

COSINC USER AGREEMENT, TERMS AND CONDITIONS

[Please read the following Terms and Conditions carefully before booking any instrumentation or requesting any Services (“Equipment and Facilities”) managed by the Colorado Shared Instrumentation in Nanofabrication and Characterization (“COSINC”). These Terms and Conditions also act as additional Terms and Conditions to the PPMS External User Terms and Conditions. By proceeding with booking instrumentation or requesting Equipment and Facilities, the Lab User/Department (“User”), and individual responsible for payment of the user fees and other related expenses (“Responsible Party”) accept these Terms and Conditions.]

This Facility User Agreement is between COSINC administration, University of Colorado, Boulder and the undersigned Lab User (User) and the responsible Principle Investigator (PI), who is either a student, post-doc, faculty member, external visitor or an employee of the University of Colorado. The Principal investigator is identified as the person responsible for payment of the user fees and other related expenses. Access to and use of Equipment and Facilities managed by COSINC on behalf of the University of Colorado Boulder (“University”) is conditioned on compliance with the following terms. These terms apply to all users (internal and external) and others who access or use the COSINC facility. In the event of a conflict between the COSINC Facility Use Additional Terms and Conditions and other related agreements containing terms and conditions, the conflict shall be resolved by the following order of precedence:

The articles of the PPMS External User Terms and Conditions, Non-Disclosure Agreements, Material Transfer Agreements,

Data Use Agreements,

COSINC Facility Use Additional Terms and Conditions, Additional Invoicing/Payment Instructions

COSINC communications (“Facility Contact”) as referenced throughout this document will be directed as follows:

COSINC-CHR Facility: 303-735-6815, cosinc-chr@colorado.edu

COSINC-FAB Facility: 303-718-1831, cosinc-fab@colorado.edu

COSINC, Director: 303-735-5019, aju.jugessur@colorado.edu

[a] **Qualifications and Equipment Care:** Prior to using the Equipment and Facilities, User must obtain the necessary training and skills from COSINC to use the equipment safely, in the proper manner and for the intended purpose. When using the Equipment and Facilities, User shall act professionally, and consistent with prevailing industry standards and practices. If User experiences any problems while operating the instruments, COSINC facility staff will be notified immediately. If a COSINC facility staff member is not onsite, contact the Facility Contact. Only authorized COSINC or University personnel are authorized to fix and/or maintain the Equipment and Facilities. Any unauthorized repair or fix may result in additional charges to the User and Responsible Party.

[b] **Compliance with Law, COSINC and University Policy:** When using the Equipment and the Facilities, User shall comply with all applicable federal, state and local statutes, regulations, codes, ordinances, as well as all applicable COSINC and University policies and procedures.

[c] **Safety:** If applicable, Users have reviewed the COSINC-FAB safety manual and adhere to follow the safety procedures in this document.

[d] **Authorship and Acknowledgements:** If the work that is carried out at COSINC provided data used in any publication (journals, conferences) and/or presentations/seminars, COSINC should be acknowledged. (*example acknowledgement 'statement' also posted on the COSINC Facility website (section: User Information), should include the following:

"This research was supported in part by the Colorado Shared Instrumentation in Nanofabrication and Characterization (COSINC): the COSINC-CHR (Characterization) and/or COSINC-FAB (Fabrication), College of Engineering & Applied Science, University of Colorado Boulder. The author/(s) would like to acknowledge the support of the staff (Name/(s)....) and the facility that have made this work possible"

[e] **Tool usage reporting:** User is responsible for reporting on the PPMS resource scheduler accurately. If User does not comply with this requirement, he/she may lose Equipment and Facility access after the first warning message.

[Note: instrumentation logs are monitored to verify actual tool usage.]

[f] **Costs and Expenses:** COSINC will determine the costs/expenses for the use of the Equipment and Facilities on a monthly basis, according to time booked on the PPMS system by the User after each session. For internal customers, the selected/approved speed-type will be billed directly through the University PeopleSoft Finance system. External Customers will be invoiced per agreed upon terms.

[g] **No-show penalty:** If User does not show up and fails to report to the facility within 1 hour of his/her starting time of a session, COSINC will delete this booking, and a flat penalty of \$50 is charged onto the User's account.

[h] **Damage or Loss [Internal Users Only]:** User shall be responsible and liable for any and all costs, expenses or charges that COSINC may incur or assess for the repair or replacement of the Equipment and Facilities as a result of damage or loss caused by User's intentional or negligent acts or omissions.

[i] **Research, Intellectual, and Personal Property Rights [Internal Users Only]:** The User acknowledges responsibility for his or her own research and that COSINC does not in any way warrant or assure project success. Ownership of rights in intellectual property resulting from User's research shall be governed by the policies of the University. The User further acknowledges responsibility for their personal and intellectual property. COSINC may provide limited, unsecured storage as a courtesy and makes no guarantees against unauthorized access.

[j] **Term and Termination:** These Terms and Conditions shall commence on the date of the first scheduled use of Equipment and Facilities and shall automatically renew on July 1 of each year unless previously terminated. No use of the COSINC Equipment and Facilities shall extend beyond the termination of this or other related agreements without prior written approval of authorized COSINC and University representatives. If a User's access to the Equipment and Facilities is terminated, the User and/or Responsible Party are then responsible for removing any personal property within sixty (60) days, or it may be disposed of at the discretion of COSINC Staff and the expense of the Responsible Party.

[k] **Dispute Resolution:** The COSINC facility managers are responsible for continued operation of the Equipment and Facilities. If at any time User feels unfairly treated by a COSINC staff member or that access was wrongly terminated, User will discuss the situation by calling the Facility Contact. The sequence of appeals is from the Facility Contact to the COSINC Director and to the College of Engineering and Applied Sciences' Dean. The User and the Responsible Party warrant that they have fully read and will abide by all terms and conditions.

I have read and understand the provisions of this Agreement, and I agree to use the equipment and facilities for the Research on the Schedule, upon and subject to the provisions hereof. By making an online reservation, I am agreeing to the terms of this document.

The following section applies to users identified as External Customers. ("External customers" are defined as individuals who are not employed by the University of Colorado.)

These are the standard terms and conditions of the Regents of the University of Colorado ("University") and contain the entire and only agreement between the parties in respect to the Services. By ordering these Services, Department ("Customer") fully accepts these terms and conditions. Should processing of the Services require Customer's issuance of a purchase order or other contractual document, all terms and conditions of such document are deleted in their entirety and superseded by these terms and conditions.

1. **Deliverables.** Title to Deliverables will reside with Customer. ("Deliverables" is defined in the informational matrix above.) Customer shall grant and hereby grants to University the transferable right to use Deliverables for academic, educational and research purposes. Title to (i) the know-how methodologies, procedures, processes, software and other materials utilized in, provided by, or made available for use in connection with performing the Services, and, (ii) excepting Deliverables, all intellectual property created or developed by the University, including without limitation any inventions and discoveries conceived or first reduced to practice, computer software, and works developed, whether or not

protectable by patent or copyright, in the performance of the Services, resides and will reside in University.

2. Acceptance. Acceptance of deliverables will be effected upon University completion of deliverables identified in Box 9 on the University premises or when electronic deliverable has been submitted. Customer has the right to inspect and evaluate work performed or being performed, at all reasonable times and in a manner that will not unduly delay the work.

