

**RESEARCH PARTICIPATION AGREEMENT FOR
USAGE OF NEES FACILITIES FOR NEES RESEARCH**

Principal Research Institution	
Research Project Title	
Research Funding Agency(s)	
Reference Award No.	
NEES Equipment Site	The University of California at Los Angeles
Research Time Period	

This NEES Research Participation Agreement (RPA-UCLA-200X-0X) (this "Agreement") is entered by and among **NEES CONSORTIUM, INC**, a nonprofit public benefit corporation, with its headquarters located in Davis, California ("NEESinc"), the Principal Research Institution set forth above ("Researcher"), and the NEES Equipment Site, The Regents of the University of California on behalf of its Los Angeles campus ("Equipment Site") for the specific purpose of performing the research project set forth above (the "Project"). This Agreement defines, for this Project, the relationship among the three parties and the mutually-agreed terms and conditions of this relationship.

RECITALS

WHEREAS, Researcher desires to use NEES facilities and resources at Equipment Site (the "Facilities") for the purpose of performing the Project; and

WHEREAS, NEESinc is funded and charged by the National Science Foundation ("NSF") to assist Researcher in the performance of the Project by coordinating with Researcher the scheduling and usage of the Facilities necessary for performance of the Project;

WHEREAS, Equipment Site is funded and charged by NSF to assist Researcher in the performance of the Project by providing to Researcher access to the Facilities necessary for performance of the Project;

WHEREAS, Researcher, Equipment Site, and NEESinc agree to abide by the regulations of NSF and the standards, requirements, and procedures of NEESinc;

NOW, THEREFORE, the parties to this Agreement in consideration of the promises and conditions contained in this Agreement do mutually agree as follows:

1. Scope of Work

1.1 General Scope

A detailed description of the Project is attached hereto as Attachment RPA-A and is incorporated herein by reference. The portion of the Project needing Equipment Site and NEESinc support, and therefore relevant to this Agreement, is summarized in the Equipment Site Utilization Form attached hereto as Attachment RPA-B and incorporated herein by reference (the "Proposal"). This Proposal shall be submitted to the Executive Director of NEESinc (the "Executive Director") for the Executive Director's approval and review.

Researcher shall obtain and coordinate the research resources needed to complete the Project as described in Attachment A. Researcher shall coordinate with NEESinc and Equipment Site the specific experimental work detailed in the Proposal. Researcher shall coordinate with the Equipment Site the implementation of the risks and safety issues mitigation plan described in Attachment RPA-B.

NEESinc shall coordinate with Researcher and Equipment Site the experimental work to be done at Equipment Site as detailed in the Proposal, including planning, scheduling, training, outreach, information technology, and problem resolution.

NEESinc shall, under that certain Subaward Agreement for Operation and Maintenance of a NEES Equipment Site entered into separately by NEESinc and Equipment Site (the "O&M Agreement"), provide Equipment Site with funds for the operation and maintenance of the Facilities.

Equipment Site shall provide to Researcher the Facilities and necessary personnel as detailed in the Proposal.

Equipment Site shall assist Researcher and NEESinc with the coordination of experimental work at Equipment Site as detailed in the Proposal, including planning, scheduling, training, information technology, and problem resolution.

1.2 Schedule and Delays

NEESinc shall coordinate the scheduling of the use of the Facilities based upon Researcher's approved Proposal and the availability of shared use time at the Facilities. Time management is a critical component of successful operation of NEESinc. Researcher is expected to have specified an appropriate amount of facility time that is required to execute the desired program of work as well as provide for a reasonable contingency for routine Equipment Site repairs and downtime. NEESinc and the Equipment Site staff will provide guidance to the Researcher regarding the risks of delays, potential payoffs, and any extraordinary circumstances.

Each of Equipment Site or Researcher may submit to NEESinc a request or petition to change or adjust the schedule at the Facilities. NEESinc also reserves the right to negotiate changes to the schedule at the Facilities and/or reprioritize NEES research activities at the Facilities. The circumstances that may justify a change in schedule include unforeseen Facility repair or downtime, delays in Project funding, optimization of scheduled equipment use at Equipment Site, extension of another project that may result in significant advances for the earthquake engineering community, time overrun by a previous project, or other circumstances as determined by NEESinc. The process guidelines for petitioning for a change in schedule are outlined in Section 3.4 of the NEES Facilities User Guide (as defined below). In case of a need for change in the schedule at the Facilities, the Executive Director shall notify each of Equipment Site and Researcher of the change and shall strive to accommodate Equipment Site's and Researcher's needs in developing a new schedule.

1.3 Delivery of Final Data Sets

Researcher and Equipment Site shall provide to NEESinc all data and information directly resulting from the use of the Facilities for the Project in accordance with policies described in the Data Sharing and Archiving Policies and Guidelines (as defined below). Such data and information shall be available for dissemination in accordance with NEESinc's standards, requirements, and procedures, as may be subsequently amended by NEESinc in its sole absolute discretion and published in revisions to the Data Sharing and Archiving Policies and Guidelines. Researcher's Data Archiving and Sharing Plan is attached hereto as Attachment RPA-E and is incorporated herein by reference.

2. Best Efforts

Researcher has final responsibility for the full and complete execution of the Project to the satisfaction of the Project's funding agency.

NEESinc and Equipment Site shall utilize their best efforts to complete the work described in Section 1 above, and shall exercise the degree of skill and care required by customarily accepted good professional practices and procedures used at institutions performing scientific and engineering research in completing their obligations under this Agreement.

3. Personnel

Researcher may use its own personnel or the Equipment Site's personnel directly participating in the Project-related activities at Equipment Site. All such personnel must be properly trained and must follow safety procedures. Because of concerns about safety and liability, Researcher must provide to both Equipment Site and NEESinc managers a list of all personnel expected to participate in experimental activities. Equipment Site and NEESinc, jointly and separately, reserve the right to disallow any Researcher personnel for safety-related reasons.

4. Authority

All work under this Agreement must be approved by the Executive Director or a designated member of the NEESinc staff. Changes to any portion of this Agreement must also be approved by the Executive Director or a designated member of the NEESinc staff.

It is intended by this Agreement that all three parties work together to successfully complete the Project. This includes management of the inevitable changes or delays inherent in experimental research. NEESinc shall closely monitor the Project's progress and shall promptly assist with resolution of any problems, changes, or delays. Equipment Site and Researcher shall cooperate with NEESinc in resolving such problems, changes, or delays. However, Equipment Site or Researcher shall each have sole authority to delay, postpone, or stop work on the Project for safety reasons only.

5. Term

This Agreement shall be in effect throughout the Project, which shall include not only the direct experimental work but also the planning phase and the data dissemination afterwards. The term of this Agreement shall be the Research Time Period set forth on page 1 of this Agreement, provided the O&M Agreement remains in force. In the event that Researcher obtains a formal extension of the Project from the funding agency, Researcher shall have the option to extend this Agreement for the

period of the Project's extension. The continued performance of this Agreement by NEESinc and Equipment Site shall be contingent on the O&M Agreement remaining in force.

6. Costs and Payment

The costs of NEESinc's participation in this Agreement are completely borne by that certain Cooperative Agreement between NSF and NEESinc for the management, operation, and maintenance of NEES (the "Cooperative Agreement").

The costs of Equipment Site's operation and maintenance of the Facilities are completely borne by the O&M Agreement.

Equipment Site anticipates incurring additional costs directly related to the Project that are separate and distinct from the operations and maintenance costs covered by the O&M Agreement. A detailed summary of these costs is attached hereto as Attachment RPA-C and is incorporated herein by reference. Researcher agrees to pay Equipment Site for these Project-related costs. Additional costs not included in Attachment RPA-C shall be allowed only with the approval of Researcher and NEESinc.

