

## TERMS AND CONDITIONS OF USE

Terms and Conditions of services given in the Schapiro Center for Engineering and Physical Science Research Clean Room, the Electron Microscopy Lab in the Havemeyer Basement, the Nanobeam e-beam writing in North-west corner building, and the Shared Materials Characterization Lab in the Havemeyer Building (together hereinafter referred to as the “Shared Lab”) at Columbia University by a Columbia University affiliates to \_\_\_\_\_, an employee of \_\_\_\_\_ (“User”).

1. **Definitions: Affiliates** shall mean any corporation, firm, partnership or other entity which directly or indirectly controls, is controlled by, or is under common control with University, including its staff members or employees.

2. **Scope of work:** The User is requesting to receive research services by the University’s affiliates. The fees charged by Columbia will depend on the actual time of equipment use and staff time invested in the User’s project. Updated user fee rates can be found on the Columbia Nano Initiative website at: <http://cni.columbia.edu/external-user-program-1/>

3. **Term:** The initial term of this agreement is one year from the effective date and will automatically renew for additional one (1) year terms for as long as the User is utilizing the Shared Lab in accordance with the terms of this Agreement or until either party notifies the other party of its intent to terminate this Agreement.

4. **Priority of service:** User understands and acknowledges that as a non-Columbia researcher, student or employee, the following individuals shall have priority over User’s services by affiliates on equipment or instrument in the Shared Lab in the following order: (i) Columbia researchers conducting research funded by a current government grant shall have first priority at all times on any equipment or instrument purchased by that grant in the Shared Lab; (ii) Columbia researchers conducting research funded by a federal grant to Columbia shall have priority on any equipment or instrument purchased by a federal grant; and (iii) Columbia researchers conducting research within the scope of their service to Columbia.

5. **User Obligations:**

a. The User representatives may be present during the time of service as observant and will not be allowed to touch equipment or to remain in any of the labs by themselves without proper training as described in the external users access agreement. The user warrants that s/he has read, understood and agreed to the terms and conditions set forth herein and has been provided with information by Columbia regarding the use of the Shared Lab, including safety training, equipment training and the rules and safety manual for the specific Shared Lab. A different agreement need to be signed in case the user wishes to use the equipment on their

own. User will abide by the usage and safety provisions set forth by Columbia and will comply with any training or testing required by Columbia for access to the Shared Lab. User assumes sole responsibility for the personal safety of the User and Columbia will not be responsible for any medical expenses that the User may incur.

b. Prior to accessing the Shared Lab, User will notify Columbia if any work to be conducted in the Shared Lab (i) is funded by a federal grant and the federal agency providing such funding or (ii) is subject to U.S. export control laws or other applicable laws that may require special conditions regarding access and use (e.g., to comply with deemed export regulations). **User understands that Columbia may, in its sole discretion, deny access to the Shared Lab if the research to be performed by User is subject to export control laws.** User will be responsible for ensuring that if User is not a citizen, permanent residents, or asylees/refugees of the U.S., that such User is authorized under his/her visa to have access to the Shared Lab (including any technology, as applicable) and for reviewing if equipment and technology brought to the Shared Lab are subject to U.S. export control laws or other applicable laws that may require special conditions regarding access and use. User will reasonably cooperate with and provide any information (including information regarding citizenship and permanent residency of its researchers) that is reasonably requested by Columbia in order to ensure User's compliance with this provision. Where required by Columbia, User will collaborate with Columbia to ensure that an appropriate plan to meet applicable regulatory requirements is in place prior to access to the Shared Lab. Columbia may prohibit User from bringing equipment or items to the Shared Lab facility.

c. User agrees that, where appropriate, Columbia will be acknowledged in publications or presentations resulting from substantive work performed in the Shared Lab facility.

d. USER UNDERSTANDS AND AGREES THAT COLUMBIA SHALL HAVE THE RIGHT TO IMMEDIATELY PROHIBIT USE OF THE SHARED LAB IF COLUMBIA, IN ITS SOLE DISCRETION, BELIEVES THAT THE USER HAS BREACHED ANY OF THE TERMS, REPRESENTATIONS AND/OR WARRANTIES OF THIS SECTION 5.

