

Harvard Cryo-EM Center for Structural Biology User Agreement

This Agreement is between _____ [insert name of facility user] (the “**User**”), an employee or trainee of _____ (“**Member Institution**”) and President and Fellows of Harvard College acting through the Harvard Cryo-EM Center for Structural Biology (the “**Facility**”), a shared instrument facility developed through collaboration between Boston-area institutions: Harvard Medical School, Dana-Farber Cancer Institute, Boston Children’s Hospital, and Massachusetts General Hospital, located at 250 Longwood Ave, Seeley G. Mudd, Room B04, Boston, MA 02115. This Agreement governs the use of instruments of the Facility by the User. The User is either a Principal Investigator authorized to sign this Agreement on behalf of the Member Institution (“**Principal Investigator**”), or an employee or trainee acting under the authority of a Principal Investigator authorized to sign this Agreement on behalf of the Member Institution.

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 consultation and training by staff in specimen preparation, microscope operation, image acquisition and data analysis of electron cryo-microscopy samples to users from member institutions (“**Services**”). After being trained on a Facility instrument, the User may use that instrument to prepare, image and process the User’s samples, in accordance with Facility access policies (<https://cryoem.hms.harvard.edu/cemc-policies>), as the same may be changed from time to time. However, the Facility will not perform or produce and is not responsible for any analyses, data or reports for the User beyond the analysis provided by the on-the-fly (OTF) preprocessing pipeline. The Facility assumes short term limited responsibility for the User’s materials as required to provide clipping and loading of samples into the microscope as described in the Facility access policies, but is not responsible in the event of any loss or damage to such materials.

2. **Compensation.** The Member Institution will be billed for User Training, Instrument Access, and Consumables 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, Consumables, 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://cryoem.hms.harvard.edu/>). Billing is based on Fees 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 Member Institution shall pay or reimburse the Facility for all such taxes (other than taxes on the Facility’s net income).

3. **Term and Termination.** The term of this Agreement shall be twelve (12) months commencing on the Effective Date, as defined in Section 9 below. Either party may terminate this Agreement at any time upon thirty (30) days’ prior written notice. In the event of termination of this Agreement for any reason, the Member Institution 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.

4. **Results.** User shall own all rights in all results from User’s use of the instrument and other data and information developed by the Facility for the User (collectively, the “**Results**”), whether

or not protectable under state, federal, or foreign patent, trademark, copyright or similar laws, and User shall be free to use such Results for any purpose without restriction.

5. No Warranties; Limitation of Liability. FACILITY PROCEDURES, METHODS AND TOOLS ARE LIMITED IN PURPOSE AND EXPERIMENTAL. THE FACILITY, SERVICES, RESULTS, EQUIPMENT, AND CONSUMABLES 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. 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 GIVING RISE TO SUCH A CLAIM.

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 electron cryo-microscopy, that are conceived, discovered, invented, developed, or reduced to practice by the Facility in performing 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 Services or otherwise. The User 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.

7. Confidentiality. The Facility shall maintain the information provided by the User and any other information generated through the User's use of the Facility in strict confidence and will not disclose this 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 the User 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 the User under an obligation of confidentiality. The Facility's obligations under this paragraph shall expire three (3) years after its receipt of such information.

8. Miscellaneous.

(a) Acknowledgements; Publicity. The Principal Investigator and the User shall acknowledge the support of 'The Harvard Cryo-EM Center for Structural Biology' in research publications arising from their use of the Facility. The Principal Investigator and the User will not otherwise use any name, logo or other trademark or service mark of the Facility, in any form of advertising,

promotion or publicity, including press releases or other public announcements, without the prior written consent of the Facility.

(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 Member Institution, 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 User's use of the Facility 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 User's use of the Facility, 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 Sections 4 or 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.

9. 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 ("Effective Date") 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.

User

By (signature): _____ Date: _____

Printed Name: _____

Email: _____

Mailing
Address: _____

Member Institution: _____

Principal Investigator, if different from the User

By (signature): _____ Date: _____

Printed Name: _____

Email: _____

Mailing
Address: _____

Member Institution: _____

**President and Fellows of Harvard College acting through the Harvard Medical School
Cryo-EM Center for Structural Biology**

By (signature): _____

Date: _____

PERSON representing the center in the agreement.

TITLE

Harvard Cryo-EM Center for Structural Biology

Harvard Medical School

250 Longwood Avenue

Seeley G. Mudd, Room B04,

Boston, MA 02115