



TERMS AND CONDITIONS OF USE

Terms and Conditions of Use for the Advanced Science Research Center NanoFabrication Facility (“ASRC NanoFab”) at The City University of New York (“CUNY”) by _____ (“User”), an employee of _____ (“Institution”).

1. Background.

This document will serve to establish the terms and conditions under which the User from Institution shall use the ASRC NanoFab at CUNY. By signature and approval of this document, the Institution and User have read, understood and agreed to the terms of this document; have been provided information by the ASRC NanoFab regarding the use of facilities, including safety training, and have reviewed and understand such information; and have been given the full opportunity to ask the CUNY and ASRC NanoFab questions it may have about such information.

2. Access to ASRC NanoFab Facility.

a. User understands that access to the ASRC NanoFab is subject to availability, which is determined in CUNY’s sole discretion, and if access is granted, such access and use is subject to the terms and conditions set forth herein.

b. User understands and acknowledges that as a non-CUNY researcher, student or employee, CUNY researchers shall have priority over User’s access to equipment or instruments in the ASRC NanoFab in the following order: (i) CUNY researchers conducting research funded by a federal grant to CUNY shall have priority on any equipment or instrument purchased by a federal grant; and (ii) CUNY researchers conducting research within the scope of their service to CUNY.

c. User understands that the period of time in which s/he may access the ASRC NanoFab will be determined by CUNY and may be terminated by CUNY in its discretion.

3. User Obligations.

a. The User represents and warrants that s/he has read, understood and agreed to the terms and conditions set forth herein and has been provided with information by CUNY regarding the use of the ASRC NanoFab, including safety training and the NanoFab Rules of Conduct. The User represents that s/he is trained in general chemical safety before using such chemicals, and in the operation of particular equipment and instruments required by his/her work and further represents that his/her knowledge of laboratory practices is sufficient to permit the safe pursuit of the work in conjunction with User’s research project in ASRC NanoFab. Notwithstanding the foregoing, User will abide by the usage and safety provisions set forth by CUNY and will comply with any training or testing required by CUNY for access to the ASRC NanoFab. User assumes sole responsibility the personal safety of the User and CUNY will not be responsible for any medical expenses that the User may incur. Prior to accessing the ASRC NanoFab, User will notify CUNY if any work to be conducted in the ASRC NanoFab is

funded by a federal grant and the federal agency providing such funding. **User understands and agrees that CUNY shall have the right to immediately prohibit use of the ASRC NanoFab if CUNY, in its sole discretion, believes that the User has breached any of the terms, representations and/or warranties of this provision.**

b. The User certifies that, where appropriate, acknowledgement will be given to The City University of New York Advanced Science Research Center NanoFabrication Facility in any of User's publications or presentations that result from work performed with ASRC facilities or staff.

c. The User will use his/her best efforts to operate all equipment and instruments in a safe and professional manner. User acknowledges that User is responsible for the progress and results of his/her project and NO WARRANTY OR PROMISE HAS BEEN MADE BY CUNY THAT ANY SPECIFIC OR USEFUL RESULT OF ANY WORK PERFORMED IN THE ASRC NANOFAB WILL BE ACHIEVED.

d. The User will not under any circumstances schedule time for use of the ASRC NanoFab by any other user in the User's name, give out the User's user name and/or password for use of the ASRC NanoFab by other users, or assist other users with access to the ASRC NanoFab. Failure to comply with this provision will result in immediate termination of User's rights to use the ASRC NanoFab.

4. **Intellectual Property.** User acknowledges that any intellectual property developed in the ASRC NanoFab is subject to the existing intellectual property rights of CUNY and other third parties and CUNY makes no guarantee or warranty that any intellectual property developed in the ASRC NanoFab is not covered by CUNY's or any third party's existing intellectual property rights. Notwithstanding the foregoing, CUNY shall make no claim to intellectual property created by the User based solely on the User's use of the ASRC NanoFab and without (i) the contribution of CUNY researchers, staff or other personnel, (ii) the use of CUNY proprietary or confidential information, and (iii) the unreimbursed use of CUNY resources (including without limitation equipment, supplies, or services) at a level not ordinarily used by or available to all users of the ASRC NanoFab. Except as otherwise expressly provided herein, no right or license has been provided by CUNY 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.

5. **Payment.** User acknowledges the responsibility for payment to CUNY for (i) ASRC NanoFab facility use fees, which shall be determined in CUNY's sole discretion; (ii) costs of supplies and materials provided by CUNY; and (iii) fees for ASRC NanoFab staff time related to instruction and support of ASRC NanoFab equipment and processes incurred by the User for use of the ASRC NanoFab. Current User fees can be found on the ASRC NanoFab website: <http://nanofab.asrc.cuny.edu/billing/equipment-rates/>. Payment will be made in full by User for such costs and payment within thirty (30) days of receipt of an invoice by CUNY. No terms in any invoice or form provided by CUNY shall be construed to change any of the terms and conditions herein, which shall govern in case of any inconsistency.

6. **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. The User acknowledges that CUNY has no obligation to preserve the confidentiality of any information User may disclose to CUNY faculty, researchers, students, staff or other employees or other users of the ASRC NanoFab.

7. **Conduct.** While on CUNY's premises, User shall comply with all security practices and workplace policies and procedures prescribed by CUNY. User acknowledges that CUNY may require him/her to leave CUNY's facilities, which is not limited to the ASRC NanoFab, if the User has violated CUNY policies or procedures or if CUNY reasonably believes that User's conduct is inappropriate.

8. **Liability; Indemnification.** The User assumes all risks and liability arising from his/her use of and access to ASRC NanoFab. User acknowledges that s/he will be financially liable for damage to equipment or other property resulting from the negligence or willful misconduct of the User. The User understands that use of ASRC NanoFab facilities 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 CUNY, 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 use of the ASRC NanoFab, except to the extent that a court of competent jurisdiction determines that such claims, damages, costs and liabilities directly arise from the negligence or willful misconduct of CUNY.

9. **ASRC NanoFab Requirements.** The User certifies that he or she will not, under any circumstances, schedule time for facility use for another user in the User's name (whether other user is qualified or not), give out the User's ASRC NanoFab User Name and/or Password for use by other users, or give other users access to the User's facility access swipe card or otherwise assist others with access to any controlled facility. ASRC NanoFab reserves the right to deny future access to the User in the event of willful breach of this policy. Anyone using a facility must be a fully qualified ASRC NanoFab User.

10. Except to acknowledge in publications and presentations that the User's work was performed in the ASRC NanoFab as set forth in Section 2b above, User will not use CUNY's name in any manner without the prior written consent of CUNY. User will not use the logos or symbols of CUNY or any of its departments or facilities for any reason whatsoever without CUNY's prior written consent.

11. 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.

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The User warrants that they have fully read and consent to the terms of this Agreement.

USER:

(Signature)

Name: _____

Title: _____

Date: _____

Principal Investigator:

(Signature)

Name: _____

Title: _____

Date: _____

***Return a signed hard copy to Celeste Ayala (ASRC room G.344) or send digitally to celeste.ayala@asrc.cuny.edu.**