

## RESEARCH FACILITIES USE AGREEMENT

THIS RESEARCH FACILITIES USE AGREEMENT (“Agreement”), made this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is by and between **Vanderbilt University**, a private nonprofit institution of higher education and research (“Vanderbilt”), and \_\_\_\_\_, a public or private institution of higher education or \_\_\_\_\_ (entity description) in the State of \_\_\_\_\_ (“Requesting Organization”). For purposes of this Agreement the term “User” shall mean Requesting Organization and any authorized employee(s), agent(s) and other individual(s) associated with Requesting Organization who may be granted privileges to access and use certain Vanderbilt research facilities under this Agreement.

**1. Background and Scope of Agreement.** Vanderbilt is making available to external users on a limited non-commercial basis certain of its academic research facilities and resources that may be unique in the geographic area (“Research Facilities”), in furtherance of its instructional, research and charitable missions. External users’ access to the Research Facilities is intended to occur when such facilities are not in use by Vanderbilt faculty and students who retain priority status for use of the facilities. Access to the Research Facilities is by special arrangement only and is intended to be of short duration and minimally intrusive to the active workings of Vanderbilt, and therefore the terms of this Agreement are not negotiable. For external user research activities not falling within the limited scope contemplated by this Agreement, traditional sponsored research arrangements are available through Vanderbilt’s Sponsored Programs Administration office. This Agreement sets forth the terms and conditions that shall govern use of and access to the Research Facilities by external users.

**2. User’s Description of Work; Estimated Fees and Costs; and Period of Performance.** With respect to each project to be undertaken by the User, Vanderbilt and Requesting Organization will enter into an agreement-addendum generally in the form of Attachment A and Attachment B, collectively Appendix A (“Project Addendum”) hereto, which Project Addendum shall be subject to the final approval of Vanderbilt. Each Project Addendum, upon final approval by Vanderbilt, shall thereby be incorporated and subject to the Agreement.

User shall provide Vanderbilt with a detailed description of the work proposed to be performed, including any chemicals, materials and equipment that User desires to bring into the Research Facilities for performance of such work, all of which shall be subject to the prior written approval of Vanderbilt and in compliance with Section 14 (Material Transport) hereof. The parties will use good faith efforts to agree upon a period of performance for such work and to agree upon fees and estimated costs to complete the project, including without limitation, any additional costs for purchasing, delivering, handling and disposing of any such approved chemicals, materials and equipment, all of which shall be the responsibility of User. The foregoing details of the project shall be documented in the form of Attachment A hereto. The final mutually agreed upon Attachment A shall be hereby incorporated into this Agreement. No deviation from the description of work will be permitted unless agreed to in writing by Vanderbilt. User acknowledges that it retains ultimate responsibility for the progress of its project. Vanderbilt does not in any way warrant that any particular project results will be commercially viable, successful or useful. User fully understands and agrees that any assistance or services provided by Vanderbilt are on a reasonable efforts basis. Vanderbilt does not warrant or guarantee any results from a given project. User accepts full responsibility for the progress, results, and costs of its project. User shall pay all fees and costs specified in the Attachment A, subject to any adjustments that may be necessary and mutually agreed upon in writing as may arise from previously estimated costs. All amounts are due 30 days from the invoice date or will be subject to late fees in the amount of 1.5% of all outstanding balances per month.

**3. User Safety.** While User will be informed regarding general safety procedures prior to being allowed to use the Research Facilities, User assumes primary responsibility for the personal safety of its employees, agents and associated individuals. It is expected that User will operate all instruments and equipment in a safe and professional manner, consistent with the safety procedures, operating instructions and rules of the laboratory facilities. User represents that its employees’, agents’ and associated individuals’ knowledge of

microfabrication processing and cleanrooms is adequate to permit the safe pursuit of the research work in conjunction with the User's specific project. Vanderbilt shall have the right to immediately prohibit further use by any User employee, agent or associated individual, if Vanderbilt, in its sole discretion, believes that User has breached this representation with regard to any particular employee, agent or associated individual.

User will be provided with certain safety information from Vanderbilt prior to User being authorized to use the Research Facilities. User must review such information and certify in writing that it understands said information and has been given full opportunity to ask Vanderbilt any questions it may have about such information. User understands that all of its employees, agents and associated individuals must complete all required training before being granted privileges to access or use the Research Facilities. No employee, agent or associated individual who has not received the required training will be allowed to access the Research Facilities except for the purpose of receiving the required training. User's authorized official and each of User's employees, agents and associated individuals shall certify in writing their understanding and agreement to comply with the aforementioned informational and training requirements by completing the form contained in Attachment B hereto. User's completed Attachment B forms are hereby incorporated into this Agreement.

**4. Confidentiality.** User and Vanderbilt will not disclose confidential information to each other unless a mutual confidentiality agreement has been signed by both parties. Absent a confidentiality agreement, Vanderbilt and its personnel have no duty to keep information supplied by a User confidential.

**5. Intellectual Property.** Each party recognizes that the other party may, prior to the Effective Date of this Agreement, possess intellectual property conceived of, reduced to practice, first fixed in a tangible medium, discovered or otherwise known or developed outside the scope of this Agreement ("Background Intellectual Property"). Notwithstanding anything to the contrary, this Agreement shall not transfer, convey, or assign any rights in Background Intellectual Property from one party to the other party. Any new invention, development, or discovery resulting from the work performed in Vanderbilt Research Facilities under this Agreement ("Invention") shall be promptly and confidentially disclosed in writing by one party to the other party. Ownership of Inventions shall reflect inventorship as determined by U.S. patent law, if patentable, and shall be determined by mutual consent between the parties, if not patentable. In the event of joint ownership of an Invention, Vanderbilt and Requesting Organization shall enter into an inter-institutional agreement for the subject Invention concerning the sharing of all invention management responsibilities, i.e., based upon the parties' relative contributions to the subject Invention. Each party shall retain a non-exclusive royalty-free license to use any Inventions developed hereunder for its own internal educational, teaching and research purposes only.

**6. Term and Termination.** The term of this Agreement shall commence upon the date it is last signed by a party hereto ("Effective Date") and shall continue for five (5) years, unless terminated sooner. Under no circumstances shall the term of this Agreement extend five (5) years beyond the Effective Date. Either party may terminate this Agreement upon fifteen (15) days prior written notice to the other. If User terminates the Agreement early, User shall pay all unpaid charges, including any monies due and owing up to the time of termination, incurred by User at the time of said termination. If Vanderbilt terminates the Agreement early, then Vanderbilt will refund any fees paid by User except those already expended on obligations arising out of completed activities under the Agreement.

**7. Liability and Indemnification.** Vanderbilt shall have no liability with respect to any loss, damages or claims incurred by the User or its employees, agents or associated individuals in connection with User's use of the Research Facilities, except for any loss, damage or claims incurred by the User or its employees, agents or associated individuals resulting from Vanderbilt's negligence, or actions or omissions of itself or those for whom it is legally responsible relating to or arising under this Agreement. User shall be liable for actual damages only, including payment of its portion of all claims, liability, costs, expenses, demands, settlements, or judgments resulting from negligence, or actions or omissions of itself or those for whom it is legally responsible relating to or arising under this Agreement. Vanderbilt will not be responsible for any

medical expenses that User or any of its employees, agents or associated individuals may incur, and User agrees to bear full responsibility for any liability resulting therefrom, except Vanderbilt shall be responsible for any medical expenses or liability related to any loss, damages or claims incurred by the User or its employees, agents or associated individuals resulting from Vanderbilt's negligence, or actions or omissions of itself or those for whom it is legally responsible relating to or arising under this Agreement.

**8. Insurance.** User will obtain and maintain comprehensive general liability insurance and Worker's Compensation insurance covering its liability under this Agreement. User shall furnish Vanderbilt with Certificate(s) of Insurance evidencing such coverages as a condition of being allowed access to Vanderbilt's Research Facilities for purposes of receiving any required training or otherwise. User acknowledges and agrees that none of its employees, agents or associated individuals will be allowed access to the Research Facilities for any reason until Vanderbilt is in receipt of acceptable Insurance Certificate(s).

