

For use with institutions that : 1) do not have an existing DOE User Facility Agreement with the Contractor, 2) do not have an SPP with the Contractor and 3) are solely seeking to access the Cryo-EM Facility, which is not a designated DOE User Facility.

Cryo-EM Facility Access Agreement

BETWEEN

Board of Trustees of the Leland Stanford, Jr., University ("CONTRACTOR")

Operator of SLAC National Accelerator Laboratory (hereinafter "Laboratory")

Under United States Department of Energy ("DOE") Contract No. DE-AC02-76-SFO0515

AND

("USER Institution")

(CONTRACTOR and USER are 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 Cryo-EM Facility involved in this Agreement.

ARTICLE I. FACILITIES AND SCOPE OF WORK

CONTRACTOR will make available to employees, consultants and representatives of USER (hereinafter called "Participants") certain Laboratory Non-Proprietary Cryo-EM Facilities, which may include equipment, services, information and other material, with or without Laboratory scientist collaboration, for purposes as described in the experiment proposal accepted and conducted at the Cryo-EM Facility. Additional future experiments referencing this Agreement may be submitted by USER for identified Cryo-EM Facilities and purposes during the term of this Agreement. Such additional experiment proposals will be considered to be part of this Agreement upon acceptance by CONTRACTOR. Each accepted and approved experiment proposal shall set forth the Technical Scope of Work of a specific project, including deliverables, to be performed pursuant to this Agreement.

USER agrees to notify CONTRACTOR if it intends to conduct any proprietary research at the facility so that the appropriate Agreement can be first put into place.

The scope of work shall not be considered proprietary information and shall be publicly releasable.

ARTICLE II. TERM OF THE AGREEMENT

The term of this Agreement shall begin effective as of the date on which it is signed by the last of the Parties. Unless terminated in accordance with the terms herein, this Agreement shall have term of five (5) years from the effective date. The agreement can be renewed for additional terms upon written consent of the parties.

ARTICLE III. COST, BILLING AND PAYMENT OF EXPENSES

A. Each party will bear its own cost and expenses associated with this agreement.

- B. USER will coordinate with the CONTRACTOR to prepare an estimated cost applicable for potential limited support services from CONTRACTOR as requested by USER, and set up a User Account before beginning an accepted and approved experiment.
- C. CONTRACTOR will invoice USER at the Billing Address submitted by User, and USER will pay each such invoice in accordance with the instructions set forth in the CONTRACTOR Policy and Procedure for USER Accounts.

ARTICLE IV. ADMISSION REQUIREMENTS

USER and Participants are subject to the administrative and technical supervision and control of CONTRACTOR; and will comply with all applicable rules of CONTRACTOR and DOE with regard to admission to and use of the Cryo-EM Facility, including safety, operating and health-physics procedures, environment protection, access to information, cyber-security, hours of work, and conduct. Participants shall execute any and all documents required by CONTRACTOR acknowledging and agreeing to comply with such applicable rules of CONTRACTOR and the terms of this Agreement. Participants will not be considered employees of CONTRACTOR for any purpose.

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 Cryo-EM 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 facility shall be the property of the CONTRACTOR or the Government, subject to the parties' existing agreements and consent. 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 Cryo-EM 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. Product Liability** - To the extent permitted by US and US 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 United States 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.

- C. General Indemnity** - To the extent permitted by US and US State law, USER hereby agrees to indemnify and hold harmless CONTRACTOR and the United States 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.
- D. Patent and Copyright Indemnity—Limited** - To the extent permitted by US and US State law, USER shall fully indemnify the 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 the Agreement to the extent such acts are not normally performed at the facility.
- 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 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. General Disclaimer** -
THE GOVERNMENT AND CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE CRYO-EM FACILITY FURNISHED HEREUNDER. IN ADDITION, THE 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 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.

The following provisions apply to Articles VIII (Patent Rights) and IX (Rights in Technical Data) and are applicable to any privately funded work. If research subject to this Agreement is performed by the USER under a federal agency grant, cooperative agreement, or contract, then, to the extent that the Intellectual Property Provisions in the USER's grant, cooperative agreement, or contract with a federal agency are inconsistent with the terms and conditions contained in these Articles, the terms and conditions of the grant, cooperative agreement, or contract shall apply to the work performed by the USER under this Agreement. If USER is a U.S. Government Agency, rights in and to patents and copyrights of USER shall be governed by the policies and regulations pertaining to USER and its employees.