7. Progress Reports

Researcher and Equipment Site shall furnish NEESinc with written reports required by NEESinc's standards, requirements, and procedures or as determined necessary by the Executive Director or a designated NEESinc staff member as approved by the BOD. Researcher and Equipment Site shall submit reports on a quarterly basis within thirty (30) days of the end of each quarter.

8. NEESinc Policies

Equipment Site and Researcher each agree to comply with NEESinc's guidelines and policies, as in effect from time to time, including any rules or directives only as adopted by NEESinc's board of directors in connection with the Cooperative Agreement and this Agreement (e.g. NEES Facilities User Guide; Data Sharing and Archive Policies and Guidelines; Educational, Outreach, and Training Strategic Plan). Copies of these guidelines and policies have been previously provided to Equipment Site and Equipment Site further understands that these guidelines and policies may be revised from time to time and new policies and guidelines may be added. NEESinc shall post changes to its guidelines and policies on its web site at www.nees.org. NEESinc shall also provide Equipment Site with notice of any changes to its guidelines and policies. Equipment Site shall have thirty (30) days after notice of the changes to notify the Executive Director of any objections to such changes; otherwise, it shall be bound by such changes. Equipment Site shall in turn ensure compliance with NEESinc's guidelines and policies by Researcher and all researchers using its Equipment Site and Facilities.

9. Publication

Data and information arising from Researcher's use of the Facilities for the Project may be published by Researcher, in accordance with this Agreement and the rules and regulations of NSF and NEESinc, if any, as approved by the BOD. Researcher shall provide NEESinc with written notice of any planned publication of data and information arising from Researcher's work in the Project together with a copy of the manuscript or proposed publication within thirty (30) days after its acceptance for publication or presentation. Researcher shall place an acknowledgment of NSF

support on any publication written or published with funds from NSF or this Agreement and on any publication reporting the results or describing the activities under this Agreement. The acknowledgment shall be to the effect that the publication was made possible with funding support from NSF and a subaward from NEESinc.

Equipment Site shall not publish or disseminate any descriptions, data, information, or results from work done under this Agreement without written permission from both Researcher and NEESinc. The obligations of Equipment Site under this Section shall be the same as that provided in Section 10 of the O&M Agreement.

10. Inventions and Patent Rights

Any intellectual property, including without limitation inventions, discoveries, biological materials, technical information, copyrights, or software, whether or not patentable, that is discovered, created or derived from research using NEES infrastructure and/or discovered, created or reduced to practice in the performance of this Agreement shall be owned by the institution that developed or invented the intellectual property and governed by the provisions of the Cooperative Agreement and NSF's Cooperative Agreement Financial & Administrative Terms and Conditions (July 2004, and as further amended) . Any inventions conceived or first actually reduced to practice in the performance of this Agreement shall be specifically governed by Bayh-Dole 37 CFR 401.

Researcher shall provide NEESinc with written notice of all such patentable inventions arising from Researcher's use of the Facilities under this Agreement. Researcher shall acknowledge NSF's support and shall include within the specifications of such invention a statement that the invention was made with funding support from NSF and a subaward from NEESinc. With respect to any publication of all other intellectual property arising from Researcher's use of the Facilities under this Agreement, Researcher shall likewise acknowledge the funding support from Sponsor and a subaward from NEESinc.

In addition to the rights of the Researcher and Equipment Site with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this Agreement, the Researcher agrees to and does hereby grant to the Equipment Site an irrevocable, nonexclusive paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Researcher, which at any time through completion of this Agreement are owned or controlled by the Equipment Site 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 Equipment Site at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Equipment Site of the aforesaid rights and license shall not prevent the Equipment Site at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

11. Acknowledgement, Publicity, and Use of Names

NEESinc, Researcher, and Equipment Site each agree that they shall acknowledge one another as appropriate in any publications related to NEES or NEES research conducted under this Agreement. Each shall also acknowledge NSF's support and funding of the NEES program. NEESinc, Researcher, and Equipment Site each agree not use the name, trademark or other identifier of the other for any non-NEES-related purpose, including but not limited to advertising and promotion, without first obtaining the express written consent of the party whose name, trademark or other identifier is to be used, which consent shall be within the reasonable discretion of such party. Researcher and Equipment Site shall provide NEESinc with written notice of any planned use of the NEES name, its derivatives (e.g. NEESinc, NEESit, etc.), the NEES logo, trademark or other identifier prior to such use. NEESinc shall endeavor to establish an on-line database where Researcher and

Equipment Site can log in their usage of the NEES name, derivatives, logo, trademark or other identifier. Nothing in this Section is intended to prohibit any of the parties from the reporting of its activities, including the disclosure of the existence and nature of this Agreement as well as the name of the parties to this Agreement.

12. Representing NEES

Researcher and Equipment Site shall not represent to any party, or imply representation thereof, that Researcher and Equipment Site, in any way, represent either NEES or NEESinc, without the express approval of NEESinc. Researcher and Equipment Site shall not represent its relationship with NEES or NEESinc as anything other than a participant in the NEES program. Researcher and Equipment Site shall not be empowered to act on behalf of or to bind either NEES or NEESinc in any respect, without the express approval of NEESinc. This restriction applies, without limiting the foregoing, to proposals, publications, public or media presentations, and education or outreach initiatives.

13. Audit Requirements

NEESinc is audited under certain OMB Circulars for compliance with federal grant administrative requirements and cost principles. OMB Circular A-133 requires that non-federal entities that expend \$500,000 or more (or such amount thereafter as may be prescribed by law) in a year in federal awards shall have a single or program-specific audit conducted for that year. Equipment Site and Researcher each agrees to provide an audit report or comparable financial statements sufficient to satisfy the requirements of Circular OMB A-133. Non-federal entities that expend less than \$500,000 (or such amount thereafter as may be prescribed by law) a year in federal awards are exempt from federal audit requirements for that year, but records must be available for review or audit by appropriate officials of NSF, NEESinc, and the General Accounting Office. Each of Equipment Site and Researcher shall maintain adequate records of the receipt and expenditure of all funds contributed under this Agreement by approved budget categories. Each of Equipment Site and Researcher agrees to retain all related records for a three-year period following the completion of the project and this Agreement. All such records shall be available upon request to representatives of NSF and NEESinc for inspection and/or audit during each annual period covered by the term of this Agreement, and for a period of three (3) years after termination. Each of Equipment Site and Researcher shall receive reasonable notice of audits and provide appropriate and reasonable access to such records during normal business hours if an on-site review is required. Each of Equipment Site and Researcher agrees that the provisions of OMB Circulars that are applicable to NEESinc, Equipment Site, or Researcher under the Cooperative Agreement and this Agreement shall be incorporated into and become part of this Agreement and that each of Equipment Site and Researcher further agrees to comply with such provisions.

14. Confidentiality

Researcher and Equipment Site (the Parties) agree to use best efforts to maintain in confidence and not to disclose or cause to be disclosed any confidential information revealed to or received by the Other Party in the performance of this Agreement, without the prior written approval of the Disclosing Party. "Best efforts" means, with respect to a given goal, the efforts, beyond mere good faith, consistent with the practice of comparable institutions performing scientific and engineering research, that a reasonable person in the position of the Receiving Party would use so as to achieve that goal. Confidential information shall include, but not be limited to, all scientific data, trade secrets, technical or test data, graphic communication, specifications, know-how, business plans, financial data, drawings, electronic and other information disclosed by either Party that, at the time of disclosure, (1) is designated as confidential (or like designation) in writing or explicitly designated as confidential

orally, or (2) is disclosed under circumstances of confidence (e.g. on a need to know basis), or (3) is treated by Disclosing Party as confidential and proprietary information providing any such disclosures under (1), (2) and (3) are clearly designated in writing as confidential, or, if communicated orally, reduced to writing within fifteen (15) days of disclosure or, if not reduced to writing and marked as confidential and proprietary, that a reasonable person would conclude was confidential and proprietary information of Disclosing Party given the content and circumstances of the disclosure. Confidential information shall not include any information which: (1) was previously known by Receiving Party, (2) is lawfully in the public domain, other than through a breach of this Agreement, (3) was disclosed to Receiving Party by a third party without any restrictions on its use or disclosure, provided that, to the Receiving Party's knowledge, the third party is not itself in breach of any obligations of confidence with respect to such information, (4) is independently developed by Receiving Party, (5) has gone through NEESinc's data curation process or (6) is required by law to be disclosed. Receiving Party shall protect such confidential information as it does its own protected information.

15. Equipment

Special equipment purchased under the terms of this Agreement shall become property of the institution that purchases it in accordance with the applicable OMB Circulars.

16. Compliance with Law/ Governing Law

NEESinc, Researcher, and Equipment Site agree to comply with all applicable federal, state, and local laws, codes, regulations, rules, and orders. The Superior Court of Yolo County and/or the United States District Court for the Eastern District of California shall have jurisdiction and venue over all disputes between the parties under this Agreement. Furthermore, Researcher agrees to comply with the provisions of the Cooperative Agreement and the O&M Agreement, which are incorporated by reference to this Agreement.

17. Assignment

Researcher and Equipment Site shall not assign or transfer any interest in this Agreement nor assign any claims or money due or to become due under this Agreement without the prior written approval of the other parties. Any and all assignments not made in accordance with this Section shall be void.

18. Independent Contractor Status

NEESinc, Researcher, and Equipment Site agree that each of Researcher and Equipment Site is an independent contractor and that the personnel hired, authorized or utilized by one party are acting as employees of that party and not employees of another party and, as such are acting under the direction and control of the party, and not as agents of another party.

19. Indemnity

Except as may be limited by state law, Researcher shall indemnify, defend and hold harmless NEESinc from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, including reasonable attorney fees, arising out of the performance of this Agreement, but only in proportion to and to the extent that such liabilities, claims, losses, lawsuits, judgments, and/or

expenses are caused by the intentional or negligent acts, errors and omissions of Researcher or any of its officers, employees, or agents.

Except as may be limited by state law, Researcher shall indemnify, defend and hold harmless Equipment Site from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, including reasonable attorney fees, arising out of the performance of this Agreement, but only in proportion to and to the extent that such liabilities, claims, losses, lawsuits, judgments, and/or expenses are caused by the intentional or negligent acts, errors and omissions of Researcher or any of its officers, employees, or agents.

NEESinc shall indemnify, defend and hold harmless Researcher, its officers, employees, and agents from and against any and all liabilities claims, losses, costs, or expenses to the person or property of another, lawsuits, claims, losses, costs or expenses to the person or property of another, lawsuits, judgments, and/or expenses, including reasonable attorney fees, arising out of the performance of this Agreement, but only in proportion to and to the extent that such liabilities, claims, losses, lawsuits, judgments, and/or expenses are caused by the intentional or negligent acts, errors and omissions of NEESinc or any of its officers, employees, or agents.

Equipment Site shall indemnify, defend and hold harmless Researcher, its officers, employees, and agents from and against any and all liabilities claims, losses, costs, or expenses to the person or property of another, lawsuits, claims, losses, costs or expenses to the person or property of another, lawsuits, judgments, and/or expenses, including reasonable attorney fees, arising out of the performance of this Agreement, but only in proportion to and to the extent that such liabilities, claims, losses, lawsuits, judgments, and/or expenses are caused by the intentional or negligent acts, errors and omissions of Equipment Site or any of its officers, employees, or Agents.

Mutual indemnification between NEESinc and Equipment Site shall be the same as that provided in Section 20 of the O&M Agreement.

20. Safety and Risk Management

All three parties are aware of the physical risks involved with large-scale testing and intend to support efforts to manage these risks. Each of NEESinc, Researcher, and Equipment Site acknowledge the importance of safety in the performance of this Agreement. Equipment Site agrees to have a formal safety plan specifically covering its Facilities and activities therein. Equipment Site shall have a designated safety officer (the "Safety Officer") who shall have overall responsibility for the safety of the Facilities and who shall have the authority to immediately stop activities at the Facilities for safety reasons, at his or her sole discretion. Equipment Site shall provide NEESinc and Researcher with a copy of its safety plan and current contact information for its Safety Officer within 30 days from the date of this Agreement. Researcher shall review and comply with the safety plan and all safety policies at Equipment Site to the satisfaction of the Safety Officer.

NEESinc may assist Equipment Site in the refinement and enhancement of its safety plan and work to sustain safety awareness in the NEES culture. However, Equipment Site acknowledges sole responsibility for safety at its Facilities.

Equipment Site reserves the right to "stop work" immediately and submit a petition for action to NEESinc for any Project activity that is deemed unsafe by its technical staff or management personnel. Project activities related to the nature of the petition shall be halted during this review period with no penalty to Equipment Site if the petition is determined to be unsound. Researcher, through its PI, may also submit a petition for action to NEESinc for any Project activity that is deemed unsafe by its technical staff or management personnel. Project activities related to the nature of the petition shall be halted during this review period with no penalty to Researcher if the petition is determined to be unsound.

21. Insurance

Researcher shall, at its own cost and expense, (1) provide and keep in full force and effect during the term of this Agreement sufficient insurance coverage as set forth in this Section, under policy terms and with an insurer that has a Best rating of A or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) and is reasonably acceptable to NEESinc, or (2) maintain a program of self-insurance satisfactory and acceptable to NEESinc, which provides equivalent insurance coverage (collectively, the "Coverage"). Researcher shall maintain the following Coverage for the joint benefit of Researcher, NEESinc and Equipment Site:

Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least Five Hundred Thousand (\$500,000) per occurrence, and One Million Dollars (\$1,000,000) in the aggregate;

Commercial general liability insurance (bodily injury or property damage), including products and completed operations liability and broad form property damage liability, with a limit of at least One Million Dollars (\$1,000,000); and at least Two Million Dollars (\$2,000,000) in the aggregate;

Workers' compensation coverage as required by law, and employer liability coverage with limits of not less than One Million Dollars (\$1,000,000) per occurrence.

In the case of a program of self-insurance, Researcher shall provide NEESinc with a description of the program and such other information as deemed necessary by NEESinc to evaluate the Coverage. Researcher shall provide NEESinc and Equipment Site with evidence of Coverage or certificates of insurance, as applicable, upon execution of this Agreement. Such Coverage shall name both NEESinc and Equipment Site as an additional insured and shall state, as applicable, that such policy or policies shall be primary and that any insurance carried by NEESinc or Equipment Site shall be noncontributing with respect thereto. Such Coverage, as applicable, shall contain a standard cross liability endorsement or severability of interests clause. Subrogation against NEESinc or Equipment Site under all of Researcher's Coverage for losses or claims arising out of Researcher's performance of this Agreement shall be and is hereby waived. Evidence of such waiver satisfactory in form and substance to NEESinc and Equipment Site shall be in the evidence of Coverage or certificates of insurance required by this Section. The Coverage maintained pursuant to this Agreement shall provide for thirty (30) days' prior written notice to NEESinc and Equipment Site in the event of cancellation or reduction in Coverage or amount. If Researcher fails to secure and maintain Coverage complying with the provisions of this Agreement, NEESinc and/or Equipment Site may terminate this Agreement. In addition to the Coverage required to be obtained and maintained by Researcher, if Researcher assigns any portion of the duties under this Agreement in accordance with the terms hereof, each Researcher or assignee shall purchase and maintain the same or better insurance coverage required hereunder.

22. Alternative Dispute Resolution Process

Prior to any party commencing any legal action relating to any disputes concerning the interpretation, implementation, compliance or termination of this Agreement, which may arise out of this Agreement or the breach hereof, including, but not limited to, termination under Section 23.3, the parties shall use the Alternative Dispute Resolution Process (the "ADR Process") as specified in this Agreement to resolve such disputes. The parties agree not to file suit except as may be permitted herein. In order to pursue a fair, orderly and cost-efficient disputes resolution process, the parties agree to structure the ADR Process under this Agreement to require two (2) separate and distinct phases: (1) the NEESinc Dispute Resolution Process and (2) Mediation as more fully set forth below. By executing this Agreement below the parties indicate (1) their intent to pursue their claims against one another through the ADR Process, and (2) their intent to initiate the ADR Process outlined in this Agreement.

22.1 Direct Negotiations

The parties agree to use the NEESinc Dispute Resolution Process as set forth in Attachment RPA-D and incorporated herein by reference as their first course of action for the resolution of disputes and as a condition precedent to Mediation below. If the matter has not been resolved at the end of the NEESinc Dispute Resolution Process, the parties may either (1) mutually agree to extend the time to permit additional time to resolve all of the disputes among them, or (2) proceed to Mediation as set forth below as to any issues and disputes remaining unresolved between the parties. The NEESinc Dispute Resolution Process shall be private and the entire process shall be confidential.

22.2 Mediation

Any unresolved issues not resolved by the NEESinc Dispute Resolution Process among the parties shall be submitted to Mediation as more fully set forth herein. Pursuing the Mediation process shall be a condition precedent to any party to any party filing an action or suit in court. Following five(5) business days from the end of the NEESinc Dispute Resolution Process, any party may initiate Mediation by giving written notice of such action to the other party pursuant to the mediation rules of the American Arbitration Association. To initiate Mediation, either party may file a request with the Sacramento Office of the American Arbitration Association for a list of mediators who would be qualified to assist the parties in the Mediation. The parties agree to work with one another and the American Arbitration Association to select a mediator who shall conduct the Mediation proceedings as contemplated by this Agreement. If the parties cannot agree upon the selection of the mediator within fifteen (15) days of the submission of the first request to the American Arbitration Association, the Sacramento Office of the American Arbitration Association will appoint the mediator. In consultation with the American Arbitration Association and mediator selected, the parties shall promptly designate a mutually convenient time and place for the Mediation, and unless the mediator grants a continuance, such time is to be not later than fifteen (15) days after selection of the mediator. The Mediation shall take place in Davis, California or at a neutral location as agreed upon by the parties. The mediator may request the parties to submit written position statements prior to the mediation on terms and conditions to be decided by the mediator. In the Mediation, each party shall be represented by legal counsel or one or more individuals with authority to settle the dispute on such party's behalf (the individuals so designated shall be known as the "Authorized Individuals."). In addition, each party may, after at least five (5) days notice to the other party and with the permission of the mediator obtained at least five (5) days prior to the Mediation, bring such additional persons as needed to respond to questions, contribute information, and participate in the negotiations. The mediator shall determine the format for the Mediation which shall be designed to assure that both the mediator and the Authorized Individuals have an opportunity to hear an oral presentation of each party's views on the matter in dispute and to facilitate resolution of the dispute. The Mediation session shall be private. The entire process shall be confidential. Neither the Authorized Individuals, legal counsel, nor the mediator shall disclose information regarding the process, or statements made during the process, unless all parties agree. The process shall be treated as both a compromise negotiation for purposes of federal and state rules of evidence, discovery, and liability. All participants commit to participate in the Mediation proceeding in good faith and with the intention of resolving the dispute.

The fees and expenses of the mediator shall be shared equally by the parties. The mediator shall be disqualified as a witness, consultant, expert or counsel for any party with respect to the dispute or any matters arising from the dispute. A resolution of dispute by Mediation shall be reduced to writing and signed by the parties and judgment thereon may be entered by any court of competent jurisdiction. The Mediation proceedings shall be completed within thirty (30) days after selection of the mediator, unless extended by the parties. If the parties have not resolved all issues by said date or any extension thereto, any party may pursue other remedies as to any open and unresolved issues, including non-binding arbitration. Each party shall have the right to seek provisional remedies and enforcement from a court of competent jurisdiction

23. Termination

For purposes of this Agreement, days shall mean calendar days unless otherwise specified. Upon termination of this Agreement, the terminating party shall reimburse the other parties for all reasonable expenses or uncancelable commitments incurred as of the effective date of termination, except where this Agreement has been terminated under Section 23.3 as a result of a breach by the other party. The termination of this Agreement for reasons other than an unremedied failure to meet the material obligations under this Agreement shall not affect the rights and obligations of the parties accrued prior to termination. This Agreement may be terminated as follows;

23.1 Termination by NEESinc

NEESinc may immediately terminate this Agreement upon written notice to each of Researcher and Equipment Site (1) if the Cooperative Agreement is terminated for any reason, (2) if NEESinc's funding pursuant to the Cooperative Agreement is terminated, substantially reduced or significantly delayed or suspended as to make it impracticable for NEESinc to continue performing its obligations under this Agreement, as determined by the Executive Director, at his or her sole discretion, or (3) for causes beyond the reasonable control of NEESinc, which would preclude performance of the NEES program, including without limitation, acts of God, war, riot, embargoes, fire, explosion, flood, accidents, strikes, epidemics.

23.2 Termination Without Cause

Any of the three parties may terminate this Agreement upon giving sixty (60) days written notice to the other parties.

23.3 Termination For Cause

Except in instances of acts of God, war, riot, embargoes, fire, explosion, flood, accidents, strikes, epidemics, if any of the parties fails to meet any of its obligations under this Agreement and fails to remedy such failure (or undertake such steps to remedy such failure to the satisfaction of the other parties, in their sole absolute discretion) within thirty (30) days after receipt of written notice of such default, the non-defaulting parties shall have the option of terminating this Agreement upon written notice to the defaulting party and may terminate any licenses or options granted to the defaulting party. Such right to terminate shall be Researcher's or Equipment Site's sole remedy at law or in equity.

24. Survival

Clauses number 9, 10, 11, 12, 14, 19, and 22 shall survive and continue after any termination of this Agreement for any reason and shall bind the parties, their successors, heirs and assigns for a period of five (5) years from the termination of this Agreement.

25. Notice

The following shall be the contact persons for NEESinc, Equipment Site and Researcher, respectively, for any notice, request, claim, demand and other communications under the Agreement:

For NEESinc:

Dr. Clifford J. Roblee
Executive Director
NEES Consortium Inc.
400 F Street
Davis, CA 95616

Tel: 530.757.6337

Fax: 530.757.6340

E-Mail: Jennifer.OREll@nees.org

For Researcher:

Tel:

Fax:

E-Mail:

For Equipment Site:

Ms. Kim Duiker
Contract & Grant Officer
The University of California
10920 Wilshire Blvd., Suite 1200
Los Angeles, CA 90095-1406

Tel: 310.794.0165

Fax: 310.943.1658

E-Mail:

kduiker@resadmin.ucla.edu

26. Entire Agreement

This subaward, together with any and all appendices and attachments, constitutes the full and complete understanding of the parties regarding the subject matter of this Agreement. No modification or alteration of or addition to this subaward shall be effective to bind the parties unless it shall be in writing, signed by authorized representatives of each party to the Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the year and date below described as set forth by their duly authorized representatives.

NEESinc.

By: _____

Dr. Clifford J. Roblee
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