AGREEMENT ON CUSTOMER ACCESS TO DTU NANOLAB
Commercial activity/pricing

BETWEEN

DTU Nanolab
Technical University of Denmark
Oersteds Place
Building 347
DK-2800 Kgs. Lyngby
CVR no. 30 06 09 46

(HEREINAFTER NAMED DTU NANOLAB)

AND

[Company name and corporate form]
[Address]
[Postal code, city, country]
Business Registration No. [XX]

(HEREINAFTER NAMED Customer)

Contact person: xxx
Contact e-mail: xxx
Contract number: 1.0
Table of Contents

§1. Scope of the Agreement ................................................................. 3
§2. Accessible Facilities .................................................................. 3
§3. Customer’s Employees who are given Access .......................... 3
§4. Training of Customer’s Employees ......................................... 4
§5. Access Facilities ...................................................................... 4
§6. Customer requested additional services ............................... 5
§7. Registration/logging ................................................................. 5
§8. Prices, Terms of Payment and Price Adjustment .................... 5
§9. Decommissioning of equipment .............................................. 6
§10. Standard Rules for Use of DTU Nanolab’s Facilities ............ 6
§11. DTU Nanolab’s obligations .................................................... 7
§12. Limitations of liability ............................................................. 7
§13. Insurance .............................................................................. 8
§14. Rights ................................................................................ 8
§15. Confidentiality ..................................................................... 8
§16. Publication .......................................................................... 9
§17. Governing Law and Venue .................................................... 9
§18. Annex .............................................................................. 10
§19. Duration .......................................................................... 10
§1. Scope of the Agreement

DTU Nanolab is the National Center for Nano Fabrication and Characterization. DTU Nanolab (before 2019 DTU Danchip) is ISO certified since 2009 has ISO 9001:2015 certification. The system scope for the certification is "Access to cleanroom facilities and use of equipment for micro- and nanofabrication and in-sourcing of customer processes". The certificate is valid for Building 346, 347 and 358 at the DTU Campus in Lyngby.

DTU Nanolab is an open access facility fully owned by the Technical University of Denmark and has the primary purpose to provide an ideal environment for both education and research and development, along with the possibility of small-scale production of micro- and nanodevices and state-of-the-art nano-characterization.

§2. Accessible Facilities

2.1. This agreement describes the conditions for the Customer’s access to DTU Nanolab’s services and facilities and the payment for the use.

2.2. The Customer will have access to the following facilities:

2.2.1. The Customer has access to all common equipment which is related to the core facilities, provided that the Customer has received mandatory training and safety instructions related to the facility and equipment.

2.3. Customer owned equipment: If Customer wishes to have their own privately owned equipment installed at DTU Nanolab’s facilities, then the terms and conditions concerning access and use of this equipment will be handled by a separate agreement.

§3. Customer’s Employees who are given Access

3.1. Customer’s employees, who have access to DTU Nanolab’s facilities in accordance with this agreement, are registered in LabManager (hereinafter “Employees”). The Customer appoints one contact person regarding invoicing and one main contact person on the Customer registration form. When the Customer has had activities at DTU Nanolab’s facilities during a month an invoice and a specification sheet will be send by e-mail to the contact person. Persons who have had activities on behalf of the Customer are listed in the specification sheet. It is the responsibility of the main contact person to check this list.
3.2. The Customer’s employees are given temporary access cards to the facility. The access cards are personal and may not be transferred to any other person. Customer’s Employees may be given access following approval from DTU Nanolab.

3.3. When the agreement is terminated or if an individual Customer’s Employee is inactive for more than 9 month this individual Customer’s Employee’s access to the facility will automatically be terminated.

3.4. The Customer’s Employees must accept the use of video surveillance in DTU Nanolab’s facilities.

§4. Training of Customer’s Employees

4.1. Before Customer’s Employees can be given access, they must be certified in the use of DTU Nanolab’s facilities and equipment through user training, including safety courses.

