

2020 SUBORDINATION AND INTERCREDITOR AGREEMENT

This 2020 Subordination and Intercreditor Agreement (this “**Agreement**”) is made as of this 28th day of February, 2020, by and among Massachusetts Development Finance Agency, a body politic and corporate created by Chapter 289 of the Acts of 1998 and established under Massachusetts General Laws Chapter 23G, as amended, with a principal place of business and mailing address of 99 High Street, Boston, Massachusetts 02110 (the “**Senior Lender**”), the individuals and entities listed on Schedule A attached hereto (the “**Junior Lenders**”) and Nano-C, Inc., with a principal place of business, chief executive office, and mailing address of 33 Southwest Park, Westwood, Massachusetts 02090 (the “**Borrower**”).

Background:

- A. The Junior Lenders have made, or will soon make, loans to the Borrower as disclosed and listed on Schedule A attached hereto (which shall be updated from time to time in accordance with this Agreement) represented by series 2020A Convertible Term Promissory Notes (the “**Junior Notes**”), copies of which are also attached hereto as Schedule B.
- B. The Senior Lender has provided financing to the Borrower on certain terms and conditions. The obligations of the Borrower to the Senior Lender are secured by all business assets of the Borrower, inclusive of intellectual property, as evidenced by the following documents, each dated November 20, 2018 and granted or given to Senior Lender by the Borrower: (i) a Security Agreement, (ii) a financing statement, (iii) a Loan Agreement, (iv) a Promissory Note, (v) a Negative Pledge Agreement, and (vi) such other instruments as may be required by Senior Lender in connection with the Senior Debt.
- C. The obligations of the Borrower to the Junior Lenders are unsecured.
- D. As a condition precedent to the loan made by the Senior Lender to the Borrower, the Senior Lender requires the Borrower and Junior Lenders enter into this Agreement with the Senior Lender.
- E. Capitalized terms not defined herein shall have the same meaning given to them in the Senior Loan Documents (defined below).

Agreement:

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

- 1. **Definitions.** The following terms as used herein shall have the following meanings:
 - (a) “**Collateral**” means all of the business assets of the Borrower, inclusive of intellectual property, securing the Senior Debt as more completely described in the Security Agreement.

(b) **“Junior Debt”** means all amounts owing to the Junior Lenders by the Borrower as evidenced by the Junior Notes.

(c) **“Junior Loan Documents”** means and is limited to the convertible promissory notes listed on Schedule A from time to time.

(d) **“Event of Default”** means an Event of Default under the Senior Loan Documents.

(e) **“Senior Debt”** means all amounts owing to the Senior Lender in connection with the sums provided for in the Senior Loan Documents including without limitation the Senior Note and all obligations, liabilities and indebtedness, fees, costs and expenses arising pursuant to any amendments, extensions, modifications, and supplements to the Senior Loan Documents, or replacements of the Senior Debt.

(f) **“Security Agreement”** has the meaning given to it in the Preamble to this Agreement.

(g) **“Senior Loan Documents”** means the Loan Agreement, Security Agreement, the Senior Note and the other agreements and instruments evidencing or securing the Senior Debt.

(h) **“Senior Note”** means the Commercial Promissory Note dated as of November 20, 2018 in the amount of \$2,400,000 made by the Borrower to the Senior Lender.

2. Junior Lenders Estoppel. The Junior Lenders hereby represent, warrant, covenant, and agree, for themselves, their successors and assigns, as follows:

(a) True and complete copies of the Junior Loan Documents have been delivered to the Senior Lender herewith, and none of such instruments has been supplemented or amended except by signed instruments also delivered to the Senior Lender.

(b) Neither the Borrower nor the Junior Lenders are in default in the performance of their respective obligations under the Junior Loan Documents. There is no claim, counterclaim or offset with respect to or arising out of the Junior Loan Documents and none is currently anticipated.

(c) The outstanding principal balance owing to the Junior Lenders, in the aggregate, under the Junior Loan Documents is as set forth in Schedule A, which shall be updated from time to time in accordance with this Agreement, but in no event shall such outstanding principal balance of the Junior Debt exceed \$1,500,000.00 under the series 2020A Convertible Term Promissory Notes.

3. Subordination in Right of Payment. The Junior Debt shall be subject and subordinate in right of payment and in all other respects to the prior payment in full of the Senior Debt. In addition, the Borrower shall not pay and the Junior Lenders shall not accept and receive any payments on account of the Junior Debt, including without limitation accrued interest thereon, unless and until the Senior Debt is fully paid. Notwithstanding anything to the contrary herein, conversion of the Junior Debt into equity securities of the Borrower in accordance the terms of the Junior Loan Documents shall not be considered a “payment” and shall not be prohibited by

this Agreement, and notwithstanding the foregoing sentence, repayment of the Junior Debt may be authorized, but only with the written consent of the Senior Lender, within the Lender's sole but reasonable discretion.

4. Payments Turned Over to Senior Lender. If any of the Junior Lenders shall receive any payment or monies arising from or with respect to the Junior Debt before the Senior Lender has determined in writing to the Borrower that the conditions to repayment provided in Section 3 have occurred, each of the Junior Lenders will hold all such amounts so received in trust solely for the benefit of the Senior Lender and shall forthwith turn over such payments to the Senior Lender in the form received, and if by check, endorsed and made payable to the order of the Senior Lender to be applied by the Senior Lender against the Senior Debt.

5. Enforcement. No Junior Lender will take any action or assert any claim with respect to collection of his/her/its portion of the Junior Debt or otherwise until full satisfaction of the Senior Debt. In addition, no Junior Lender shall accept nor cause the Borrower to grant any collateral owned by the Borrower to secure the Junior Debt.

6. Actions with Respect to Senior Debt. The Senior Lender may (subject to the terms of the Senior Loan Documents) at any time and from time to time without the consent of the Junior Lenders and without incurring any responsibility or liability to the Junior Lenders change the manner, place or terms of payment or extend the time of payment or renew or alter the Senior Debt or any portion thereof including without limitation: (i) increase the Senior Debt to a sum greater than its original principal sum plus costs incurred to maintain, preserve and/or protect the collateral securing such Senior Debt, (ii) increase the interest rate of the Senior Debt, or (iii) reduce the term thereof; (iv) sell, exchange, release or otherwise deal with the Collateral, or any other property pledged or mortgaged to the Senior Lender to secure the Senior Debt or any portion thereof; (v) release anyone liable in any manner for the payment or collection of the Senior Debt or any portion thereof; (vi) exercise or refrain from exercising any rights against the Borrower and others; and (vii) apply any sums paid or however realized to the Senior Debt or any portion thereof.

7. Refinancing of the Senior Debt. In the event that the Borrower enters into a bona fide commitment to refinance the Senior Debt, which upon its closing may or may not result in payment in full of the Senior Debt, or is otherwise acceptable to the Senior Lender, the Junior Lenders agree that, upon request of the Senior Lender, the Junior Lenders will immediately provide the refinancing lender with an original subordination of the Junior Loan Documents in recordable form upon terms and conditions reasonably required by the new lender. Notwithstanding the foregoing, in the event of any such proposed bona fide refinancing, the Borrower shall promptly provide the Senior Lender with notice thereof.

8. Further Assurances. The Junior Lenders and Senior Lender mutually agree to execute any further documents or amendments and take such other actions as may be reasonably necessary to effect the purposes of this Agreement, including the filing of any financing statements or other instruments in any applicable public records, all as directed by either party.

9. Specific Performance. The parties recognize that any breach of this Agreement by the Junior Lenders may cause irreparable harm to the Senior Lender for which there is no adequate remedy at law. Consequently, all and each provision of this Agreement may be specifically

(a) This Agreement and all matters arising out of the Senior Debt and the Junior Debt related to this Agreement shall be governed by laws of the Commonwealth of Massachusetts and each of the parties hereto submit themselves to the jurisdiction of the courts of the Commonwealth of Massachusetts for all purposes arising out of or related to this Agreement.

(b) The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision of this Agreement.

(c) Titles to sections have been included for convenience and are not part of this Agreement.

(d) This Agreement incorporates all discussions and negotiations by and among the Borrower, the Senior Lender and the Junior Lenders concerning the Agreement effected hereby. No provision may be altered, amended, waived, canceled or modified except by a written instrument executed, and acknowledged by a duly authorized officer of the Borrower, the Senior Lender and the Junior Lenders.

(e) THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION UNDER OR RELATING TO THIS AGREEMENT.

(f) This Agreement is not intended to benefit the Borrower or any other third party and neither the Borrower nor any third party shall be entitled to rely on this Agreement. The Borrower hereby consents to this Agreement but expressly acknowledges that it does so with the full knowledge that it obtains no third party beneficiary rights hereunder and may not assert any rights hereunder unless expressly set forth herein.

(g) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, this Agreement has been executed as a sealed instrument as of the date first written above.

Witnessed by:

SENIOR LENDER:

MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY

Name:

By:

Name: Laura L. Canter
Title: Executive Vice President, Finance
Programs
Duly Authorized
Date: February 28, 2020

BORROWER:

NANO-C, INC.

Name:

By: _____

Name: Viktor Vejins
Title: President and CEO
Duly Authorized
Date: February 28, 2020

IN WITNESS WHEREOF, this Agreement has been executed as a sealed instrument as of the date first written above.

JUNIOR LENDER:

By: _____

Name: _____

Date: _____

SCHEDULE A
List of Junior Lenders, Addresses and Loan Amounts

<u>Lender</u>	<u>Loan Amount</u>
TOTAL	\$ _____

SCHEDULE B

Copy of Promissory Notes