

COSINC USER AGREEMENT

Read the following COSINC User Agreement carefully before booking instrumentation or requesting services managed by the Colorado Shared Instrumentation in Nanofabrication and Characterization (“COSINC”).

This Agreement is presented by the REGENTS OF THE UNIVERSITY OF COLORADO, a body corporate, acting on behalf of the University of Colorado Boulder (“University”), acting on behalf of the COSINC facility. By making an online reservation, the requesting party fully accepts the terms of this Agreement and represents and warrants that they are duly authorized to bind the lab user (“User”) and legal entity or University unit they represent (“Customer”) to all terms and obligations contained herein.

1. DEFINITIONS

Agreement: COSINC User Agreement.

COSINC: Colorado Shared Instrumentation in Nanofabrication and Characterization facility.

Customer: Legal entity or University of Colorado unit that is represented by and includes the User and is responsible for all financial obligations incurred by the User.

Deliverables: Data and/or fabrication derived from User’s approved use of Equipment and Facilities.

Equipment and Facilities: Instrumentation and services offered by COSINC.

External: Related to a non-University of Colorado affiliated party.

Facility Contact: COSINC communications.

Internal: Related to a party officially affiliated with the University of Colorado.

University: University of Colorado Boulder.

User: Customer representative using COSINC Equipment and Facilities.

2. GENERAL TERMS OF USE

Access to and use of COSINC Equipment and Facilities is conditioned on compliance with the terms in this section. These terms apply to all Internal and External Customers and Users.

[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 consistent with prevailing industry standards and practices. If User experiences any problems while operating the instruments, User shall notify COSINC facility staff immediately. If a COSINC facility staff member is not onsite, User shall contact the relevant 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 Customer.

[b] **Safety:** If applicable, Users shall review the COSINC-FAB safety manual before accessing Equipment and Facilities and shall follow all safety procedures detailed therein.

[c] **Authorship and Acknowledgements:** If the work that is carried out at COSINC provides data used in any publication (including but not limited to journals and conferences), presentations, and/or seminars,

COSINC shall be acknowledged using the following language or language that is substantively similar:

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

[d] **Tool Usage Reporting:** Instrumentation logs are monitored to verify actual usage. User is responsible for accurate reporting on the PPMS resource scheduler. Non-compliance with this requirement may result in loss of Equipment and Facility access after the first warning message.

[e] **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 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.

[f] **No-Show Penalty:** If User does not show up and fails to report to the facility within one (1) hour of the starting time of a session, COSINC will delete the booking, and a flat penalty of \$50 shall be charged to the User's account.

[g] **Term and Termination:** This Agreement 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 Customer 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 Customer.

[h] **Communications:** Customers shall direct Facility Contact as follows:

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

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

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

[i] **Dispute Resolution:** 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, then to the College of Engineering and Applied Sciences' Dean.

[j] **Order of Precedence:** In the event of a conflict between the Agreement and other related agreements, the conflict shall be resolved by the following order of precedence:

COSINC User Agreement, Non-Disclosure agreements, Material Transfer agreements, Data Use agreements, COSINC Facility Use Additional Terms and Conditions, Additional Invoicing/Payment Instructions.

3. INTERNAL CUSTOMERS

These terms apply to all Internal Customers and Users.

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

[b] **Damage or Loss:** Customer 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 intentional or negligent acts or omissions of its personnel and representatives.

[c] **Research, Intellectual, and Personal Property Rights:** 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.

4. EXTERNAL CUSTOMERS

These terms apply to all External Customers and Users. Should processing of payment 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.

[a] **Deliverables:** Title to data and/or fabrication derived from User's approved use of Equipment and Facilities ("Deliverables") will reside with Customer. 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 Equipment and Facilities; and (ii) excepting Deliverables, all intellectual property created or developed by 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 offering Equipment and Facilities, resides and will reside in University.

[b] **Acceptance:** Acceptance of Deliverables will be effected upon completion of Deliverables or when Deliverables are submitted electronically. 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.

[c] **Liability.** Customer acknowledges that access to Equipment and Facilities is not controlled or video-monitored and that access is on the honor system. University is not responsible for any damage to Customer-owned 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.