4.2. Depending on the nature of the required access to facilities the certifications may include the following:

4.2.1. Introductory course. Details are given on our homepage https://www.nanolab.dtu.dk

4.2.2. Tool Package Trainings (TPTs). Details are given on our homepage https://www.nanolab.dtu.dk

4.2.3. Individual equipment training in the use of relevant equipment and processes (duration depends on machine/process complexity and trainee experience).

4.3. The content of trainings and courses offered may be hands on trainings, online videos, quizzes, lectures, manuals etc.

4.4. If the Customer’s Employee is inactive for a period of 9 month or more using certain facilities or specific equipment the Customer’s Employee cannot maintain the access to the facilities and equipment and has to complete new training.

4.5. Prices for Customer’s Employees courses and training can be found in DTU Nanolab’s price book, cf. Annex 1, (also available at our homepage https://www.nanolab.dtu.dk and will be charged in addition to the payment for use of the facilities set forth in § 8.

§5. Access Facilities

5.1. Questions regarding access to and prioritization of access to equipment are decided by DTU Nanolab’s staff. Access is usually granted subject to first come, first served basis, which can be made in accordance with the booking rules described in DTU Nanolab’s LabManager.

5.2. The Customer’s employees must at all times comply with DTU Nanolab’s general instructions. If a Customer’s employee does not comply with DTU Nanolab’s regulations, DTU Nanolab can deny access to the facilities. If access has been denied, the Customer’s Employee must follow the relevant Safety Courses (see §4) again before the right to access is re-established.
5.3. During normal operations, the facilities are open 24 hours a day all year round. DTU Nanolab staff is available for support between 09:00 and 16:00 on usual working days, i.e. not on public holidays, Monday to Friday. Customer must accept that the facilities can be closed down for a period of 1-3 weeks per year for scheduled service and maintenance. This will be notified to the Customer at least 6 weeks in advance.

5.4. During the special university student training periods (e.g. “three-week periods”), typically in January and June to August, extraordinary activity in the facility should be expected which may limit the possibility of regular processing.

§6. Customer requested additional services

6.1. Technical support can be acquired from DTU Nanolab at an hourly rate in addition to the payment set forth in § 8. In addition to the hourly work rate, any use of equipment will incur additional cost for the tool and materials used. Rates and instruction how to schedule support are given in DTU Nanolab’s price book, cf. Annex 1. A separate agreement must be entered into.

6.2. Services depending on availability. Some services, such as shelf space in cleanroom, basement and chemical storage as well as lockers for personal belongings are available in limited amounts and result in additional charge if required.

6.3. DTU Nanolab offers the following services without additional charge: standard process flow reviews, consultancy on safety in cleanroom, brief questions and questions due to errors on tools and instrumentation wrongfully indicated as operational in LabManager.

§7. Registration/logging

7.1. Registration of number of hours spent in DTU Nanolab’s facility is based on electronic access logging.

7.2. The Customer’s Employees must register equipment usage in DTU Nanolab’s LabManager as well as other parameters required by the DTU Nanolab manual of the individual equipment. Exceptions from this general rule will be stated in DTU Nanolab’s price book, cf. Annex 1, or individual equipment manual. Failure to comply with this paragraph evokes §10.2.

§8. Prices, Terms of Payment and Price Adjustment

8.1. A payment specification for number of hours spent in the facility by Customer’s Employees, cost of equipment hours, cost of materials, rent of area/shelves and cost of support hours from DTU Nanolab’s staff is collected on a monthly basis based on DTU Nanolab’s LabManager registrations.

8.2. For Cleanroom access the following is included in the charged access rate:
• Basic personal cleanroom and safety equipment. A list can be found in DTU Nanolab’s price book, cf. Annex 1.
• Equipment which is categorized as free of charge according to DTU Nanolab’s price book., cf. Annex 1.

8.3. All prices are described in DTU Nanolab’s price book, cf. Annex 1. The prices will be adjusted annually in January. If prices increase above 20% Customer will be notified 3 months in advance.