3. Transfer of Materials to University. Customer may supply University with “Materials” as defined in the Quotation in accordance with the following terms and conditions. Customer retains ownership and title to any Materials delivered to University under the Quotation, and University will return all Materials not exhausted in the Services upon termination of the agreement and request of the Customer. University agrees that it will: (i) use the Materials solely to complete the Services and for no other purpose unless authorized in writing; (ii) attempt to limit allowed use of the Materials to those individuals necessary for completion of the Services; (iii) not reverse engineer, deconstruct or analyze the Materials in a manner not contemplated by the Quotation. Prior to delivery or acceptance of any Materials, Customer shall provide any and all documentation or user guidance necessary to ensure the safe handling and use of the Materials. Customer represents and warrants that all Materials delivered to University are not, or will not be when subjected to the conditions detailed in the Quotation: hazardous, a select agent or toxin, explosive, highly flammable, biological materials or infringing on third-party intellectual property rights. University Units are not allowed to accept such Materials. Customer shall indemnify, defend and hold harmless the University from all claims, losses, damages, costs (including attorney fees), and liabilities resulting from the use or handling of the Material, provided that Materials were used substantially in accordance with any Customer provided documentation for the safe handling of the Materials.

4. Liability. Customer acknowledges that access to the Services and Materials is not controlled or video-monitored and that access is on the honor system. University is not responsible for any damage to Customer's Materials, no matter the cause, including but not limited to damage caused by negligence, mistake, power outage, other user errors, or theft. Customer is solely responsible for any liability arising out of Customer's use of or reliance upon Deliverables or anything generated from the Deliverables.

5. Rates/Prices. Rates/Prices subject to change with 30 days' notice to apply to work not yet started.

6. Payment. Customer shall pay University the Rates/Prices in accordance with the terms and currency stipulated in the Quotation. Payments will be made within NET 30 Days of Invoice Date. Reference invoice number on payment.

7. Export Controls. Customer will not disclose to University any information nor provide University with any item(s) that are either export-controlled under International Traffic in Arms Regulations, or that appear on the Commerce Control List (except as EAR99) of the Export Administration Regulations. Neither party shall export, directly or indirectly, any such information or items to any country which the U.S. Government at the time of export requires an export license or other Government approval without first obtaining such license or approval. University has no obligation to restrict, foreign national access in support of this effort.

8. Governmental Immunities. Regardless of governing law, venue, or jurisdiction, with respect the University's status, rights, and obligations as a state institution and the governmental and sovereign immunities afforded the University as a state institution, including, without limitation, under the Colorado Governmental Immunity Act, CRS §§ 24-10-101 et seq., the laws of the State of Colorado control. This Paragraph is governed and construed in accordance with the laws of the State of Colorado.

9. Governing Law. This agreement shall be governed by, and the parties agree to the exclusive jurisdiction of courts within, the State of Colorado.

10. Disclaimer of Warranties. UNIVERSITY SERVICES, FACILITIES, EQUIPMENT, AND SUPPLIES ARE PROVIDED "AS IS" WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. UNIVERSITY EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL UNIVERSITY, ITS OFFICERS, AGENTS OR

EMPLOYEES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER IN AN ACTION IN CONTRACT OR TORT ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. University Facilities Use Details. Subject to these terms and conditions and upon request, Customer may request and University may provide Customer with office, laboratory or other work space, equipment and/or supplies (hereinafter referred to both individually and collectively as, the “University Facilities”), as the University deems appropriate. The University reserves the right to reasonably modify, change or revise the University Facilities that Customer uses. Customer shall use the University Facilities only as directed by the University and in compliance with all applicable laws and regulations. The University reserves the right to revoke at any time access to all or any portion of the University Facilities. Use shall not interfere in any manner with the University’s research, operations, or another third party use authorized by the University.

11.1. If University permits Customer access to or use of University Facilities, Customer must maintain, at its own expense and for the duration of any and all use: General Liability coverage with limits of not less than \$2,000,000 combined single limit; where applicable, auto coverage for owned and non-owned auto liability with limits of not less than \$1,000,000; where applicable, fire coverage limits not less than \$1,000,000; where applicable, pollution liability coverage if use or storage of hazardous or regulated materials is anticipated; where applicable, workers’ compensation coverage at required statutory limits. All insurance policies shall name the Regents of the University of Colorado, a body corporate, as additional insured. The certificate Holder shall be: The Regents of the University of Colorado, University Risk Management, 1800 Grant Street, Suite 700, Denver, CO 80203-1187. Certificates must be provided at the time of Customer acceptance of Quotation and prior to University beginning Services and shall be sent via e-mail to: URM@CU.EDU. Policies shall be primary to all other coverage that may be concurrently in effect. All policies shall be underwritten by a company licensed to do business in the State of Colorado.

11.2. Customer shall be solely responsible for its use of University Facilities and shall indemnify and hold harmless The Regents of the University of Colorado, its officers, administrators, agents, employees, and students from and against any and all claims or

demands or damages in any way arising from Customer's use of University Facilities. Indemnification shall not be limited and shall include any liability or payment (including costs and attorney's fees) by reason of any damages or bodily injury (including death) sustained by any person or persons or on account of damage to property, including the loss or use thereof arising out of or in connection with the use.

11.3. Customer may use the University Facilities only for authorized purposes consistent with the project related to the Services and only to the extent that those purposes or functions for which the equipment was safely designed. Customer shall immediately notify the Unit in the event of any problems with the University Facilities. Customer shall refrain from use of University Facilities if functionality or safety is or appears to be compromised. Customer shall comply with all applicable local, state, and federal laws and regulations, in addition to all applicable University policies, rules and procedures. Customer shall review and abide by any and all applicable laboratory safety/operations plan/rules as provided by University prior to use and to follow all rules and directions from University personnel regarding use.

12. Confidential information. ("Information") is information that is not generally known to the public, and may include data, technical and non-technical materials, designs, processes, software, strategies, product samples, specifications, or any other financial or business information. This Quotation applies to protect only Information, whether or not patentable, furnished by one party of this Quotation ("disclosing party") to the other ("receiving party"), that is clearly marked "Proprietary" or "Confidential," or that, if disclosed orally or in some other intangible form, is identified as confidential at the time of disclosure and thereafter in a written summary sent to the receiving party by the disclosing party, within 15 days of the date of intangible disclosure. For absence of doubt, this agreement shall not be considered Information.

This Quotation imposes no obligation upon the receiving party with respect to Information that: (a) was known to the receiving party prior to receipt from the disclosing party; (b) is or becomes public through no fault of the receiving party; (c) is rightfully received by the receiving party from a third party without a duty of confidentiality; (d) is disclosed by disclosing party to a third party without a duty of confidentiality; (e) is independently developed by the receiving party without use of the disclosing party's Information, as demonstrated by written evidence; or (f) receiving party is required by law to disclose,

including the Colorado Open Records Act (C.R.S. § 24-72-201 et seq.); or (g) is disclosed by the receiving party after the disclosing party's prior consent.

The receiving party agrees to maintain the disclosing party's Information in confidence and to use the disclosing party's Information for the sole purpose of conducting the Services. The obligations of confidentiality and non-use of Information will terminate upon 3 years from the completion of the Quotation.

13. Publicity. Neither party shall use the name or logo of the other party in any advertising, sales promotion nor other publicity matter, without prior written approval.

14. Independent Contractor. In the performance of this agreement, neither party is authorized or empowered to act as agent for the other party nor shall one party be bound by the acts or conduct of the other party. Each party shall act as an independent contractor and not as an employee of the other. The parties, nor any agent or employee of either party, shall not be entitled to unemployment insurance or workers compensation benefits through the other party.

15. Termination. Either party may terminate this implied agreement upon 30 days' prior written notice to the other. Customer shall be responsible for all costs and any non-cancellable obligations incurred by the University up to the date of termination. University shall return any prepayment by Customer in excess of such sums.

I have read and understand the provisions of this Agreement, and I agree to use the equipment and facilities for the Research on the Schedule, upon and subject to the provisions hereof. By making an online reservation, I am agreeing to the terms of this document.