

FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT, by and between the Board of Regents of the University of Wisconsin System for the University of Wisconsin-_____ (the "Lessor") whose address is _____, Wisconsin, and _____ (the "Lessee") whose address is _____, WI, 54902;

1. **PREMISES.** Lessor hereby leases to Lessee and Lessee leases from Lessor the following (the "Premises"):

Approximately _____ square feet of space in (the "Building") rooms (and additional classroom and greenhouse spaces including but not limited to _____, conference rooms, and the occasional use of other shared laboratory rooms) together with all appurtenances and access to common areas.

2. **TERM, RENEWALS.** The Use Agreement term hereunder shall begin on _____ or date of occupancy, and end _____. The execution of this Use Agreement is contingent upon funding of _____ **Number of Grant #** which has been submitted by _____ and is currently pending. This Use Agreement may, at the option of the Lessee, be renewed for (X) additional _____ period from and after July 1, 20XX, subject to the availability of funds for the payment of rentals, upon the same terms and conditions herein specified except rental rate which shall be negotiated and mutually agreed upon, provided notice be given in writing to the Lessor at least 90 days before the Use Agreement or any renewal thereof would otherwise expire. Rent payable during the initial term of this use agreement shall be payable in accordance with the schedule below.
3. **ASSIGNMENT, SUBLETTING.** The Lessee shall not assign this Use Agreement in any event, and shall not sublet the demised Premises, and will not permit the use of said Premises by anyone other than the Lessee, and the agents, contractors, grantors and grantees, and servants of the Lessee, without prior written approval of the Lessor.
4. **RENTAL.** The Lessee shall pay the Lessor rent for the Premises during the initial Use Agreement year at the following rate: The sum of _____ and xx/100 (\$_____) per year. The annual rental rate for the first and each subsequent year of this Use Agreement shall be in accordance with the following schedule:

Initial Term Rental Rate Schedule			
Begin Date	End Date	Annual Rent	Monthly Rent
August 1, 20XX	June 30, 20XX	\$	\$
Renewal Term Rental Rate Schedule			
July 1, 20XX	June 30, 20XX	\$	\$

The annual rental rate includes all operating expenses associated with the premises of this space, including but not limited to taxes, utilities water, and sewer. The annual rent throughout the entire Use Agreement term, including optional extensions, shall be payable in advance in monthly installments as shown above on the first day of each month, except for the month of July during which the monthly installment is not due until the 15th day. Said rental payments shall be made to Lessor at the address for notices hereinafter set forth.

5. USE OF PREMISES. Except as otherwise authorized in writing by Lessor, Lessee shall use the Premises as space for _____ NSF proposal (or?)_#____, “STTR Phase II: (Title?)_____.” Lessee shall have access to the premises twenty-four (24) hours per day, seven (7) day a week. Lessor will provide Lessee all generally available equipment within the Building in the same manner that such equipment is made available to university researchers. Lessee’s use of all such equipment is subject to the following conditions:

- (a) The use of the equipment is limited to processing which is compatible with the purpose of each system, as defined by the Building Laboratory Manager or the _____. Compatibility may be limited due to chemical contamination, equipment limitations or physical restrictions such as wafer size.
- (b) Equipment availability may be limited due to academic courses or University Research. Academic usage will take priority as determined by the _____.
- (c) Equipment availability may be limited due to necessary repairs. Priority of repairs will be determined by the Building Laboratory Manager and/or the _____.
- (d) Subject to (b) above, assignment of processing time on the equipment is on a “first come, first served” basis, except for systems with a posted formal sign-up procedure. Processes or experiments which will require the use of a system for an extraordinary amount of time must be scheduled with the Building Laboratory Manager or the _____, as appropriate.
- (e) Access to Building may be limited to a maximum number of approved Lessee’s researchers in the facility as determined by the Building Laboratory Manager or the _____, as appropriate. The number of Lessee’s researchers present must not be so large as to negatively effect access by university researchers.
- (f) The facilities and equipment currently available in premises are identified on Exhibit A attached hereto (the “Equipment”). Equipment may be added or removed from premises as determined by the Building/premises?[FACILITY] Advisory Committee.
- (g) Lessor shall provide a reasonable space for Lessee to place a secure safe, cabinet or locker in which to store proprietary data and materials. Lessee is responsible for providing adequate security to meet its needs.
- (h) The Building Laboratory Manager shall provide the supplies normally available to all users, namely: standard chemicals; clean room garments; clean room gloves; clean room wipes; standard process gases; standard deposition materials; safety equipment, such as eye protection and acid gloves; and other standard laboratory supplies, such as beakers and thermometers. As used herein, the term “standard” refers to items which have a broad demand in integrated circuit processing and have been historically provided to researchers by the Building. Any items which are not generally provided by the Building to all users must be provided by Lessee. These include but are not limited

