

Agreement Between
The National Aeronautics and Space Administration
and
[INSTITUTION NAME]
For the Loan of Microparticle Impact Laboratory 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] in [INSTITUTION LOCATION] (hereinafter referred to as “the Institution”). NASA and the Institution may be individually referred to as a “Party” and collectively referred to as the “Parties.”

PURPOSE

Microparticle Impact samples distributed by NASA, a U.S. federal agency, are property of the U.S. Government and are under the custody and curatorial control of JSC.

NASA desires to make certain Microparticle Impact samples available to the Institution by entering into this Loan Agreement. The Institution proposes to use these Microparticle Impact samples to undertake scientific investigations led by its Principal Investigator (the person who performs the investigations, hereinafter referred to as “PI”). These investigations are described in one or more sample requests submitted by the PI to the Microparticle Impact Sample Curator at JSC and approved by the Microparticle Impact Sample Curator. Once approved, these sample requests are an integral part of this Loan Agreement. JSC approval of the sample request (the award letter) is a prerequisite to the initiation of this Loan Agreement and subsequent loan of the Microparticle Impact samples. The approved samples will not be provided to the PI, through the Institution, until after conclusion of this Loan Agreement.

The use of the Microparticle Impact samples will permit beneficial contact among representatives of JSC and the Institution, including through the PI; will provide opportunities for discovery and dissemination of information to the broader scientific community and to the general public; will promote the maximum utilization of Microparticle Impact samples by JSC; and will provide opportunities for the dissemination of information concerning the activities of NASA.

RELATIONSHIP BETWEEN THE INSTITUTION AND PI

The Institution hereby designates [PI NAME] as the PI for the purposes of this Loan Agreement. The Institution will enter into a separate legally binding agreement with the PI for purposes of carrying out certain responsibilities of the Institution, as appropriate, that are set forth in this Loan Agreement. The Institution will be responsible for ensuring the PI's and his/her designee(s)' adherence to this separate agreement which is attached to this Loan Agreement as Annex 1 and is an integral part of this Loan Agreement.

RESPONSIBILITIES:

The Parties agree to the following:

1. The Microparticle Impact samples made subject to this Loan Agreement shall be identified and assigned to the Institution by the JSC Microparticle Impact Sample Curator via Microparticle Impact sample assignment forms signed by the Microparticle Impact Sample Curator and the PI.
2. The Microparticle Impact samples are irreplaceable and are therefore made available through institutions to PIs 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 Microparticle Impact samples. The Institution shall designate the PI to be responsible for the receipt, use (including security during use), and accountability of the Microparticle Impact samples, through the attached agreement.
3. Title to the Microparticle Impact samples shall remain with the U.S. Government and shall not be affected by the incorporation, attachment, or mixture thereof to or with property not owned by NASA.

4. As determined by NASA, the Microparticle Impact samples shall be either hand-carried, at the expense of the Institution, by an authorized official of the Institution, or mailed at JSC's expense, to the Institution via registered mail or a shipping service approved by JSC. JSC reserves the right, at the expense of the Institution, to direct the mode of transportation for the return of the Microparticle Impact sample.
5. Only the PI or the PI's designee(s), may receive and open the registered package. The PI or the PI's designee(s) shall record all of the Microparticle Impact samples promptly upon receipt, and a record of receipt shall be maintained while the Microparticle Impact samples are in the custody, possession or control of the PI and the Institution.
6. During the use for research purposes, the Microparticle Impact samples must be under the constant control of the PI or the PI's designee(s). At no time may the Microparticle Impact samples be left unattended. At the end of each use of the Microparticle Impact samples, an inventory shall be made to insure the accountability of the Microparticle Impact samples. Such inventories shall be maintained as a permanent record and shall be made accessible to NASA at all times.
7. When not being actively investigated, the Microparticle Impact samples must be locked in a secure nitrogen cabinet behind a door with a combination padlock or equivalent. The door combination shall be under the exclusive control of the PI and, if appropriate, the Institution's security organization. If a controlled environment is required for scientific purposes, samples not being actively investigated must be stored in a locked laboratory.
8. In no case may Microparticle Impact samples on loan from NASA be stored with money, precious stones or minerals, classified material or any other item that is considered to be of high theft value. Microparticle Impact samples may be stored with other astromaterials (e.g., meteorites).
9. To ensure that appropriate security arrangements are followed, the Institution holding the Microparticle Impact samples shall be subject to inspection by NASA representatives upon request at all times.
10. The Institution and the PI shall report immediately the loss or damage of the Microparticle Impact samples to the Microparticle Impact Sample Curator.

11. The Institution security organization must be informed of the presence and location of the Microparticle Impact samples by the PI.
12. The Institution, or, if and when the Institution determines appropriate, the PI, is responsible for returning the Microparticle Impact samples upon expiration or termination of this Loan Agreement. However, the Institution retains the ultimate responsibility for the return of Microparticle Impact samples.
13. The PI shall be responsible for accurate accounting of all Microparticle Impact samples by sample name, number and location. The Institution shall perform an inventory of the Microparticle Impact samples on an annual basis beginning no later than approximately one year from the effective date of this Agreement, using the sample inventory form provided by the Microparticle Impact Sample Curator, and submit this form to the Microparticle Impact Sample Curator within two months of receipt. This inventory includes any samples consumed or destroyed in the course of the research. This inventory shall be signed by the PI and certified by an official or security representative of the Institution.
14. The Institution, acting through the PI, may only use the Microparticle Impact samples at the Institution, or may permit the PI to use the sample at other locations consistent with the approved sample request. Any uses not expressly addressed in the approved sample request will require the advance written approval of the Microparticle Impact Sample Curator. If the approved sample request entails collaborative work at another institution, the Microparticle Impact samples shall be either hand-carried, at the expense of the Institution, by an authorized official of the Institution, or mailed at the Institution's expense, via registered mail or by a shipping service approved by JSC. The Institution, acting through the PI shall keep a record of all such transfers, inform the Microparticle Impact Sample Curator when such transfers occur, and note them in the annual inventory. When the samples are in use by a collaborator, the original Institution is responsible for extending the security requirements set forth in this agreement and shall retain responsibility for the Microparticle Impact samples.
15. This Loan Agreement is not transferable to another institution or investigator. If the PI relocates to another institution and wishes to continue research on the Microparticle Impact

samples, a new Loan Agreement must be completed between the new Institution and NASA before Microparticle Impact samples can be transferred. If the PI is finished with a sample, but another investigator at the Institution is interested in studying this sample, a new sample request must be submitted to the Microparticle Impact Sample Curator, and if approved, a new Loan Agreement must be completed by the new Institution.

16. Return of Microparticle Impact samples to JSC may arise from several circumstances. If the PI completes or terminates research on the Microparticle Impact samples, or if the PI relocates to a new institution without executing a new loan agreement with NASA, the samples must be returned to the Microparticle Impact Sample Curator at JSC. Upon the circumstances of death or incapacitation of the PI, the Institution will likewise be responsible for returning the Microparticle Impact samples to the Microparticle Impact Sample Curator at JSC. Finally, if this agreement expires without a new loan agreement being entered into by the Parties, or is terminated by either Party, the Microparticle Impact samples must be returned to the Microparticle Impact Sample Curator at JSC. In all cases described above, the Microparticle Impact samples shall be returned with a full accounting of the Microparticle Impact samples, using the sample return forms provided by the Microparticle Impact Sample Curator.
17. The use of Microparticle Impact samples shall be solely for the purposes set forth in the approved sample request. This Loan Agreement allows the Institution to use destructive analytical procedures only as specified in the approved sample request. The Institution, acting through the PI, may request from the Microparticle Impact Sample Curator an amendment to the sample request in order to perform additional research on the samples.
18. When requested by NASA, the Institution, acting through the PI, shall provide the Microparticle Impact Sample Curator at JSC a copy of any publication(s) resulting from the Institution's 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.
19. NASA or the Institution, in part acting through the PI, may, consistent with Federal law and this Loan Agreement, release general information regarding its participation in this Loan Agreement as desired.

LIABILITY AND RISK OF LOSS

1. The Institution shall be responsible for any loss or damage to the Microparticle Impact samples.
2. The Institution recognizes that the United States Government may take any action available under US law against the Institution with respect to such loss or damage.
3. Loss or damage to the Microparticle Impact samples caused by failure to follow proper safeguarding standards as set forth in this Loan Agreement, or by any willful act or omission, lack of good faith, or negligence of the Institution may result in the recall of all Microparticle Impact samples in the Institution's possession and will be considered in selecting future recipients, both PIs and Institutions, for Microparticle Impact sample loans.
4. NASA, its officers, and employees shall not be liable for any loss, damage, expense, or liability of whatsoever nature or kind arising out of, or as a result of, or in connection with the possession or use of the samples during the term of the loan or any extension thereof.
5. The Institution 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 employees or the employees of the Institution's related entities, or for damage to, or loss of, the Institution'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. The Institution further agrees to extend this unilateral waiver to its related entities, including the PIs, 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.
6. The Institution shall ensure that the PI is responsible to the United States Government to the same extent as the Institution as set forth in paragraphs 1 through 5 of this provision.