ARTICLE VIII. PATENT RIGHTS—Use of Facilities (Class Waiver)

1. Definitions

- A. "Subject Invention" means any invention or discovery of the Contractor, or, to the extent the User is performing any work under this Agreement, of the User, conceived in the course of or under this Agreement, or, in the case of an invention previously conceived by the User, first actually reduced to practice in the course of or under this Agreement. "Subject Invention" includes any

art, method, process, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plant, whether patented under the patent laws of the United States of America or any foreign country, or unpatented.

- B. "Patent Counsel" means the DOE Patent Counsel assisting the procuring activity which has the administrative responsibility for the Facility where the work under this Agreement is to be performed.
2. Rights of the User; election to retain rights
Subject to the provisions of paragraph 3 with respect to any Subject Invention reported and elected in accordance with paragraph 4 of this article, the User may elect to obtain the entire right, title, and interest throughout the world to each Subject Invention and any patent application filed in any country on a Subject Invention and in any resulting patent secured by the User. Where appropriate, the filing of patent applications by the User is subject to DOE and other Government security regulations and requirements.
3. Rights of Contractor and Government
- A. Assignment to either the Contractor or the Government
The User agrees to assign to either the Contractor or the Government, as requested by the Facility Contractor, the entire right, title, and interest in any country to each Subject Invention of the User and to each Subject Invention of the Contractor, where the User:
- (1) does not elect pursuant to this Clause to retain such rights; or
 - (2) elects to obtain title to a Subject Invention pursuant to paragraph 2 but fails to have a patent application filed in that country on the Subject Invention or decides not to continue prosecution or not to pay any maintenance fees covering the invention.
- B. Terms and Conditions of Waived Rights
- (1) To preserve the Facility Contractor's and the Government's residual rights to Subject Inventions, and in patent applications and patents on Subject Inventions, the User shall take all actions in reporting, electing, filing on, prosecuting, and maintaining invention rights promptly, but in any event, in sufficient time to satisfy domestic and foreign statutory and regulatory time requirements, or, if the User decides not to take appropriate steps to protect the invention rights, it shall notify the Contractor in sufficient time to permit either the Contractor or the Government to file, prosecute, and maintain patent applications and any resulting patents prior to the end of such domestic or foreign statutory or regulatory time requirements.
 - (2) The User shall convey or ensure the conveyance of any executed instruments necessary to vest in either the Facility Contractor or the Government the rights set forth in this article.
 - (3) With respect to any Subject Invention in which the User obtains title, the User hereby grants to the Government a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced by or on behalf of the United States the Subject Invention throughout the world.
 - (4) The User shall provide the Government a copy of any patent application filed on a Subject Invention within 6 months after such application is filed, including its serial number and filing date.
 - (5) Preference for U.S. Industry. Notwithstanding any other provision of this article, the User agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will

be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the User or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

- (6) **March-In Rights.** The User agrees that with respect to any Subject Invention of the Contractor in which it has acquired title, the DOE shall retain the right to require the User to grant a responsible applicant a nonexclusive, partially exclusive, or exclusively license to use the Subject Invention in any field of use, on terms that are reasonable under the circumstances, or if the User fails to grant such a license, to grant the license itself. DOE may exercise this right only in exceptional circumstances and only if DOE determines that:
 - (a) the action is necessary to meet health or safety needs that are not reasonably satisfied by the User; or
 - (b) the action is necessary to meet the requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the User; or
 - (c) such action is necessary because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of the agreement required by paragraph 5 regarding preference for U.S. industry.
 - (7) The User agrees to refund any amounts received as royalty charges on any Subject Invention in procurement by or on behalf of the Government and to provide for that refund in any instrument transferring rights to any party in the invention.
 - (8) The User agrees to include, within the specification of any U.S. patent applications and any patent issuing thereon covering a Subject Invention, the following statement. "The Government has rights in this invention pursuant to Management & Operations Contract DE-AC02-76SF00515 between Stanford University and the Department of Energy."
4. **Invention Identification, Disclosures, and Reports**
- A. The User shall furnish the Patent Counsel a written report containing full and complete technical information concerning each Subject Invention it makes within 6 months after conception or first actual reduction to practice, whichever occurs first, in the course of or under this Agreement, but in any event prior to any on sale, public use, or public disclosure of such invention known to the User. The report shall identify the contract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding, to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any election of invention rights under this article. When an invention is reported under this paragraph 4.A, it shall be presumed to have been made in the manner specified in Section (a)(1) and (2) of 42 USC 5908.
 - B. The Contractor shall report Subject Inventions it makes in accordance with the procedures set forth in contract DE-AC02-76SF00515. In addition, the Contractor shall disclose to the User at the same time as disclosure to the Department any Subject Inventions made by the Contractor under this Agreement and the User shall notify the Department within 6 months of receipt of such disclosure by the User of any election of patent rights under this article.

