

# PRITZKER NANOFABRICATION FACILITY FACILITIES USE AGREEMENT

This Facilities Use Agreement (this "**Agreement**") is made as of \_\_\_\_\_ (the "**Effective Date**"), by and among The University of Chicago, having a principal place of business at 5801 S. Ellis Avenue, Chicago, IL 60637 (hereinafter "**University**"), \_\_\_\_\_, having a place of business at \_\_\_\_\_ (hereinafter "**Institution**"), and \_\_\_\_\_ an individual residing at \_\_\_\_\_ (hereinafter "**User**") with reference to the following facts:

WHEREAS, University owns and operates the Pritzker Nanofabrication Facility located on Lower Level 1 (LL1) at 5640 S Ellis Avenue in the William Eckhardt Research Center ("**ERC**") on the University campus (the "**Facility**");

WHEREAS, User is not a University student, faculty or staff member and is an employee or agent of Institution; and

WHEREAS, Institution and User request permission to access and use certain University-owned equipment located in the Facility for purposes approved in writing and in advance by the University ("**Purpose**"); and

WHEREAS, User is working on a project under the direction of \_\_\_\_\_ ("**Principal Investigator**")

WHEREAS, University is willing to permit the User to access and use the Equipment for the Purpose for a fee as denoted herein, subject to the Institution's and the User's agreement to and compliance with the terms and conditions stated in this Agreement.

NOW THEREFORE, in consideration of the following mutual undertakings and commitments, the parties agree as follows:

## 1. DEFINITIONS

- 1.1. "**Equipment**" means only those tools and equipment that Facility staff affirmatively authorize User to use.

## 2. GRANT

- 2.1. Grant of Access. Subject to User's and Institutions continued compliance with the terms and conditions of this Agreement, University grants User a limited, revocable permission to access and use the Equipment in the Facility solely for the Purpose during the Term (as defined in Section 3.1). Principal Investigator represents and certifies that they approve of User's use of the Facility for the project.
- 2.2. Use of Equipment. User will not use any equipment or tools in the Facility without having first received appropriate training from PNF staff. User will not use any equipment or tools in the Facility other than the Equipment.
- 2.3. Additional Users. Should Institution wish to add additional Users after the execution of this Agreement, such additional Users may be added upon execution of the Additional User Agreement attached hereto as Exhibit A.

## 3. ACCESS TO FACILITY; TERM

- 3.1. Term. The term of this Agreement begins on the Effective Date and ends on June 30, \_\_\_\_\_. The parties may extend this Agreement by mutual agreement for subsequent one-year periods (the initial term and any extensions are collectively referred to herein as the "**Term**").

Prior to any extension of the Term, User may be required to complete additional training or certification.

### 3.2. Suspension; Termination.

3.2.1. University may suspend or revoke User's permission to use the Equipment and the Facility at any time with or without cause.

3.2.2. University may terminate this Agreement: (i) without cause upon ten (10) business days' notice to User and Institution, and (ii) immediately upon written notice from University in the event of User's or Institution's breach of this Agreement.

3.3. Cessation of Employment/Agency. User's permission to use the Equipment and the Facility automatically terminates in the event User is no longer an employee or agent of Institution. Institution and User will promptly notify University in writing in the event User's employment or agency ceases.

3.4. Vacation upon Termination or Expiration. Promptly after the end of the Term or upon revocation or termination of User's permission to use the Equipment or the Facility, User will immediately cease using the Equipment and leave the Facility and immediately remove all of his or her personal property and shall immediately return all University property, including but not limited to any identification cards.

## 4. COMPLIANCE WITH RULES AND POLICIES

4.1. Compliance with Applicable Laws. User will comply with all applicable laws in its use of the Equipment and Facility or while otherwise present in University's facilities or on University's campus.

4.2. U.S. Export Regulations. User shall not commit any act or cause any person to commit any act that would cause University to violate any U.S. export control regulations. User shall take any and all actions within its ability to comply with such regulations and to provide assistance to University in complying therewith.

4.3. Hazardous Materials and Activity. Without the express written permission of the University, User will not transport, store, or use any materials in, or conduct any activity in, the Facility or otherwise in University's facilities or on its campus that could be hazardous to, or present a danger to, persons or animals or any equipment, facilities, or other real or personal property. Without limiting the foregoing, User will not transport, store, or use any materials in the Facility that are not on the Facility's approved materials list or authorized in advance by the University in writing.

4.4. Policies and Guidelines. User will comply with all applicable laws and University rules and regulations, including those set forth at [pnf.uchicago.edu/safety-policies/](http://pnf.uchicago.edu/safety-policies/) and will follow the directions and instructions of University personnel. These rules, regulations and policies are subject to change at the discretion of University.

4.5. Inspection. University and its personnel may enter the Facility and examine the Facility and Equipment at all reasonable times to verify User and Institution's compliance with this Agreement.