FINANCIAL OBLIGATIONS

There shall be no transfer of funds between the Parties under this Loan Agreement and each Party shall fund its own participation. All activities under or pursuant to this Loan Agreement are subject to the availability of funds, and no provision of this Loan 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 Loan 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, the Institution 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 Loan 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 Loan Agreement does not obligate NASA to seek alternative government property or services under the jurisdiction of NASA at other locations.

CUSTOMS CLEARANCE AND MOVEMENT OF PERSONS

In accordance with its laws and regulations, each Party will facilitate free customs clearance and waiver of all applicable customs duties and taxes for goods necessary for the implementation of this Loan Agreement. In the event that any customs duties or taxes of any kind are nonetheless levied on such equipment and related goods, such customs duties or taxes will be borne by the Party of the country levying such customs duties or taxes.

In accordance with its laws and regulations, each of the Parties will also facilitate the movement of goods into and out of its territory as necessary to comply with this Loan Agreement.

NONEXCLUSIVITY

This Loan 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

The Institution or the PI 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. The Institution or the PI 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. The Institution or the PI must submit any proposed use of the emblems to NASA Communications for review and approval.

The Institution shall ensure that the PI carries out these obligations.

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 the Parties hereto, or five years from the effective date, whichever is sooner. This Loan Agreement may be amended at any time by written agreement of the Parties.

The Parties may unilaterally terminate this Loan Agreement by providing thirty (30) calendar days written notice to the other Parties. Upon termination the Institution, or if and when the Institution determines appropriate, the PI, is responsible for returning the Microparticle Impact samples to the Microparticle Impact Sample Curator within thirty (30) days. However, if any provision of this Loan Agreement is violated, NASA may request the return of all the

Microparticle Impact samples, and the Microparticle Impact samples shall be returned immediately. The Institution retains the ultimate responsibility for the return.

POINTS OF CONTACT

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

Principal Investigator (PI)

Institution Official

Name

Name

Title

Title

Email

Email

Telephone

Telephone

Fax

Fax

Address

Address

NASA Headquarters, Office of International
Curator
and Interagency Relations

NASA Microparticle Impact Sample

Name: Kent Bress
Email: Kent.G.Bress@nasa.gov
Telephone: (202) 358-0269
Fax: (202) 358-3030
Address: NASA Headquarters
Mail Suite 5X37
300 E Street, SW
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Name: Michael Zolensky
Email: michael.e.zolensky@nasa.gov
Telephone: (281) 483-5128
Fax: (281) 483-5347
Address: NASA – JSC,
Mail Code KT
2101 NASA PKWY
Houston TX 77058
USA

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 persons identified in this Loan Agreement as the “Points of Contact.” The persons identified as the “Point of Contact” for NASA and the Institution shall consult and attempt to resolve all issues arising from the implementation of this Loan Agreement. If the Parties are 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 any of the Parties 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:

Institution Official:

Signature

Printed Name

Date

NASA Microparticle Impact Sample Curator:

Signature

Printed Name

Date

***Director, Aeronautics and Cross-Agency
Support Division (ACD), NASA Headquarters
Office of International and Interagency Relations:***

Signature

Printed Name

Date

Observer: Principal Investigator (PI):

Signature

Printed Name

Date

ANNEX 1

AGREEMENT BETWEEN [INSTITUTION NAME] AND [PI NAME]

1. [INSTITUTION NAME] designates [PI NAME] to be the Principal Investigator (hereinafter referred to as “PI.”) for the Agreement between the National Aeronautics and Space Administration Johnson Space Center and [INSTITUTION NAME] of [INSTITUTION LOCATION] for the Loan of Microparticle Impact samples (hereinafter referred to as the “Loan Agreement”), to which this Agreement is affixed.

2. The PI agrees that s/he will be accountable for the responsibilities of the Institution and of the PI as set forth in the provisions of the Loan Agreement. These responsibilities are detailed in the following sections of the Loan Agreement:

PURPOSE; RESPONSIBILITIES; LIABILITY AND RISK OF LOSS; PRIORITY OF USE; CUSTOMS CLEARANCE AND MOVEMENT OF PERSONS; USE OF NASA NAME, INITIALS, AND EMBLEM; TERMS OF AGREEMENT – DURATION, TERMINATION, AND MODIFICATION; POINTS OF CONTACT; and DISPUTE RESOLUTION.

3. This Agreement terminates or expires at such time as the Loan Agreement terminates or expires.

Institution Official

Principal Investigator

Printed Name

Printed Name

Signature

Signature

Date

Date