**9. Publicity and Use of Names.** User may acknowledge Vanderbilt's provision of the Research Facilities in research and academic publications, whether in print or online reports, symposia, journals and the like, provided that the acknowledgement is consistent with the following text: "Experiments were performed in the Vanderbilt [insert lab name]. The views expressed are those of the author(s) and do not necessarily reflect the views of Vanderbilt University." Except as permitted by this paragraph, neither Vanderbilt nor User may use the trademarks or name of the other Party or its employees for any commercial, advertisement, or promotional purposes without the prior written consent of an authorized corporate office of the other.

**10. Status of Parties and User Employees/Agents.** Vanderbilt and User shall be deemed to be and shall be independent contractors under this Agreement. User understands that its employees, agents and associated individuals are not employees or agents of Vanderbilt and that Vanderbilt provides no worker's compensation or liability insurance coverage for User's benefit. User's employees, agents and associated individuals are deemed to be acting as a representative and/or employee of User for all purposes during work on a project in the Research Facilities. User is responsible for promptly notifying the Vanderbilt representative in writing, in accordance with the Notice section of this Agreement, if any employee, agent or associated individual ceases to be under control of or contract to User. User is responsible for all fees and costs incurred by such User representative until such time as notice is received by the Vanderbilt representative.

**11. Vanderbilt Disclaimer of Warranties.** USER ACKNOWLEDGES AND AGREES THAT THE RESEARCH FACILITIES, EQUIPMENT, SPACE AND ANY RELATED SERVICES ARE PROVIDED BY VANDERBILT "AS IS". VANDERBILT MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO THE PROVISION OF THE RESEARCH FACILITIES, EQUIPMENT, SPACE OR PERFORMANCE OF ANY RELATED SERVICES, OR PROVISION OF ANY DATA, MATERIALS OR TECHNICAL INFORMATION DERIVED FROM ANY WORK UNDER THIS AGREEMENT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE. THIS AGREEMENT GRANTS NO REAL PROPERTY RIGHTS AND NO RIGHTS IN ANY TANGIBLE OR INTANGIBLE PERSONAL PROPERTY.

**12. Warranties of User.** User represents and warrants that its undersigned representative is an authorized official of User, and that said individual has read, understood and agreed to the terms of this Agreement.

**13. Export Control.** The Parties acknowledge and agree that they are subject to United States (U.S.) laws and regulations controlling the export of goods, services, software and technology including technical data, laboratory prototypes and other commodities. No export control restricted materials or technical information is allowed to be brought onto Vanderbilt's premises under this Agreement. In addition, Vanderbilt requires ten (10) days written notice if User intends to send any employee, agent, or associated individual to Vanderbilt who is not a U.S. person for the purposes of U.S. export control laws and regulations. User shall provide with such notice the necessary information (including, at a minimum, the name and citizenship of the non-U.S. person and a completed Attachment A) for the Vanderbilt Export Compliance office to assess

the export control implications of the individual's presence in the relevant Vanderbilt research facility. User acknowledges that such export control assessment will depend upon, among other things, the citizenship of any such non-U.S. persons; and User agrees to update the Vanderbilt Export Compliance office prior to the addition of any individuals to User's list of authorized employees, agents or associated individuals, so that an updated export control assessment can be performed.

**14. Material Transport.** Notwithstanding anything to the contrary in this Agreement, in no event shall User bring upon Vanderbilt's premises or provide Vanderbilt with any materials that are toxic, contagious, hazardous in nature, or which are regulated by the FDA, EPA, or other federal agencies with the authority to control regulated substances and materials.

**15. Protection of Minors and Background Checks.** As used herein, "Minor" means a person under the age of eighteen (18). Vanderbilt is dedicated to the welfare and safety of Minors on Vanderbilt's campus. In furtherance of its policy and procedures regarding the protection of Minors, Vanderbilt reserves the right to require background checks and training at any time for User's employees, agents and associated individuals as a condition of being allowed to access or to continue accessing the Research Facilities. User shall give prior written notice to Vanderbilt whenever a Minor who is an employee, agent or associated individual of User seeks permission to access Vanderbilt's Research Facilities.