to specific polymer processing chemicals, specific deposition materials, photo masks, and system fixturing for specific experiments. All supplies, materials, chemicals, ancillary equipment and other university property provided by the Building are limited to use within the Building and may be removed from the premises only with permission of the Laboratory Manager or the Deputy Dean, as appropriate.

(i) Lessee shall abide by all federal, State of Wisconsin, County of _____ and City of _____ statutes as well as Lessor rules governing the transportation, handling, use and disposal of toxic and hazardous substances. Any wastes resulting from materials, chemicals, gases or other substances brought into the Building by Lessee remain the property of Lessee. Lessor bears no responsibility for the transportation, handling, use and disposal of toxic and hazardous wastes beyond the use of "standard" items provided by the Building as described in section (h) above. Lessee shall obtain approval of the Building Laboratory Manager or the _____ and comply with all statutes and rules prior to transporting toxic and hazardous materials into the Building facilities.

6. MAINTENANCE AND REPAIR. The Lessor shall maintain the said Premises in good repair and tenantable condition during the continuance of this Use Agreement, except in case of damage arising from a willful act or the negligence of the Lessee's agents or employees. Costs for repair or replacements to Premises due to misuse or negligence by an employee of Lessee shall be the responsibility of Lessee.

7. COVENANTS OF LESSOR. Lessor hereby covenants and agrees with Lessee as follows:

- a. Lessor shall duly carry out the various obligations and duties imposed upon it at the time and in the manner called for by this Use Agreement.
- b. Lessor shall furnish during the term of this Use Agreement the goods, services and other items as defined in this Use Agreement.

8. COVENANTS OF LESSEE. Lessee hereby covenants and agrees with Lessor as follows:

- a. Lessee does hereby covenant, promise, and agree to pay the rent in the manner hereinbefore specified, and to duly comply with all other provisions of this Use Agreement at the time and in the manner herein provided.
- b. At the expiration of this Use Agreement or any renewal thereof, Lessee will return the Premises to the Lessor in as good condition as they were at the time the Use Agreement went into possession, ordinary wear, damage by the elements and fire excepted. It is mutually agreed, in consideration of the rent to be paid and other conditions of this Use Agreement, that the Lessee shall not be responsible for damage to the Premises by fire. The Lessee shall be responsible for any acts or omissions of its agents, and employees
- c. Lessee will not make or permit anyone to make any alterations, improvements or additions in or to the Premises, without the prior written consent of Lessor.
- d. Lessee shall identify problems concerning the occupancy of this space to Lessor for resolution.

e. Lessee will conduct its business and control its employees, agents, and invitees in such a manner as not to create any nuisance or unreasonably interfere with, annoy, or disturb any other Lessee or occupant of the Building.