8.5. Invoices from DTU Nanolab are subject to the payment terms due date + 30 days net.

§9. Decommissioning of equipment

9.1. Tools reaching their end of useful life at DTU Nanolab will enter a decommissioning phase. During this phase DTU Nanolab will work with the Customer to find substitute processes either among DTU Nanolab’s tools or in DTU Nanolab’s network. Perfect substitutions cannot be guaranteed which means that in rare cases processes cannot be supported past the decommissioning phase. At the end of the decommissioning phase the tool will leave DTU Nanolab’s facilities.

9.2. DTU Nanolab will inform about tools entering a decommissioning phase through LabManager and TechForum meetings. The decommissioning phase will usually be of more than 6 months.

9.3. End of useful life means in most cases, that the tool is worn out beyond reasonable continued maintenance efforts. However, since facility space is a costly resource DTU Nanolab owned equipment used less than 100 hours per year, can also be deemed to be at end of useful life, simply due to lack of usage.

9.4. In extremely rare situations a tool may suffer a catastrophic breakdown and be broken beyond repair. These breakdowns cannot be predicted, so tools suffering catastrophic breakdowns may be decommissioned without a decommissioning phase.

§10. Standard Rules for Use of DTU Nanolab’s Facilities

10.1. The Customer’s Employees shall follow the guidelines and instructions provided by DTU Nanolab’s staff. The Customer’s Employees have an obligation to seek information regarding safety instructions and operation manuals for the equipment they use and Customer is responsible to make this known among Customer’s Employees.

10.2. Failure to comply with guidelines, manuals and instructions as well as use of equipment without completed individual equipment training (see §4.2.3) or use of equipment marked “out of use” can at
DTU Nanolab’s sole decision lead to periodic or permanent denial of access to DTU Nanolab’s facilities for the individual Customer’s Employee. If access has been temporary denied, the user may incur retraining to gain access again.

§11. DTU Nanolab’s obligations

11.1. DTU Nanolab aims to keep its equipment and facilities operational for the maximum time possible. DTU Nanolab will therefore maintain them best possible and retain the full right to carry out any necessary activities deemed necessary to ensure this. These activities may include: periodic preventive maintenance, periodic control of functionality, troubleshooting, internal repair or acquisition and assistance of external repair, up-to-date user manuals for all equipment and training of User’s Employees in the operation of the equipment.

11.2. Within one working day of the reporting of an error, DTU Nanolab must inform Customer’s Employees of an ‘expected ready’ date and a description of the problem, and to keep Customer’s Employees informed if the situation changes. Equipment status and updates are displayed in DTU Nanolab’s LabManager.

11.3. Equipment failure during use of equipment should be reported immediately in LabManager. If reported in due course and the failure is not caused by Customer’s Employees, the Customer can request refund for the registered equipment time using LabManager.

11.4. For instance, an exception to §11.3 refund, is operational failure caused by Customer’s Employee operating the equipment outside the guidelines in the equipment manual.

11.5. Another exception to §11.2 refund, is if Customer’s Employee chooses to use the equipment even though DTU Nanolab has made it clear (by LabManager status “limited use” or email/sign) that the required functionality is not fully available.

§12. Limitations of liability.

12.1. The parties are liable for damages according to Danish law, however subject to the limitations set forth in this § 12.

12.2. Except for breach of the duty of confidentiality, DTU Nanolab shall in no event be liable to the Customer for any anticipated or indirect loss or damage, including, but not limited to, loss of profits or future business; any damage to reputation or goodwill; any damage, loss, costs or expenses of an indirect, exemplary, consequential, or economic nature, caused by, arising from, associated with or attributable to the activities, including, but not limited to, operational failures or obstacles to Customer’s
performance of planned tasks, lack of quality of Customer’s research results or services or that Customer’s activities does not lead to the desired result, or other obligations of DTU Nanolab under this Agreement.

