

LABORATORY OR EQUIPMENT ACCESS AGREEMENT
BETWEEN
CALIFORNIA INSTITUTE OF TECHNOLOGY
AND
[[LESSEE NAME]]

This Agreement, effective as of the date of the last signature below, is by and between **[Lessee Name]** located at **[Lessee Address]** (“Lessee”) and California Institute of Technology (“Caltech”).

Whereas Lessee desires to use Caltech’s specialized facilities or equipment as described in Attachment A (“Caltech Facilities”), which are not generally publicly available, on an as-available basis to further Lessee’s research and development, and

Whereas Caltech finds that Lessee’s request is consistent and does not interfere with Caltech’s status as an institute of higher education and its mission to further scientific knowledge, the parties agree to the following:

1. **Grant of Right.** Caltech hereby grants to Lessee a non-exclusive right to use Caltech Facilities for purposes as described and approved in Attachment A. Only Lessee’s employees, agents or consultants (“Lessee Employees”) named in Attachment A will be allowed access to Caltech Facilities; however, Attachment A may be modified in writing with mutual consent. Use of the Caltech Facilities is strictly limited to the use(s) as described in Attachment A. Use or work outside the scope described in Attachment A requires submission and advance approval of an amended Attachment A. Caltech retains all legal rights in the Caltech Facilities licensed, and the relationship created between the Parties is that of licensor/licensee, and not that of landlord/tenant.
2. **Research Review Board Approval.** Lessee represents and warrants that any research involving animals or human subjects performed on Caltech premises have been approved by Lessee’s appropriate review board. Copies of the approval documents shall be provided to Caltech prior to start of work.
3. **Access to Caltech Facilities.** Caltech Facilities shall be made available to Lessee on mutually agreeable times as appropriate for the intended purpose described in Attachment A, but it is understood that Caltech is an institution of higher education and research and that the use of the Caltech Facilities by the Lessee shall not interfere with or take priority over the work of Caltech students or researchers. Furthermore, access to Caltech Facilities and the working condition of Caltech Facilities cannot be guaranteed. Lessee retains ultimate responsibility for project progress and development; Caltech does not in any way warrant or assure a particular project result. Lessee shall be responsible for all damage to Caltech’s property, including the Caltech Facilities, caused by Lessee’s equipment, employees or anyone acting on behalf of Lessee.
4. **Warranty of Training.** Lessee represents and warrants that Lessee Employees are properly trained by Lessee in relevant laboratory procedures, safety and in equipment operation, and when requested, shall provide evidence of such training prior to utilizing Caltech Facilities. Responsibility for safe use of the facility by Lessee Employees rests with the Lessee, and Lessee assumes all risks and liability for use of Caltech Facilities.

Lessee agrees that Lessee Employees will be familiar, and comply with, all applicable Caltech safety policies and procedures prior to commencement of the work. Caltech's safety policies and procedures may be accessed through the web at <http://www.safety.caltech.edu/>. Under some circumstances, Caltech may provide Lessee with safety information to Lessee Employees who are U.S. persons. Should a Lessee Employee not be a U.S. person, Caltech cannot provide such information unless and until Caltech's Director of Export Compliance has approved the provision of the information. Although Caltech may provide such safety information, Lessee assumes sole responsibility for the acts and omissions of training Lessee Employees. Lessee also agrees to be responsible for insuring that Lessee Employees plan and perform work in such a way as to ensure their own personal safety as well as the safety of others in the Caltech Facilities and Caltech community.

5. **Lessee Employee Status.** Lessee agrees that Lessee Employees are not employees or agents of Caltech, that Caltech has no responsibility to provide Worker's Compensation or other liability coverage, insurance, benefits or compensation for Lessee Employees, and that Caltech will not be responsible for any costs, expenses or liabilities for illness or injuries of Lessee Employees. Lessee agrees that Lessee Employees are acting solely as representatives and employees of Lessee during work at Caltech. The names of Lessee Employees to be on Caltech premises are identified in Attachment A.
6. **Intellectual Property.** The parties' existing intellectual property rights are not affected by any physical transfer to the other party of intellectual property if the transfer is necessary for Lessee to use Caltech Facilities. The parties shall negotiate in good faith the ownership of intellectual property developed from Lessee's use of the Caltech Facilities. Inventorship shall be determined by US patent law and authorship shall be determined by US Copyright law. At a minimum, Lessee grants to Caltech the right to practice or use any Lessee-developed methods or devices resulting from the use of Caltech Facilities for Caltech's non-profit research and teaching purposes only.
7. **Lessee Indemnification.** Lessee shall defend, indemnify and hold harmless Caltech, its trustees, officers, employees, students, and agents from all claims, demands, suits, investigations or other such proceedings which arise as a result of or are related to this Agreement ("Claims"), and any losses, damages, costs, including reasonable attorneys' fees and costs, and liabilities arising out of such Claims ("Losses"), including Claims and/or Losses arising from or related to:
 - (a) the use of Caltech Facilities, property, equipment, materials or other resources by Lessee,
 - (b) infringement of any patent, copyright, or other intellectual property arising out of any acts required to carry out this Agreement,
 - (c) personal injury, death or property damage related to or caused by any products or services provided by Caltech hereunder or any products or services provided by Lessee, including those incorporating any resources provided by Caltech hereunder or any information or know-how provided pursuant to this Agreement, and
 - (d) from data, information, prototypes, product(s), expertise, or training offered by Caltech pursuant to this Agreement, in each case except to the extent caused by Caltech's gross negligence or willful misconduct.