**16. Notice.** Any notices required to be given under this Agreement will be in writing and delivered by U.S. mail, postage prepaid, certified mail, return receipt requested, or by nationally-recognized overnight courier, or by email, addressed to the relevant party as follows:

**If to Vanderbilt University:**

Vanderbilt University  
Sponsored Programs Administration  
Baker Building, Suite 800  
110 21<sup>st</sup> Avenue, South  
Nashville, TN 37203-2417  
Attn: Associate Director for Contracts and  
Subawards  
Email: SPA@vanderbilt.edu

**If to \_\_\_\_\_:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

**17. Governing Law and Venue.** The Agreement shall be governed and construed according to laws of the State of Tennessee, without regard to its conflicts of law principles, and the venue for any action initiated in connection with this Agreement shall be a court of competent jurisdiction in Nashville, Davidson County, Tennessee.

**18. Entire Agreement and Conflicts.** This Agreement and the Attachments incorporated herein contain the entire agreement between the parties respecting the subject matter hereof and supersede all previous negotiations, agreements and writings between the parties. The terms of this Agreement, as supplemented by the applicable Project Addendum, shall govern every access, use and project conducted by User. In the event of a conflict between the terms of the Agreement and any Project Addendum or attachments thereto, the terms of the Agreement shall govern. This Agreement may not be amended in any manner except by a written instrument signed by authorized representatives of both parties, which expressly states that it is intended to amend this Agreement. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.

By signing below, both parties agree to abide and be governed by this Agreement.

**VANDERBILT UNIVERSITY**

**Entity Name:** \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Associate Director for Contracts and Subawards

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX A**  
**ATTACHMENTS A & B**

**ATTACHMENT A**  
**PROJECT DETAILS**

**Project Title and Description**

**Vanderbilt Tools and Facilities User Requests to Use**

User will have access to all tools listed on the VINSE website that the user has completed training on <https://www.vanderbilt.edu/vinse/facilities/instrumentation.php>

**External Chemicals, Materials and Equipment User Requests to Bring to Vanderbilt**

**Fees and Costs – rates adjusted annually**

VINSE user rates:

<https://www.vanderbilt.edu/vinse/facilities/rates.php>

<b><u>List Full Names of User’s employees, agents and associated individuals requesting permission to access and use the Research Facilities.</u></b>	<b><u>Indicate whether “U.S.” or “Non-U.S.” person.</u></b>	<b><u>If “Non-U.S.” person, specify Foreign Citizenship.</u></b>
1.		
2.		
3.		
4.		
5.		
[Attach additional sheet if necessary]		

Export control review is required for any non-U.S. persons. Request for review should be directed to:

**Vanderbilt Export Compliance (VEC)**

[vec@vanderbilt.edu](mailto:vec@vanderbilt.edu) | Phone: 615-343-2426

<http://www.vanderbilt.edu/exportcompliance/rip.php>

**Acknowledged and Accepted by Entity \_\_\_\_\_ :**

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Acknowledged and Accepted by Vanderbilt University, Sponsored Programs Administration:**

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_



**ATTACHMENT B**

**USER RELEASE AND WAIVER OF LIABILITY FOR WORK PERFORMED AT  
VANDERBILT UNIVERSITY CORE**

I am fully aware of the risks and hazards connected with my activities at the Vanderbilt Institute of Nanoscale Science and Engineering (VINSE) Core, and I agree to undertake all related training that is recommended or required by Core personnel. I am aware that such activities may present significant risk, and I am voluntarily choosing to participate in these activities, knowing that the activities may be hazardous. I voluntarily assume full responsibility for any risks of loss, property damage, or personal injury, including my death, and for any loss or damage to my property or my employer's property that could result from my engaging in activities at Core. I release the Core and Vanderbilt University to the fullest extent possible in return for permission to use Core facilities and equipment. I understand and agree that I am assuming full responsibility both for using Core equipment and all other activities I perform at Core. I agree that Vanderbilt and others at the Core are not responsible for any loss, property damage or personal injury to me.

It is my intent that this User Release and Waiver Agreement also binds the members of my family and my spouse, if I am alive, and my heirs, assigns and personal representative, if I am deceased.

**I HAVE READ THIS "USER RELEASE AND WAIVER OF LIABILITY FOR WORK PERFORMED AT VANDERBILT UNIVERSITY CORE" AND I FULLY UNDERSTAND ITS TERMS AND THAT I AM GIVING UP CERTAIN RIGHTS BY SIGNING IT.**

USER SIGNATURE:

PRINT NAME:

DATE:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PI SIGNATURE:

PRINT NAME:

DATE:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_