

Center for Macromolecular Interactions Commercial User Agreement

This Agreement is between _____ [insert name of institution or company] (“**the Client**”) and President and Fellows of Harvard College acting through the Harvard Medical School Center for Macromolecular Interactions (the “**Facility**”), a shared instrument facility located at 240 Longwood Ave, Building C, Room C-303, Boston, MA 02115. This Agreement governs the use of instruments of the Facility by _____ [insert name of the facility user] (“**the User**”), who shall be an employee or trainee of the Client.”

The following sets forth the agreement between the parties with respect to certain services as described below to be provided by the Facility to the User.

1. **Services.** The Facility provides training and access to shared biophysical instruments for the characterization of macromolecules and their interactions (the “**Services**”). After being trained on a Facility instrument, the User may use that instrument to process or analyze the Client’s materials, in accordance with Facility access policies (<https://cmi.hms.harvard.edu/policies>). However, the Facility will not perform or produce and is not responsible for any analyses, data or reports for the Client, and the Facility also has no responsibility for the Client’s materials. Because the primary responsibility of the Facility is to provide Services to researchers of Harvard University and its affiliates, the Facility will give priority to such work over the User’s training and instrument access, in the event of conflicting demands.

2. **Compensation.** The Client will be billed for Training and for Instrument Access. Instrument Access includes actual time used on the instrument and reserved but unused time. The fees for Training and Instrument Access and associated Facilities and Administration (F&A) fees are revised annually based upon the Harvard Fiscal Year (July 1 – June 30) and are posted on the Facility website (cmi.hms.harvard.edu). Billing is based on fees at the time of service. Terms are net thirty (30) days from the Client’s receipt of an invoice from the Facility. Payments will be made in United States Dollars. The amount owed for the Services is 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).

4. **Term and Termination.** The term of this Agreement shall be twelve (12) months commencing on the date that the Client executes below. Either party may terminate this Agreement at any time upon thirty (30) days’ prior written notice.

5. **No Warranties; Limitation of Liability.** FACILITY PROCEDURES, METHODS AND TOOLS ARE LIMITED IN PURPOSE AND EXPERIMENTAL. SERVICES ARE PERFORMED “AS IS,” WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE FACILITY 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 OR INJURY TO PERSONS OR PROPERTY RESULTING FROM USE OF THE FACILITY, EVEN IF FACILITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FACILITY’S LIABILITY FOR ANY CLAIMS OR DAMAGES OF ANY KIND SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID TO THE FACILITY FOR THE SERVICES.

6. **Proprietary Rights of Parties.** The Facility shall own all rights in 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 the analysis of macromolecules and their interactions, that are conceived, discovered, invented, developed, or reduced to practice by the Facility in performing the Services or otherwise, 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. The Client shall own all rights in all results of any analysis performed by the User, and all other data and information developed by the User using instruments at the Facility, whether or not protectable under state, federal, or foreign patent, trademark, copyright or similar laws. The User is required to provide general information about samples brought to the Facility in order to comply with safety regulations and to facilitate training, but the User shall not disclose any confidential information of the Client to personnel of the Facility.

7. **Miscellaneous.**

(a) **Publicity.** 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 or other public announcements, without the prior written consent of the other party.

(b) **Notice.** Notice given under this Agreement shall be deemed received when delivered by certified or first class mail, by recognized commercial courier, or by electronic transmission to the parties at their respective addresses set forth below, 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 the 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 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 may be changed only by a writing signed by each party. No waiver of any term, provision or condition of this Agreement will be deemed to be or construed as a further or continuing waiver of any other term, provision or condition of this Agreement. 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, unless the invalid provision materially affects the rights of the parties.

(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 6 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 intellectual property rights, publicity and use of names, and limitation of liability, shall survive expiration or termination of this Agreement.

8. **Counterparts/Delivery of Signatures**. This Agreement may be executed and delivered by 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 as of the date of signing by the Facility 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.

[Client]

By (signature): _____ Date: _____

Printed Name: _____

Title: _____

Institution: _____

Address: _____

Email: _____

[User]

By (signature): _____ Date: _____

Printed Name: _____

Email: _____

**President and Fellows of Harvard College acting through the Harvard Medical School
Center for Macromolecular Interactions**

By (signature): _____ Date: _____

Name: Dr. Kelly L. Arnett
Title: Director
Address: Harvard Medical School
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