

Non-Proprietary User Agreement

BETWEEN

Board of Trustees of the Leland Stanford, Jr., University (“CONTRACTOR”)
Operator of SLAC National Accelerator Laboratory (hereinafter “Laboratory”)
Under United States (U.S.) Department of Energy (DOE) Contract No. DE-AC02-76-SFO0515

AND

(“USER”)

(Collectively, “the Parties”)

The obligations of the above-identified DOE Contractor may be transferred to and shall apply to any successor in interest to said Contractor continuing the operation of the DOE Non-Proprietary User Facility involved in this User Agreement.

ARTICLE I. FACILITIES AND SCOPE OF WORK

CONTRACTOR will make available to employees, consultants, and representatives of USER (hereinafter called “Participants”) certain Laboratory User Facilities for non-proprietary use, which may include equipment, services, information, and other material, with or without Laboratory scientist collaboration, for purposes as described in the USER’s proposal accepted and conducted at the designated User Facility. Additional future experiments referencing this Agreement may be submitted by USER for identified User Facilities and purposes during the term of this Agreement (see Article II). Such additional proposals will be considered part of this Agreement upon acceptance by CONTRACTOR. Each accepted and approved proposal shall set forth the Technical Scope of Work of a specific project, including deliverables, to be performed pursuant to this Agreement. The scope of work shall not be considered proprietary information and shall be publicly releasable.

ARTICLE II. TERM OF THE AGREEMENT

This Agreement shall have a term of five (5) years from the effective date. The term of this Agreement shall be effective as of the date on which it is signed by the last of the Parties. The agreement can be renewed without any changes for additional terms upon written consent of the parties.

ARTICLE III: COST

Each Party will bear its own costs and expenses associated with this Agreement. No money will be transferred to or from either Party as consideration, in whole or in part, for this Agreement.

ARTICLE IV: GENERAL DISCLAIMER

THE U.S. GOVERNMENT AND CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE USER FACILITY FURNISHED HEREUNDER. IN ADDITION, THE U.S. GOVERNMENT, CONTRACTOR AND USER MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. THE U.S. GOVERNMENT, CONTRACTOR AND/OR USER SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO USE OF SUCH FACILITIES, RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT.

ARTICLE V: PROPERTY AND MATERIALS

USER may be permitted by Contractor to furnish equipment, tooling, test apparatus, or materials necessary to assist in the performance of its experiment(s) at the User Facility. Such items shall remain the property of USER. Unless the Parties otherwise agree, all such property furnished by USER or equipment and test apparatus provided by USER will be removed by USER within sixty (60) days of termination or expiration of this Agreement or will be disposed of as directed by USER at USER's expense. Any equipment that becomes integrated into the User Facility shall be the property of the U.S. Government. USER acknowledges that any material supplied by USER may be damaged, consumed or lost. Materials (including residues and/or other contaminated material) remaining after performance of the work or analysis will be removed in their then condition by USER at USER's expense.

USER will return facilities and equipment utilized in their original condition except for normal wear and tear.

CONTRACTOR shall have no responsibility for USER's property in CONTRACTOR's possession other than loss or damage caused by willful misconduct or gross negligence of CONTRACTOR or its employees.

Personal property produced or acquired during the course of this Agreement shall be disposed of as directed by the owner at the owner's expense.

ARTICLE VI: SCHEDULING

USER understands that CONTRACTOR will have sole responsibility and discretion for allocating and scheduling usage of the User Facilities and equipment needed for or involved under this Agreement.

