

Birck Nanotechnology Research Center Facilities Use Agreement

This Facilities Use Agreement ("Agreement"), effective on the date last signed (the "Effective Date"), is entered into by and between Purdue University on behalf of its Birck Nanotechnology Center located at 1205 West State Street, West Lafayette, Indiana 47907 ("Purdue") and _____, a _____ with its principal offices in _____ ("Contractor").

WHEREAS, Contractor desires to utilize certain Equipment (as defined below) which is owned by Purdue and located in the Facilities (as defined below) in order to assist Contractor in pursuit of its own projects; and

WHEREAS, Purdue is willing to allow Contractor to have access to the Facilities and to utilize the Equipment under 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. Term and Termination

1.1 Term The term of this Agreement shall begin on the Effective Date and shall continue until terminated under Section 1.2 below.

1.2 Termination This Agreement shall terminate on the earlier of (i) _____, or (ii) 15 days after either party receives written notice from the other party terminating this Agreement. Either party shall have the right to provide such notice at any time, with or without cause.

1.3 Immediate Termination This Agreement will terminate immediately in the event of a rules violation or negligent act by Contractor.

2. Equipment Usage

2.1 Equipment While this Agreement remains in effect, Contractor may request the opportunity to use the specialized equipment owned by Purdue which is (i) identified in **Exhibit A** (the "Equipment and Fees") and (ii) located in Purdue's Birck Nanotechnology Center (the "Facility"). Such requests shall be directed to the Purdue representative who is designated to receive notices under this Agreement on behalf of Purdue.

2.2 Scheduling Upon receiving a request from Contractor to use the Equipment, but subject always to Purdue's own requirements to use the Equipment and the Facility as the first priority, Purdue shall use reasonable efforts to schedule times for the Contractor to have access to the Facility to utilize the Equipment.

2.3 Training Contractor shall provide a list to Purdue of all Contractor employees and other agents (together, "Employees") whom Contractor intends to allow to use Equipment before such use commences. No Employee shall be permitted to use Equipment until Contractor has identified such Employee to Purdue and has demonstrated to Purdue's satisfaction that such Employee is fully trained and competent to use the Equipment. Upon request by the Contractor,

but subject always to the schedules of university personnel, Purdue shall use reasonable efforts to provide training to Employees who need training to become competent to use Equipment.

3. Fees and Costs The Contractor shall pay for the following fees which are outlined in the attached, “**Exhibit A:**” (i) the current usage fees (“**Usage Fees**”) for each item of Equipment which it uses, (ii) the hourly training fees for any training which Purdue provides in connection with the proper use of the Equipment (“**Training Fees**”), (iii) the facility access fees (“**Facility Access Fees**”) for its access to Purdue facilities. The above described Fees are subject to change at the discretion of Purdue. In addition to the above, the Contractor shall also pay for the cost of any Purdue consumables used by Contractor.

4. Invoicing Purdue shall keep an accurate record of Contractor's use of Equipment, of all training provided to Contractor, and of Contractor's consumption of consumables. At the end of each month, Purdue shall prepare and send an invoice to Contractor specifying the Usage Fees, the Training Fees and the costs of consumables used by Contractor during the month then ending. Contractor shall pay the invoiced amounts within _____ days of receipt of an invoice.

5. Compliance With Purdue Rules Contractor and its agents and employees shall at all times (i) observe all Purdue rules and regulations while on Purdue property, including but not limited to rules and regulations designed to protect the safety of persons and property, and (ii) follow the directions and instructions of Purdue personnel with respect to the Contractor's use of the Equipment and the Facility, and otherwise with respect to Contractor's activities while on university property.

6. Contractor’s Security Clearance Requirements

6.1 Requirement. Contractor shall perform security clearance background checks on all officers, agents, or employees of Contractor assigned to have access to Purdue’s facilities to identify whether any such individual is a registered sex offender pursuant to Zachary’s Law, Ind. Code § 11-8-8 et. seq. or the equivalent law of the individual’s state of residence. Contractor shall not assign any individuals identified as registered sex offenders to perform work or services at Purdue’s facilities.

7. Damage to Purdue Property Contractor shall immediately reimburse Purdue for the full cost of repair or replacement of any Equipment, or any other Purdue property, which is damaged, destroyed or stolen by Contractor or its Employees. Purdue shall use its reasonable judgment in determining whether damaged Equipment or other property should be repaired or replaced.

