

EXHIBIT D: MODEL CONTRACT TERMS AND CONDITIONS

REPRESENTATIONS, WARRANTIES and COVENANTS

- A. During the term of this Contract, TMT will respond to Contractor's reasonable requests for data and other information to the extent that (1) such information is known by or readily available to TMT, and (2) it is legally permissible for TMT to provide such information to Contractor. In connection therewith, TMT will make its personnel available to confer with Contractor regarding the Work and any potential constraints.
- B. Contractor is responsible for the direct management and supervision of its personnel. Contractor will inform all such personnel prior to the start of Work that there is no implied employment of Contractor personnel by TMT.
- C. Contractor represents and warrants that the Deliverables will not infringe, misappropriate or otherwise violate any confidential or proprietary information, any trade secret or any intellectual property right belonging to any third party.
- D. Contractor represents and warrants that it has not engaged in collusion with any other potential contractor to procure this Contract. Contractor further represents and warrants that no benefit of tangible value has been given, nor will be given to any of TMT's agents or employees as a result of being awarded this Contract.

PROPRIETARY INFORMATION

A. Proprietary Information Defined.

1. "Proprietary Information" means confidential proprietary information (including business, financial or technical data, machine-readable or interpreted information, information contained in physical components, mask works or artworks in written or other permanent form) that is delivered to the recipient, bears the date of disclosure, and is visibly identified by clear and conspicuous markings as the disclosing Party's Proprietary Information. A non-written disclosure shall be considered Proprietary Information to the extent that such disclosure is orally identified as Proprietary Information at the time of disclosure and is confirmed in writing by the disclosing Party. Such written confirmation shall: (i) sufficiently describe the information disclosed in detail, its scope, and the date and manner of disclosure; (ii) identify disclosers and recipients; (iii) be supplied within 10 days after oral disclosure; and (iv) refer to this Article.
2. Contractor's Proprietary Information does not and shall not under any circumstances include: (a) any deliverables submitted by Contractor to TMT under this Contract unless otherwise agreed to in writing authorized by the Parties, (b) information in TMT specifications or in any future modifications thereto, including, but not limited to, modifications suggested by Contractor; or (c) any scientific data.

B. Obligations of Receiving Party. The receiving Party shall preserve the disclosing Party's Proprietary Information for three years from the date of disclosure and will maintain the confidentiality of the Proprietary Information with at least the same degree of care that it uses to protect its own confidential information, but no less than a reasonable degree of care under the circumstances. The receiving Party will not disclose any of the disclosing Party's Proprietary Information, except to its employees, project members or consultants who have a need to know and who agree to abide by nondisclosure terms at least as comprehensive as those set forth herein. The receiving Party will not disclose a disclosing Party's Proprietary Information to any third party without the disclosing Party's prior written authorization. Any copies that are made will be identified as belonging to the disclosing Party and marked "Proprietary" or with a similar legend. A receiving Party may not use Proprietary Information to reproduce, redesign, or reverse engineer any products or equipment of the disclosing Party.

C. No Liability for Certain Disclosures. The receiving Party will not be liable for the disclosure of any information, regardless of its designation as Proprietary Information, if it is (a) rightfully in the public domain other than by a breach of a duty to the disclosing Party; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to the receiving Party without any limitation on use or disclosure prior to its receipt from the disclosing Party; (d) independently developed by the employees of the receiving Party; or (e) generally made available to third parties by the disclosing Party without restriction on disclosure.

D. Disclosures Required by Law. Should a receiving Party be faced with a legal obligation to disclose Proprietary Information received under this Contract, the receiving Party shall, as soon as possible, notify the disclosing Party, and upon request of the disclosing Party shall reasonably cooperate in contesting such disclosure. Except in association with a failure to discharge the responsibilities set forth in this paragraph, neither Party shall be liable for any disclosures made pursuant to federal or state law.

E. This Article for Proprietary Information shall survive expiration or termination of this Contract.

GENERAL TERMS AND CONDITIONS

A. Independent Contractor. Contractor is engaged as an independent contractor and not as an agent or employee of TMT. Contractor shall have no authority to bind or obligate TMT in any manner whatsoever. Contractor shall be solely liable and responsible for its employment practices and for paying its own employee salaries, benefits, taxes and withholdings.

B. Indemnification and Hold Harmless.

1. Contractor agrees to indemnify, defend and hold harmless TMT, its directors, officers, members, employees, agents, assigns and affiliates from any and all

liabilities, claims, damages, losses, reasonable attorneys' fees, and other reasonable costs of defense (including costs incurred prior to commencement of a lawsuit) resulting from or attributed to (i) Contractor's breach of its representations, warranties or obligations set forth in this Contract; (ii) any assertion that any component of the Work infringes, misappropriates, or violates any patent right, copyright right, trade secret, or other proprietary right of any third party; or (iii) any negligent or unlawful act or omission of Contractor or any of its employees and/or agents in the performance of this Contract.

2. If TMT seeks indemnification pursuant to this Contract, TMT shall notify the Contractor in writing of any claim or the commencement of any action or proceeding that TMT believes is subject to indemnification (referred to as the "Claim"). TMT shall also forward all documents in its possession and communicate all information known by it to the Contractor to the extent such documents and information are relevant to the Claim.

3. The Contractor shall have the right, at its option and sole expense, to assume sole responsibility for defending or settling the Claim, and shall have the right to use legal counsel of its choice. If the Contractor exercises this option, (i) it shall notify TMT, (ii) TMT shall cooperate in the settlement or defense of the Claim, and (iii) the Contractor shall not be liable to TMT for any legal or other expenses subsequently incurred by TMT in connection with settling or defending the Claim. If the Contractor refuses to accept responsibility for defending or settling the Claim, TMT shall exercise reasonable efforts to defend or settle the Claim, and any recovery against the TMT suffered by it in good faith under such circumstances shall be conclusive in its favor against the Contractor.

4. This Article for Indemnification and Hold Harmless shall survive expiration or termination of this Contract.

C. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS CONTRACT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Notwithstanding anything to the contrary in this Contract, this paragraph shall not apply to damages arising out of or relating to the following: (i) damage claims payable to third parties, irrespective of the basis for such claims; and (ii) violations of law. This section shall survive expiration or termination of this Contract.

D. Insurance. At all times during the term of this Contract, the Contractor shall procure and maintain, at its own expense, the following insurance coverage: (A) workers' compensation at statutory limits, (B) employer's liability insurance with limits of at least \$1,000,000 per occurrence, and (C) comprehensive general liability (including bodily injury, property damage and contractual liability) insurance with limits of at least \$1,000,000 per occurrence. Contractor shall give TMT at least 30 days prior written notice of any cancellation of insurance coverage or any proposed reduction of insurance

coverage below the limits set forth in this Section. Contractor shall provide TMT with a certificate of insurance for the required coverage promptly upon request.

E. Governing Law. This Contract shall be governed by and construed in all respects in accordance with the laws of the State of California, without giving effect to its choice of law rules. This section shall survive expiration or termination of this Contract.

F. Changes to Contract. This Contract may be modified, amended or waived only by a written instrument executed by both TMT and the Contractor. If the terms of this Contract are modified, amended or waived such that the change causes an increase or decrease in the cost of, or the time required for, the Work, the parties may agree to an equitable adjustment in the Ceiling Price, the delivery schedule, or both. Contractor must assert its right to an adjustment under this clause within fifteen (15) days from the date it receives a written request for a change from TMT. Failure to agree to an adjustment shall be a dispute under the Disputes clause.

G. Export Regulations. Contractor shall comply with all U.S. export control laws and regulations in the performance of this Contract. The Contractor shall be responsible for (a) obtaining appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance; and (b) all regulatory record-keeping requirements associated with the use of licenses and license exemptions/exceptions. This Article for Export Regulations shall survive expiration or termination of this Contract.

H. Dispute Resolution.

1. Pre-Arbitration Procedures. Except as provided below, in the event of any dispute or controversy arising out of or relating to this Contract, including its validity, enforceability, performance, or breach (“Dispute”), the Party alleging a Dispute will notify the other Party of the existence of the Dispute, and provide reasonable detail about the Dispute. Senior officials representing both Parties will meet and attempt to resolve the Dispute within 15 days of the notice.

2. Arbitration. In the event senior officials do not meet or are unable to resolve a Dispute within the above period, the Dispute shall be resolved exclusively by final binding arbitration in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association (AAA). The Parties shall endeavor to select a mutually acceptable arbitrator within fifteen (15) days of the Notice of a demand of arbitration (“Arbitration Notice”). In the event the Parties are unable to agree to such a selection, AAA procedures shall be used to select a single arbitrator. The costs for the arbitration and the fees of the arbitrator shall be shared equally by the Parties. All Parties agree that arbitration shall take place within the County of Los Angeles, California. The arbitrator shall not have the authority, power, or right to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The arbitrator shall endeavor to commence the arbitration

within sixty (60) days of the Arbitration Notice. A written award shall be rendered by the arbitrator within thirty (30) days of the end of the arbitration hearing(s), and shall be final and binding on the Parties. Judgment may be entered thereon in any court having jurisdiction.

3. Continued Performance Pending Dispute Resolution. Pending the resolution of the Dispute, the Parties shall, without delay, continue to perform their respective obligations under this Contract.

4. This Article for Dispute Resolution shall survive expiration or termination of this Contract.

I. Primary Contacts. The Contractor agrees that the TMT Contracts Manager is the only person authorized to make changes to the Contract.

The primary contacts under this Contract are as follows:

1. *TMT Contract Technical Manager:*

Eric Williams
TMT Observatory Corporation
1200 E. California Blvd.
MC 102-8
Pasadena, California 91125

Phone: 626.395.1638
Fax: 626.395.8909
ewilliams@tmt.org

2. *TMT Contracts Manager:*

Pratheep Eamranond
TMT Observatory Corporation
1200 E. California Blvd.; MC 102-8
Pasadena, CA 91125

Phone: 626.395.1607
Fax: 626.395.8909
pratheep@tmt.org

J. Notice. Written notices from one Party to the other shall be given by one of the following methods: (a) United States registered mail, return receipt requested, and said notice shall be deemed to have been given three (3) days after said notice is deposited into the United States mail; (b) personal delivery, and said notice shall be deemed given upon such delivery; or (c) recognized overnight courier service, (d) telefax; or (e) e-mail,

and said notice shall be deemed given upon delivery by such service at the following addresses or at such other address of which either Party shall advise the other in writing:

To TMT: TMT Observatory Corporation
2632 E. Washington Blvd., Mail Code 102-8
Pasadena, CA 91107
ATTN: Pratheep Eamranond
pratheep@tmt.org

To Contractor: [Contractor Notice Information]

This section shall survive expiration or termination of this Contract.

K. Force Majeure. Neither of the Parties shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated Party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated Party. The Parties will use reasonable efforts to mitigate the effect of a Force Majeure event. If such event continues for more than 30 days, either Party may cancel unperformed services upon written notice.

L. Entire Contract and Modification. This Contract constitutes the complete and exclusive statement of the Contract between the Parties and supersedes all prior representations, understandings, and communications, oral and written, between the Parties relating to the subject matter thereof. Any changes to this Contract made by the Parties shall be invalid unless executed in a writing signed by both Parties' authorized representatives.

M. Headings. The headings within this Contract are inserted for convenience of reference only and not to define, describe or limit the scope or the intent of this Contract or any term hereof.

N. Assignment. TMT may assign this Contract, in whole or in part, in its sole discretion to any member of the TMT Project including, but not limited to, the California Institute of Technology, the University of California or the Association of Canadian Universities for Research in Astronomy. This Contract shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties hereto. Notwithstanding the foregoing, Contractor may not assign or delegate any of its rights or obligations under this Contract without the prior written consent of TMT, and any attempt to do so shall be void.

O. Mutual Non-Waiver. No failure of either Party to exercise any power given hereunder or to insist upon strict compliance with any obligations specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any Party's right to demand strict compliance with the terms hereof.

P. Severability. If any term or provision of this Contract, or the application thereof to any person or circumstance, shall to any extent be found to be invalid, void, or unenforceable, the remaining provisions of this Contract and any application thereof shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

Q. Data Rights. Except as otherwise stated in this Contract and required by law, TMT will own all rights to the work product delivered to it pursuant to this Contract and will have the right to use, reproduce and adapt it for any purpose. If requested, Contractor will sign or assist in preparation of documents necessary to perfect title to the work product at TMT's expense. TMT's ownership and title to its information shall not be affected by the transfer of the information to the Contractor for purposes of carrying out the terms of this Contract. Ownership and right to use or modify the work product shall survive the term of this Contract.

R. No Third-Party Beneficiary. Nothing in this Contract, express or implied, is intended to confer on any person other than the Parties hereto and their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Contract.

S. Personnel Moves. Prior to removing, replacing, or diverting key personnel designated below, if any, the Contractor shall notify TMT, in writing, reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Contract. No diversion shall be made by the Contractor without written consent of TMT; provided that TMT may ratify in writing the change, and such ratification shall constitute the consent of TMT required by this Article. Designated Key Personnel are:

1.

T. Termination for Default. TMT reserves the right to terminate all or any part of this Contract if Contractor breaches any provision of this Contract and fails to cure such breach within ten (10) days of receiving notice thereof from TMT. TMT may immediately terminate this Contract in the event of any of the following (a) insolvency of Contractor, (b) filing of a voluntary petition in bankruptcy by Contractor, (c) filing of any involuntary petition of bankruptcy against Contractor, (d) appointment of a receiver or trustee for Contractor, (e) or execution of an assignment for the benefit of creditors by Contractor, provided such petition, appointment, or assignment is not vacated or nullified within fifteen (15) days after such event. In the event of termination for default, TMT shall have no remaining liability to Contractor under this Contract other than to pay for any labor or materials accepted by TMT on or before the effective date of the default. TMT's rights under this paragraph are in addition to any other remedies available hereunder or by law.

U. Termination for Convenience. TMT reserves the right to terminate this Contract, or any part hereof, for its sole convenience. In the event TMT gives Contractor notice of

such termination, Contractor shall immediately stop all Work hereunder and shall cause any and all of its suppliers and subcontractors to promptly cease work. Within sixty (60) days after the effective date of a termination for convenience, Contractor shall submit a detailed termination claim to TMT with sufficient supporting data to permit TMT's audit and such additional supporting information as TMT requests ("Termination Claim"). The Termination Claim must be certified by the Contractor to represent the sum of all claims under the terminated Contract. The Contractor must also certify on the Termination Claim that no additional claim for services, materials, rights or benefits under the terminated Contract will be brought by the Contractor. Subject to the terms of this Contract, Contractor shall be paid its reasonable out-of-pocket costs for terminating the Work as of the effective date of the termination. TMT's payment to Contractor shall be due within thirty (30) days after its receipt of the Termination Claim less any amount disputed in good faith by TMT. TMT, or its agents, shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other items related to any termination claim of Contractor. Contractor shall not be entitled to reimbursement for any work performed or costs incurred which reasonably could have been avoided at the time of termination.

V. Effect of Termination. Upon termination of this Contract, the Parties shall have no further obligation to one another, except for those obligations that survive the termination of this Contract as expressly set forth herein.

W. TMT Property. FAR clause 52.245-1 (June 2007) is incorporated into this Contract in its entirety with the following exceptions:

1. "TMT" shall be substituted for all instances of "Government."
2. "TMT contract manager" shall be substituted for all instances of "contracting officer" or "property administrator,"
3. "Customer Furnished Property" shall be substituted for instances of "Government Furnished Property."
4. Paragraph (h)(1) of FAR clause 52.245-1 is revised to read as follows:
 - a. Risk of Loss. Contractor, upon the delivery to it or acquisition by it of any TMT property, assumes the risk of and shall be responsible for all loss thereof or damage thereto. When such property is no longer needed for the performance of this Contract, or at such other time as may be directed by TMT, Contractor shall return such property to TMT, as applicable, in as good a condition as when received, except for reasonable wear and tear, and except for such property as has been reasonably consumed in the performance of work hereunder.

X. Counterparts. This Contract, and any amendments hereto, may be executed in counterparts, each such counterpart to be considered an original and all of which shall be construed together as one and the same document.

Y. Authorization. The undersigned individuals represent that they are fully authorized to execute this Contract on behalf of the named Parties