C. Requests for extension of time for election under subparagraphs A and B may be granted by Patent Counsel for good cause shown in writing.

5. Limitation of Rights

Nothing contained in this patent rights Clause shall be deemed to give the Government any rights with respect to any invention other than a Subject Invention except as set forth in the Facilities License of paragraph 6.

6. Facilities License

In addition to the rights of the Parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this Agreement, the User agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or first actually reduced to practice or acquired by the User, which at any time, through completion of this Agreement, are owned or controlled by the User and are incorporated in the facility as a result of this Agreement to such an extent that the facility is not restored to the condition existing prior to the Agreement (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of the facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or title to, any rights or patents herein licensed.

7. Early Termination of Agreement

The terms and conditions of this article shall survive the Agreement, in the event that the Agreement is terminated before completion of the Statement of Work.

ARTICLE IX. RIGHTS IN TECHNICAL DATA - USE OF FACILITY

1. The following definitions shall be used.

A. "Generated Information" means information produced in the performance of this Agreement.

B. "Proprietary Information" means information which is developed at private expense, is marked as Proprietary Information, and embodies (1) trade secrets or (2) commercial or financial information which is privileged or confidential under the Freedom of Information Act (5 USC 552 (b)(4)).

C. "Unlimited Rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

2. The User agrees to furnish to the Contractor or leave at the facility that information, if any, which is (1) essential to the performance of work by the Contractor personnel or (2) necessary for the health and safety of such personnel in the performance of the work. Any information furnished to the Contractor shall be deemed to have been delivered with Unlimited Rights unless marked as Proprietary Information. The User agrees that it has the sole responsibility for appropriately identifying and marking all documents containing Proprietary Information, whether such documents are furnished by the User or produced under this Agreement and made available to the User for review.

3. The User, Contractor, and the Government shall have Unlimited Rights in all Generated Information, except for information which is disclosed in a Subject Invention disclosure being considered for patent protection.

4. The Government and Contractor agree not to disclose properly marked Proprietary Information without written approval of the User, except to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 U.S.C. 1905).

5. The User is solely responsible for the removal of all of its Proprietary Information from the facility by or before termination of this Agreement. The Government and Contractor shall have Unlimited Rights in any Proprietary Information which is not removed from the Facility by termination of this Agreement. The Government and Facility Contractor shall have Unlimited Rights in any Proprietary Information which is incorporated into the facility or equipment under this Agreement to such an extent that the facility or equipment is not restored to the condition existing prior to such incorporation. The U.S. Government and Contractor shall have unlimited rights in any information which is not removed from the facility by or before termination of this Agreement.
6. The User agrees that the Contractor will provide to the Department a nonproprietary description of the work performed under this Agreement.
7. Copyrights. The User may assert copyright in any of its Generated Information, and may also require the Contractor, at the User's expense, to register copyright and assign to the User copyright in any Generated Information produced by the Contractor which the User wishes to copyright. Subject to the other provisions of this article , and to the extent that copyright is asserted, the Government reserves for itself a royalty-free, world-wide, irrevocable, non-exclusive license for Governmental purposes to publish, disclose, distribute, translate, duplicate, exhibit, prepare derivative works, and perform any such data assigned to the User.
8. The terms and conditions of this article shall survive the Agreement, in the event that the Agreement is terminated before completion of the Statement of Work.
9. 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.

ARTICLE X. LABORATORY SITE ACCESS, SAFETY AND HEALTH***

As a precondition to using CONTRACTOR facilities, 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, health, access to information, security and environmental regulations and the requirements of the Department and CONTRACTOR, including the specific requirements of the Cryo-EM Facility covered by this Agreement. In the event that USER or 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 Cryo-EM 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***

USER acknowledges that the export of goods or Technical Data may require some form of export control license from the U.S. Government and that failure to obtain such export control license may result in criminal liability under the laws of the United States.

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 United States 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 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 laboratory'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 final 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 accepted and approved experiment proposal. 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.

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: Stanford University

BY: Cathy Knotts,
Authorized Stanford/SLAC Officer

SIGNATURE _____

TITLE: Manager, SSRL User Research Administration
SLAC National Accelerator Laboratory

DATE: _____

FOR THE USER INSTITUTION:

BY: _____
(Name of Authorized Officer, typed)

SIGNATURE _____

TITLE: _____

DATE: _____

ADDRESS: _____

TELEPHONE: _____

EMAIL: _____