

NECEN TERMS AND CONDITIONS

1. Governing Provisions.

These terms and conditions (“Terms and Conditions”) apply to high throughput data collection by usage of an electron microscope, sample optimization for the electron microscope, data processing and map interpretation (“Work”) provided by NeCEN and, if applicable, according to the detailed description in the applicable quotation or other written statement of work (“SOW”), as submitted by NECEN and accepted by Client. These Terms and Conditions, together with the SOW, form the entire contract between Client and NECEN (“Custom Agreement”), and supersede all prior communications between the parties, whether written or oral, relating to the Work, except for a written contract signed by both parties. Client’s submission of a purchase order or other similar document to indicate payment for the Work (“PO”) shall indicate acceptance of these Terms and Conditions to the exclusion of any other terms or conditions appearing or referenced in such PO, which are hereby deemed to be material alterations and notice of objection to which is hereby given, notwithstanding anything contained to the contrary in a PO.

2. Performance of Work.

NECEN shall perform the Work as an independent contractor, using methods, materials, equipment, personnel and/or related intellectual property owned or controlled by NECEN to provide Client with data and/or materials produced by NECEN as a direct result of the Work, as specified in the SOW (collectively “Deliverables”), which Deliverables may include data or materials that result from the use of materials supplied by Client (“Client Materials”). NECEN will make a good faith effort to start and complete all Work on time, and will notify Client if substantial delays are likely. NECEN will comply with all laws and regulations generally applicable to Work, and with any specific regulatory framework agreed in the SOW.

NECEN may delegate performance of the Work, or portion thereof, to an affiliate, provided that all Work will be performed in accordance with the Custom Agreement. Performance of Work hereunder is conditioned on Client’s acceptance of the Terms and Conditions and the SOW, whether by execution of the SOW, a contract, or a PO that references the SOW. In the event of a conflict of terms, the SOW takes precedence over these Terms and Conditions, and any written contract signed by both parties takes precedence over either; inconsistent terms of a PO shall not apply unless NECEN has agreed to them in writing.

3. Client Materials and Data.

Client will provide NECEN with Client Materials specified in the SOW, in compliance with applicable laws and regulations and in sufficient amounts, as well as relevant safety information and other characteristics of Client Materials needed by NECEN to perform the Work, including without limitation any certification or documentation of Client Materials reasonably requested by NECEN. The Client Materials, and all information about Client Materials, whether provided by Client or generated by NECEN in the performance of Work (such information collectively referred to as

“Data”), shall be subject to the confidentiality and non-use requirements of Section 8. Upon completion of the Work, NECEN will maintain records of the Data for a period of no less than thirty (30) days after confirmation of reception of the Data and will delete it after this period.

Client is solely responsible for the means of transportation and the state of Client Materials at time of arrival at the exact address and within office hours stated in the SOW. Client informs NECEN about the date and, if possible, time Client’s Material is due to arrive at NECEN.

NECEN will use Client Materials and Data only in accordance with the SOW, and will not modify nor reverse engineer Client Materials except as agreed therein. Unless otherwise specified in the SOW or agreed in writing, any Client Materials not consumed in the Work or required for additional Work will be returned to Client at request. Client Materials processed or consumed in the Work will be regarded useless and be discarded.

NECEN will not transfer Client Materials, in whole or in part, to any third party, without Client’s prior written approval.

4. Use Limitations.

Except as expressly agreed otherwise in the SOW, Client agrees to use Deliverables only for Client’s lawful internal research purposes, not for use in humans, and in accordance with any Limited Use Label License (LULL) identified in the SOW, and Deliverables shall not be transferred to or commercially used by or for any third party, regardless of whether such transfer or commercial use of Deliverables is for research purposes of Client. The research use limitation, however, shall not preclude Client’s use of (i) Deliverables in its lawful research and development of commercial products or services, provided that such product or service does not require the practice of NECEN Technology, or (ii) any Data for the regulatory approval and commercialization of such products or services. Where more than one LULL is applicable, the most restrictive LULL shall apply, and these Terms and Conditions take precedence over any less restrictive LULL, but any use limitations or permissions expressly stated in the SOW take precedence over either. Without limiting the foregoing, Client shall not directly or indirectly furnish materials or information provided hereunder to any entity, or destination, or for any use, except in full accordance with all applicable laws and regulations, including without limitation export control and trade sanctions laws and regulations of the United States.

5. Pricing and Payments.

The Access rates for the Work are published on the website and are subject to alteration. NECEN uses different rates for Dutch academia, International Academia and Industry.

All rates exclude VAT (BTW). All rates are without the costs of shipping of Client Material to and from NECEN; Client is responsible for the transportation. All rates do not include the cost for shipping, hardware and/or software services needed to provide the Deliverables.

Client shall pay NECEN for the Work within 30 days after the date of the respective invoice(s), which shall be sent to Client upon completion of the Work (or portion thereof), according to the payment schedule and currency specified in the SOW. If Client defaults on any payment when due, NECEN, at

its option and without prejudice to its other lawful remedies, may delay performance, defer delivery, charge interest on undisputed amounts owed, and/or terminate the Custom Agreement.

On request by Client, NECEN may, under special circumstances, deviate from the rates on the website and conditions stated in this Section 5.

6. Ownership, Intellectual Property.

As between the parties, except as otherwise expressly agreed in the SOW, Client shall be the exclusive owner of (i) the Data, (ii) Client Materials, (iii) any derivatives or modifications of Client Materials that are generated by NECEN as a direct result of the Work, and (iv) any inventions and/or discoveries that directly result from the performance of the Work and that directly relate to Client Materials, whether or not copyrightable or patentable (collectively, the "Client Inventions").

NECEN's laboratory notebooks or other records maintained with respect to the Work shall be owned by NECEN, provided however that if such notebooks or records contain any Data or other confidential information of Client, such Data and confidential information will continue to be the property of Client, and the parts of the notebooks and records that contain Client confidential information will be subject to NECEN's obligations of nonuse and confidentiality as set forth in Section 8.

7. Non-Exclusivity.

Unless expressly agreed in writing, all Work is provided on a non-exclusive basis, and NECEN reserves all rights for itself to provide third parties with deliverables that are identical or similar to Deliverables, provided that NECEN shall not use any Client Materials or information received from Client to perform Work for any third party.

Notwithstanding anything else in the Terms and Conditions, where NECEN performs the Work without reliance on Client Materials or confidential information received from Client, NECEN reserves all rights to commercialize such Work as a catalog product.

8. Confidentiality.

NECEN shall treat all Data and Client Materials as proprietary and confidential to Client, and will not disclose Data or Client Materials to any person except its employees, consultants, and subcontractors as necessary for purposes of providing the Work, and then only subject to a written confidentiality agreement that includes the requirements specified herein. If NECEN discloses any information or materials comprising NECEN Technology to Client, Client shall treat such information and materials as proprietary and confidential to NECEN. Each party shall protect the proprietary and confidential information or materials of the other party by using the same degree of care as such party uses to protect its own materials and information, but in any event no less than a reasonable degree of care. Notwithstanding any other provisions herein, however, each recipient party shall have no obligation to the other party for any information or material that is (a) already known to the recipient party; (b) publicly known other than by a wrongful act of the recipient party; (c) received from a third party lawfully entitled to disclose it; (d) disclosed pursuant to an enforceable order of a court or administrative agency; and/or (e) is independently developed by or for the recipient party.

9. Limited Warranty.

The Work, high throughput data collection by usage of an electron microscope, sample optimization for the electron microscope, data processing and map interpretation, is a highly specialized operation using state of the art technology. NECEN is doing its utmost to assure correct operation at all times and regular maintenance. However, due to unexpected and various circumstances the microscope may not be working correctly. NECEN cannot be held accountable for any damages that may arise out of aforementioned circumstances.

NECEN's sole warranty for the performance of Work is that the Work will be performed using due care in accordance with

(a) the Custom Agreement, including the respective SOW and
(b) laws, regulations and generally prevailing industry standards applicable to such Work; NECEN does not warrant or represent that the results of the Work will be acceptable to any regulatory agency to which they are presented or that they will advance the interests of Client. The Deliverables will be presented 'as is' and will not be interpreted in any way, unless requested otherwise and laid down in a separate agreement. Any pre-processing during the collection of data will not be a part of the Data and will only be carried out to ensure correct operation.

If Client believes that NECEN, in breach of its limited warranty, has made a material error in the Work that renders the results of such Work invalid, Client must notify NECEN of such error in writing, within six months after receipt of the final Deliverable for such Work; and as Client's sole remedy for such error, NECEN shall either (i) repeat the particular Work at NECEN's own expense or

(ii) refund to Client the fees actually paid for the particular Work giving rise to the breach of warranty.