12.3. DTU Nanolab does not assume any product liability and the Customer shall indemnify, defend and hold DTU Nanolab harmless against any suit, action or proceeding, including any claim for compensation based on product liability law, regardless of whether the damages can be linked to a malfunction etc. of the equipment and/or facilities made available under this agreement, and claims for damages caused by other Customer’s use of the equipment/facilities.

12.4. Equipment failure may occur if the facilities are not operating within specifications, for instance due to an emergency evacuation or facilities shutdown. Compensation for both direct and indirect equipment failure may only be obtained by the Customer in accordance with § 11.3

§13. Insurance

13.1. The Customer shall be obliged to take out all relevant insurance coverage required as a consequence of this agreement, including liability insurance and industrial injuries insurance for those of the Customer’s employees who work in the facilities as well as insurance for Customer’s own equipment that is used at the facilities.

§14. Rights

14.1. Any know-how, results and intellectual property rights that belong or belonged to the Customer or DTU prior to the commencement or outside of this Agreement shall be owned by the Customer or DTU respectively.

14.2. The Parties shall retain any intellectual property rights, including the right to take out patents, to the results of their own work.

14.3. DTU Nanolab has no claims to any products, process related results, intellectual property, process recipes nor process flows exclusively developed for the Customer by DTU Nanolab staff using commercial rate for assistance (commissioned research).

14.4. DTU Nanolab shall not be prevented from developing process recipes or process flows, which compete with Customer’s process recipes or process flows, or working with other Customers, who develop such products and processes, provided such development is made independently of and takes place without use of Customer’s products, process related results or intellectual properties exclusively.

§15. Confidentiality
15.1. All persons who are given access to the facilities shall observe the confidentiality of all verbal and written information, technical as well as commercial, which has been reported in writing to DTU Nanolab’s Management as being confidential at least a fortnight after the information has been released and which may be damaging to the Customer’s legitimate interests if disseminated. The confidentiality obligation exists for three years after the expiry of this agreement. However, the confidentiality obligation does not include information which:

a. already is or later becomes lawfully known to the public.
b. is received from third party provided that third party’s possession and communication of the information are lawful.
c. a party can prove is information which was already known to the party and not linked to the other party.
d. a party can prove is information which the person in question has developed and which is not linked to the other party.

15.2. Each party shall ensure that their employees, students and PhD students are instructed to follow the provisions of this clause.

§16. Publication

16.1. Unless otherwise agreed, the parties have a right to publish scientific results and experience produced by the work to an extent where this is possible without disregarding the confidentiality obligation in accordance with §15 above.

§17. Governing Law and Venue

17.1. This Agreement shall be governed by the laws of Denmark. This applies whether or not international private law and choice of law rules may lead to the application of another country’s laws.

17.2. Should a dispute arise between the Parties in connection with this Agreement, including its interpretation and use, the Parties shall enter into negotiations in good faith in order to solve the dispute.

17.3. Have the Parties been unsuccessful in solving the dispute within 30 calendar days after initiation of negotiations hereof, the Parties may agree to refer the dispute to mediation at Mediationsinstituttet (www.mediationsinstituttet.dk) according to its rules.

17.4. If the Parties do not agree to mediation within 7 calendar days after expiry of the deadline set forth in Section 24.3, or has no solution to the dispute been reached 30 calendar days after commencement of
mediation with Mediationssributtet, the dispute shall be settled by the District Court of Lyngby as the court of first instance.

§18. Annex

18.1. This agreement include the following documents, which must be read before signing this agreement:

Annex 1: Price book. The conditions in the Price Book are adjusted annually and it is the Customer’s own responsibility to stay updated.

§19. Duration

19.1. This agreement starts on the date of the final signature by the two representatives (below).

19.2. This agreement can be terminated by both parties, subject to three months’ notice to expire on the last day of a calendar year.

Signatures

Date: Date:

DTU Nanolab Customer

________________________________________  ______________________________

Jörg Hübner [Name]

Director, DTU Nanolab [Title]