

PURDUE UNIVERSITY
Birck Nanotechnology Center Agreement for
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. Purdue and Sponsor are sometimes referred to below as the Parties.

The Sponsor desires to commission design and/or fabrication services performed by Birck technical staff as outlined below:

1. **Project** _____ (Project)

The services commissioned by Sponsor and resulting designs, data, and materials generated by Purdue in the course of the Project are referred to in this Agreement as “Deliverable Designs, Data, and Materials” and are generally described as:

Additional specifics of the Project budget, staffing, timetable, and deliverables are stated in Appendix A to this Agreement. Sponsor acknowledges that the Project will be performed on a best-effort basis with no guarantee of final device results or performance.

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:

Principal Investigator is an employee of Purdue, and Purdue is an independent contractor to Sponsor.

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. Termination of this Agreement by either party for any reason will not affect the rights and obligations of the Parties accrued under this Agreement prior to the effective date of termination.

4. **Financial Support**

The Birck Nanotechnology Center will invoice Sponsor monthly based on actual machine time, professional staff time, and other consumables used, in accordance with the Project terms stated in Appendix A. The invoices shall be due and payable upon receipt.

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. All returned checks, drafts, or orders are subject to a service charge not exceeding the maximum allowed by Indiana law.

5. **Intellectual Property**

If and as achieved, Purdue shall deliver any Deliverable Designs, Data and Materials to the sole and exclusive custody of Sponsor. Purdue shall assert no ownership claim to the Deliverable Designs, Data, and Materials but may, upon Sponsor's consent, retain possession of them for agreed-upon purposes.

Sponsor acknowledges that any research inquiry by Principal Investigator or any other Purdue personnel directed to or resulting in any patentable invention is outside the scope of the Project and shall not be subject to any obligation of assignment, license, or license option in favor of Sponsor.

If pre-existing intellectual property (PIP) is necessary for performance of the Project, Sponsor is responsible (at Sponsor's expense) for obtaining any necessary license to the PIP from the PIP owner, whether Purdue Research Foundation or a third-party. To the extent that Sponsor's intellectual property is used in the Project, Sponsor hereby grants Purdue a limited term non-exclusive license to that Sponsor intellectual property for that limited purpose.

6. **Publication Disclosure**

If Principal Investigator or any other Purdue personnel proposes to disclose any Deliverable Designs, Data, or Materials in any publication, Principal Investigator shall submit the proposed publication to Sponsor no less than thirty days before submitting the proposed publication to a third-party, and Sponsor shall be entitled in its discretion to permit, prohibit, or condition the proposed disclosure of the Deliverable Designs, Data or Materials by the Principal Investigator. Any permitted publication by Principal Investigator or any Purdue personnel of any Deliverable Designs, Data or Materials shall include credit to the Sponsor for support of the Project.

7. **Sponsor Confidential Information**

Should it be necessary for Purdue personnel to receive Sponsor's confidential information, Sponsor agrees to state in writing at the time of delivery that such information is confidential, or if given orally, the confidential information shall (within 30 days of the oral disclosure) be reduced to writing and clearly marked as confidential. Purdue agrees to safeguard Sponsor's confidential information to the same extent that Purdue safeguards its own confidential information. Purdue shall, upon request of Sponsor, return Sponsor's confidential information to Sponsor at the conclusion of the Project. In the event the Parties have entered into a Non-Disclosure Agreement or other similar agreement pertaining to confidentiality and the exchange of confidential or proprietary information ("Prior Agreement") the terms and conditions of the Prior Agreement shall govern, control and take precedent over any terms and conditions pertaining the confidentiality and the exchange of confidential or proprietary information contained herein.
8. **Disclaimer of Warranty**

THE DELIVERABLE DESIGNS, DATA, AND MATERIALS AND ANY ACCOMPANYING REPORTS ARE PROVIDED TO THE SPONSOR "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 shall have no obligation to continue the Project beyond the Project budget and shall have no obligation to continue the Project when any Project invoice is past-due.
11. **Use of Purdue Name and Marks**

Sponsor will not use the name, trade dress, or trademark of Purdue, Purdue Research Foundation, or of any of their respective employees, students, directors, trustees or agents, in any publicity, advertising, or news release without the prior written approval of an authorized representative of Purdue. Sponsor will not under any circumstances advertise or otherwise publicly state or imply that Purdue has tested or approved any product or process.
12. **Personnel Compliance**

Sponsor personnel who participate in the Project at a Purdue facility must (a) comply with all published Purdue University policies and procedures applicable to campus visitors and researchers (including as set forth at <http://www.purdue.edu/policies/>), (b)

submit to facility-use training at the direction of Purdue, and (c) not be a registered sex offender.