8. Relationship Between the Parties All work performed by Contractor using Equipment and/or at the Facility shall be under Contractor's sole direction and control and shall be entirely independent of any project of Purdue's. This Agreement does not establish a partnership or joint venture between the parties. Contractor shall be an independent contractor for all purposes. Neither party is, or shall represent itself to be, the agent of the other for any purpose.

9. Warranty Disclaimer; Limitation of Damages

9.1 No Warranty

9.1.1 Equipment and Facility Contractor acknowledges and

agrees that the Equipment and Facility are provided for Contractor's use "as is, where is" without warranty of any type or kind, including any warranty that either is merchantable or fit for Contractor's intended use or for any other particular purpose. Contractor assumes the entire risk that any Equipment, or the Facility, does not satisfy Contractor's needs or expectations in any respect, regardless of whether any defect or deficiency is caused in whole or in part by Purdue's negligence or other fault.

9.1.2 Training Contractor acknowledges and agrees that training is required prior to the use of Purdue's Facilities and Equipment.

9.2 Limitation of Damages Purdue shall have no liability to Contractor or any other person or entity under any circumstance for any incidental, special, consequential, punitive or exemplary damages, or for loss of profits, revenues, or other economic loss, regardless or whether or not Purdue knew or had reason to know of the possibility of such damages in advance. Without limiting the generality of the foregoing, Purdue shall have no liability under any circumstance for breach of this Agreement in any amount which exceeds the total of all Usage Fees and Training Fees which Purdue has received from Contractor hereunder.

10. Indemnification and Insurance

10.1 Indemnification Without limiting Contractor's obligations under Section 7 above, Contractor shall indemnify, defend and hold harmless Purdue and its affiliates, officers, employees, agents, and insurers from and against all costs (including, but not limited to, reasonable attorneys' fees and litigation costs), claims, disputes, litigation and judgments, whether alleging bodily injury, property damage, economic loss, or other harm, which arise from or in connection with (i) Contractor's use of the Equipment or the Facility, (ii) breach by Contractor of this Agreement.

10.2 Insurance Contractor shall at all times maintain in force (i) worker's compensation insurance with limits complying with Indiana law, (ii) comprehensive general liability insurance (including product and completed operations coverage) with policy limits of at least \$1,000,000 combined single limit per occurrence for bodily injury and property damage, and (iii) automobile liability insurance with policy limits of at least \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Upon request, Contractor will provide to Purdue duly executed certificates of insurance evidencing these coverages, together with satisfactory evidence of the payment of the premium thereon. Each certificate shall specify that the policy cannot be cancelled without providing Purdue at least 30 days prior written notice, that Purdue is named as an additional insured, and that the insurer waives any subrogation rights against Purdue.

11. General

11.1 Notices Any notice or other correspondence required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been given if: (a) served personally, (b) sent by facsimile with confirmation of receipt, or (c) sent by first class mail, postage prepaid, to the addresses set forth below or to such other addresses as either party hereto may designate by notice to the other party.

If to Purdue (for technical matters): Director of Birck Nanotechnology Center
1205 West State Street
Room 1027B

West Lafayette, IN 47907-2057
Phone: 765-496-6105
Email: tbd

If to Purdue (for contractual matters): Assistant Director, SPS Contracting
610 Purdue Mall, Hovde Hall
West Lafayette, IN 47907
Phone: 765-494-6210
Email: spscontr@purdue.edu

If to Contractor:

11.2 Force Majeure Delay in performing an obligation under this Agreement (other than an obligation to pay money) is not a breach or default to the extent that the delay or failure is due to a cause beyond the reasonable control of the affected party.

11.3 Applicable Law This Agreement shall be governed by and construed in accordance with Indiana law without reference to its choice of law principles.

11.4 Disputes The parties agree that all disputes arising under or in connection with this Agreement shall be resolved in state or federal courts in Tippecanoe County, Indiana. Each party hereby agrees not to commence any action relating to this Agreement or its performance or breach in any other forum, and each party hereby irrevocably waives any claim or argument that a court in Tippecanoe County would lack personal jurisdiction or would constitute an inconvenient forum.

11.5 Modifications This Agreement may not be modified except in a written instrument signed by authorized representatives of both parties.

11.6 Entire Agreement This Agreement constitutes the entire agreement between the parties and supersedes all previous negotiations and agreements, written or oral, between the parties with respect to the subject matter hereof.

11.7 Assignment. Neither party may assign this Agreement without the prior written consent of the other party, which consent may be granted or withheld in the other party's sole discretion.

