

**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 \_\_\_\_\_ (“User”).

**WHEREAS**, User requests permission to access and use certain Purdue-owned Equipment (as defined below) located in the Facility (as defined below) for User’s self-directed research and/or development projects (“Purpose”); and

**WHEREAS**, Purdue is willing to permit User to access and use the Equipment for the Purpose for a fee, subject to 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. Revocable Permission to Access Facility and Use Equipment**

**1.1** Purdue grants User a limited permission to access and use the following Equipment in the following location in the Facility for the Purpose:

\_\_\_\_\_ (specify item of Equipment)  
\_\_\_\_\_ (specify space location in Facility)

User is prohibited from accessing or using any part of the Facility or any Equipment other than as listed. This permission is subject to the terms and conditions specified in this Agreement and subject to all Purdue University policies (as posted at <http://www.purdue.edu/policies/> and made applicable by their terms). User’s permission to use the Equipment in the Facility is revocable by Purdue (i) without cause upon ten business days’ advance notice to User and (ii) with cause by notice effective upon receipt by User.

**2. Equipment Usage**

**2.1 Equipment** While this Agreement remains in effect, User 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 User 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 User to have access to the Facility to utilize the Equipment.

**2.3 Training** User shall provide a list to Purdue of all User employees and other agents (together, “User Personnel”) whom User intends to allow to use Equipment before such use commences. No User Personnel shall be permitted to use Equipment until User has identified such User Personnel to Purdue and has demonstrated to Purdue’s satisfaction that each of the

User Personnel is fully trained and competent to use the Equipment. All User Personnel must (a) be cleared by \_\_\_\_\_, the Birck Safety Officer, for access to the Facility and Use of the Equipment and (b) complete BNC 111 (Birck Orientation and Safety Training) as a mandatory precondition to access the Facility and use the Equipment. Upon request by User, but subject always to the schedules of university personnel, Purdue shall use reasonable efforts to provide training to User Personnel who need training to become competent to use Equipment.

**2.4 Confidentiality** User shall be solely responsible for securing and maintaining the confidentiality of any of User'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 Purdue researcher, any sponsor of research at the Facility, or any other user of the Facility. User shall cooperate with all inquiries, restrictions, and limitations made by Purdue from time to time for the protection and management of confidential information at the Facility. User acknowledges and submits to the application of the Uniform Trade Secrets Act, as codified in Indiana and administered pursuant to the dispute resolution terms specified in this Agreement below, with respect to the determination and remedy of any threatened or actual event of unauthorized access to confidential information.

**3. Fees and Costs** User shall pay 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"), and (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 User shall also pay for the cost of any Purdue-supplied consumables used by User.

**3.1 Collections** Purdue may charge interest at the rate of eight percent (8%) per annum on any amounts owed under this agreement that are not paid in full by the due date. Said interest will begin no earlier than the day after the due date and continue until the amount owed is paid in full. In collection of any indebtedness owed Purdue, Purdue shall be entitled to all additional costs referenced in Indiana Code § 21-14-2-11, as from time to time amended or re-codified. Expenses associated with collection of indebtedness by means of the Indiana State tax set off program shall be added to the indebtedness. Any judgment entered shall be without relief from valuation and appraisal laws. The parties agree that exclusive jurisdiction and venue for any dispute resolution brought under this agreement shall be the courts of Tippecanoe County, Indiana, except as pre-empted by or prohibited by 15 USC 1692i, as hereinafter amended from time to time, other federal statutes, or state laws and regulations, including consumer protection laws but excluding general preferred venue rules or laws. All returned checks, drafts, or orders are subject to a service charge not exceeding the maximum allowed by Indiana law.

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

**5. Compliance With Purdue Rules** User 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 User's use of the Equipment and the Facility, and otherwise with respect to User's activities while on university property.

User acknowledges and confirms User's actual notice of all Purdue University rules and regulations as posted at <http://www.purdue.edu/policies/>. Notwithstanding Purdue University Policy I.A.1, Purdue does not assert any disclosure obligation or ownership claim with respect to intellectual property that is generated solely by User or User Personnel and entirely outside of any Purdue University employment or enrollment of User Personnel.

## **6. User's Security Clearance Requirements**

**6.1 Requirement** User shall perform security clearance background checks on all officers, agents, or employees of User 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. User shall not assign any individuals identified as registered sex offenders to perform work or services at Purdue's facilities.

**7. Damage to Purdue Property** User 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 User or its User Personnel. 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 User using Equipment and/or at the Facility shall be under User's sole direction and control and shall be entirely independent of any Purdue researcher's project. 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 of the other for any purpose.

## **9. Warranty Disclaimer; Limitation of Damages**

### **9.1 No Warranty**

**9.1.1 Equipment and Facility** User acknowledges and agrees that the Equipment and Facility are provided for User's use "as is, where is" without warranty of any type or kind, including any warranty that either is merchantable or fit for User's intended use or for any other particular purpose. 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 Purdue's negligence or other fault.

**9.2 Limitation of Damages** Purdue shall have no liability to User 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 User hereunder.

## **10. Indemnification and Insurance**

**10.1 Indemnification** Without limiting User's obligations under Section

7 above, User 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) User's use of the Equipment or the Facility or (ii) breach by User of this Agreement.

**10.2 Insurance** User 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, User will provide to Purdue duly executed certificates of insurance evidencing these coverages, together with satisfactory evidence of the payment of the premium thereon.

**11. General**

**11.1 Notices** Any notice pursuant to this Agreement should be made in writing and delivered as follows:

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](mailto:spscontr@purdue.edu)

If to User: Address:  
  
Phone:  
  
Email:

**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) and the United States of America. The operation of this Agreement shall at all times be subordinate to federal regulatory requirements for the conduct of research at Purdue University.

**11.4 Disputes** This Agreement shall be deemed to have been executed in the State of Indiana, U.S.A. Any justiciable dispute between Purdue and Sponsor shall be determined solely and exclusively under the substantive law of the State of Indiana by a court of competent

jurisdiction in Indiana, except as pre-empted by or prohibited by 15 USC §1692i, as hereinafter amended from time to time, other federal statutes, or state laws and regulations, including consumer protection laws but excluding general preferred venue rules or laws. 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 Indiana would lack personal jurisdiction or would constitute an inconvenient forum.

**11.5 Use of Names** User will not use the name, trade dress, or trademark of Purdue in any publicity, advertising, or news release. Sponsor will not under any circumstances advertise or otherwise publicly state or imply that Purdue has tested or approved any product or process.

**11.6 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.

**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: \_\_\_\_\_

**[User name]**

By: \_\_\_\_\_

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

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

**Exhibit A**

**Equipment and Fees** : Hourly rate for each equipment