Caltech shall promptly notify Lessee of any claim for which it seeks indemnification hereunder, provided that any delay in providing such notice will not relieve Lessee of its obligations

hereunder. Lessee shall have the right to control the defense and settlement of such claim, provided that Lessee may not enter into any settlement which admits guilt, culpability or liability on the part of Caltech or any of the indemnified persons without Caltech's prior written consent. Caltech shall have the right to participate in the defense of any such claim with its own independent counsel at its own expense.

8. **Payment.** Access to and use of Caltech facilities indicated in Attachment A are provided to the Lessee and designated employees at no charge. Any additional materials or supplies, or access to facilities outside of those described in Attachment A and supplied by Caltech may incur a use fee, and will be billed separately to Lessee. As mutually agreed upon, Caltech may require full payment before allowing future access to Caltech Facilities, or shall submit to Company invoices no more than once a month, which are due and payable in full upon receipt. Caltech reserves the right to discontinue providing access to Caltech Facilities under this agreement due to nonpayment on the part of the Lessee.
9. **NO WARRANTIES.** Lessee acknowledges ultimate responsibility for its use of the Caltech Facilities and understands that Caltech in no way warrants or assures project success. THE CALTECH FACILITIES PROVIDED HEREUNDER BY CALTECH, AS WELL AS ANY DATA, PROTOTYPE, PRODUCT(S) OR OTHER RESOURCES GENERATED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE MADE AVAILABLE BY CALTECH TO LESSEE UNDER THIS AGREEMENT ARE PROVIDED ON AN 'AS IS' BASIS, WITHOUT WARRANTY OF ANY KIND, AND CALTECH HEREBY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE FOREGOING, INCLUDING, WITHOUT LIMITATION, ALL EXPRESS OR IMPLIED WARRANTIES AS TO THE CONDITIONS OF ANY SUCH RESOURCES OR THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY SUCH RESOURCES. IN NO EVENT SHALL CALTECH BE LIABLE TO LESSEE OR ANY THIRD PARTY FOR LOST PROFITS, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE BASIS OF THE CLAIM.
10. **Lessee Equipment.** If Lessee brings any equipment onto Caltech property, Lessee agrees that it will maintain such equipment in safe working order and assume all risks of damage or loss to their equipment.
11. **Term and Termination.** This Agreement shall be effective for the period of use described in Attachment A, and expire not more than 60 days after the effective date as given below. However, this Agreement may be terminated at any time by either party upon written notice to the other party. Upon termination or expiration of this Agreement, Lessee shall immediately remove all of its property and restore all Caltech Facilities used to the condition in which Lessee found them. Lessee shall also immediately return any Caltech property including keys and/or access cards. Lessee agrees to pay costs associated with re-keying doors or Caltech Facilities if keys are not returned.
12. **Compliance with Law.** Lessee hereby warrants that it will comply with any and all applicable laws and regulations in connection with its activities contemplated under this Agreement. Lessee further warrants that it currently has and will keep in effect for the term of this Agreement, all licenses, permits and approvals that are legally required for the Lessee to

conduct business and perform such activities. Lessee further warrants that it will be responsible for ensuring that all its partners, co-sponsors, subcontractors, independent contractors, vendors or other agents as applicable, have and will keep in effect for the term of this Agreement, all licenses, permits and approvals which are legally required for them to conduct business. Lessee shall indemnify Caltech against all penalties incurred by reason of the non-observance of any such laws, provisions or regulations.

Lessee hereby acknowledges and agrees that as used herein, the Lessee's "agents" will include Lessee's partners, co-sponsors, subcontractors, independent contractors, vendors, volunteers, invitees, and guests. Lessee further warrants that any and all of its agents including partners, co-sponsors subcontractors, independent contractors and vendors will comply with all laws, rulings and regulations applicable to their business conducted pursuant to this Agreement. Lessee warrants that it will require and ensure all its partners, co-sponsors, subcontractors, independent contractors and vendors shall maintain and keep in force throughout the term of this Agreement insurance consistent with Paragraph 6, herein.

13. Miscellaneous.

a. Lessee agrees that it will not, or authorize others to, use the names "California Institute of Technology" or "Caltech" in any publication or statement in relation to this Agreement that would constitute an express or implied endorsement by Caltech of any product or service without Caltech's prior written consent. Similarly, Caltech agrees that it will not use Lessee's name without its prior written consent.

b. Lessee represents and warrants it has the right to contract with Caltech for this work and that the signatory below is an authorized representative of Lessee able to legally bind Lessee.

c. This Agreement contains the entire Agreement between the Parties with respect to the use of Caltech Facilities. Any agreement to change any terms and conditions of this Agreement or the Attachment shall be valid only if the change is made in writing and executed by the Parties to this Agreement.

d. This Agreement may not be assigned by Lessee without the prior written consent of Caltech.

e. This Agreement shall be interpreted and governed by the laws of the State of California, without regard to principles of conflicts of laws.

[Lessee]

California Institute of Technology

By: _____

Name/Title: _____

Name/Title: _____

Date: _____

Date: _____

Attachment A
DESCRIPTION OF FACILITIES, WORK CONDUCTED
AND LESSEE EMPLOYEE ACCESS

Facilities and/or Equipment Used by Lessee:

Cahill Center for Astronomy and Astrophysics
Remote Operations Room (room 118 or 144 Cahill)

Date(s) of Use:

Enter date(s) of use here

Description of Work Conducted by Lessee at Caltech:

Remote astronomical observations made in conjunction with Keck Observatory (of similar facility)

Lessee Employee(s) (includes all consultants, agents or other representatives of Lessee) to be at Caltech: