

AGREEMENT FOR LABORATORY SERVICES

This Agreement for Microscopy Services (the “**Agreement**”) is made this ___ day of _____, 20__ (the “**Effective Date**”) by and between the **President and Fellows of Harvard College** acting through the Microscopy Resources on the North Quad (MicRoN) Core, a share light microscopy facility located at Harvard Medical School, 77 Avenue Louis Pasteur NRB 10th floor, Boston MA 02115 (“**the Facility**”) ----- (“**Client**”), with a place of business at ----- (Client and Facility hereafter designated individually as a “party” or collectively as the “parties”).

The following sets forth the agreement between the parties with respect to certain services as described below to be conducted by the Facility on behalf of Client in connection with Materials (as such term is defined below).

1. **Services.** The Facility provides consultation and training by staff in sample preparation, experimental design, microscope operation, image acquisition of light microscopy samples (the “**Services**”). After training on a Facility instrument, the Client may use that instrument to image and process the Client’s samples, in accordance with Facility access policies (<https://micron.hms.harvard.edu/accesstraining>). During the COVID-19 pandemic and while access to the Facility is restricted, the Services shall include the Facility’s performance of imaging services for the Client. Client shall provide such materials to the Facility (the “**Materials**”) and related information (the “**Information**”) as the Facility shall reasonably require performing the Services. The Facility shall commence the Services upon receipt of the Materials and Information. The Facility will complete the Services as expeditiously as practical, but because the Facility’s primary responsibility is to do the work of the researchers of Harvard University and its affiliates, in the event of conflicting demands the Facility will give priority to such work; therefore, the Facility is unable to commit to any performance schedule for the Client. The Facility is not responsible in the event of any loss or damage to the Client’s Materials. The Facility is not obligated to retain any Results or Reports (as such terms are defined below) or any Materials or Information beyond the period needed for performance of the Services. The Facility is not responsible for the quality of the Services or Results that may arise from inadequate or inferior samples or poor sample preparation.

2. **Compensation.** The client (“the Client”) will be billed for user training and instrument access, as described in the Facility access policies. Instrument access includes actual time used on the instrument and reserved but unused time. The fees for Training, Instrument Access, and associated Facilities and Administration (F&A) fees (“**Fees**”) are revised annually based upon the Harvard Fiscal Year (July 1 – June 30) and are posted on the Facility website (<https://micron.hms.harvard.edu/>). Billing is based on Fees charged at the time of service. Terms are net thirty (30) days from receipt of an invoice from the Facility. Payments will be made in United States Dollars. Fees owed are net of any taxes required to be withheld or otherwise applicable, such as sales taxes and VAT, and the Client shall pay or reimburse the Facility for all such taxes (other than taxes on the Facility’s net income). Payment to Facility will be made by check unless Facility elects to receive electronic payments and signs up with Client’s electronic payment provider. Payments sent by check shall be sent to the following address:

[Address of Institution]

3. **Reporting.** The Facility shall provide Client with such written reports, records and documents relating to the Services as are customary for such work, in Facility’s standard formats (the “**Reports**”).

4. **Term and Termination.** The term of this Agreement shall be twelve (12) months commencing on the Effective Date (the “**Term**”). Either party may terminate this Agreement at any time upon thirty (30) days’ prior written notice, provided that any Services initiated by the Facility prior to expiration or, in the event of termination by the Facility, prior to the notice of termination, shall be completed. In the event of termination of any Services by Client prior to completion for any reason, Client shall pay all costs accrued by the Facility as of the date of termination, including non-

cancelable obligations incurred prior to the notice of termination and reasonable costs associated with winding up the Services.

5. **Results and Materials**. Client shall own all rights in all results of the Services and other data and information developed by the Facility for the Client (collectively, the “**Results**”), whether or not protectable under state, federal, or foreign patent, trademark, copyright or similar laws, and Client shall be free to use such Results for any purpose without restriction. Any Material used in the course of the Services and all associated intellectual property rights will remain the exclusive property of Client. Facility will use the Materials provided by Client only as necessary to perform Services in accordance with this Agreement.

6. **No Warranties; Limitation of Liability**.

SERVICES ARE PERFORMED AND RESULTS, REPORTS AND OTHER DELIVERABLES ARE PROVIDED “AS IS,” WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NEITHER PARTY WILL NOT BE LIABLE UNDER ANY LEGAL THEORY (WHETHER TORT, CONTRACT OR OTHERWISE) FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, HOWEVER CAUSED, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE BREACH HEREOF OR THE PERFORMANCE OF THE SERVICES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. NEITHER PARTIES LIABILITY FOR ANY CLAIMS OR DAMAGES OF ANY KIND SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID TO THE FACILITY FOR THE SERVICES GIVING RISE TO SUCH A CLAIM.

7. **Facility Rights**. The Facility shall own all discoveries, inventions, developments, innovations, improvements and technology (whether or not protectable under state, federal, or foreign patent, trademark, copyright or similar laws) relating to the science, methodology, technique or practice of microscopy, that are conceived, discovered, invented, developed, or reduced to practice by the Facility in performing the Services or otherwise and that do not incorporate Results or Client’s Confidential Information, as well as all general knowledge, skills, experience and know-how developed or obtained by the Facility in the course of performing the Services or otherwise.