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

Purdue University

Approved by:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

[contractor name]

By: _____

Title: _____

Date: _____

Exhibit A

Equipment and Fees

[Insert appropriate schedule based on Contractor type]

PURDUE UNIVERSITY
Birck Nanotechnology User Agreement
Design and Processing Services for a Sponsor

This AGREEMENT is made between _____ (Sponsor), and Purdue University on behalf of its Birck Nanotechnology Center (Purdue), 1205 W. State Street, West Lafayette, IN 47907-2057

The Sponsor desires to provide financial support for design and/or fabrication services performed by Birck technical staff as outlined below:

1. **Project Title**

2. **Personnel and Facilities**

Purdue will undertake the Project through its Birck Nanotechnology Center. Purdue's Principal Investigator for the Project is:

Name:

Title:

Address:

Phone:

Email:

3. **Project Period**

This Agreement shall terminate on the earlier of (i) _____, or (ii) 15 days after either party receives written notice from the other party terminating this Agreement. Either party shall have the right to provide such notice at any time, with or without cause.

4. **Financial Support**

The Birck Nanotechnology Center will provide monthly invoice billings based on actual machine time, professional staff time, and other consumables used. Sponsor will remit payment on a monthly basis and understands that the work will be done on a best effort basis with no guarantee of final device results or performance. Upon termination, Sponsor shall pay Purdue for all costs and non-cancelable payment obligations incurred in furtherance of the Project up to and including the date of termination.

5. **Intellectual Property**

Pursuant to published Purdue policy and consistent with Federal Law and U.S. inventorship laws, Purdue maintains that ownership follows inventorship. If Purdue invents the intellectual property, Purdue owns the intellectual property. If Sponsor invents the intellectual property, the Sponsor owns the intellectual property. If both Purdue and Sponsor jointly invent the intellectual property, Purdue and Sponsor jointly own the intellectual property. If pre-existing intellectual property is introduced to project, then before the project begins, Sponsor must obtain a license to use pre-existing Purdue intellectual property from the Purdue Research Foundation. If pre-existing Sponsor intellectual property is introduced to project, Sponsor grants Purdue a limited non-exclusive license (Sponsor License) to use pre-existing Sponsor intellectual property

for the purpose of performing said project; upon completion of the project Sponsor License shall terminate. The original owner of pre-existing intellectual property shall retain full ownership of its pre-existing intellectual property.

6. **Publication Rights**

If not prohibited by a previously executed NDA, the results of the Project may be published and will include credit to the Sponsor for support of the project.

7. **Sponsor Confidential Information**

Should it be necessary for Purdue personnel to receive Sponsor Confidential Information, Sponsor agrees to state in writing at the time of delivery that such information is confidential, or if given orally, reduced to writing, clearly marked as confidential, within 30 days of the oral disclosure. Purdue and its personnel agree to safeguard Sponsor confidential material to the same extent it safeguards its own.

8. **Disclaimer of Warranty**

THE PROJECT RESULTS, REPORTS, DATA, AND DELIVERABLES ARE PROVIDED TO THE SPONSORS "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. **PURDUE SHALL NOT BE LIABLE** FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES SUFFERED BY SPONSOR AS A RESULT OF SPONSOR'S USE OF PROJECT RESULTS, REPORTS, DATA, OR DELIVERABLES.

9. **Publicity**

The parties will not use the name of the other or the other's project staff in any publicity, advertising, or news release without the prior written consent of the other. Sponsor will not state or imply that Purdue has tested or approved any product or process.

10. **Completion**

Purdue will use reasonable efforts to complete the Project on time and in accordance with Appendix A. Because of the nature of this work, Purdue does not guarantee Project completion within the Project Period. Purdue is not obligated to spend any more on the Project than the funds provided by the Sponsor for the Project.

11. **General**

This instrument contains the entire AGREEMENT between the parties with respect to the subject matter hereof. If Sponsor issues a purchase order to initiate the Project, the terms of this AGREEMENT supersede the terms of the purchase order. Modifications to the terms of this AGREEMENT are not valid unless made in writing and signed by authorized representatives of the parties. This AGREEMENT will be governed according to the laws of the State of Indiana.

“SPONSOR”

**“PURDUE”
PURDUE UNIVERSITY**

By: _____

By: _____

Printed Name

Printed Name

Title:

Title

Date: _____

Date: _____

Approved by Director of the Birck Nanotechnology Center:

Name: _____

Title: _____

Date: _____

Sample