

# HCBI Memorandum of Understanding and Release

This Memorandum of Understanding (MOU) will serve as an agreement between the Harvard Center for Biological Imaging (“HCBI”) at Harvard University (“UNIVERSITY”), and Massachusetts Institute of Technology (“INSTITUTION”) on behalf of \_\_\_\_\_ (“USER”), who is a non-Harvard University student or employee of INSTITUTION, regarding the USER’s use of the HCBI facilities.

## 1. Background

This MOU will serve to establish the terms and conditions under which the USER from INSTITUTION shall use HCBI facilities at the UNIVERSITY.

By signature and approval of this MOU, the INSTITUTION certifies that both the INSTITUTION and USER have (a) read, understood and agreed to the terms of the MOU; (2) that the USER has been provided information by the UNIVERSITY and HCBI regarding the use of HCBI facilities, including safety training; (3) that the USER has reviewed and understand such information; and (4) that the USER has been given the full opportunity to ask the UNIVERSITY and HCBI questions it may have about such information.

## 2. Project Terms

### a) Description of Work

A description of the work proposed to be performed at HCBI shall be provided by the USER prior to the commencement of such work hereunder. No substantive deviation from said statement of work will be permitted unless first agreed to in writing by HCBI.

### b) Reasonable Efforts

The USER and INSTITUTION acknowledge that USER retains ultimate responsibility for his/her project progress and development and that NEITHER HCBI NOR UNIVERSITY IN ANY WAY WARRANTS OR ASSURES ANY RESULTS, COMMERCIAL VIABILITY, MERCHANTABILITY OR USEFULNESS OF ANY PARTICULAR PROJECT(S). The USER and INSTITUTION fully understand and agree that any work done or service provided by HCBI and its employees is on a reasonable efforts basis. The USER accepts full responsibility for the progress and results of his/her project(s).

### c) Payment

The INSTITUTION acknowledges the responsibility for payment to the UNIVERSITY for purchases, materials costs, annual training fees, and use fees incurred by the USER for use of HCBI facilities and at other UNIVERSITY departmental stockrooms (collectively, “COSTS INCURRED”). HCBI will bill use fees by the hour and shall invoice the INSTITUTION for COSTS INCURRED, and payment in full shall be made by INSTITUTION within sixty (60) days thereof. All payments for COSTS INCURRED, including annual training fees, are nonrefundable. No terms in any form prepared by USER or INSTITUTION, including Purchase Orders, shall be construed to change any term in this Agreement, and the terms of this MOU shall strictly govern in the event of an inconsistency.

## 3. Status of USER

The INSTITUTION and USER understand that the USER is not an employee of the UNIVERSITY and that the UNIVERSITY provides no Worker’s Compensation for the USER’s benefit. The USER is deemed to be acting as a representative and employee of INSTITUTION for all purposes during work on a project in the HCBI facilities. The USER must have his/her own health and accident insurance, the USER is not covered by UNIVERSITY insurance of any kind, and the UNIVERSITY will not be responsible for any medical expenses that the USER may incur.

## 4. User Safety

Although the USER will be informed regarding general safety policy prior to being allowed to use the facilities, the INSTITUTION assumes responsibility for the USER’s own personal safety. It is expected that the USER will operate all instruments and equipment in a safe and professional manner, consistent with the operating instructions and the facility policies presented to the USER per the terms of Paragraphs 1 and 5. The INSTITUTION represents that

the USER's knowledge of laboratory practices is adequate to permit the safe pursuit of the research work in conjunction with the USER's specific project. The UNIVERSITY and HCBI shall have the right to immediately prohibit further use by the USER if HCBI, in its sole discretion, believes that this representation has been breached.

#### **5. Appropriate Conduct**

The INSTITUTION agrees that the USER shall observe all applicable governmental, UNIVERSITY, and HCBI policies, rules and regulations that pertain to the USER's conduct on campus and at HCBI. The INSTITUTION agrees that HCBI or the UNIVERSITY may require the USER to leave HCBI if it believes that the USER has violated a policy, rule or regulation, or if it believes that the USER's conduct is inappropriate.

#### **6. Liability**

The INSTITUTION maintains such health and accident insurance as it may carry for the USER while he/she is working at HCBI facilities. The USER knowingly assumes all the risks and responsibilities surrounding his/her use of and access to HCBI facilities. The INSTITUTION and the USER understand that use of HCBI facilities may involve exposure to potentially hazardous conditions including, but not limited to, biological, chemical, mechanical, electrical and radiation hazards. The USER and the INSTITUTION shall release, hold harmless and indemnify the UNIVERSITY, its current or former officers, faculty, staff, representatives, volunteers, employees, students, other trainees or agents, and current or former members of its governing boards (collectively, "UNIVERSITY INDEMNNEES") from claims, damages, costs (including reasonable attorney fees) and liabilities arising out of the USER's use of HCBI's facilities, with the exception of gross negligence or willful misconduct by the UNIVERSITY or UNIVERSITY INDEMNNEES. The UNIVERSITY and UNIVERSITY INDEMNNEES shall hold no liability with respect to loss, damages or claims incurred by the INSTITUTION or USER in connection with the USER's use of the facilities described, unless otherwise provided herein. The INSTITUTION also acknowledges that it is financially liable for equipment or other property damage if it is found to result from negligence or willful misconduct by the USER.

#### **7. Intellectual Property**

HCBI operates as a shared-use facility, and the UNIVERSITY shall make no claim to co-own USER-created intellectual property based solely on the USER's use of the UNIVERSITY's facilities. The USER and INSTITUTION acknowledge that the commercial viability of any technique developed at HCBI facilities is subject to the existing intellectual property rights of the UNIVERSITY and other third-party rights holders. The UNIVERSITY makes no guarantee that techniques developed at HCBI facilities are not covered by its own or a third party's intellectual property. The USER and the INSTITUTION further acknowledge that the UNIVERSITY may claim partial ownership of intellectual property that the USER co-develops with HCBI staff or other UNIVERSITY personnel.

#### **8. Confidentiality**

The USER and INSTITUTION agree not to disclose to a third party, or use, directly or indirectly, any proprietary or confidential research, data, trade secrets, or other similar information of which the USER and INSTITUTION may become aware as a result of the USER's activities at HCBI. The USER and INSTITUTION agree that research projects conducted by UNIVERSITY and third-party patrons of HCBI, other than research projects undertaken in collaboration with the USER, are presumed confidential unless otherwise expressly stated. The USER and INSTITUTION further acknowledge that the UNIVERSITY and HCBI Staff have no obligation either to preserve the confidentiality of information USER or INSTITUTION may disclose to HCBI Staff.

#### **9. HCBI Requirements**

The INSTITUTION and USER certify that the USER will under no circumstances (a) schedule time for facility use for another person in the USER's name (whether other user is qualified or not), (b) disclose the USER's HCBI User Name and/or Password for use by other persons, (c) give other persons access to the USER's facility-access swipe card or (d) otherwise assist others with unauthorized access to any controlled facility at the UNIVERSITY.

#### **10. Termination of Access**

HCBI reserves the right to deny future access to the USER in the event of breach of any obligation of this MOU. In the event of termination for breach, the UNIVERSITY shall be entitled to payment in full of all costs incurred, including hourly use fees, as of the date of termination.

The INSTITUTION warrants that it has fully read and agrees with this Agreement.

**INSTITUTION: Massachusetts Institute of Technology**

Representative: Jamie Goldberg Title: Sr Contract Administrator, Office of Sponsored Programs

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The User has read and understands the foregoing MOU, agrees to comply with the obligations imposed on the USER and INSTITUTION pursuant to its terms and conditions, and agrees that it is subject to all disclaimers and limitations of liability that run to the benefit of the UNIVERSITY.

**USER:** \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Principal Investigator:** \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**UNIVERSITY: Harvard Center for Biological Research (HCBI) at Harvard University**

Representative: Shanna deBlieck Title: Assistant Director of Science Operations

Signature: \_\_\_\_\_ Date: \_\_\_\_\_