

NEES Site User Agreement

BETWEEN

_____ (“Equipment Site”)

Which operates the George E. Brown, Jr. Network for Earthquake Engineering Simulation (“NEES”) Equipment Site in _____, under a subaward (“Site Agreement”) from Purdue University (“Purdue”) under Cooperative Agreement No. CMMI-0927178 (“Prime Contract”) with the National Science Foundation (“NSF”), effective October 1, 2009.

AND

_____ (“User”)

(Collectively, “the Parties”)

DEFINITIONS

- Participant:** A participant is an employee or representative of the User who will be granted access to and use of the equipment site facility for the conduct of research. This category will also include contractors working at the facility at the direction of the User employees or representatives.
- Prime Contract:** Prime contract refers to Cooperative Agreement No. CMMI-0927178 between Purdue University and the National Science Foundation (“NSF”), effective October 1, 2009 and later amended.
- Site Agreement:** Site Agreement refers to the subaward agreement between Purdue University (NEEScomm) and Equipment Site.

ARTICLE I. FACILITIES

Equipment Site will make available to Participants certain Equipment Site facilities, which may include equipment, services, information and other material, with or without Equipment Site personnel collaboration. This NEES Site User Agreement shall apply to all such experiments authorized for performance at Equipment Site facilities by User.

Under the terms of this Agreement, the Participants will be granted access to and use of the facility for the conduct of research, which research must first receive programmatic approval of the Equipment Site Principal Investigator or Site Operations Manager and available scheduling therefore, as set forth in Article IV.

ARTICLE II. SCOPE OF ACTIVITIES

User understands that the Equipment Site is funded and charged by the NSF to assist researchers in conducting earthquake engineering related research both funded by NSF and other organizations. Research activity conducted at the Equipment Site (Project) can be divided by type as follows:

- a. NEESR projects funded through the Division of Civil, Mechanical, and Manufacturing Innovation Division of NSF (“NEESR Projects”);
- b. Other projects that have been approved by the Director of Site Operations at Purdue and the Equipment Site Principal Investigator or Site Operations Manager for Shared-Use status. For such projects, User agrees to share data in accordance with Article V (“Shared Use Projects”); and
- c. Any other project not subject to Article V (“Non-NEES Scope Projects”)

ARTICLE III. TERM OF THE AGREEMENT

This Agreement shall have an Expiration date of September 30, 2014. The term of this Agreement shall be effective as of the date on which it is signed by the last of the Parties.

ARTICLE IV. PROJECT APPROVAL

In order to use Equipment Site for NEESR Projects and Shared Use Projects, the Participant, in conjunction with the Equipment Site Principal Investigator or Site Operations Manager, must complete the Equipment Site Utilization Form (“Site Utilization Form”). A copy of this form shall be available at www.nees.org. Information included in the Site Utilization Form shall not be considered proprietary information and shall be publicly releasable. Equipment Site Principal Investigator or Site Operations Manager will secure all necessary approvals required by the Equipment Site and described in its Site Agreement. This includes but is not limited to the approvals required by Site Agreement. User understands that Purdue must approve all NEESR and Shared Use Projects before such projects begin.

ARTICLE V. DATA ARCHIVING AND SHARING PLAN

Both Parties acknowledge that it is the intent of NSF that NEESR and Shared Use Projects conducted at the Equipment Site contribute to the public knowledge related to earthquake engineering. In order to ensure that this intent is met, the data and information resulting from NEESR and Shared Use Projects

shall be shared with the Equipment Site and the NEES Community in accordance with the NEES Data Archiving and Sharing Plan. A copy of this plan shall be available at www.nees.org.

ARTICLE VI. COST

For NEESR Projects and Shared Use Projects, each Party will bear its own costs and expenses associated with the Agreement. If, however, through the completion of the Site Utilization Form, the Equipment Site Director determines that the User's Project will require additional costs specific to the Project that are separate and distinct from the normal operational and maintenance costs of the Equipment Site, these non-standard costs shall be noted on the Site Utilization Form and agreed to in writing by the Participant, prior to commencement of the Project. For Non-NEES Scope Projects, Equipment Site will provide Participant a summary of the cost necessary for the conduct of the Non-NEES Scope Project. Participant shall agree to cost and payment terms prior to commencement of the Project.

ARTICLE VII. SCHEDULING

Both Parties acknowledge time management is a critical component of the successful operation of the Equipment Site and of the NEES program in general. Participant and Equipment Site shall work together to determine the appropriate amount of facility time required to complete the project and include that on the Site Utilization Form. Equipment Site will also identify the potential down time needed for Equipment Site repairs and downtime associated with each Project. User understands that Equipment Site scheduling will be in accordance with the NEES Facilities User Guide and is subject to the approval of Purdue.

In the event a change or adjustment to the schedule is needed, Participant shall submit a request to modify the Site Utilization Form. Equipment Site shall evaluate the request and coordinate as required under the Site Agreement.

ARTICLE VIII. PROPERTY AND MATERIALS

Participant may be permitted by Equipment Site to furnish equipment, tooling, test apparatus, or materials necessary to assist in the performance of its experiment(s) at the Equipment Site. Such items shall be identified on the Utilization form prior to the commencement of the Project. Such items remain the property of the 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 the Project or will be disposed of as directed by User at User's expense. User acknowledges that any material supplied by User may be damaged, consumed or lost. Material (including residues and/or contaminated material) remaining after the performance of the Project will

be removed by User at User's expense. User will return the facilities and equipment utilized in their original condition except for normal wear and tear.

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

ARTICLE IX. INVENTIONS AND PATENT RIGHTS

Any intellectual property, including without limitation inventions, discoveries, technical information, copyrights, or software, whether or not patentable, that is discovered, created or derived from research (Intellectual Property) 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 Prime Agreement which incorporates NSF's Cooperative Agreement Financial & Administrative Terms and Conditions (dated June 2007, and as further amended). Any invention conceived or first reduced to practice in the performance of this Agreement shall be specifically governed by Bayh-Dole 37 CFR 401.

User shall provide Equipment Site with written notice of all such patentable inventions arising from User's use of the Equipment Site facilities under this Agreement. Participant 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 through the Site Agreement from Purdue University.

In addition to the rights of the User and Equipment Site with respect to Intellectual Property, the User 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 reduce to practice or acquired by the User, which at any time through completion of this Agreement are owned or controlled by Equipment Site and are incorporated in the Equipment Site facilities as a result of this Agreement to (1) practice or to have practiced by or for the Equipment Site, and (2) to transfer such license with the transfer of the Site Agreement. 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.

ARTICLE X. RIGHTS IN TECHNICAL DATA

1. Definitions:
 - a. "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 Agreement administration.

- b. "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.
2. Allocation of Rights:
- a. The U.S. Government shall have Unlimited Rights in Technical Data first produced or specifically used in the performance of this Agreement except as otherwise provide in this Agreement.
 - b. User shall have the right to use for its private purposes, subject to patent, security, or other provisions of this Agreement, Technical Data it first produces in the performance of this Agreement provided the data delivery requirements as described in this Agreement have been met as of the date of the private use of such data; and Technical Data first produced by Equipment Site, if any, under this Agreement.

ARTICLE XI. NEES POLICIES

User understands and agrees to comply with NEES guidelines and policies in accordance with both the Prime Agreement and Site Agreement. These guidelines and policies include but are not limited to the NEES Facilities User Guide; Data Sharing and Archiving Policies and Guidelines; Educational, Outreach, and Training Strategic Plan. Copies of these guidelines and policies shall be available at www.nees.org. Purdue may revise these documents periodically. Notice of changes will be posted on the website, and the Equipment Site shall be informed. Equipment Site shall be responsible for informing User of any changes that may impact User under this Agreement.

ARTICLE XII. CONTACTS

Notices and communications will be addressed to the Party to receive such notice or communications at the address given below, or such other address as may hereafter be designated by notice in writing:

Equipment Site: _____

User: _____

In the event of a dispute:

Purdue: Director of Site Operations

ARTICLE XIII. ACKNOWLEDGEMENT, PUBLICITY, AND USE OF NAMES

Both Parties 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 Purdue’s and NSF’s support of the NEES program, as appropriate. Both Parties agree not to use the name, trademark, or other identifier of the other for any non- NEES related purposes, including but not limited to advertising and promotion, without first obtaining the express written consent of the named Party.

User shall provide Equipment Site and Purdue with written notice of any planned use of the NEES name, its derivatives, the NEES logo, trademark, or other identifier prior to such use. Nothing in this Article is intended to prohibit either Party 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.

ARTICLE XIV. PERSONNEL RELATIONSHIPS

Participants will remain employees or representatives of the User at all times during their participation on the work under this Agreement, and shall not be considered employees of the Equipment Site, Purdue or NSF for any purpose. However, while Participants are in the Equipment Site facilities, Participants shall be subject to the administrative and technical supervision and control of Equipment Site during and in connection with the Participants’ activities under this Agreement.

ARTICLE XV. INDEMNITY

Except as may be limited by state law, User shall indemnify, defend and hold harmless Equipment Site, NSF and Purdue 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 the extent such liabilities, claims lawsuits, judgments and/or expenses are caused by the intentional or negligent acts, errors, and omissions of User or any of its officers, employees, or agents.

Except as may be limited by state law, Equipment Site shall indemnify, defend and hold harmless User 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 the extent such liabilities, claims 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.

ARTICLE XVI. SAFETY AND RISK MANAGEMENT

Both Parties are aware of the physical risks involved with large-scale testing and intend to support efforts to manage these risks. Both Parties 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 Equipment Site and who shall have the authority to immediately stop activities at the Equipment Site for safety reasons, at his or her sole discretion. Equipment Site shall provide Participant with a copy of its safety plan and current contact information for its Safety Officer within 30 days from the date of this Agreement. Participant shall review and comply with the safety plan and all safety policies at Equipment Site to the satisfaction of the Safety Officer.

Equipment Site reserves the right to "stop work" immediately and submit a petition for action to Purdue 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 without penalty to Equipment Site if the petition is determined to be unsound. Participant may also submit a petition for action to Equipment Site 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 with no penalty to the User if the petition is determined to be unsound.

ARTICLE XVII. 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 XVIII. PUBLICATIONS

Data and information arising from User's Project(s) may be published by Participant, in accordance with this Agreement and the rules and regulations of NSF. Participant shall provide Equipment Site with written notice of any planned publication of data and information arising from User's Project (s) together with a copy of the manuscript or proposed publication within thirty (30) days after its acceptance for publication or presentation. Participant shall place an acknowledgment of NSF support on any publication reporting the results or describing the activities of a Project under this Agreement. The acknowledgement shall be to the effect that the publication was made possible with funding support from NSF and a subaward from Purdue.

ARTICLE XIX. 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 contract Purdue's Director of Site Operations (DSO) to provide assistance. The DSO will 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 DSO 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. Absent resolution, either Party may seek relief in a court of competent jurisdiction.

ARTICLE XX. 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 by the personnel identified in Article XII. 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. However, all User Projects active at the effective date of termination shall end as of the effective date of the termination.

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.

EQUIPMENT SITE

USER

BY: _____

BY: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____