9. INSURANCE. Lessor is protected by the State of Wisconsin Self-Funded Liability and Property Programs. Sections 20.865(1)(f) and (fm), Wisconsin Statutes, provide funds to pay property and liability claims. In addition, section 895.46 provides that the state will pay judgments taken against state officers or employees for acts carried out while the officers or employees were acting within the scope of their employment. This shall be deemed as evidence of protection for applicable liability claims brought against the state, its officers or employees and damage to property for which the state may be responsible. Lessee shall file with the Lessor, before using the facilities and not later than Commencement Date, Certificate of Insurance indicating that the coverage for Lessee as specified in the following paragraphs, is in force during the term of this Agreement:

<u>Workers Compensation (WC)</u>	<u>Statutory Limits</u>
Each Accident	\$100,000
Disease-Policy Limit	\$500,000
Disease-Each Employee	\$100,000
 <u>Commercial General Liability (CGL)</u>	
General Aggregate including products and complete operations	\$5,000,000
Each Occurrence	\$1,000,000

Additional Insured:

Lessee shall add the “Board of Regents of the University of Wisconsin System, its officers, employees and agents” as an additional insured under the commercial general liability policy.

All policies must be issued by an insurance company licensed to do business in the State of Wisconsin, and have a minimum AM Best Rating of A-, and be signed by an authorized agent. The insurer shall provide Lessor written notice ten (10) days in advance of any reduction of coverage or cancellation of the policy.

The policy shall not contain an exclusion for damage to property in the care, custody or control of Lessor.

In the event premises or the Building is damaged or destroyed in whole or in part by fire or any other means whatsoever during the term of this Agreement, then either Lessor or Lessee shall have the right to terminate this Agreement by written notice to the other and Lessor shall refund to Lessee the portion of the fee relating to the period after termination. If this Agreement is not terminated, Lessor shall repair and restore premises and/or the Building to substantially the same condition that existed just prior to its damage or destruction. During the period from the occurrence of the casualty until premises and/or the Building is repaired and restored so as to be usable by Lessee, a portion of the fee payable by Lessee hereunder shall be abated in proportion to the area of premises and/or Building which is unusable.

10. NOTICES. Notice in writing referred to herein shall not be construed to mean personal notice, but such notice shall be given in writing, by mail, by depositing the same in the post office or letter-box, in a post paid envelope, addressed to the Lessor at Lessor's last known address, and such notice shall

be deemed to be given at the time when the same shall be thus mailed. Such notices provided hereunder shall be addressed as follows:

If to Lessor: University of Wisconsin – Campus
,WI

And: University of Wisconsin, System
Capital Planning and Budget
780 Regent Street
Madison, WI 53715-263526

If to Lessee: Ph.D.

WI

11. **CANCELLATION.** This Use Agreement may be cancelled by either Lessee or Lessor, upon 30 days prior written notice to the other party.
12. **CONFIDENTIALITY.** The Building is user facility with open access to students, faculty and staff of the UW-Oshkosh as well as to the general public. Lessor makes no warrant as to the security of information that may be divulged to third parties through casual conversation and written or printed materials left uncontrolled or unprotected in the facility. Lessee shall protect UW processes clearly identified in writing as proprietary that might become necessary for use of equipment in the Building. The provision contained in this Section imposes no obligation upon Lessee with respect to specific confidential information which (a) was in Lessee's possession on a non-confidential basis before receipt from the Lessor as evidence by written records; (b) is or becomes a matter of public knowledge through no fault of Lessee; (c) is rightfully obtained by the recipient from a third party who is legally free to pass on such information without a duty of confidentiality; (d) is disclosed by Lessor to a third party without a duty of confidentiality to the third party; (e) is independently developed by Lessee as evidence by written records; or (f) is disclosed under operation of law.
13. **CAPTIONS.** The item captions contained herein are for convenience only and do not define, limit, or construe the contents of such items, paragraphs, or sections.
14. **BINDING EFFECT.** This Use Agreement when fully executed shall be binding upon the respective heirs, executors, administrators, successors, and assigns of the parties hereto.
15. **ENFORCEABILITY.** The invalidity or unenforceability of any provision of this Use Agreement shall not affect or impair any other provision. The laws of the State of Wisconsin shall govern the validity, performance and enforcement of this Use Agreement. The rights and remedies herein granted are cumulative and are in addition to any given by statute, rule of law, or otherwise, and the use of one remedy shall not be taken to exclude or waive the right to use another.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names as of the date first above written.

LESSEE:

Signature: _____

Date _____

LESSOR: UNIVERSITY OF WISCONSIN CAMPUS

Signature: _____

Date _____

Chancellor,