8. **Confidentiality**. Confidential Information” shall mean all information and material of a confidential and proprietary nature, including but not limited to the Information, the Materials, the Reports and the Results, received by or made available to the Facility from or on behalf of the Client and its affiliates in connection with Services or proposed Services under this Agreement. All information and materials developed or generated by the Facility in performing Services shall be considered Confidential Information of the Client. The Facility shall maintain the Confidential Information in strict confidence and will not disclose the Confidential Information to any third party except as required by applicable law or regulation, nor use the same for any purpose except to perform the Services; provided, however, that the foregoing shall not apply to (a) any information which is or becomes publicly available by publication or otherwise, except by breach of this Agreement by the Facility; (b) information disclosed to the Facility by Client which the Facility can establish by written records was already in its possession at the time of disclosure; or (c) information which is rightfully disclosed to the Facility by a third party who did not receive such information from Client under an obligation of confidentiality. The Facility’s obligations under this paragraph shall expire three (3) years after termination of this Agreement.

9. **Material Transfer**. The Facility shall not distribute or release the Materials to anyone other than its laboratory personnel and shall make sure that no one will be allowed to take or send the Materials to any location other than that to which it is sent by Client, unless prior written permission is obtained from Client. The Facility shall not use the Materials for any purpose other than in the performance and evaluation of the Services, or as otherwise authorized in writing by Client. The Facility will use the Materials in compliance with all applicable governmental regulations.

10. **Miscellaneous.**

(a) **Acknowledgements; Publicity.** The Client shall, and shall require its researchers to, acknowledge the support of 'The Microscopy Resources on the North Quad (MicRoN) Core at Harvard Medical School' in research publications arising from their use of the Facility. Neither party will use any name, logo or other trademark or service mark of the other party, or the names of the other party's employees, in any form of advertising, promotion or publicity, including press releases, without the prior written consent of the other party. Without limiting the foregoing, except as provided in the first sentence of this Section 10(a), Client shall not identify the Facility publicly or to any third party as the source of any Results or Reports except with the prior written consent of the Facility in each instance.

(b) **Notice.** Notice given under this Agreement shall be deemed received when delivered by certified or first class mail, by air courier, or electronic transmission (provided the original follows via first class mail) to the parties at their respective addresses set forth above, or at such other address as either party may provide to the other in writing from time to time.

(c) **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

(d) **Independent Contractor.** The parties to this Agreement are independent contractors. Nothing herein shall be construed to mean that any employee of the Facility is, on the basis of this Agreement, an agent or employee of Client, or vice versa. Neither party shall, by reason of this Agreement, have authority to make any commitment binding on the other.

(e) **Entire Agreement; Amendment and Waiver; Severability.** This Agreement, including any fully signed work orders, each of which are incorporated herein, constitutes the entire agreement between the parties with respect to the specific subject matter of this Agreement and all prior agreements with respect thereto are superseded. The terms of this Agreement apply solely to the Services and not to any obligations of either party to the other under any other agreement. If there is any conflict, or inconsistency between the terms of this Agreement and any work order, purchase order, or other form used by the parties relating to the Services, the terms of this Agreement will control. This Agreement (including work orders) may be changed only by a writing signed by each party. No waiver of any term, provision or condition of this Agreement or any work order will be deemed to be or construed as a further or continuing waiver of any other term, provision or condition of this Agreement or any work order. Any such waiver must be evidenced by an executed instrument in writing. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable, such provision will be deemed modified to the extent required to make the provision valid and enforceable to the maximum extent permitted by law.

(f) **Documentation.** Each party agrees to execute such documents as may be reasonably requested by the other to effectuate the rights of the other under Section 5 or 7 of this Agreement.

(g) **Survival.** The provisions of this Agreement which by their explicit terms or their manifest intent are to survive, including without limitation those which relate to confidentiality, ownership and intellectual property rights, publicity and use of names, and limitation of liability, shall survive expiration or termination of this Agreement.

11. **Counterparts/Delivery of Signatures.** This Agreement may be executed and delivered by facsimile or electronically transmitted signatures and in two or more counterparts, all of which together shall constitute one and the same instrument. The parties agree that upon being signed and delivered by the parties, this Agreement shall become effective and binding and that such signed copies will constitute evidence of the existence of this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by their duly authorized representatives as of the Effective Date.

**President and Fellows of Harvard College
acting through the _____
Laboratory**

By: _____

By: _____

Name:

Name:

Title:

Title:

[Exhibit A to Follow]

EXHIBIT A

Services

1. **Services.** The Facility will perform the following Services:
2. **Materials.** Client will provide the following Materials for the Services:
3. **Service Provider Contacts:**
4. **Client Contacts:**
5. **Compensation:**

WORK ORDER AGREED TO AND ACCEPTED BY:

[client name]

**President and Fellows of Harvard
College acting through the
_____ Laboratory**

By _____

By _____

Name:

Name:

Title:

Title:

Date: _____

Date: _____