## 5. FEES AND COSTS

5.1. Fees. Institution will pay all access fees, use fees and materials costs incurred by the User in his/her use of the Equipment and Facilities. A listing of the current fees can be found at

[pnf.uchicago.edu/about/rates/](http://pnf.uchicago.edu/about/rates/). These fees are subject to change at the discretion of University. In addition to the above, the Institution shall also pay for the cost of any University supplied consumables used by User.

- 5.2. Invoicing and Payment. University may invoice Institution on a monthly basis in arrears and upon the end of the Term. Institution shall pay all undisputed invoices within thirty (30) days of receipt of such invoice. Late payments will accrue interests at the greater of one percent (1%) per month or the maximum amount permitted under applicable law. Checks, payable to the University of Chicago, should be mailed to: University of Chicago, PNF Receivables, 5640 S Ellis Avenue, Chicago, IL 60637.

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1. Ownership of Intellectual Property Rights. All intellectual property rights conceived, derived, reduced to practice, made or developed solely by User in the course of User's approved use of the Equipment or Facility under this Agreement ("**User Intellectual Property**") will be owned by User. To the extent University obtains any right, title, or interest in or to any User Intellectual Property, University hereby assigns such right, title, or interest to User. The University makes no, and hereby disclaims all, representations or warranties, whether express or implied, with respect to such right, title, or interest, including with respect to University's title thereto or that any User Intellectual Property does not infringe, are merchantable, or are fit for a particular purpose.

## **7. CONFIDENTIALITY**

- 7.1. User Responsibility. User is solely responsible for securing and maintaining the confidentiality of any of User's or Institution's proprietary information possessed or used at the Facility. User is prohibited from accessing or attempting to access any research data or other confidential information possessed or maintained by any University researcher, any sponsor of research at the Facility, or any other user of the Facility.

## **8. RELATIONSHIP BETWEEN THE PARTIES**

- 8.1. Independent Parties. All work performed by User using Equipment and/or at the Facility shall be under User's or Institution's sole direction and control and shall be entirely independent of any University activities. This Agreement does not establish a partnership or joint venture between the parties. This Agreement does not confer any intellectual property license or license option of any kind with respect to any intellectual property. Neither party is, or shall represent itself to be, the agent or employee of the other for any purpose.

## **9. REPRESENTATIONS AND WARRANTIES.**

- 9.1. Institution's Representations and Warranties. Institution represents and warrants to the University:
- 9.1.1. User is an employee or agent of Institution and is acting within the scope of his or her employment or agency in his or her use of the Equipment and Facilities.
- 9.1.2. Institution has the full power and authority to enter into this Agreement and, once signed by Institution, this Agreement will be binding upon Institution.

## **10. WARRANTY DISCLAIMER AND LIMITATION OF DAMAGES**

- 10.1. NO WARRANTY FOR EQUIPMENT AND FACILITY. THE EQUIPMENT AND FACILITY AND THE RESULTS OF THE USE THEREOF ARE PROVIDED ON AN "AS IS",

“WHERE IS” BASIS, AND THE UNIVERSITY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. USER ASSUMES THE ENTIRE RISK THAT ANY EQUIPMENT, OR THE FACILITY, DOES NOT SATISFY USER’S NEEDS OR EXPECTATIONS IN ANY RESPECT, REGARDLESS OF WHETHER ANY DEFECT OR DEFICIENCY IS CAUSED IN WHOLE OR IN PART BY UNIVERSITY’S NEGLIGENCE OR OTHER FAULT. ALTHOUGH UNIVERSITY PROVIDES GENERAL SAFETY COURSES AND TRAINING ON THE SAFE USE OF SPECIFIC EQUIPMENT, THE USER ASSUMES RESPONSIBILITY TO PLAN AND PERFORM WORK IN SUCH A WAY AS TO ENSURE HIS/HER OWN PERSONAL SAFETY AS WELL AS THE SAFETY OF OTHERS IN THE FACILITY.

- 10.2. Limitation of Liability. The University shall not be liable hereunder for consequential, indirect, incidental, special or punitive damages (including lost profits or savings), even if it has been advised of their possible existence, whether in contract, tort (including negligence), products or strict liability or any other form of action. In no event shall the total and cumulative liability of the University arising out of or related to this Agreement and the activities contemplated hereunder exceed the total amounts paid to the University by User and Institution under this Agreement.

## **11. INDEMNIFICATION AND INSURANCE**

- 11.1. Joint and Several Liability. Institution is fully responsible for, and will be primarily, and jointly and severally, liable to University for, all acts, errors or omissions of User. Institution shall immediately reimburse University for the full cost of repair or replacement of any Equipment, or any other University property, which is damaged, destroyed or stolen by User or other Institution personnel. University shall use its reasonable judgment in determining whether damaged Equipment or other property should be repaired or replaced.
- 11.2. Indemnification. Institution and User will indemnify, defend and hold harmless University and its affiliates, officers, employees, agents, and trustees from and against all costs (including, but not limited to, reasonable attorneys’ fees and litigation costs), claims, disputes, litigation and judgments, which arise from or in connection with: (i) User’s use of the Equipment or the Facility or presence on the premises of the University; (ii) User’s or Institution’s breach of this Agreement; or (iii) any use by User or Institution of any tangible or intangible products, materials, or data resulting from User’s use of the Equipment or Facility (collectively “**Losses**”). Should Institution be a public/governmental entity that is prohibited or restricted by law in its ability to provide indemnification, Institution shall release and hold Chicago harmless, to the extent permitted by law, from all Losses.
- 11.3. Insurance.
- 11.3.1. User will at all times carry health and/or accident insurance coverage that will cover any personal injury that he or she may sustain while at the University, regardless of cause, and shall provide proof of such insurance upon request. User shall not attempt to claim coverage under any University insurance policy or University self-insurance program.
- 11.3.2. Institution’s insurance coverages shall include General Liability, Automobile Liability when applicable, Workers’ Compensation and Employers Liability with minimum limits of \$1,000,000 per occurrence (statutory for Workers’ Compensation). The University of Chicago, University of Chicago Medical Center, and their affiliates, their officers, directors, trustees, volunteers, agents and employees shall be named as additional

insureds under the General Liability and Automobile Liability policies. Institution will provide proof of such insurance upon request. The certificates are to be signed by a person authorized by the insurer to bind coverage on its behalf. University reserves the right to require certified copies of endorsements affecting coverage required by this insurance clause.

## **12. GENERAL**

- 12.1. Notice. Any notice pursuant to this Agreement should be made in writing and delivered as to the applicable party at the address set forth in the preamble.
- 12.2. Force Majeure. University shall be excused from performance and shall not be liable for any delay, in whole or in part, caused by the occurrence of any contingency beyond the University's reasonable control. These contingencies include war, sabotage, terrorism, insurrection, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, unavailability, slowdown or restrictions of any equipment or third party systems, act of any government or agency, accident, fire, explosion, flood, severe weather or other act of God, or shortage of labor or fuel or raw materials.
- 12.3. Applicable Law/Venue. This Agreement shall be governed by and construed in accordance with Illinois law (without reference to its choice of law principles) and the United States of America. Jurisdiction and venue for the interpretation and/or enforcement of this Agreement shall be in a District Court of the State of Illinois located in Chicago, Cook County, Illinois. By executing this Agreement, both parties hereby consent to the jurisdiction of the District Courts located in Chicago, Cook County, Illinois.
- 12.4. Use of Names. Neither User nor Institution will use the name, trade dress, or trademark of University or its employees in any publicity, advertising, or news release. Neither User nor Institution will under any circumstances advertise or otherwise publicly state or imply that University has tested or approved any product or process.
- 12.5. Modification. This Agreement may not be modified except in a written instrument signed by authorized representatives of all parties hereto.
- 12.6. Severability. If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then the validity or the unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, and all other provisions shall remain in full force and effect. If any of the provisions of this Agreement is held to be excessively broad, it shall be reformed and construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by law.
- 12.7. Entire Agreement. This Agreement constitutes the entire agreement among the parties and supersedes all previous negotiations and agreements, written or oral, among the parties with respect to the subject matter hereof.
- 12.8. Assignment. Neither party may assign or transfer this Agreement or any rights or obligations hereunder.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the dates written below.

**USER****INSTITUTION****UCHICAGO**

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_

Read and Acknowledged

PRINCIPAL INVESTIGATOR

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved (internal use only)

TECHNICAL DIRECTOR

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Start Date: \_\_\_\_\_

## Exhibit A

### Additional User Agreement

This Additional Use Agreement is made as of \_\_\_\_\_ (the "**Effective Date**"), by and among The University of Chicago, having a principal place of business at 5801 S. Ellis Avenue, Chicago, IL 60637 (hereinafter "**University**"), \_\_\_\_\_, having a place of business at \_\_\_\_\_ (hereinafter "**Institution**"), and \_\_\_\_\_, an individual residing at \_\_\_\_\_ (hereinafter "**Additional User**") with reference to the following facts:

WHEREAS, University and Institution entered into a certain Facilities Use Agreement dated \_\_\_\_\_ (the "**Prime Agreement**"); and

WHEREAS, University and Institution desire to add the Additional User as a User under the Prime Agreement.

NOW THEREFORE, in consideration of the following mutual undertakings and commitments, the parties agree as follows:

University represents and certifies that the Principal Investigator (as defined in the Agreement) has approved of Additional User being added as a User under the Prime Agreement.

Additional User agrees to be bound and comply with all terms and conditions of the Prime Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the dates written below.

**USER**

**INSTITUTION**

**UCHICAGO**

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_

Approved (internal use only)

TECHNICAL DIRECTOR: Initials: \_\_\_\_\_ Start Date: \_\_\_\_\_