9.1. NECEN SHALL NOT BE LIABLE HEREUNDER, UNDER ANY LEGAL THEORY, FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS OR LOSS OF BUSINESS, EVEN IF NECEN HAD NOTICE OF THE POSSIBILITY THEREOF.

9.2. THE WARRANTY SET FORTH IN THIS SECTION 9 IS IN LIEU OF ANY AND ALL OTHER WARRANTIES RELATING TO THE WORK, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT DELIVERABLES OR USE THEREOF WILL NOT INFRINGE ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

9.3. NECEN'S LIABILITY TO CLIENT FOR BREACH OF ANY PROVISION OF THE CUSTOM AGREEMENT (OTHER THAN BREACH OF THE WARRANTY IN THIS SECTION 9 FOR WHICH LIABILITY IS LIMITED TO RE-PERFORMANCE OR REFUND AS SPECIFIED HEREIN) SHALL BE LIMITED TO DAMAGES IN AN AMOUNT NOT TO EXCEED THE FEE TO BE PAID FOR THE WORK.

9.4. NOTHING IN THE CUSTOM AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE OR FOR FRAUD OR FRAUDULENT MISREPRESENTATION.

9.5 THE WORK WILL BE SCHEDULED BY NECEN IN ACCORDANCE WITH THE CUSTOM AGREEMENT. NECEN RESERVES THE RIGHT TO CHANGE THE SPECIFIC DATES TO ITS OWN INSIGHT AT ANY TIME.

10. Indemnification.

Except to the extent caused by the willful misconduct of NECEN, Client shall indemnify and hold harmless NECEN, its affiliates and their respective officers, directors, employees and agents (“Indemnified Party”) from and against any and all expenses (including, but not limited to, reasonable attorney’s fees) and losses incurred by any such Indemnified Party in connection with any claim asserted by a third party arising out of or based on (a) Client Materials or use thereof in performance of the Work as specified in the SOW; and/or (b) any product or service of Client based in whole or part on Client’s reliance on Deliverables, or any portion or derivative thereof; and/or (c) breach of Section 4.

11. Changes, Termination.

Changes to the Work must be agreed to by both parties in writing, and may require changes in the fees or timelines. NECEN is aware that Client Materials are non-standard and therefore, in case of unforeseen circumstances and if possible, is willing to carry the Work out on a different date than agreed on.

However, NECEN may terminate the Custom Agreement if

- (a) Client breaches any material provision of the Custom Agreement and fails to remedy the breach to the satisfaction of NECEN within 15 days after written notice thereof;
- (b) NECEN is unable to obtain third party materials or technology specified in the SOW, for reasons beyond NECEN’s reasonable control;
- (c) NECEN determines that biosecurity, biosafety, and/or feasibility reasons prevent or are likely to prevent the performance of the Work, or
- (d) Client is or is deemed by law to be unable to pay its debts or perform its obligations under the Custom Agreement.

Client shall have the right to terminate any SOW upon 2 working days prior written notice to NECEN. Termination of Work in progress which is not caused by NECEN, will result in a charge of 25% of the price that was agreed upon in the Custom Agreement per day or part of a day that was reserved to carry out the Custom Agreement, in addition to any other termination or cancellation charges specified in the SOW.

Miscellaneous.

This Custom Agreement may not be assigned without the consent of the other party. The Custom Agreement shall be governed by Dutch Law.

If any part of these Terms and Conditions is found to be legally unenforceable, the remaining clauses of these Terms and Conditions shall be unimpaired, and the parties shall in good faith negotiate an enforceable provision that most closely achieves the objectives of the unenforceable provision. Except for payment obligations, neither party shall be responsible for failure to perform its obligations due to natural disasters or other force majeure causes beyond its reasonable control.

In case Client is charged for an Industrial Rate, neither party shall use the name of other party or of its employees in any promotion or publication without prior written consent of such other party; in

all other cases, Clients are obliged to refer to NECEN in publications which present results of any Delivery and inform NECEN hereof.

No waiver by either party of any breach hereof shall constitute a waiver of any other breach thereof.

NECEN reserves the right to amend these terms and conditions from time to time without notice and at its discretion. It is CLIENT's responsibility to periodically review these terms and conditions for updates which shall come into effect once posted at www.NECEN.nl. CLIENT's continued use of NECEN facilities will be deemed acceptance of these terms and conditions.