pyris-1 Thermogravimetric Analyzer	\$150/hour
Chemistry Laboratory Station	\$100/hour

The NanoTech Institute is also equipped with physical and magnetic properties measurement systems, EPR, and various probe and test stations that may be available on an individual basis. For more information contact Dr. Steve Collins at (972) 883-6534 or by e-mail at scollins@utdallas.edu.

*All services will be billable at a three-hour minimum, with additional time billed in one-hour increments.

APPENDIX B
(see attached)

RELEASE AND INDEMNIFICATION AGREEMENT

INSTITUTION:

The University of Texas at Dallas
2601 N. Floyd Road
Richardson, TX 75080

PARTICIPANT:

Name: _____
Address: _____

DESCRIPTION OF ACTIVITY:

Access to and use of The University of Texas at Dallas Security Analysis and Information Assurance Laboratory (NanoTech)

DATE(s): _____

I, the above named participant, am eighteen years of age or older and have voluntarily requested to participate/engage in the above Activity. I acknowledge that the nature of the Activity may expose me to hazards or risks that may result in my illness, personal injury or death, and I understand and appreciate the nature of such hazards and risks.

IN CONSIDERATION OF MY PARTICIPATION IN THE ACTIVITY, I HEREBY ACCEPT ALL RISK TO MY HEALTH AND OF MY INJURY OR DEATH THAT MAY RESULT FROM SUCH PARTICIPATION, AND I HEREBY RELEASE THE ABOVE NAMED INSTITUTION, ITS GOVERNING BOARD, OFFICERS, EMPLOYEES AND REPRESENTATIVES FROM ANY LIABILITY TO ME, MY PERSONAL REPRESENTATIVES, ESTATE, HEIRS, NEXT OF KIN, AND ASSIGNS FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION FOR LOSS OF OR DAMAGE TO MY PROPERTY AND FOR ANY AND ALL ILLNESS OR INJURY TO MY PERSON, INCLUDING MY DEATH, THAT MAY RESULT FROM OR OCCUR DURING MY PARTICIPATION IN THE ACTIVITY, WHETHER CAUSED BY NEGLIGENCE OF THE INSTITUTION, ITS GOVERNING BOARD, OFFICERS, EMPLOYEES, OR REPRESENTATIVES, OR OTHERWISE. I further agree to indemnify and hold harmless the Institution and its governing board, officers, employees, and representatives from liability for the injury or death of any person(s) and damage to property that may result from my negligent or intentional act or omission while participating in the described Activity.

I HAVE CAREFULLY READ THIS AGREEMENT AND UNDERSTAND IT TO BE A RELEASE OF ALL CLAIMS AND CAUSES OF ACTION FOR MY INJURY OR DEATH OR DAMAGE TO MY PROPERTY THAT OCCURS WHILE PARTICIPATING IN THE DESCRIBED ACTIVITY AND IT OBLIGATES ME TO INDEMNIFY THE PARTIES NAMED FOR ANY LIABILITY FOR INJURY OR DEATH OF ANY PERSON AND DAMAGE TO PROPERTY CAUSED BY MY NEGLIGENT OR INTENTIONAL ACT OR OMISSION.

PARTICIPANT

Signature: _____ Date: _____
Printed name: _____

WITNESS

Signature: _____ Date: _____
Printed name: _____

APPENDIX C
NANOTECH GENERAL OPERATING PROCEDURES AND LABORATORY
SAFETY

**Agreement to Follow UTD NanoTech Safety Policies and
Conform with all Internal Operating Procedures**

I _____ have read and fully understand the UTD NanoTech Institute Rules, Safety Manual and Operating Procedures. I further agree to abide the content of these documents, and comply with any other instructions provided by the NanoTech Management. I also understand that these documents and instructions can be amended at any time.

Signature: _____ Date: _____

Printed name: _____

Title: _____

Company Represented: _____

Department of Chemistry/NanoTech Institute Cost Center General Operating Procedures

To inquire about training in the Cost Center, complete the Request for Certification and Training. Once the information on this form is verified, training sessions will be set up with a designated Center staff member. A completed Request for Certification and Training form must be on file with the Facilities Director for anyone working in the Center. Once trained personnel are granted permission to use a facility, the following guidelines must be strictly adhered to:

- a. Users must sign in using the equipment logbook. The experiment, sample type, time in and time out, and any problems should be recorded.
- b. The work area must be left clean. No samples or other materials are to be left behind.
- c. All safety policies of the University and the Department of Chemistry (located at <http://www.utdallas.edu/chemistry/resources/safety.html>) must be followed, including proper disposal of chemicals and broken glass, wearing of safety glasses, etc.
- d. Data may be left as a backup on equipment computers; however the facility is not responsible for lost data. Save your data files and take them with you when your session is over.

Failure to follow any of the above procedures will result in either temporary or permanent termination of privileges.

Reservations

Equipment reservations will be made by using Resource Scheduler, a web based interface that we have developed. After a Request for Certification and Training Form is on file for a user, he/she will be given a login to access the scheduling website. The User's Manual for Resource Scheduler is provided below, and the scheduling website is located at <http://nanoserver/mrm6>.

Damage to Instrumentation

The user is responsible for any damage to instrumentation due to neglect or misuse by that user.

Questions, comments, and requests should be directed to:

Steve Collins, Ph.D.
Facilities Director
Office: Berkner Hall Room 2.304
Phone: (972) 883-6534
E-mail: scollins@utdallas.edu