ARTICLE VII: INDEMNITY AND LIABILITY

- A. Personnel Relationships** - USER shall be responsible for the acts or omissions of Participants.
- B. General Indemnity** - To the extent permitted by U.S. law and U.S. State law, USER hereby agrees to indemnify and hold harmless CONTRACTOR and the U.S. Government, their officers, agents and employees from any and all liability, claims, damages, costs and expenses, including attorney fees, for injury to or death of persons, or damage to or destruction of property, to the extent such liability, claims, or damages is caused by or contributed to the negligence or intentional misconduct of USER or its employees or representatives during the performance of the work under this Agreement.
- C. Patent and Copyright Indemnity—Limited** - To the extent permitted by U.S. law and U.S. State law, USER shall fully indemnify the U.S. Government and CONTRACTOR and their officers, agents, and employees for infringement of any United States patent or copyright arising out of any acts required or directed or performed by USER under this Agreement to the extent such acts are not normally performed at the facility.
- D. Product Liability** - To the extent permitted by U.S. law and U.S. State law, if USER utilizes the work derived from this Agreement in the making, using, or selling of a product, process or service, then USER hereby agrees to hold harmless and indemnify CONTRACTOR and the U.S. Government, their officers, agents and employees from any and all liability, claims, damages, costs and expenses, including attorney fees, for injury to or death of persons, or damage to or destruction of property, as a result of or arising out of such utilization of the work by or on behalf of USER, its assignees or licensees.
- E.** The liability and indemnity provisions in paragraphs B, C and D above shall not apply unless USER shall have been informed as soon as practicable by CONTRACTOR or the U.S. Government of the suit or action alleging such infringement, and such indemnity shall not apply to a claimed infringement that is settled without the consent of USER unless required by a court of competent jurisdiction.
- F. Notice and Assistance Regarding Patent and Copyright Infringement**
- a. USER shall report to the U.S. Government, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which USER has knowledge.
 - b. In the event of any claim or suit against the U.S. Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed hereunder, USER shall furnish to the U.S. Government when requested by the U.S. Government, all evidence and information in possession of USER pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the U.S. Government except where USER has agreed to indemnify the U.S. Government.

ARTICLE VIII: PATENT RIGHTS

The provisions, in Articles VIII (Patent Rights) and IX (Rights in Technical Data) below, are applicable to any privately or non-federally funded work. Notwithstanding the foregoing, if research subject to this Agreement is performed by the USER under a federal agency grant, cooperative agreement, or contract, or the work is subject to an international agreement then, to the extent that the Intellectual Property Provisions in the USER's grant, cooperative agreement, or contract with a federal agency or in the international agreement are inconsistent with the terms and conditions contained in Articles VIII and IX below, the Intellectual Property terms and conditions of the grant, cooperative agreement, or contract, or international agreement that are inconsistent with Articles VIII and IX below, shall apply to the work performed by the USER under this Agreement.

A. Definitions

1. "Subject Invention" means any invention or discovery conceived or first actually reduced to practice in the course of or under this Agreement.
2. "USER Invention" means any Subject Invention of USER.
3. "CONTRACTOR Invention" means any Subject Invention of CONTRACTOR.
4. "Patent Counsel" means the DOE Counsel for Intellectual Property assisting the DOE Contracting activity.

B. Subject Inventions

CONTRACTOR and USER agree to disclose their Subject Inventions, which includes any inventions of their Participants, to each other, concurrent with reporting such Subject Inventions to DOE. USER shall provide through the iEdison reporting system, unless otherwise directed by Patent Counsel, the disclosure within six months of conception or first actual reduction to practice, whichever occurs first.

C. CONTRACTOR's Rights

Except as provided below in the case of joint inventions, CONTRACTOR Inventions will be governed by the provisions of CONTRACTOR'S Prime Contract for operation of the User Facility.

D. USER's Rights

Subject to the provisions herein, USER may elect title to any USER Invention through iEdison reporting system and in any resulting patent secured by USER within one year of reporting the subject invention to DOE. The USER shall file a US patent application within a reasonable period of time. Where appropriate, the filing of patent applications by USER is subject to DOE security regulations and requirements.

E. Joint Inventions

For Subject Inventions conceived or first actually reduced to practice under this Agreement that are joint Subject Inventions made by CONTRACTOR and USER, each Party shall have the option to elect and retain title to its undivided rights in such joint Subject Inventions.

F. Rights of the U.S. Government

1. USER agrees to timely assign to the U.S. Government, if requested, the entire right, title, and interest in any country to each USER Invention where USER:
 - a. Does not elect to retain such rights; or
 - b. Fails to timely have a patent application filed in that country on the USER Invention or decides not to continue prosecution or not to pay the maintenance fees covering the Invention; or
 - c. At any time, no longer desires to retain title.
2. USER shall provide through the iEdison reporting system, unless otherwise directed by Patent Counsel, a copy of any application filed by USER promptly after such application is filed, including its serial number and filing date.
3. USER hereby grants to the U.S. Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the USER Invention made under said project throughout the world.
4. USER acknowledges that the DOE has certain March-in Rights to any USER Inventions elected by the USER in accordance with 48 C.F.R. 27.304-1(g) and that the USER is subject to the requirements with respect to preference for U.S. industry pursuant to 35 U.S.C. § 204 to any USER Inventions elected by the USER.
5. The USER agrees to include, within the specification of any U.S. patent applications and any patent issuing thereon covering a USER Invention, the following statement: “The United States Government has rights in this invention pursuant to a USER Agreement (specify number) between (USER name) and (CONTRACTOR Name), which manages and operates (name of Laboratory) for the U.S. Department of Energy.”
6. USER agrees to submit through the iEdison reporting system, unless otherwise directed by Patent Counsel, periodic reports to DOE no more frequently than annually on the utilization of USER Inventions or on efforts to obtain such utilization that are being made by USER or its licensees or assignees.
7. Facilities License: USER agrees to and does hereby grant to the U.S. Government a nonexclusive, nontransferable, irrevocable, paid-up license in and to any inventions or discoveries, regardless of when conceived or actually reduced to practice or acquired by USER, which are incorporated in the User Facility as a result of this Agreement to such an extent that the facility is not restored to the condition existing prior to this Agreement (1) to practice or to have practiced by or for the U.S. Government at the User Facility, and (2) to transfer such licenses with the transfer of that User Facility. The acceptance or exercise by the U.S. Government of the aforesaid rights and license shall not prevent the U.S. Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

ARTICLE IX: RIGHTS IN TECHNICAL DATA

A. Definitions:

1. "Technical Data" means recorded information regardless of form or characteristic, of a scientific or technical nature. Technical Data as used herein does not include financial reports, costs analyses, and other information incidental to administration of this Agreement.
2. "Proprietary Data" means Technical Data which embody trade secrets developed at private expense, outside of this agreement, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:
 - a. Are not generally known or available from other sources without obligation concerning their confidentiality.
 - b. Have not been made available by the owner to others without obligation concerning their confidentiality, and
 - c. Are not already available to the CONTRACTOR or the U.S. Government without obligation concerning their confidentiality.
 - d. Are marked as "Proprietary Data."
3. "Unlimited Rights" means right to use, duplicate, or disclose Technical Data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

B. Allocation of Rights

1. USER, CONTRACTOR, and the U.S. Government shall have Unlimited Rights in all data generated under this Agreement, except for information which is disclosed in a Subject Invention disclosure being considered for patent protection.
2. USER agrees that to the extent it receives or is given access to Proprietary Data or other technical, business or financial data in the form of recorded information from the CONTRACTOR, DOE or subcontractor, USER shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the CONTRACTOR or DOE Contracting Officer.

C. Deliverables

1. USER agrees to furnish to DOE or CONTRACTOR those data, if any, which are (a) specified to be delivered in Appendices, (b) essential to the performance of work by CONTRACTOR personnel or (c) necessary for the health and safety of such personnel in the performance of the work. Any data furnished to DOE or CONTRACTOR shall be deemed to have been delivered with unlimited rights unless marked as "Proprietary Data" of USER.
2. Upon completion or termination of the project, USER agrees to deliver to DOE and CONTRACTOR a nonproprietary report describing the work performed under this Agreement.

D. Legal Notice

The following legal notice shall be affixed to each report or publication resulting from this Agreement which may be distributed by USER:

DISCLAIMER NOTICE

This document was prepared by _____ as a result of the use of facilities of the U.S. Department of Energy (DOE), which are managed by Stanford University, acting under Contract No. DE-AC02-76-SFO0515. Neither Stanford University, DOE, the U.S. Government, nor any person acting on their behalf: (a) make any warranty or representation, express or implied, with respect to the information contained in this document; or (b) assume any liabilities with respect to the use of, or damages resulting from the use of any information contained in the document.

E. Copyrighted Material

1. USER agrees to, and does hereby grant to the U.S. Government, its officers, agents, servants and employees acting within the scope of their duties:
 - a. A royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of and to authorize others so to do, all copyrightable material first produced or composed in the performance of this Agreement by USER, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and
 - b. A license as aforesaid under any and all copyrighted or copyrightable works not first produced or composed by USER in the performance of this Agreement but which are incorporated in the material furnished or delivered under this Agreement, provided that such license shall be only to the extent USER now has, or prior to completion or final settlement of this Agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.
2. USER agrees that it will not knowingly include any copyrightable material furnished or delivered under this Agreement without a license as provided for in subparagraph 1(b) hereof, or without the consent of the copyright owner, unless it obtains specific written approval of the DOE Contracting Officer for the inclusion of such copyrighted materials.

F. Disclosure of Proprietary Data

The USER shall not bring Proprietary Data into the User Facility except at USER's own risk. Any such data, regardless of how it is marked, shall be deemed Technical Data and shall be treated according to this article of this Agreement.