13. **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

If to Sponsor: _____

14. **Indemnity; Limitation of Liability**

Sponsor agrees to indemnify, hold harmless and defend Purdue University, the Trustees of Purdue University, and their respective officers, directors, trustees, employees and agents (the “indemnified Parties”) against any and all claims, demands, actions, liability and expenses (“claims”), related to or arising out of: (a) use by Purdue personnel according to Sponsor’s instructions of any equipment or materials supplied by Sponsor for the Project; and, (b) Sponsor’s use of any research performed pursuant to this Agreement, including but not limited to the development, testing, manufacturing, sale, disposition or use of any product, device or object that employs or relies upon any Deliverables Designs, Data or Materials.

The cumulative liability of Purdue to Sponsor for any claim, demand, or action arising out of or relating to this Agreement, the Project, and the Deliverable Data, Design, and Materials shall not exceed the total amount paid to Purdue hereunder. Without limiting the foregoing, in no event shall Purdue be liable for any business expense; machine down time; loss of profits; any incidental, special, exemplary, or consequential damages; or any claims or demands brought against Sponsor or Sponsor’s customers even if Purdue has been advised of the possibility of such claims and demands. The foregoing limitation of liability will survive any termination of this Agreement and will apply without regard to

any other provision of this Agreement that may have been breached or have been proven ineffective.

15. **Export Control**

The Parties and the rights and obligations specified in this Agreement are subject to United States laws and regulations controlling the export of goods, software, and technology, including technical data, laboratory prototypes, and other commodities, including “deemed exports,” and shall comply with all applicable laws and regulations, including the Arms Export Control Act, the International Traffic in Arms Regulations (“ITAR”), the Export Administration Regulations (“EAR”), and the laws and regulations implemented by the Office of Foreign Assets Control, U.S. Department of the Treasury (“OFAC”). “Deemed export” means any release of technology to a foreign national within the United States. Technology is released for export when it is (i) made available to foreign nationals for visual inspection, (ii) exchanged orally, or (iii) made available by practice or application under the guidance of persons with knowledge of the technology. Diversion contrary to U.S. law is prohibited.

Notwithstanding anything to the contrary in this Agreement, if a license to export a deliverable cannot be responsibly obtained from the concerned government agency, Purdue’s obligations under this Agreement with respect to the deliverable shall be limited to conform to the lack of an export license. The Parties agree that compliance with any applicable export control laws and regulations, including the Arms Export Control Act, ITAR, EAR, and the laws and regulations implemented by OFAC which adversely affect a Project and/or any deliverable or grant of intellectual property rights hereunder, shall not constitute a breach of this Agreement.

If either Party intends to transmit information to the other that the disclosing party determines to be export controlled, the disclosing Party must identify and label the information as export controlled specifying which authority (EAR or ITAR) governs the restriction and providing the Export Control Classification Number (ECCN) for all information restricted under the EAR. The receiving Party reserves the right to elect not to receive export controlled information. If the receiving Party chooses instead to accept export controlled information, then a plan for receipt, use, and dissemination of such export-controlled information must be developed and agreed to by a business officer of the receiving Party prior to such disclosure. The Principal Investigator or other scientific or technical contact of the receiving Party may not elect, and does not have the authority to elect, to receive export-controlled information without the approval of a business officer.

16. **Governing Law; Jurisdiction and Venue; Severance**

This Agreement shall be construed under and governed by the laws of the State of Indiana (without regard to conflict of law rules) and the United States of America. This Agreement and the Project shall at all times be subordinate to federal regulatory requirements for the conduct of research at Purdue University.

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.

17. **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.

“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: _____

Appendix A – Project Scope of Work and Additional Terms

Cost estimate (this is NOT a price quote), expressed as price per sample or hourly rate:

Further description of project, if needed: