

LAB MACHINIST SOLUTIONS, LLC SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is dated this ___ day of June, ____ (the “Effective Date”) by and between Lab Machinist Solutions, LLC, a Massachusetts limited liability company having a place of business at 429 Main Street, Waltham, MA 02452 (“LMS”), and _____, a _____ corporation having a place of business at _____ (“Client”). LMS and Client are each referred to individually as a “Party” and together as the “Parties.”

Background

- A. LMS offers laboratory consulting services including mechanical design of custom solutions, including repairs, customization or design of new laboratory apparatus, tools and instruments; and consulting and design services to solve problems for research scientists (the “Services”).
- B. Client owns and operates a research organization [or other business/facility] and, from time to time, requires Services of the type offered by LMS.
- C. Client desires to obtain Services from LMS, and LMS is willing to provide such Services to Client, in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants, promises and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section I – Services

1. Services. LMS agrees to provide Services for Client in accordance with this Agreement and all applicable federal, state and local laws, rules and regulations, as well as any applicable Client policies provided to LMS. Client shall be responsible for all safety matters and compliance with federal, state and local laws and regulations at its laboratory and facilities.

2. Estimates; Expenses. Work shall be estimated on a project completion basis or hourly basis. The fees and expenses quoted are estimates only. LMS will keep the Client apprised of any changes in the estimated service hours and charges within a reasonable period of time. Final fees and expenses shall be set forth on the final invoice. The Client should assume that all requested additions, alterations or process changes will alter the time and cost. The Client shall reimburse LMS for all expenses arising from work assignments including, but not limited to, materials, deliverable tooling and travel.

3. Scope(s) of Service; Deliverables. Scope(s) of Service and deliverables are attached at Exhibit A. Exhibit A may be amended from time to time to change or add new scopes of service under this Agreement.

Section II – Invoices & Expenses

4. Invoices. Invoices are payable thirty (30) days after receipt unless otherwise stated. A \$50 service charge shall be payable on all overdue balances for reissuing each invoice at 31, 45 and 61 days from the date of original invoice. The Client shall be responsible for all costs incurred in collecting unpaid invoices, including but not limited to reasonable attorney’s fees. The Client shall reimburse LMS for all expenses arising from work assignments, including but not limited to material, deliverable tooling and any significant travel. All payments shall be remitted to LMS at the following address:

Lab Machinist Solutions, LLC
429 Main Street
Waltham, MA 02452

Section III – Confidentiality

5. Confidentiality. At all times during the term of this Agreement and thereafter, the Parties will hold in strictest confidence and will not disclose, use, lecture upon or publish any of the other Party’s Proprietary Information (as defined below), except to the extent such disclosure, use or publication may be required in direct connection with the Services or is expressly authorized in writing by the other Party. The term “Proprietary Information” shall mean any and all trade secrets, confidential knowledge, know-how, data or other proprietary information or materials of either Party or entrusted to it in confidence by third parties. By way of illustration but not limitation, Proprietary Information includes: (i) any inventions, ideas, samples, novel compounds, processes, formulas, data, know-how, improvements, discoveries, developments, designs and techniques, as well as procedures and formulations for producing or testing any thereof; (ii) information regarding research or development plans, protocols or results; new products and product plans; marketing and selling plans and results; business plans; unpublished budgets and financial information; non-public information about licenses, collaborations, prices, costs, suppliers or customers, in each case whether actual or prospective; and (iii) information regarding the skills and compensation of employees or other consultants of the other Party.

Section IV – Term and Termination

6. Term. The initial term of this Agreement shall commence on the Effective Date and terminate on the date that is one (1) year from the Effective Date, unless otherwise terminated as provided herein (“Initial Term”). Thereafter, this Agreement may be renewed for one-year periods commencing on the anniversary of the Effective Date (“Renewal Term”). Fees for Services in any Renewal Term shall be then-current rate charged by LMS.

7. Termination. Notwithstanding anything herein to the contrary, this Agreement may be terminated at any time as follows:

- a. By mutual agreement of the Parties; or
- b. With cause by LMS or Client upon the default by the other of any term, covenant or condition of this Agreement, where such default continues for a period of ten (10) business days after the defaulting Party receives written notice thereof from the other Party specifying the existence of the such default; or
- c. Without cause by LMS or Client upon at least thirty (30) days prior written notice to the other Party in which case the Agreement shall terminate on the future date specified in such notice.

Section V – Miscellaneous

8. Ownership of Designs. LMS transfers ownership of designs to the client when design services are explicitly estimated and purchased. Otherwise, LMS retains ownership of any designs created in the course of a project. In the event of cancellation of a project, ownership of all copyrights and the original design shall be retained by LMS, and a cancellation fee for work completed, and expenses already incurred, shall be paid by the Client.

9. Right to Authorship Credit. Unless the work is subject to the terms of a Non-Disclosure Agreement, LMS may use designs and project photos in a portfolio, including, but not limited to, the LMS website. The Client agrees that, when asked, the Client will identify LMS as the creator of the design or product where applicable.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts of laws principles.