ARTICLE X. LABORATORY SITE ACCESS, SAFETY AND HEALTH

As a precondition to using the User Facility, Participants must complete all CONTRACTOR site access documents and requirements. USER and participant shall take all reasonable precautions in activities carried out under this Agreement to protect the safety and health of others and to protect the environment. Participants must comply with all applicable safety, operating and health procedures, access to information, security, cyber-security, hours of work, conduct and environmental regulations and the requirements of the DOE and CONTRACTOR, including the specific requirements of the User Facility covered by this Agreement. In the event that USER or

its Participant fails to comply with said regulations and requirements, CONTRACTOR may, without prejudice to any other legal or contractual rights, issue and order stopping all or any part of USER's activities at the User Facility.

ARTICLE XI. PERSONNEL RELATIONSHIPS

Participants will remain employees or representatives of the USER at all times during their participation in the work under this Agreement, and shall not be considered employees of CONTRACTOR or DOE for any purpose. Participants shall be subject to the administrative and technical supervision and control of CONTRACTOR during and in connection with the Participant's activities under this Agreement.

ARTICLE XII: EXPORT CONTROLS

THE PARTIES UNDERSTAND THAT MATERIALS AND INFORMATION RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT MAY BE SUBJECT TO U.S. GOVERNMENT EXPORT CONTROL LAWS AND REGULATIONS AND THAT EACH PARTY IS RESPONSIBLE FOR ITS OWN COMPLIANCE WITH SUCH LAWS AND REGULATIONS. EXPORT LICENSES OR OTHER AUTHORIZATIONS FROM THE U.S. GOVERNMENT MAY BE REQUIRED FOR THE EXPORT OF GOODS, TECHNICAL DATA OR SERVICES UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT EXPORT CONTROL REQUIREMENTS MAY CHANGE AND THAT THE EXPORT OF GOODS, TECHNICAL DATA OR SERVICES FROM THE U.S. WITHOUT AN EXPORT LICENSE OR OTHER APPROPRIATE GOVERNMENTAL AUTHORIZATION MAY RESULT IN CIVIL AND CRIMINAL LIABILITY.

ARTICLE XIII: PUBLICATIONS

- A. USER and CONTRACTOR will provide each other copies of articles of any publication of information generated pursuant to this Agreement for review and comment 14 days prior to publication.
- B. USER will not use the name of CONTRACTOR or the U.S. Government or their employees in any promotional activity, such as advertisements, with reference to any product or service resulting from this Agreement, without prior written approval of the U.S. Government and CONTRACTOR.

ARTICLE XIV: DISPUTES

The parties will attempt to jointly resolve all disputes arising under this agreement. If the parties are unable to jointly resolve a dispute within a reasonable period of time, either party may contact the CONTRACTOR's Technology Transfer Ombudsman (TTO) to provide assistance. The TTO may work directly to resolve the dispute or, upon mutual agreement of the parties, contact a third-party neutral mediator to assist the parties in coming to a resolution. The costs of the mediator's services will be shared equally by the parties. In the event that an agreement is not reached with the aid of the ombudsman or mediator, the parties may agree to have the dispute addressed by neutral evaluation. The decision rendered by the neutral evaluator shall be nonbinding on the parties, and any costs incurred there from shall be divided equally between the parties. Upon mutual agreement, the parties may request a decision by the DOE Contracting Officer. Absent resolution, either party may seek relief in a court of competent jurisdiction.

ARTICLE XV. CONFLICT OF TERMS

This Agreement constitutes the primary document which governs the work described in the attached Appendices or in references cited. In the event of any conflict between the terms of this document and any other document issued by either Party, the terms of this document shall prevail, unless USER is performing work with Federal funding or an international agreement. In such situations, the terms of the Federal funding agreement or international agreement will prevail.

ARTICLE XVI: TERMINATION

Either Party may terminate this Agreement for any reason at any time by giving not less than thirty (30) days prior written notice to the other Party. Notice will be deemed made as of the day of receipt. The obligations of any clause of this Agreement, which by their nature extend beyond its termination, shall remain in full force and effect until fulfilled.

FOR THE CONTRACTOR: Board of Trustees of the Leland Stanford, Jr., University,
Operator of SLAC National Accelerator Laboratory

BY:

TITLE:

DATE:

FOR THE USER:

BY:

TITLE:

INSTITUTION:

ADDRESS:

DATE: