

**NANOSCIENCE @ UNIVERSITY OF NEW MEXICO
FACILITIES USE AGREEMENT**

This Facilities Use Agreement (Agreement) is made and entered into between The Regents of the University of New Mexico, a New Mexico state educational institution (“UNM”) and _____ (“User”). User has a project approved under the UNM Service Center program sponsored by Nanoscience @ UNM. This Agreement establishes the terms and conditions under which User and/or User’s employees and agents shall use the Nanoscience at UNM laboratory facilities, located at the Earth and Planetary Science department (Transmission Electron Microscope Laboratory), Center for High Technology Materials (Cleanroom, Interferometric Lithography and Molecular Beam Epitaxy) and the Center for Microengineered Materials, (Scanning Electron Microscope, X-Ray Photoelectron Spectrometer and Small Angle X-Ray Scattering). User’s employees and agents covered by this Agreement will sign and acknowledge this Agreement. The parties intend for this document to constitute a legally binding Agreement.

1. Background. By signature and approval of this Agreement, User represents that an authorized official of User has read, understood and agreed to the terms of this Agreement, and that User agrees to use UNM facilities in accordance with written procedures established by UNM for the operation of its facilities including any training provided by UNM (collectively “Operating Procedures”). User further represents UNM has provided it with information regarding the use of UNM laboratory facilities, including copies of the Operating Procedures, and that User has reviewed and understands such information and has had the opportunity to ask UNM any questions it may have about such information.
2. Nanoscience @ UNM Facility. These facilities are available to User under the auspices of UNM’s Service Center program but are entirely subject to the terms of this Agreement.
3. Project Terms.
 - a.) Description of Work. User shall provide to UNM a written description of the work it proposes to conduct at UNM prior to beginning such work. UNM must approve the work project (the “Project Proposal”) in writing prior to the start of the work and UNM must also agree in writing to any material change from the Project Proposal.
 - b.) Equipment and Facilities. UNM shall make equipment and facilities available to User in accordance with the equipment/facilities list and fee schedule attached hereto as Exhibit A. User may use the equipment and facilities to carry out the Project Proposal.
 - c.) Payment. UNM shall invoice User for costs incurred for use of said equipment and facilities as determined under UNM’s fee structure as in the Exhibit A attached hereto, and User shall make payment in full within thirty (30) days thereof. No terms in any form prepared by User, including purchase orders, shall be construed to change any term in this Agreement, and the terms of the Agreement shall strictly govern in the event of an inconsistency. If User fails to pay invoices within ten (10) days after they are due, and such failure continues for five (5) days after UNM has given User notice of such failure, User shall be considered in default under the Agreement.
 - d.) WAIVER OF WARRANTIES. THE USER ACKNOWLEDGES THAT IT RETAINS ULTIMATE RESPONSIBILITY FOR ITS PROJECT’S PROGRESS AND DEVELOPMENT AND THAT UNM DOES NOT IN ANY WAY WARRANT OR ASSURE A PARTICULAR PROJECT’S RESULTS OR THAT THE RESULTS WILL BE COMMERCIALY VIABLE, SUCCESSFUL OR USEFUL. THE USER AND ITS EMPLOYEES AND AGENTS FULLY UNDERSTAND AND AGREE THAT ANY WORK DONE, OR SERVICES PROVIDED BY UNM ARE ON A REASONABLE EFFORT BASIS. UNM DOES NOT WARRANT OR GUARANTEE ANY RESULTS FOR ANY GIVEN PROJECT, ANY COMMUNICATIONS FROM UNM EMPLOYEES, PAST OR FUTURE, NOTWITHSTANDING. THE USER ACCEPTS FULL RESPONSIBILITY FOR THE PROGRESS AND RESULTS OF ITS PROJECT.

- e.) Basic Technical Support (price included). The fee schedule in Exhibit A includes basic technical support and basic training of User's employees and agents in the use of designated equipment or tool sets by UNM. Before the start of work on the project, User and the appropriate lab manager shall prepare a work-plan to guide User's use of the facilities and equipment and suggesting time using the facilities and equipment. This work-plan shall be a guideline and not binding on the parties. UNM will provide baseline process parameters, if available and requested, for User to use in carrying out the Project Proposal.
 - f.) Assisted Technical Support (based on fee schedule). Technical support services to operate a tool on behalf of User are available to User on an ad hoc basis, subject to UNM's approval. Use of such technical support services will incur additional fees in accordance with Assisted rates on Exhibit A. Those fees will be included in UNM's invoice and shall be paid by User pursuant to the subparagraph on Payment above.
 - g.) Additional Technical Support. If User requires more support or services in addition to those described in Exhibit A, such as, for instance, help developing an equipment recipe, then User and UNM may reach agreement on such services that UNM is willing to provide and appropriate compensation rates in a separate written agreement.
4. Status of User employees. User understands that its agents and employees are not UNM employees and that UNM provides no Workers' Compensation or other liability insurance coverage for User's benefit. User's employees/agents are deemed to be acting as representatives and employees of User for all purposes during work in the UNM facilities. User shall provide Worker's Compensation health and accident insurance for all its agents and employees and UNM will not be responsible for any medical expenses that the agents/employees may incur and User agrees to bear full responsibility for any liability resulting therefrom. User shall maintain insurance coverage with respect to both Worker's Compensation and General Liability Insurance, and will provide UNM with at least thirty (30) days' advance notice of any change thereto. User shall maintain such coverage in an amount not less than the limits of the New Mexico Tort Claims Act, which currently total \$1,050,000.
5. User Safety. While UNM will inform User regarding general safety policy prior to being allowed to use the laboratory facilities, User assumes primary responsibility for the personal safety of its employees/agents. UNM expects that User will operate all instruments and equipment in a safe and professional manner, consistent with the Operating Procedures. User warrants that its employees' and agents' knowledge and training is adequate so that they can safely conduct the work under User's specific research project, or that they shall request appropriate assistance from UNM personnel. UNM shall have the right to immediately prohibit further use by any employee or agent of User if UNM, in its sole discretion, believes that User has breached this representation with regard to any particular employee or agent.

User shall not bring onto any UNM facility chemicals or other hazardous materials without first obtaining written consent of the facility manager. User shall disclose in writing all such chemicals and other hazardous materials brought onto the UNM facility, including amounts, dates, and disposition. User agrees to abide by UNM policies on the storage, handling and disposition of all hazardous materials.

6. Liability. To the extent permitted by applicable law, User shall defend, protect, indemnify and hold UNM its officers, employees and agents harmless from and against any and all liabilities, claims, actions, losses, damages, expenses (including reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement except in such instances where a court of competent jurisdiction has determined that such liabilities, claims, losses, expenses, attorney's fees or claims for injury and damages are caused solely by the negligent or intentional acts or omissions of UNM. UNM shall have no liability with respect to any loss, damages or claims incurred by the User or its employees/agents in connection with User's use of the facilities described. Notwithstanding anything to the contrary in this Agreement, UNM's liability hereunder shall be limited to amounts and by the immunities of the New Mexico Tort Claims Act, Section 41-4-1 et seq. NMSA 1978.

7. Warranties of User. The User, by completion of this Agreement hereby warrants that it:
- a.) has been provided with a copy of the Operation Procedures,
 - b.) has had the opportunity to ask any questions he/she might have about the procedures, policies, rules and/or guidelines of the Service Center Program,
 - c.) has received and understands the answers to those questions,
 - d.) has been provided with the UNM fee structure for the use of laboratory facilities,
 - e.) has fully read and agrees with this Agreement, and
 - f.) if necessary for work project covered by this Agreement, has obtained any required export licenses under Commerce Department or Department of State regulations and any other necessary regulatory approvals.
8. Governing Law & Venue. Each party hereby consents to the jurisdiction of the courts of the State of New Mexico, Bernalillo County, and the jurisdiction of the US District Court for the District of New Mexico for the purpose of any suit, action, or other proceedings arising out or based upon this Agreement or the subject matter thereof. Each party agrees that it shall bring any such proceeding only in such courts. This Agreement shall be construed under the laws of the State of New Mexico.
9. Termination of Agreement. This Agreement shall have a duration of ninety (90) days renewable indefinitely. This Agreement shall be deemed to be renewed for an additional ninety (90) days unless UNM provides written notice of nonrenewal prior to the end of the preceding term. Any such notice of nonrenewal shall include a ten (10) day extension of the term for close out purposes. UNM shall have the right to terminate the Agreement without cause upon thirty (30) days written notice to User. UNM shall have the right to terminate the Agreement immediately upon written notice to User that User is either in default under Section 3(c) above, or is in violation of any of its covenants under this Agreement.
10. Intellectual Property. A separate Confidentiality Agreement shall govern any confidential or proprietary information exchanged between the parties.
11. Acknowledgement. User agrees to acknowledge the use of Nanoscience @ UNM in any publications or presentations resulting from User's work carried out in these facilities.

Nanoscience @ UNM Acknowledgement

Nanoscience @ UNM is supported by the Center for High Technology Materials, the Center for Micro-Engineered Materials and the Dept of Earth and Planetary Sciences.. This support should be acknowledged in publications and presentations that are made possible by work performed at Nanoscience @ UNM.

For papers, a suggested acknowledgement reads:

This work was performed in part at the Nanoscience @ UNM facility.

In presentations, listing the Nanoscience @ UNM facility along with your other acknowledgements will suffice.

NANOSCIENCE @ UNIVERSITY OF NEW MEXICO FACILITIES USE AGREEMENT
SIGNATURE PAGE

<p>The Regents of the University of New Mexico</p> <p>Approval by: _____</p> <p>Signature: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>User Organization</p> <p>Approval by: _____</p> <p>Signature: _____ (authorized official)</p> <p>Title: _____</p> <p>Date: _____</p>
---	---

The following Employees/Agents of User acknowledge they have read the foregoing and understand their obligation hereunder:

Name: _____ Signature: _____ Date: _____

Name: _____ Signature: _____ Date: _____

Name: _____ Signature: _____ Date: _____

Name: _____ Signature: _____ Date: _____

Name: _____ Signature: _____ Date: _____