

Terms and Conditions for NANOCHEM Reliability Test Services

Preamble

NANOCHEM is a research infrastructure entitled **NANOCHEM – Ultrahigh resolution chemical characterization** supported by the Danish Agency for Science and Higher Education as granting authority (the 'Granting Authority').

NANOCHEM is a cooperation between the major Danish universities to establish a Danish research infrastructure for chemical imaging on the nanoscale.

NANOCHEM is a novel world class infrastructure for high resolution nanoscopy with elemental and chemical analysis. NANOCHEM supports research and development both at Danish industries as well as Danish universities on new and smarter materials, devices for sensing and clean energy, imaging of catalytic processes, biomedical imaging, tissues dynamics, drug delivery, artificial organs, environmental monitoring and imaging of minerals and archaeological materials, to name a few. NANOCHEM enables the Parties to contribute to and solve many scientific challenges in various research areas of clinical, technical and natural sciences in a systematic way.

NANOCHEM aims to generally provide different services towards academia and industry by facilitating highest resolution chemical imaging and analysis. The services will be available within the three areas of:

- Chemical imaging of materials
- Chemical imaging of test samples
- Chemical imaging of upscaled samples and devices

('NANOCHEM Services')

The NANOCHEM infrastructure is open to project partners, academic, and commercial users and NANOCHEM RServices will be provided on equal terms. Clients can apply for NANOCHEM Services through the research infrastructures website. Services are granted upon application and according to the criteria described in these Terms and Conditions for NANOCHEM Services. Applications are ultimately approved by the laboratory leader responsible for respective NANOCHEM lab or test facility/installation.

Any user of the NANOCHEM Services accepts to be subject to and undertakes to fulfill its obligations as set forth by these Terms and Conditions for NANOCHEM Services.

1. Definitions

The following definitions shall apply to the Terms and Conditions for NANOCHEM Services:

Service Provider: means the legal entity providing the NANOCHEM Services.

Background: means any data, know-how or information whatever its form or nature, tangible or intangible, including any rights such as intellectual property rights, which is held by the Service Provider and the Client prior to or developed independently of the Project.

Client: the legal person or entity acquiring NANOCHEM Services.

Party/Parties: means the Service Provider and the Client respectively.

Project: the specific NANOCHM Services to be undertaken by the Service Provider on behalf of the Client at the NANOCHM Laboratories according to the work programme as described in the application using the Standard Form in Schedule A.

Results: means any tangible or intangible output of the Project, such as data, knowledge or information that is generated in the Project, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including intellectual property rights.

NANOCHM Laboratory: means group of equipment/instruments/devices/software/test installation placed in the laboratory facilities of a Service Provider being a part of the NANOCHM research infrastructure, where the NANOCHM Services are to be performed on behalf of the Client.

2. Services

The services will be available within the three areas of:

- Chemical imaging of materials
- Chemical imaging of test samples
- Chemical imaging of upscaled samples and devices

Specifically NANOCHM aims to integrate and be able to provide imaging services within the following fields in a 5 years period:

- Sensors for micro- and nanoplastics
- Organic and hybrid thin-film solar cells
- Flexible electronics
- Nanophotonics
- Power electronic and capacitive components
- Physics of battery failure
- Catalysis and electrolysis
- Smart 3D materials
- Intravital imaging of biological events
- Spider silk and other bioinspired materials
- Vascular permeability in health
- Stimulated Raman scattering of cholesterol in tissues
- Other

Services can be acquired from the NANOCHM test facilities at the Mads Clausen Institute and the Department of Biochemistry and Molecular Biology at the University of Southern Denmark, the Department of Materials and Production at Aalborg University and the Department of Health Technology at the Technical University of Denmark jointly constituting the NANOCHM research infrastructure.

A Client can apply for NANOCHM Services through the research infrastructures website. The application shall include information on the applicant (the User), when the NANOCHM Services are requested and the activities to be performed by using the Standard Form (Application Form). Applications are ultimately evaluated and approved by the laboratory leader responsible for the respective NANOCHM lab or test facility/installation, subject to the capacity of NANOCHM. The Access Provider will issue an order confirmation as confirmation for the planned activity, which includes the price by using the Standard Form (Order Confirmation).

NANOCHM Reliability Test Services, will be provided as revenue funded research in accordance with applicable rules and regulation, including but not limited to Framework for State aid for research and development and innovation (2014/C 198/01).

3. General Obligations of the Parties

3.1 In addition to payment for the Service Provider's performance, the Client shall make the agreed Background, including material samples, equipment and products, available to the Service Provider for use in the execution of the Project. These contributions by the Client shall only be used in connection with the execution of the Project. Materials, etc. that form part of the performance of the Client shall be forwarded to the Service Provider.

3.2 Notwithstanding the 'Governing Law' Clause, the Parties shall each abide by their own respective national laws and regulations including, but not limited to, laws and/or regulations which govern employment, immigration, taxation, social security, personal and public liability and insurance.

3.3 The Parties shall act in good faith to resolve any dispute, controversy or claim via referral of the matter to its senior management representative for dispute resolution between the Parties concerned. Where the matter has not been resolved to the reasonable satisfaction of the Parties concerned within forty five (45) days or such longer period as may be mutually agreed between the Parties concerned, the Parties shall refer the matter to the Court for resolution ('Governing Law' Clause).

3.4 The Client may not without the prior written consent of the Universities either directly or indirectly refer to the Universities or employees of the Universities in connection with any marketing activities, or generally exploit the names of the Universities.

4. Liability

4.1 Each Party shall be solely liable for any loss, damage or injury caused to the other Party or any third parties resulting from the performance of said Party's obligations under access to the NANOCHEM Laboratories or under the Project.

4.2 No Party shall be responsible to the other Party for any indirect or consequential loss or damages such as, but not limited to, loss of profit, loss of revenue or loss of contracts howsoever caused.

4.3 In case of unavailability of NANOCHEM Reliability Test Services, the Service Provider cannot be held responsible. Under no circumstances, can the Client obtain any compensatory damages.

4.4 In respect of any information or materials (incl. Results and Background) supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.

4.5 Each Party acknowledges that due to the intrinsic nature of research, specific results or outcomes cannot be guaranteed when carrying out the experimental research, and therefore, the Service Provider will not be responsible of any associated delays in the Project.

4.6 The Service Provider does not assume liability for any use of the Results generated in the Project. In the event of third party claims for compensation against the Service Provider arising from the Client's exploitation of Results (including but not limited to claims based on product liability regulations), the Client shall – notwithstanding anything to the contrary set out herein – defend and hold harmless the Service Provider from such claims.

5. Intellectual Property Rights

5.1 The Client must obtain written permission from the owner of any Background before using it in the Project, and must comply with any conditions set by the owner. Ownership of Background will remain with the Party owning or controlling such Background. The Service Provider may choose at its own discretion, on request from the Client, and where it is free to do so, to make available on a non-

commercial basis on terms and conditions to be agreed upon, own Background which is reasonably requested by the Client for implementation of the Project.

5.2 Results generated by the Service Provider shall be owned by the Client.

5.3 The Universities reserve the right to use Results for academic purposes, including for educational purposes as well as in connection with collaboration with a third party, however subject to the condition that third party never attains direct access to the Results owned to the Client as well as in accordance with the confidentiality obligation in section 6 of the Standard Terms.

6. Confidentiality

6.1 Subject to the provisions set out herein, both Parties will keep confidential any Confidential Information (as defined below) communicated or disclosed to them by the other Party in connection with the Project. Exchange of Confidential Information will be on a bilateral basis between the Client and the Service Provider.

6.2 All information in whatever form or mode of communication, which is disclosed by a Party (the 'Disclosing Party') to any other Party (the 'Recipient') in connection with the Project during its implementation and which has been explicitly marked as 'confidential' at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within 15 calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is 'Confidential Information'.

6.3 The Recipient hereby undertakes, for a period of 3 years after receipt:

- Not to use Confidential Information otherwise than for the purpose for which it was disclosed;
- not to disclose Confidential Information without the prior written consent by the Disclosing Party;
- to ensure that internal distribution of Confidential Information by a Recipient shall take place on a strict need-to-know basis; and
- to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipient including all copies thereof and to delete all information stored in a machine readable form to the extent practically possible. The Recipient may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations or for the proof of on-going obligations provided that the Recipient comply with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.

6.4 The Recipient shall be responsible for the fulfilment of the above obligations on the part of its employees or third parties involved in the Project and shall ensure that they remain so obliged, as far as legally possible, during and after the involvement in Project and/or after the termination of the contractual relationship with the employee or third party.

6.5 The above shall not apply for disclosure or use of Confidential Information that:

- the Confidential Information has become or becomes publicly available by means other than a breach of the Recipient's confidentiality obligations;
- the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential;
- the Confidential Information is communicated to the Recipient without any obligation of confidentiality by a third party who was in lawful possession thereof and under no obligation of confidentiality to the Disclosing Party;
- the Confidential Information, at any time, was developed by the Recipient independently of the Project;
- the Confidential Information was already in the lawful possession of the Recipient prior to disclosure, or

- the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provision 6.7 hereunder.

6.6 The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed in relation to the Project as with its own confidential and/or proprietary information, but in no case less than reasonable care.

6.7 Recipient shall promptly advise the Disclosing Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.

6.8 If Recipient becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure

- notify the Disclosing Party, and
- comply with the Disclosing Party's reasonable instructions to protect the confidentiality of the information.

7. Reporting

7.1 The Service Provider is subject to an obligation to keep the Granting Authority informed about the use being made of the NANOCHM Laboratories. The Client will fill in the Form "Project Fact Sheet" in order for the Granting Authority to evaluate the research infrastructures and monitor the Grant, comprising:

- a) Complete an extended abstract ("Project Fact Sheet") for the Project according to the provided template.
- b) Inform the Service Provider of any publication or presentation made on the work of the Project to provide evidence of the soundness of the scientific work performed at the Service Provider's NANOCHM Laboratories under this opportunity. This information may be used by the Service Provider in its reports to the Granting Authority.
- c) Note that the Service Provider's reports to the Granting Authority will contain the names, home institutions and description of the work of the Client. The description of the work follows the extended abstract, taking into account eventual confidentiality clauses. Clients must also note that the Granting Authority has the right to publish the list of Clients.

7.2 The Client will submit documents to the NANOCHM Center Manager within six (6) months after the end of the stay.

8. Governing Law

8.1 These Terms and Conditions for NANOCHEM Reliability Test Services shall be governed by Danish Law, with the exception however of international private law and rules concerning choice of law, to the extent that such rules would lead to the application of another country's law.

8.2 Any dispute arising from the activities hereunder, including interpretation and application of the Terms and Conditions for NANOCHEM Reliability Test Services that cannot be settled amicably by the Service Provider and the Client shall be tried by the Court of Odense as the court of first instance.