6. **Warranty:** The user acknowledges that NO WARRANTY OR PROMISE HAS BEEN MADE BY COLUMBIA THAT ANY SPECIFIC OR USEFUL RESULT OF ANY WORK PERFORMED IN THE SHARED LAB FACILITY WILL BE ACHIEVED.

7. **Intellectual Property.** User understands and acknowledges that Columbia shall make no claim to intellectual property created by the User based solely on the User's prior know-how without (i) the contribution of Columbia researchers, staff or other personnel beyond the reasonable service performing described in this document and/or (ii) the use of Columbia

confidential information. User acknowledges that any intellectual property developed in the Shared Lab which is not relating solely on the users materials and prior know-how is subject to the existing intellectual property rights of Columbia and other third parties and Columbia makes no guarantee or warranty that any intellectual property developed in the Shared Lab is not covered by Columbia's or any third party's existing intellectual property rights. Except as otherwise expressly provided herein, no right or license has been provided by Columbia to User, under any tangible or intellectual property, materials, patent, patent application, trademark, copyright, trade secret, know how, technical information, data or other proprietary right.

8. **Payment.** User acknowledges the responsibility for payment to Columbia for (i) Shared Lab facility equipment use fees, which shall be determined in Columbia's sole discretion; (ii) costs of supplies and materials provided by Columbia (i.e. "set up charges"); and (iii) fees for Shared Lab staff time performing the work using the Shared Lab equipment and processes. Payment will be made in full by User for such costs and payment within thirty (30) days of receipt of an invoice by Columbia. No terms in any invoice or form provided by Columbia shall be construed to change any of the terms and conditions herein, which shall govern in case of any inconsistency.

9. **Insurance.** The User is not an employee of Columbia and understands and acknowledges that Columbia does not provide worker's compensation or other liability coverage for the User's benefit. User shall have his/her own health and accident insurance and will carry business liability insurance in the minimum amount of coverage of \$2,000,000.

10. **Security of User Property; Confidentiality.** The User acknowledge sole responsibility for his/her personal property, which may include but is not limited to materials, devices, notebooks, chemicals, glassware, and other supplies, and any intellectual property or proprietary/confidential information that resides therein. Columbia University will keep confidential all information disclosed to the affiliate performing the services described in this agreement for the purpose of performing the service. Columbia University shall not use the information except to perform the services and will disclose the information only to its officers and employees directly concerned with carrying out the services but will not disclose the information to a third party or use it for any other purpose.

11. **Liability:** The User understands that entering the Shared Lab facility may involve exposure to potentially hazardous conditions including but not limited to chemical, mechanical, electrical, thermal, and radiation hazards. User will release, indemnify, and hold harmless Columbia, its faculty, officers, researchers, students, agents and employees from any and all claims, damages, costs (including responsible attorney fees) and liabilities arising out of User's presence in and use of the Shared Lab, except to the extent that a court of competent jurisdiction determines that such claims, damages, costs and liabilities directly arise from the gross negligence or willful

misconduct of Columbia. Columbia University will not be liable for financial damage caused to the user by delays in the services supplied.

12. **Force Majeure:** Neither the user nor Columbia University shall be liable for failure of or delay in performing obligations in this agreement, nor neither shall be deemed in breach of its obligations, if such failure or delay is due to natural disasters or any causes reasonably unforeseen or beyond the control of the user and Columbia University.

13. **Use of Name.** Except to acknowledge in publications and presentations that the User's services were performed in the Shared Lab as set forth as described above, User will not use Columbia's name in any manner without the prior written consent of Columbia. User will not use the logos or symbols of Columbia or any of its departments or facilities for any reason whatsoever without Columbia's prior written consent.

14. **Governing Law.** These terms and conditions will be construed in accordance with and governed by the laws of the State of New York without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New York to the rights and duties of the Parties.

USER

Columbia University

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Name:

Name:

Title:

Title:

Date:

Date: