

Nonreimbursable Agreement between the National Aeronautics and Space Administration Johnson Space Center and [Institution Name] for the Loan of Cosmic Dust Samples

AUTHORITY AND PARTIES

In accordance with the National Aeronautics and Space Act (51 U.S.C. § 20113), this Loan Agreement is entered into by the National Aeronautics and Space Administration Johnson Space Center, located at Houston, Texas (hereinafter referred to as “NASA” or “JSC”) and [Institution Name] located at [Institution Location]. NASA and [Institution Name] may be individually referred to as a “Party” and collectively referred to as the “Parties.”

PURPOSE

The Johnson Space Center (JSC) of the National Aeronautics and Space Administration (NASA), a Federal Agency, desires to enter into a Loan Agreement and to make certain Cosmic Dust samples available to [Institution Name]. [Institution Name] proposes to use the said Cosmic Dust samples to undertake, at its own direction, scientific investigations in the area of [Research Title]. These investigations are described in a sample request submitted to the Cosmic Dust Sample Curator and approved by NASA Headquarters. Approval of a sample request is a prerequisite to this Loan Agreement and subsequent loan of the Cosmic Dust samples.

The use of the Cosmic Dust samples will permit beneficial contact between representatives of JSC and [Institution Name]; will provide opportunities for discovery and dissemination of information to the scientific community and to the general public; will promote the maximum utilization of Cosmic Dust samples by JSC; and will provide opportunities for dissemination of information concerning the activities of NASA.

RESPONSIBILITIES:

The Parties Agree to the Following:

1. The Cosmic Dust samples made subject to this Loan Agreement shall be assigned to [Institution Name] on sample assignment forms signed by the JSC Cosmic Dust Sample Curator and the Principal Investigator of [Institution Name] as designated in the Security Plan, Attachment A.

2. The Cosmic Dust samples are the property of the United States Government, are considered irreplaceable, and are therefore made available to Investigators only under a carefully controlled and monitored program. It is therefore essential that rigorous security and accountability procedures be followed by all persons who have access to the Cosmic Dust samples. [Institution Name] shall designate the Principal Investigator to be responsible for the receipt, use (including security during use), and accountability of the Cosmic Dust samples. The Principal Investigator shall also be responsible for returning the Cosmic Dust samples upon termination of this agreement. [Institution Name] agrees to strictly adhere to the Security Plan established in Attachment A, which is considered an integral part of this Loan Agreement.

3. [Institution Name] shall be responsible for accurate accounting of all Cosmic Dust samples by location. [Institution Name] shall perform an inventory of the Cosmic Dust samples every year, using the sample inventory form provided by the JSC Cosmic Dust Sample Curator, and submit this form to the JSC Cosmic Dust Sample Curator in a timely manner. This inventory includes any samples consumed or destroyed in the course of the research. This inventory shall be witnessed by the Principal Investigator and by a security official or other official of [Institution Name]. At the termination of this Loan Agreement, the Cosmic Dust samples shall be returned to JSC with a full accounting of such Cosmic Dust samples, using the sample return form provided by the JSC Cosmic Dust Sample Curator.

4. [Institution Name] agrees that the Cosmic Dust samples may be used at [Institution Name] or at other locations as agreed to in advance and in writing by the JSC Cosmic Dust

Sample Curator during the period of the loan. In either case, the original Principal Investigator shall retain responsibility for sample security.

5. If the Principal Investigator transfers to another institution, a new Loan Agreement and Security Plan must be completed with that institution before Cosmic Dust samples can be transferred. If the Principal Investigator completes or terminates research on Cosmic Dust samples, those Cosmic Dust samples must be returned to the JSC Cosmic Dust Sample Curator or transferred to another Principal Investigator and a new Loan Agreement and Security Plan approved. If the Principal Investigator dies or becomes incapacitated [Institution Name] must inform the JSC Cosmic Dust Sample Curator and return the Cosmic Dust samples. If this agreement is terminated by either party, the Cosmic Dust samples must be returned.

6. The use of Cosmic Dust Samples shall be solely for the purposes set forth in the approved sample request.

7. When requested to do so during the period of the use, appropriate officials of [Institution Name] shall provide to representatives of JSC a copy of any publication(s) resulting from the research and confer any scientific knowledge acquired as a result of such use, provided that no proprietary knowledge shall be disclosed involuntarily in the discharge of this obligation.

8. Title to the Cosmic Dust samples shall remain with NASA and shall not be affected by the incorporation, attachment, or mixture thereof to or with property not owned by NASA.

9. NASA or [Institution Name] may, consistent with Federal law and this Loan Agreement, release general information regarding its own participation in this Loan Agreement as desired.

LIABILITY AND RISK OF LOSS

1. Notwithstanding any other provision of this Agreement, [Institution Name] shall not be liable for loss of or damage to the Cosmic Dust samples, except that [Institution Name] shall be responsible for any such loss or damage

a. which results from willful misconduct, lack of good faith, or negligence on the part of [Institution Name] directors or officers, or on the part of any of [Institution Name] superintendents or any other equivalent representatives, who have supervision or direction of all or substantially all of [Institution Name] business; or

b. which results from a failure on the part of [Institution Name] due to the willful misconduct, lack of good faith, or negligence on the part of any of his directors, officers, or other representatives mentioned in (a) above (i) to maintain and administer, in accordance with the provisions of this Loan Agreement the program for delivery, protection, and preservation of Government property (as enumerated in Attachment A, an integral part of this Loan Agreement), or (ii) to take all reasonable steps to comply with any written directions from JSC with respect to the delivery, protection, and preservation of Government property.

Additionally, loss or damage to the Cosmic Dust samples caused by failure to follow proper safeguarding standards as set forth in this Loan Agreement shall be considered in selecting recipients for future Cosmic Dust sample loans.

2. [Institution Name] shall be liable for all claims, demands, actions, costs, and charges made, asserted, or incurred by reason of any injury to any person or property, or loss of life or property, suffered or sustained during the period of the use when the injury, loss of life, or property damage is caused by any act or omission of any agent or employee of [Institution Name].

3. [Institution Name] hereby waives any claims against NASA, its employees, its related entities, (including, but not limited to, contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors and subcontractors, at any tier) and employees of NASA's related entities for any injury to, or death of, [Institution Name] employees or the employees of [Institution Name's] related entities, or for damage to, or loss of, [Institution Name's] property or the property of its related entities arising from or related to activities conducted under this Loan Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

4. [Institution Name] further agrees to extend this unilateral waiver to its related entities by requiring them, by contract or otherwise, to waive all claims against NASA, its related entities, and employees of NASA and employees of NASA's related entities for injury, death, damage, or loss arising from or related to activities conducted under this Loan Agreement.

FINANCIAL OBLIGATIONS

There shall be no transfer of funds between the Parties under this Agreement and each Party shall fund its own participation. All activities under or pursuant to this Agreement are subject to the availability of funds, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, (31 U.S.C. § 1341).

PRIORITY OF USE

Any schedule or milestone in this Agreement is estimated based upon the Parties' current understanding of the projected availability of NASA goods, services, facilities, or equipment. In the event that NASA's projected availability changes, [Institution Name] shall be given reasonable notice of that change, so that the schedule and milestones may be adjusted accordingly. The Parties agree that NASA's use of the goods, services, facilities, or equipment shall have priority over the use planned in this Agreement. Should a conflict arise, NASA in its sole discretion shall determine whether to exercise that priority. Likewise, should a conflict arise as between two or more non-NASA Parties, NASA, in its sole discretion, shall determine the

priority as between those Parties. This Agreement does not obligate NASA to seek alternative government property or services under the jurisdiction of NASA at other locations.

NONEXCLUSIVITY

This Agreement is not exclusive; accordingly, NASA may enter into similar agreements for the same or similar purpose with other private or public entities.

USE OF NASA NAME, INITIALS, AND EMBLEM

[Institution Name] shall not use “National Aeronautics and Space Administration” or “NASA” in a way that creates the impression that a product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. [Institution Name] must submit any proposed public use of the NASA name or initials (including press releases and all promotional and advertising use) to the NASA Assistant Administrator for the Office of Communication or designee (“NASA Communications”) for review and approval. Approval by NASA Communications shall be based on applicable law and policy governing the use of the NASA name and initials.

Use of NASA emblems (*i.e.*, NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) is governed by 14 C.F.R. Part 1221. [Institution Name] must submit any proposed use of the emblems to NASA Communications for review and approval.

TERMS OF AGREEMENT -- DURATION, TERMINATION, AND MODIFICATION

This Loan Agreement becomes effective upon the date of the last signature below (“effective date”) and shall remain in effect until the completion of all obligations of both Parties hereto, or ten years from the effective date. Following that time, if [Institution Name] still holds Cosmic Dust samples, a new Loan Agreement must be instituted or the samples must be returned to the JSC Cosmic Dust Sample Curator.

The initial loan period for any specific Cosmic Dust sample shall be ten years from the date of receipt by [Institution Name]. At the end of this period the sample shall be returned to JSC, unless consumed by analysis. If the Cosmic Dust sample is required for additional research the Principal Investigator may request, in writing, a loan extension from the JSC Cosmic Dust Sample Curator. If the request is approved, the loan period shall be extended by the amount of time agreed to by the JSC Cosmic Dust Sample Curator.

Either Party may unilaterally terminate this Loan Agreement by providing thirty (30) calendar days written notice to the other Party. However, if any tenet of this Loan Agreement is violated, NASA may request the return of all the Cosmic Dust samples immediately. Any modification to this Agreement shall be executed, in writing, and signed by an authorized representative of NASA and [Institution Name].

POINTS OF CONTACT

The following personnel are designated as the Points of Contact between the Parties in the performance of this Agreement.

Management Points of Contact:

<u>NASA</u>	<u>[Institution Name]</u>
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

Principal Investigator:

[Institution Name]

Name

Title

Email

Telephone

Cell

Fax

Address

DISPUTE RESOLUTION

All disputes concerning questions of fact or law arising under this Loan Agreement shall be referred by the claimant in writing to the appropriate person identified in this Agreement as the “Points of Contact.” The persons identified as the “Points of Contact” for NASA and [Institution Name] shall consult and attempt to resolve all issues arising from the implementation of this Loan Agreement. If they are unable to come to agreement on any issue, the dispute shall be referred to the signatories to this Loan Agreement, or their designees, for joint resolution. If the Parties remain unable to resolve the dispute, then the NASA signatory or that person’s designee, as applicable, shall issue a written decision that shall be the final agency decision for the purpose of judicial review. Nothing in this article limits or prevents either Party from pursuing any other right or remedy available by law upon the issuance of the final NASA decision.

APPLICABLE LAW

U.S. Federal law governs this Loan Agreement for all purposes, including, but not limited to, determining the validity of the Loan Agreement, the meaning of its provisions, and the rights, obligations and remedies of the Parties.

SIGNATORY AUTHORITY

The signatories to this Loan Agreement covenant and warrant that they have authority to execute this Loan Agreement. By signing below, the undersigned agrees to the above terms and conditions.

NASA JSC

[Institution Name]

Name

Name

Cosmic Dust Sample Curator

Title

Date

Date

ATTACHMENT A
[INSTITUTION NAME] SECURITY PLAN

1. The Cosmic Dust samples shall be either hand-carried, at the expense of [Institution Name], by an authorized official of [Institution Name], or mailed at JSC's expense, to [Institution Name] via registered mail or courier service. JSC reserves the right, at the expense of [Institution Name], to direct the mode of transportation for the return of the Cosmic Dust samples.

2. Only the Authorized Official named below, normally the Principal Investigator, may receive and open the registered package. The Authorized Official shall record all of the Cosmic Dust samples promptly upon receipt, and they shall be so identified so long as they remain in the custody, possession, or control of [Institution Name].

3. During periods when the samples are not being actively investigated, the Cosmic Dust samples must be under the constant control of the Authorized Official or Designee. During these periods the Cosmic Dust samples must not be left unattended. At the end of each use of the Cosmic Dust samples, an inventory shall be made to insure the accountability of the Cosmic Dust samples. Such inventories shall be maintained as a permanent record and shall be made accessible to NASA at all times.

4. When not being actively investigated, the Cosmic Dust samples must be locked in a safe or secure storage cabinet equipped with a combination padlock. The combination to the storage safe or cabinet shall be under the exclusive control of the Authorized Official and, if required, the [Institution Name] security organization.

5. In no case may the Cosmic Dust samples be stored with money, precious stones or minerals, classified material, or any other item that is considered to be of high theft value.

6. The [Institution Name] security organization must be informed of the presence and location of the Cosmic Dust samples.

7. To insure that appropriate security arrangements are followed, the [Institution Name] organization holding the Cosmic Dust samples shall be subject to inspection by NASA representatives at all times.

8. The Authorized Official shall report immediately the consumption, loss or damage of the Cosmic Dust samples to the JSC Cosmic Dust Sample Curator.

I hereby designate [Principal Investigator] to be the Principal Investigator of Cosmic Dust samples, as the Authorized Official to assume the responsibility for the security of same, and their ultimate return to JSC.

Signature for
[Institution Name]

Date

Title

Signature
[Principal Investigator]

Date

Principal Investigator