

Agreement for Accessing the Faulkes Telescopes for Educational Use

Las Cumbres Observatory (“the Company”) operates the Faulkes Telescope Project, which aims to provide experience of astronomy to students in the United Kingdom and Eire and to other approved educational bodies. This is done through access to the Faulkes Telescopes via the website www.faulkes-telescope.com or any replacement URL which the Company notifies from time to time (“the website”). There are two Faulkes Telescopes, one located on Haleakala in Maui, Hawaii (FT North) and one located in New South Wales, Australia (FT South). The User wishes to access these Telescopes for educational purposes and hereby reserves an Access Package by applying to the Company for telescope time.

Terms and conditions

Access Package

- 1 The Company hereby agrees to provide to the User an Access Package for which the User will apply via the website. An Access Package to the Telescopes for schools in the UK and Eire comprises of:
 - (a) observing sessions, each session comprising 30 consecutive minutes of which 28 minutes consist of Real Time Access and 2 minutes of operational time during which control of the relevant Telescope is handed to or from the User and the Telescope is re-set. Real Time Access involves access to and control of a Telescope by the User via the website; and
 - (b) Off-Line Access, which can be applied for by the User and granted at the discretion of the Company. Via Off-Line Access a user can place a request via the website that a particular object be observed by a Telescope, the resultant image being returned to the User's nominated e-mail address once the Telescope has produced such image.
- 2 The User will be entitled to reserve additional observing time at any time upon agreement with the Company.
- 3 Upon reservation of an Access Package the Company shall provide the User with :
 - (a) a user name and password which the User must utilise to gain access to the Telescopes;
 - (b) access to certain materials related to the operation of the Telescopes and astronomy projects operated by the Company as determined by the Company from time to time. Ownership of all copyright and other intellectual property rights in such materials shall at all times remain the property of the Company.

Termination by the Company

- 4 The Company shall have the right to terminate this Agreement with immediate effect by written notice to the User. For the avoidance of doubt, upon such termination by the Company, the User's right to access the Telescopes shall terminate with immediate effect. The Company reserves the right to suspend the User's account and charge a re-registration fee to enable the account, if the User is negligent in their use of the telescope, inhibiting the usefulness of subsequent sessions

Reserving and cancelling observing sessions

- 5 The procedure for reserving and cancelling observing sessions is attached for your information and forms part of these terms and conditions.

Intellectual property

- 6 With the exception of any subsisting proprietary rights of third parties, the User acknowledges and agrees that any and all intellectual property rights created, developed, subsisting or used in or in connection with the Telescopes, the education materials supplied by the Company and/or the website (and any amendment of same) are and shall remain the sole property of the Company or its third party suppliers and all copyright in the images obtained by the Telescopes shall remain the property of the Company.

- 7 The Company hereby grants the User a non-exclusive royalty free licence for the duration of this Agreement to use the website, the Telescopes and the educational materials and to download any part(s) of the website and the images produced by the telescope during an observing session of the User to a personal computer for viewing by the User, its teaching staff and students for private, educational and non-profit making purposes but the User is not permitted without the prior written permission of the Company in each case:
- (a) to use or store it (or any part of it) for any other purpose;
 - (b) to print out copies or otherwise reproduce or copy it (or any part of it) except for the User's own viewing for private, educational and non-profit making purposes (including viewing by the teaching staff and students of the User for such purposes);
 - (c) to transmit it (or any part of it) in any way for any purpose other than for private, educational and non-profit making purposes of the User, its teaching staff and students.

Liability of the Company

- 8 The Company does not make any express or implied warranty regarding the Telescopes and the website (and any amendment of same) including without limitation any warranty of merchantability or fitness for any particular purpose notwithstanding that such purpose may have been known or become known to the Company. The User acknowledges that due to the nature of the internet and to inclement climatic conditions, it is not possible to guarantee Users with continuous and uninterrupted access to the website or the Telescopes and the Company has no liability arising from any interruption in or non-availability of such access. The website may contain links to websites operated by third parties and the Company does not endorse or approve the content of any such site and gives no warranty regarding the same.
- 9 Notwithstanding any provision of this Agreement the Company shall not be liable or obligated under any section of this Agreement or under contract, negligence, strict liability or otherwise for any indirect, special, incidental or consequential damages or for loss of profits or loss of data.
- 10 The Company does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of the Company, its employees, agents or authorised representatives.
- 11 Subject to the provisions hereof and except insofar as the Company's liability may not be excluded or limited by law, the User acknowledges and agrees that the Company's entire liability under this Agreement (other than under 10 above) shall be limited to the total consideration actually received by the Company under this Agreement, which the User acknowledges and agrees is reasonable in all the circumstances. The terms of Clauses 8 to 11 shall survive the termination of this Agreement howsoever caused.

User Warranties

- 12 (a) The User hereby warrants, represents and undertakes to the Company that:
- (i) all information the User has provided to the Company is accurate, complete in all material respects, up-to-date and not misleading;

- (ii) it will not impersonate or permit any of its teaching staff or students to impersonate any person or entity in its use of the website, the Telescopes and the educational materials;
 - (iii) it will only use the website and the Telescopes for lawful purposes;
 - (iv) it shall not attempt to decipher, decompile, disassemble or reverse engineer any of the software making up any or all part(s) of the website;
 - (v) it will not disclose or share its password or user name with any third party or use the same for any unauthorised purpose;
 - (vi) if the User becomes aware of any unauthorised use of its user name or password it will notify the Company immediately;
 - (vii) it will not post or attempt to post any virus, trojan horse, or other computer programs or devices that are intended to damage, interfere with, intercept or capture any system, data or software contained on or making up the website;
 - (viii) it shall not disclose any sensitive or confidential information and materials (including without prejudice any Telescope generated image) belonging to the Company or any third party which the User may have access to on the website or through the Telescopes or the educational materials without the prior written consent of the Company; and
 - (ix) it will procure that its teaching and other staff and students comply with the provisions of this clause 12 as though named together with the User.
- (b) The User hereby agrees to indemnify the Company in respect of any liability, losses, damages, costs or expenses arising out of any breach by the User of this Clause 12, save where same is due to an act or omission of the Company or the breach by the Company of its obligations under this Agreement.
- (c) The Company reserves the right to suspend the User's account and charge a re-registration fee to enable the account, if the User is negligent in their use of the telescope, inhibiting the usefulness of subsequent sessions.

Publicity

The User hereby undertakes to the Company that neither it, nor any of its teaching or other staff, students or associates will, without the prior consent of the Company use in advertising, publicity or otherwise the name of Las Cumbres Observatory or the Faulkes Telescope Project or any of the images produced by the Telescopes or the education materials, or any trade name, trade mark, trade device, service mark, symbol or abbreviation, contraction or simulation thereof owned by Las Cumbres Observatory or any of its associates. Any images produced through utilisation of the Telescopes shall be credited with the words "Image obtained using the Faulkes Telescope [North/South], operated by Las Cumbres Observatory." as appropriate. The User further undertakes to provide the Company with the opportunity to review and approve materials or publications, including press releases, in which the name of the Company or Faulkes Telescope Project or a variation thereof, is used prior to such materials being issued.

Collection of scientific data

In the event that a User makes a discovery which is of potential scientific interest or produces data which may be valuable to astronomical research organisations as a result of an Observing Session or Off-Line Access, the User hereby agrees to provide such findings or data to the Cardiff Operations Centre (which has day to day responsibility for the operation and management of the Telescopes) in the first instance without delay. The Cardiff Operations Centre will be responsible for verification and announcement of any such discovery.

Governing law and jurisdiction

- 13 This Agreement shall be governed by and construed in all respects in accordance with English law and each of the parties hereto hereby agrees to submit to the non-exclusive jurisdiction of the English Courts as regards any claims or matters arising hereunder.

Procedure for reserving and cancelling observing sessions

- 1 Each observing session for either Telescope must be booked by the User by contacting the Cardiff Operations Centre through the online booking system at least 2 hours in advance. The Cardiff Operations Centre shall thereafter notify the User to confirm the date and time of the User's observing session or alternatively, to advise that the requested observing session is not available if circumstances change. Offline observations are performed automatically by the telescope at the earliest opportunity, and no guarantee can be made on the timescales that such data will be available to the User.
- 2 The User shall be wholly responsible for ensuring that it is logged on to the website prior to the commencement of an observing session. The User shall also be responsible for ensuring that it is in a position to accept control of the Telescope at the commencement of an observing session involving Real Time Access. The Company accepts no liability for any missed observing session which arises out of an act or omission by the User or the breach by the User of its obligations under this Agreement. Observing sessions may be monitored by or on behalf of the Cardiff Operations Centre without notice to the User. Details of all observing sessions are saved on a computer at the Cardiff Operations Centre for such period as the Cardiff Operations Centre, in its sole discretion, decides and the Cardiff Operations Centre may review any observing session.
- 3 Any cancellation of an observing session by a User must be by notice in writing (including by email) to the Cardiff Operations Centre to such address (or email address) as is notified to the User from time to time. Please note:
 - (a) In the event of the User cancelling an observing session: (i) 24 hours or more in advance, the observing session shall remain available for use by the User at another time; or (ii) less than 24 hours in advance, the User's entitlement to the observing session shall be forfeited unless the Company (or Cardiff Operations Centre) agrees otherwise;
 - (b) In the event that a User fails to cancel a booked observing session and fails to participate in the observing session, the User's right to that observing session shall be forfeited. Persistent failure to participate in pre-arranged observing sessions may result in the User's account being suspended. Re-enabling the User's account is done so at the discretion of the Project Director of the Company.
 - (c) In the event of an observing session being cancelled in advance by the Cardiff Operations Centre, the full observing session will remain available in the User's account for future use.
 - (i) In the event that an observing session is interrupted or Real Time Access lost, due to (i) technical difficulties with a Telescope or its instruments; or (ii) inclement weather conditions, or (iii) by cancellation by the Company or the Cardiff Operations Centre the remaining observing time in that session (considered to be 28 minutes of observing time in total duration) will be credited to the offline account of the User.
 - (d) The Company has the right to interrupt an observing session to enable a Telescope to be utilised for an urgent scientific programme. In the event that an observing session is interrupted or Real Time Access lost due to a Telescope being utilised as part of an urgent scientific programme, the User will have the full observing session re-credited to its Account. For these purposes, "an urgent scientific programme" shall include the Swift Project, UKAPP and RoboNet, being projects undertaken by NASA, UK scientists and the Company to study various astronomical phenomena.

- (e) In the event that an Observing Session is interrupted or Real Time Access lost due to technical difficulties with the User's computer system, the User should contact the Cardiff Operations Centre in order to seek advice but shall have no automatic right to have any part of the Observing Session re-credited to its Account.

The determination by the Project Director of the Company as to whether the User is or is not entitled to be credited with the benefit of all or part of an Observing Session which has been cancelled or interrupted shall be final and conclusive between the parties.