11. Limitation of Liability for Use of Designs. The Client shall indemnify LMS against all claims and expenses, including attorney's fees, due to any incorrect uses of the design or uses other than intended by LMS and defined by the project scope. Client agrees that any advice, designs, physical parts, and prototypes provided by LMS will be used at Client's own risk. The Client shall indemnify LMS against all claims and expenses, including attorney's fees, due to any incidental or consequential damages that arise from use of advice, designs, parts, or prototypes.

12. Limitation of Liability for Chemistry Consulting. Consulting on techniques and methods for chemistry lab work is provided by LMS with the understanding that the consulting advice will not be relied on as prescriptive, complete, or authoritative. The Client assumes full responsibility for proper supervision, safety training, practice, research, and preparation. The Client shall indemnify LMS against all claims and expenses, including attorney's fees, due to any incidental or consequential damages that arise from experiments.

13. Limitation of Liability LMS or agents or employees shall not be liable for any incidental or consequential damages that arise from any breach of this Agreement whether due to intentional or negligent acts or omissions of LMS, its representatives, employees, or a third party.

14. NO WARRANTIES; LIMITATION OF LIABILITY. LMS MAKES NO

WARRANTY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS OR FITNESS FOR ANY PURPOSE OF THE SERVICE(S) OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES BY LMS ARE HEREBY EXCLUDED AND DISCLAIMED. IN NO EVENT SHALL LMS BE LIABLE TO CLIENT OR ANY OTHER PERSON, FIRM OR ENTITY IN ANY RESPECT, INCLUDING, WITHOUT LIMITATION, FOR ANY DAMAGES, EITHER DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, ACTUAL, PUNITIVE, OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER, ARISING OUT OF MISTAKES, ACCIDENTS, ERRORS, OMISSIONS, INTERRUPTIONS, DELAYS, OR DELAYS, INCLUDING THOSE WHICH MAY BE CAUSED BY REGULATORY OR JUDICIAL AUTHORITIES, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OBLIGATIONS OF LMS PURSUANT TO THIS AGREEMENT. IN NO EVENT SHALL LMS'S LIABILITY, FOR ANY REASON UNDER THIS AGREEMENT, EXCEED THE AMOUNT THAT IS THE TOTAL OF THE PREVIOUS TWELVE MONTHS' INVOICING UNDER THIS AGREEMENT.

15. Indemnification.

(a) Client shall indemnify, defend and hold harmless LMS from any losses, liabilities, damages, claims, actions, suits, proceedings, costs and expenses (including reasonable attorneys' fees) (collectively, "Losses"), arising out of LMS's performance of the Services, except to the extent such Losses arise out of LMS's gross negligence, willful misconduct or breach of this Agreement.

(b) LMS shall indemnify, defend and hold harmless Client from any Losses, arising out of LMS's negligence, gross negligence, willful misconduct or breach of this Agreement, except to the extent such Losses arise out of Client's negligence, gross negligence, willful misconduct or breach of this Agreement.

16. Force Majeure. Neither the LMS nor the Client shall be considered to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence.

17. Dispute Resolution. Any disputes in excess of maximum limit for small-claims court arising out of this Agreement shall be submitted to binding arbitration in Suffolk County, Massachusetts, before a mutually agreed-upon arbitrator pursuant to the rules of the American Arbitration Association. The Arbitrator's award shall be final, and judgment may be entered in any court having jurisdiction thereof. The non-prevailing party shall pay all arbitration and court costs, reasonable attorney's fees, and legal interest on any award of judgment in favor of the prevailing party.

18. Entire Agreement; Written Modification. This Agreement is the entire agreement between the Parties and supersedes all prior and contemporaneous oral or written communications, proposals, quotes, advertisements or understandings regarding the subject matter hereof. This Agreement may be amended only in writing, and only if signed by both Parties.

19. Severability. If any of the provisions of this Agreement are held invalid or unenforceable, unless such invalidity or unenforceability substantially frustrates the purpose and intent of the remainder of this Agreement, such invalidity or unenforceability shall not affect the remainder of this Agreement. All terms and conditions are severable and all remedies hereunder or at law or in equity are cumulative and nonexclusive.

20. Waiver. Any Party's failure to insist upon strict performance of any provision of this Agreement is not a waiver of any of its rights under this Agreement.

21. Independent Contractor. LMS and Client are independent contractors for the purposes of this Agreement and neither has the authority to bind the other. No third party is a beneficiary of this Agreement.

22. Assignment; Subcontracting. The Parties may not assign or subcontract this Agreement or any of their respective rights or obligations hereunder without the prior written permission of the other Party.

23. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to the choice of law rules thereof. Article 2 of the Uniform Commercial Code shall apply to this agreement.

24. Interpretation. This Agreement is the product of negotiation between the Parties and shall not be interpreted for or against any Party on account of the role of a Party in the drafting hereof. Each appearance of the word "including" or "includes" shall be deemed to include the words "without limitation."

25. Survival. In addition to any specific survival references in this Agreement, any terms or obligations that by nature would be expected to survive the termination or expiration of this Agreement shall survive.

26. Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Signatures provided by facsimile transmission or other electronic delivery shall be deemed to be original signatures.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives under seal as of the date first set forth above.

LMS:

By: _____

Name (Print): _____

Title: _____

Date: _____

CLIENT

By: _____

Name (Print): _____

Title: _____

Date: _____

EXHIBIT A

Scope of Services

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