[d] **Payment:** Payments shall be made by Customer within NET 30 Days of invoice.

[e] **Export Controls:** Customer will not disclose to University any information nor provide University with any items that are either export-controlled under International Traffic in Arms Regulations ("ITAR") or that appear on the Commerce Control List ("CCL") of the Export Administration Regulations (except as EAR99). Should the User utilize such information or items during its access or use of Equipment and Facilities, User is solely responsible for protection and control of the same. Neither party shall export, directly or indirectly, any such information or items to any country which the United States Government, at the time of export, requires an export license or other Government approval without first notifying in writing and obtaining written approval from University's Office of Research Security and Export Control. University has no obligation to restrict foreign national access in support of this effort.

[f] **Funds Transparency and Reporting Compliance:** The parties will cooperate with one another to ensure compliance with applicable fund transparency and reporting laws and regulations. Based upon information available, it is understood that Customer's country of incorporation is the United States of America. It is also understood that Customer should be looked to as the sole obligor and recipient of rights under this Agreement, and that Customer is not acting as an agent of, or on behalf of, another entity. In order to ensure correct reporting, Customer agrees to promptly notify OCGServiceContracts@Colorado.edu and Facility Contact of any necessary corrections to the information contained in this paragraph.

[g] **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 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.

[h] **University Facilities Use Details:** University reserves the right to reasonably modify, change, or revise Equipment and Facilities. User shall access and use Equipment and Facilities only as directed by University and in compliance with all applicable laws and regulations. University reserves the right to

revoke at any time access to all or any Equipment and Facilities. Use of Equipment and Facilities shall not interfere in any manner with University's research, operations, or other third-party use authorized by the University.

Customer must maintain, at its own expense and for the duration of any and all use: (i) General Liability coverage with limits of not less than \$2,000,000 combined single limit; (ii) where applicable, auto coverage for owned and non-owned auto liability with limits of not less than \$1,000,000; (iii) where applicable, fire coverage limits not less than \$1,000,000; (iv) where applicable, pollution liability coverage if use or storage of hazardous or regulated materials is anticipated; and (v) where applicable, workers' compensation coverage at required statutory limits. Certificates must be provided upon University request. 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.

Customer shall be solely responsible for its User's use of Equipment and Facilities and shall indemnify and hold harmless University, its officers, administrators, agents, employees, and students from and against any and all claims or demands or damages in any way arising from such use. 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.

Users may access Equipment and Facilities only for authorized purposes and only to the extent that those purposes are functions for which Equipment and Facilities were safely designed. User shall immediately notify COSINC in the event of any problems with the Equipment and Facilities. User shall refrain from use of University Facilities if functionality or safety is or appears to be compromised. User shall comply with all applicable local, state, and federal laws and regulations, in addition to all applicable University policies, rules, and procedures. User 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. COSINC may, at its discretion, determine additional requirements are applicable.

[i] **Confidential Information.** Only information clearly marked "Proprietary" or "Confidential," or, if disclosed orally or in some other intangible form, identified as confidential at the time of disclosure and thereafter in a written summary to COSINC within 15 days of the date of disclosure, shall be protected as confidential by the University.

The University accepts no obligation with respect to information that: (i) was known prior to receipt from Customer; (ii) is or becomes public through no fault of the University; (iii) is rightfully received by the University from a third party without a duty of confidentiality; (iv) is disclosed by Customer to a third party without a duty of confidentiality; (v) is independently developed by the University without use of the Customer's information; (vi) University is required by law to disclose, including in response to a Colorado Open Records Act (C.R.S. § 24-72-201 et seq.) request; or (vii) is disclosed by the University after the Customer's prior consent.

The University agrees to maintain Customer's confidential information in confidence and to use the information for the sole purpose of providing Equipment and Facilities. Confidentiality obligations will terminate upon 3 years from the termination of the Agreement.

[j] **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 QUOTATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

[k] **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.

[l] **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.

[m] **Termination for Convenience.** Either party may terminate this 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. By proceeding, I am agreeing to the terms of this document.