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SPACE ACT AGREEMENTS GUIDE

Responsible Office: Office of the General Counsel

***Note*:** This Guide is intended to explain NASA agreement practice and provide assistance to those involved in formation and execution of Space Act Agreements. It does not establish substantive or procedural requirements. All references to such requirements contained in NASA Policy Directives (NPDs), NASA Procedural Requirements (NPRs), NASA Advisory Implementing Instructions (NAIIs) or other guidance should be verified by reviewing the cited authority directly.

NAII 1050-1E contains updates to Chapter 4. Agreements With Foreign Entities. Updates to other chapters will be forthcoming in future versions.

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TABLE OF CONTENTS

CHANGE LOG (Located after Table of Contents)

CHAPTER 1. INTRODUCTION 1

1.1. AUTHORITY AND POLICY 1

1.2. SPACE ACT AGREEMENT DEFINED 2

1.3. AGREEMENT FORMATION PROCESS 3

Role of Agreement Manager 4

The HQ Abstract Review Process 6

(b) Space Act Agreement Review and Concurrence 7

Space Act Agreement Recordkeeping 9

HANDLING NON-PUBLIC INFORMATION ABOUT NASA FACILITIES, ASSETS OR NETWORKS 11

INFORMATION THAT WOULD DISCLOSE NON-PUBLIC INFORMATION SUCH THAT AN OUTSIDE PARTY COULD POTENTIALLY ASSESS SECURITY VULNERABILITIES THAT COULD REASONABLY BE EXPECTED TO ENDANGER THE LIFE OR PHYSICAL SAFETY OF ANY INDIVIDUAL SHOULD NOT BE INCLUDED IN AGREEMENTS. 11

AGREEMENT MANAGERS SHOULD TAKE CARE TO AVOID POSSIBLY DISCLOSING SECURITY VULNERABILITIES OF NASA FACILITIES, ASSETS AND/OR NETWORKS. TO THE EXTENT DOCUMENTS SUCH AS SITE DRAWINGS, FLOOR PLANS OR SIMILAR DOCUMENTS ARE REQUIRED TO BE EXCHANGED TO SUPPORT AN AGREEMENT, THEY SHOULD BE HANDLED SEPARATELY AND NOT ATTACHED TO OR INCLUDED IN THE AGREEMENT ITSELF. 11

1.4. NONREIMBURSABLE AGREEMENT 11

1.5. REIMBURSABLE AGREEMENT 12

1.6. INTERAGENCY AGREEMENT 15

1.7. INTERNATIONAL AGREEMENT 15

1.8. FUNDED AGREEMENT 15

1.9. UMBRELLA AGREEMENT (AND ANNEX) 18

1.10. SPECIALIZED ACTIVITIES AGREEMENTS 20

1.10.1. RESERVED 20

1.10.2. REIMBURSABLE TRAVEL 20

1.10.3. SOFTWARE USAGE AGREEMENT (SUA) 20

1.11. NON-AGREEMENTS *20*

CHAPTER 2. NONREIMBURSABLE AND REIMBURSABLE AGREEMENTS WITH DOMESTIC NONGOVERNMENTAL ENTITIES **22**

2.1. GENERAL GUIDANCE *22*

2.2. AGREEMENT CONTENTS *22*

2.2.1. TITLE **23**

2.2.2. AUTHORITY AND PARTIES **24**

2.2.3. PURPOSE **24**

2.2.4. RESPONSIBILITIES **24**

2.2.5. SCHEDULE AND MILESTONES **25**

2.2.6. FINANCIAL OBLIGATIONS **26**

2.2.7. PRIORITY OF USE **27**

2.2.8. NONEXCLUSIVITY **28**

2.2.9. LIABILITY AND RISK OF LOSS **28**

2.2.9.1. SAAs For Shared Benefits – Cross-Waiver And Flow Down **29**

2.2.9.2. SAAs Primarily Benefitting AN SAA Partner – Unilateral Waiver **30**

2.2.9.3. Product Liability **31**

2.2.9.4. Insurance **31**

2.2.10. INTELLECTUAL PROPERTY RIGHTS **33**

2.2.10.1. Data Rights **34**

2.2.10.1.1. Proprietary Data Exchange Not Expected (Basic Clause) *36*

2.2.10.1.2. Proprietary Data Exchange Expected (Proprietary Exchange Clause) *38*

2.2.10.1.3. Reimbursable SAAs For the Benefit of a Foreign Entity *40*

2.2.10.1.4. Non-technical SAAs (Free Exchange of Data Sample Clause) *41*

2.2.10.2. Rights In Raw Data Generated Under The Agreement **41**

2.2.10.3. Invention and Patent Rights **42**

2.2.10.3.1. Invention and Patent Rights in SAAs with Little Likelihood of an Invention Resulting (Short Form Clause) *43*

2.2.10.3.2. Invention and Patent Rights in SAAs with Likelihood of an Invention Resulting (Long Form Clause) *44*

2.2.10.3.3. Invention and Patent Rights in SAAs Where NASA's Title Taking Authority Applies (Title Taking Clause) *45*

2.2.10.4. Patent And Copyright Use – Authorization, Consent, And Indemnification **46**

2.2.11. USE OF NASA NAME AND EMBLEMS **47**

2.2.12. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA **48**

2.2.13. DISCLAIMERS **48**

2.2.13.1. Disclaimer Of Warranty **48**

2.2.13.2. Disclaimer Of Endorsement **48**

2.2.14. COMPLIANCE WITH LAWS AND REGULATIONS **48**

2.2.15. TERM OF AGREEMENT **49**

2.2.16. RIGHT TO TERMINATE **49**

2.2.17. CONTINUING OBLIGATIONS **50**
2.2.18. POINTS OF CONTACT **50**
2.2.19. DISPUTE RESOLUTION **51**
2.2.20. INVESTIGATIONS OF MISHAPS AND CLOSE CALLS **51**
2.2.21. MODIFICATIONS **52**
2.2.22. ASSIGNMENT **52**
2.2.23. APPLICABLE LAW **52**
2.2.24. INDEPENDENT RELATIONSHIP **52**
2.2.25. LOAN OF GOVERNMENT EQUIPMENT **53**
2.2.26. SPECIAL CONSIDERATIONS **53**
2.2.27. SIGNATORY AUTHORITY **53**

APPENDIX TO CHAPTER 2. SAMPLE CLAUSES – NONREIMBURSABLE AND REIMBURSABLE AGREEMENTS WITH DOMESTIC NONGOVERNMENTAL ENTITIES **53**

2.2. AGREEMENT CONTENTS ***53***
2.2.1. TITLE **53**
2.2.1.1. TITLE (NONREIMBURSABLE AGREEMENT SAMPLE CLAUSE) **54**
2.2.1.2. TITLE (REIMBURSABLE AGREEMENT SAMPLE CLAUSE) **54**
2.2.1.3. TITLE (NONREIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE) **54**
2.2.1.4. TITLE (REIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE) **54**
2.2.1.5. TITLE (ANNEX AGREEMENT SAMPLE CLAUSE) **54**
2.2.2. AUTHORITY AND PARTIES (SAMPLE CLAUSE) **54**
2.2.3. PURPOSE **54**
2.2.3.1. PURPOSE (SAMPLE CLAUSE) **54**
2.2.3.2. PURPOSE AND IMPLEMENTATION (UMBRELLA AGREEMENT SAMPLE CLAUSE) **55**
2.2.3.3. PURPOSE (ANNEX SAMPLE CLAUSE) **55**
2.2.4. RESPONSIBILITIES **55**
2.2.4.1. RESPONSIBILITIES (SAMPLE CLAUSE) **55**
2.2.4.2. RESPONSIBILITIES (UMBRELLA AGREEMENT SAMPLE CLAUSE) **55**
2.2.4.3. RESPONSIBILITIES (ANNEX SAMPLE CLAUSE) **56**
2.2.5. SCHEDULE AND MILESTONES **56**
2.2.5.1. SCHEDULE AND MILESTONES (SAMPLE CLAUSE) **56**
2.2.5.2. SCHEDULE AND MILESTONES (UMBRELLA AGREEMENT SAMPLE CLAUSE) **56**
2.2.5.3. SCHEDULE AND MILESTONES (ANNEX SAMPLE CLAUSE) **56**
2.2.6. FINANCIAL OBLIGATIONS **57**
2.2.6.1. FINANCIAL OBLIGATIONS (NONREIMBURSABLE AGREEMENT SAMPLE CLAUSE) **57**
2.2.6.2. FINANCIAL OBLIGATIONS (REIMBURSABLE AGREEMENT SAMPLE CLAUSE) **57**
2.2.6.3. FINANCIAL OBLIGATIONS (REIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE) **58**
2.2.6.4. FINANCIAL OBLIGATIONS (REIMBURSABLE ANNEX SAMPLE CLAUSE) **58**
2.2.7. PRIORITY OF USE (SAMPLE CLAUSE) **59**

2.2.8. NONEXCLUSIVITY (SAMPLE CLAUSE) 59
2.2.9. LIABILITY AND RISK OF LOSS 59
2.2.9.1. SAAs For Shared Benefits – Cross-Waiver And Flow Down 59
2.2.9.1.1. Liability and Risk of Loss (Cross-Waiver with Flow Down Sample Clause) 59
2.2.9.1.2. Liability and Risk of Loss (Cross-Waiver of Liability for Agreements Involving Activities Related to the ISS Sample Clause) (Based on 14 C.F.R. 1266.102) 59
2.2.9.1.3. Liability and Risk of Loss – Cross-Waiver (Cross-Waiver of Liability for Launch Agreements for Science or Space Exploration Activities Unrelated to the ISS Sample Clause) (Based on 14 C.F.R. 1266.104) 63
2.2.9.2. SAAs Primarily Benefitting AN SAA Partner – Unilateral Waiver 65
2.2.9.2.1. Liability and Risk of Loss (Unilateral Waiver with Flow Down Sample Clause) 65
2.2.9.3. Product Liability 66
2.2.9.3.1. Liability and Risk of Loss (Product Liability Sample Clause) 66
2.2.9.3.2. Liability and Risk of Loss (Product Liability Indemnification Sample Clause) 66
2.2.9.4. Insurance 66
2.2.9.4.1. Liability and Risk of Loss (Insurance for Damage to NASA Property Short Form Sample Clause) 66
2.2.9.4.2. Liability and Risk of Loss (Insurance for Damage to NASA Property Long Form Sample Clause) 67
2.2.9.4.3. Liability and Risk of Loss (Insurance Protecting Third Parties Sample Clause) 68
2.2.9.4.4. Agreement Partner's Self-Insurance for High Risk Activities (Sample Clause) 69
2.2.9.4.5. Liability and Risk of Loss (Commercial General Liability Insurance) 70
2.2.10. INTELLECTUAL PROPERTY RIGHTS 72
2.2.10.1. Data Rights 72
2.2.10.1.1. Intellectual Property Rights - Data Rights (Proprietary Data Exchange Not Expected Sample Clause) 72
2.2.10.1.1.2. Intellectual Property Rights – Identified Intellectual Property (Annex Sample Clause Where Proprietary Data Exchange Is Not Expected) .. 74
2.2.10.1.2. Intellectual Property Rights - Data Rights (Proprietary Data Exchange Expected Sample Clause) 74
2.2.10.1.2.1. Intellectual Property Rights – Identified Intellectual Property (Annex Sample Clause where Proprietary Data Exchange Is Expected) 79
2.2.10.1.3. Intellectual Property Rights - Data Rights (Reimbursable SAA For the Benefit of a Foreign Entity Sample Clause) 80
2.2.10.1.4. Intellectual Property Rights - Data Rights (Free Exchange of Data Sample Clause) 83

2.2.10.2. Intellectual Property Rights - Rights in Raw Data (Sample Clause) **83**
2.2.10.3. Intellectual Property Rights – Invention and Patent Rights **84**
2.2.10.3.1. Intellectual Property Rights - Invention and Patent Rights (Short Form Sample Clause) ***84***
2.2.10.3.2. Intellectual Property Rights - Invention and Patent Rights (Long Form Sample Clause) ***84***
2.2.10.3.3. Intellectual Property Rights - Invention and Patent Rights (Title Taking Sample Clause) ***86***
2.2.10.4. Patent And Copyright Use – Authorization, Consent, And Indemnification **92**
2.2.10.4.1. Patent and Copyright Use - Authorization and Consent (Sample Clause) ***92***
2.2.10.4.2. Patent and Copyright Use - Indemnification (Sample Clause) ***92***
2.2.11. USE OF NASA NAME AND EMBLEMS (SAMPLE CLAUSE) **92**
2.2.12. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA (SAMPLE CLAUSE) **93**
2.2.13. DISCLAIMERS **93**
2.2.13.1. Disclaimer of Warranty (Sample Clause) **93**
2.2.13.2. Disclaimer of Endorsement (Sample Clause) **94**
2.2.14. COMPLIANCE WITH LAWS AND REGULATIONS (SAMPLE CLAUSE) **94**
2.2.15. TERM OF AGREEMENT **95**
2.2.15.1. Term of Agreement (Sample Clause) **95**
2.2.15.2. Term of Annex (Annex Sample Clause) **95**
2.2.16.1. Right to Terminate (Nonreimbursable Agreement Sample Clause) **95**
2.2.16.2. Right to Terminate (Reimbursable Agreement Sample Clause) **95**
2.2.16.3. Right to Terminate (Reimbursable Agreement Requiring High Certainty of Support Sample Clause) **95**
2.2.16.4. Right to Terminate (Nonreimbursable Umbrella Agreement Sample Clause) **96**
2.2.16.5. Right to Terminate (Reimbursable Umbrella Agreement Sample Clause) **96**
2.2.16.6. Right to Terminate (Nonreimbursable Annex Sample Clause) **97**
2.2.16.7. Right to Terminate (Reimbursable Annex Sample Clause) **97**
2.2.17. CONTINUING OBLIGATIONS (SAMPLE CLAUSE) **97**
2.2.18.1. Points of Contact (Sample Clause) **97**
2.2.18.2. Points of Contact (Umbrella Sample Clause) **98**
2.2.18.3. Points of Contact (Annex Sample Clause) **99**
2.2.19. DISPUTE RESOLUTION **100**
2.2.19.1. Dispute Resolution (Sample Clause) **100**
2.2.19.2. Dispute Resolution (Umbrella Sample Clause) **100**
2.2.20. INVESTIGATIONS OF MISHAPS AND CLOSE CALLS (SAMPLE CLAUSE) **101**
2.2.21. MODIFICATIONS **101**

2.2.21.1. MODIFICATIONS (SAMPLE CLAUSE) 101
2.2.21.2. MODIFICATIONS (UMBRELLA SAMPLE CLAUSE) 101
2.2.21.3. MODIFICATIONS (ANNEX SAMPLE CLAUSE) 101
2.2.22. ASSIGNMENT (SAMPLE CLAUSE) 101
NEITHER THIS AGREEMENT NOR ANY INTEREST ARISING UNDER IT WILL BE ASSIGNED BY THE PARTNER OR NASA WITHOUT THE EXPRESS WRITTEN CONSENT OF THE OFFICIALS EXECUTING, OR SUCCESSORS, OR HIGHER- LEVEL OFFICIALS POSSESSING ORIGINAL OR DELEGATED AUTHORITY TO EXECUTE THIS AGREEMENT. 2.2.23. APPLICABLE LAW (SAMPLE CLAUSE) 101
2.2.24. INDEPENDENT RELATIONSHIP (SAMPLE CLAUSE) 101
THIS AGREEMENT IS NOT INTENDED TO CONSTITUTE, CREATE, GIVE EFFECT TO OR OTHERWISE RECOGNIZE A JOINT VENTURE, PARTNERSHIP, OR FORMAL BUSINESS ORGANIZATION, OR AGENCY AGREEMENT OF ANY KIND, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL BE ONLY THOSE EXPRESSLY SET FORTH HEREIN.
2.2.25. LOAN OF GOVERNMENT (SAMPLE CLAUSE) 101
2.2.26. SPECIAL CONSIDERATIONS (NO SAMPLE CLAUSE) 2.2.27. SIGNATORY AUTHORITY 102
2.2.27.1. SIGNATORY AUTHORITY (SAMPLE CLAUSE) 102
2.2.27.2. SIGNATORY AUTHORITY (ANNEX SAMPLE CLAUSE) 102

CHAPTER 3. NONREIMBURSABLE AND REIMBURSABLE AGREEMENTS WITH FEDERAL/STATE/LOCAL GOVERNMENT ENTITIES 103

3.1. GENERAL GUIDANCE 103

3.2. AGREEMENTS WITH STATE/LOCAL GOVERNMENT ENTITIES 103

3.3. AGREEMENTS WITH FEDERAL GOVERNMENT ENTITIES 103
3.3.1. GENERAL GUIDANCE 103
3.3.2. AGREEMENT CONTENTS 110

3.3.2.1. TITLE 112
3.3.2.2. AUTHORITY AND PARTIES 112
3.3.2.3. PURPOSE 112
3.3.2.4. RESPONSIBILITIES 112
3.3.2.5. SCHEDULE AND MILESTONES 113
3.3.2.6. FINANCIAL OBLIGATIONS 113
3.3.2.7. PRIORITY OF USE 113
3.3.2.8. LIABILITY AND RISK OF LOSS 114
3.3.2.9. INTELLECTUAL PROPERTY RIGHTS 114
3.3.2.10. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA 115
3.3.2.11. TERM OF AGREEMENT 116
3.3.2.12. RIGHT TO TERMINATE 116
3.3.2.13. CONTINUING OBLIGATIONS 117
3.3.2.14. POINTS OF CONTACT 117
3.3.2.15. DISPUTE RESOLUTION 117
3.3.2.16. MODIFICATIONS 118
3.3.2.17. APPLICABLE LAW 118
3.3.2.18. LOAN OF GOVERNMENT EQUIPMENT 118
3.3.2.19. SIGNATORY AUTHORITY 119

APPENDIX 3. SAMPLE CLAUSES – NONREIMBURSABLE AND REIMBURSABLE AGREEMENTS WITH FEDERAL GOVERNMENT ENTITIES 120

3.1. AGREEMENT CONTENTS 120
3.2.1. TITLE 120
3.2.1.1. TITLE (NONREIMBURSABLE AGREEMENT SAMPLE CLAUSE) 120
3.2.1.2. TITLE (REIMBURSABLE AGREEMENT SAMPLE CLAUSE) 120
3.2.1.3. TITLE (NONREIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE) 120
3.2.1.4. TITLE (REIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE) 120
3.2.1.5. TITLE (ANNEX AGREEMENT SAMPLE CLAUSE) 120
3.2.2. AUTHORITY AND PARTIES (SAMPLE CLAUSE – *APPLIES TO ALL IAAS*) 120
3.2.3. PURPOSE 121
3.2.3.1. PURPOSE (SAMPLE CLAUSE) 121
3.2.3.2. PURPOSE AND IMPLEMENTATION (UMBRELLA AGREEMENT SAMPLE CLAUSE) 121
3.2.3.3. PURPOSE (ANNEX SAMPLE CLAUSE) 121
3.2.4. RESPONSIBILITIES 121
3.2.4.1. RESPONSIBILITIES (SAMPLE CLAUSE) 121
3.2.4.2. RESPONSIBILITIES (UMBRELLA IAA SAMPLE CLAUSE,) 122
3.2.4.3. RESPONSIBILITIES (ANNEX SAMPLE CLAUSE) 122
3.2.5. SCHEDULE AND MILESTONES 122

3.2.5.1. SCHEDULE AND MILESTONES (SAMPLE CLAUSE) 122
3.2.5.2. SCHEDULE AND MILESTONES (UMBRELLA AGREEMENT SAMPLE CLAUSE) 122
3.2.5.3. SCHEDULE AND MILESTONES (ANNEX SAMPLE CLAUSE)..... 123
3.2.6. FINANCIAL OBLIGATIONS 123
3.2.6.1. FINANCIAL OBLIGATIONS (NONREIMBURSABLE AGREEMENT SAMPLE CLAUSE)..... 123
3.2.6.2. FINANCIAL OBLIGATIONS (REIMBURSABLE AGREEMENT SAMPLE CLAUSE) 123
3.2.6.3. FINANCIAL OBLIGATIONS (REIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE) 123
3.2.6.4. FINANCIAL OBLIGATIONS (REIMBURSABLE ANNEX SAMPLE CLAUSE) 124
3.2.7. PRIORITY OF USE (SAMPLE CLAUSE)..... 124
3.2.8. LIABILITY AND RISK OF LOSS 124
3.2.8.1. LIABILITY AND RISK OF LOSS (SAMPLE CLAUSE)..... 124
3.2.8.2. LIABILITY AND RISK OF LOSS (CROSS-WAIVER OF LIABILITY FOR AGREEMENTS INVOLVING ACTIVITIES RELATED TO THE ISS SAMPLE CLAUSE) . 124
3.2.8.3. LIABILITY AND RISK OF LOSS (CROSS-WAIVER OF LIABILITY FOR LAUNCH AGREEMENTS FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE ISS SAMPLE CLAUSE)..... 124
3.2.9. INTELLECTUAL PROPERTY RIGHTS 125
3.2.9.1. INTELLECTUAL PROPERTY RIGHTS – DATA RIGHTS – FREE EXCHANGE OF DATA (SAMPLE CLAUSE)..... 125
3.2.9.2. INTELLECTUAL PROPERTY RIGHTS – DATA RIGHTS – HANDLING OF DATA (SAMPLE CLAUSE)..... 125
3.2.9.2.1. INTELLECTUAL PROPERTY RIGHTS – DATA RIGHTS – IDENTIFIED INTELLECTUAL PROPERTY (ANNEX SAMPLE CLAUSE) 126
3.2.9.3. INTELLECTUAL PROPERTY RIGHTS – INVENTION AND PATENT RIGHTS (SAMPLE CLAUSE)..... 127
3.2.10. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA (SAMPLE CLAUSE) 127
3.2.11. TERM OF AGREEMENT..... 127
3.2.11.1. TERM OF AGREEMENT (SAMPLE CLAUSE)..... 127
3.2.11.2. TERM OF ANNEX (ANNEX SAMPLE CLAUSE)..... 128
3.2.12. RIGHT TO TERMINATE..... 128
3.2.12.1. RIGHT TO TERMINATE (NONREIMBURSABLE SAMPLE CLAUSE)..... 128
3.2.12.2. RIGHT TO TERMINATE (REIMBURSABLE SAMPLE CLAUSE)..... 128
3.2.12.3. RIGHT TO TERMINATE (UMBRELLA NONREIMBURSABLE SAMPLE CLAUSE) 128
3.2.12.4. RIGHT TO TERMINATE (UMBRELLA REIMBURSABLE SAMPLE CLAUSE) 128
3.2.12.5. RIGHT TO TERMINATE (ANNEX SAMPLE CLAUSE) 128
3.2.13. CONTINUING OBLIGATIONS (SAMPLE CLAUSE)..... 128
3.2.14. POINTS OF CONTACT 129

3.2.14.1. POINTS OF CONTACT (SAMPLE CLAUSE) 129
3.2.14.2. POINTS OF CONTACT (UMBRELLA SAMPLE CLAUSE) 130
3.2.14.3. POINTS OF CONTACT (ANNEX SAMPLE CLAUSE) 131
3.2.15. DISPUTE RESOLUTION 131
3.2.15.1. DISPUTE RESOLUTION (SAMPLE CLAUSE) 131
3.2.15.2. DISPUTE RESOLUTION (UMBRELLA SAMPLE CLAUSE) 131
3.2.16. MODIFICATIONS 132
3.2.16.1. MODIFICATIONS (SAMPLE CLAUSE) 132
3.2.16.2. MODIFICATIONS (UMBRELLA SAMPLE CLAUSE) 132
3.2.16.3. MODIFICATIONS (ANNEX SAMPLE CLAUSE) 132
3.2.17. APPLICABLE LAW (SAMPLE CLAUSE) 132
3.2.18. LOAN OF GOVERNMENT EQUIPMENT (SAMPLE CLAUSE) 132
3.2.19. SIGNATORY AUTHORITY (SAMPLE CLAUSE) 133

CHAPTER 4. AGREEMENTS WITH FOREIGN ENTITIES 134

4.1. GENERAL GUIDANCE AND PROCESS *134*
4.1.1. AGREEMENT FORMATION PROCESS 135
4.1.2. CIRCULAR 175 PROCESS 137
4.1.3. AGREEMENTS WITH FOREIGN UNIVERSITIES, INSTITUTES, AND NONPROFITS 137

4.2. FORMS OF AGREEMENTS *138*
4.2.1. MOUS AND AGREEMENTS (LETTER AND DUAL-SIGNATURE) 138
4.2.2. FRAMEWORK AGREEMENTS AND IMPLEMENTING ARRANGEMENTS 139
4.2.3. EXCHANGE OF DIPLOMATIC NOTES 140

4.3. NONREIMBURSABLE AGREEMENTS WITH FOREIGN ENTITIES *140*
4.3.1. NONREIMBURSABLE AGREEMENTS WITH FOREIGN GOVERNMENTAL ENTITIES 141
4.3.2. NONREIMBURSABLE AGREEMENTS WITH FOREIGN COMMERCIAL ENTITIES 141

4.4. REIMBURSABLE AGREEMENTS WITH FOREIGN ENTITIES *142*
4.4.1. REIMBURSABLE AGREEMENTS WITH FOREIGN GOVERNMENTAL ENTITIES 143
4.4.2. REIMBURSABLE AGREEMENTS WITH FOREIGN COMMERCIAL ENTITIES 143

4.5. SPECIALIZED AGREEMENTS *143*
4.5.1. AGREEMENTS RELATED TO THE INTERNATIONAL SPACE STATION 143
4.5.2. PROPERTY LOAN AGREEMENTS 145
4.5.3. VISITING RESEARCHER AGREEMENTS 145

4.6. STANDARD CLAUSES FOR AGREEMENTS WITH FOREIGN ENTITIES *145*
4.6.1. TITLE 146
4.6.2. TABLE OF CONTENTS 147
4.6.3. PREAMBLE/INTRODUCTORY LANGUAGE 147

4.6.4. AUTHORITY 148
4.6.5. PURPOSE OF COOPERATION 148
4.6.6. DEFINITIONS 149
4.6.7. RESPONSIBILITIES 150
4.6.8. DATA RIGHTS 151
4.6.9. FINANCIAL ARRANGEMENTS 153
4.6.10. SCHEDULE AND MILESTONES 153
4.6.11. PRIORITY OF USE 154
4.6.12. POINTS OF CONTACT 154
4.6.13. MANAGEMENT AND DOCUMENTATION 154
4.6.14. LIABILITY AND RISK OF LOSS – CROSS-WAIVER 155
4.6.14.1. CROSS-WAIVER FOR AGREEMENTS INVOLVING AERONAUTICS OR TERRESTRIAL ACTIVITIES 155
4.6.14.2. CROSS-WAIVER FOR AGREEMENTS INVOLVING SPACE ACTIVITIES (NON-ISS) 156
4.6.14.3. CROSS-WAIVER FOR AGREEMENTS INVOLVING SPACE ACTIVITIES (ISS) 158
4.6.15. REGISTRATION OF SPACE OBJECTS 161
4.6.16. TRANSFER OF GOODS AND TECHNICAL DATA 162
4.6.17. INTELLECTUAL PROPERTY RIGHTS 163
4.6.18. RELEASE OF RESULTS AND PUBLIC INFORMATION 165
4.6.19. EXCHANGE OF PERSONNEL AND ACCESS TO FACILITIES 165
4.6.20. CUSTOMS CLEARANCE AND MOVEMENT OF GOODS 166
4.6.21. OWNERSHIP OF GOODS AND DATA 166
4.6.22. INVESTIGATIONS OF CLOSE CALLS, MISHAPS, AND MISSION FAILURES 167
4.6.23. ORBITAL DEBRIS AND SPACECRAFT DISPOSAL 167
4.6.24. PLANETARY PROTECTION 168
4.6.25. LUNAR SITES OF HISTORIC OR SCIENTIFIC VALUE 168
4.6.26. LOAN OF GOVERNMENT PROPERTY 169
4.6.26.1 LOAN OF GOVERNMENT PROPERTY WITHIN A BROADER AGREEMENT .. 169
4.6.26.2 FREESTANDING PROPERTY LOAN AGREEMENT 170
4.6.27. CHOICE OF LAW 172
4.6.28. CONSULTATION AND DISPUTE RESOLUTION 173
4.6.29. FINAL PROVISIONS 174
4.6.29.1. FINAL PROVISIONS – BINDING MOUS AND AGREEMENTS 174
4.6.29.2. FINAL PROVISIONS – NON-BINDING INSTRUMENTS 175
4.6.30. SIGNATORIES 176
4.6.30.1. SIGNATORIES – MOUS AND DUAL-SIGNATURE AGREEMENTS 176
4.6.30.2. SIGNATORIES – LETTER AGREEMENTS 177
4.6.31. AGREEMENTS WITH FOREIGN COMMERCIAL ENTITIES AND REIMBURSABLE AGREEMENTS WITH FOREIGN GOVERNMENTAL ENTITIES 177

CHANGE LOG

Change #	Date	Section Number	Description/Comments
1	2/25/2013	Chapters 1-3	Revised Article/Clause numbering to be consistent throughout the SAAG. Chapter 4 was not updated at the request of OIIR.
2	2/25/2013	1.3. Agreement Formation Process	Clarified that Agreement Managers are responsible for uploading signed SAAs and all documents that are part of the SAA (including, but not limited to, annexes, task orders, or modifications to the SAA) into PAM within 5 business days.
3	2/25/2013	1.3. Agreement Formation Process	Added explanation that classified interagency agreements are drafted in the appropriate classified system in coordination with OIIR/ECILD. Moreover, signed classified interagency agreements should be provided to OIIR/ECILD for centralized tracking on the appropriate system.
4	2/25/2013	1.3. Agreement Formation Process	Changed the URL link for EPLS searches to the SAM system.
5	2/25/2013	1.3 Agreement Formation Process	Added to the preliminary abstract review requirements that OIIR is responsible for the NASA-wide preliminary review of proposed classified interagency agreements. Centers and Headquarters offices should submit an abstract to OIIR/ECID through the appropriate classified system when they are planning a classified interagency agreement. All classified activities with a federal Government entity directly as a Partner, or indirectly as a beneficiary require submission of an abstract to OIIR through the appropriate classified system.
6	2/25/2013	1.3. Agreement Formation Process	Added to the preliminary abstract review requirement that where a foreign entity benefits, an explanation of the benefit should be provided.
7	2/25/2013	1.3. Agreement Formation Process	Clarified that MSD will facilitate resolution of any abstract issues with

			a goal of providing a consolidated response within 8 business days.
8	2/25/2013	1.3. Agreement Formation Process	Added requirement for Agreement Managers to make MSD aware if there are significant changes to a proposed activity upon which a decision not to submit an abstract was made.
9	2/25/2013	1.3. Agreement Formation Process	Clarified that the NASA Management Office is not required to do Estimated Price Reports.
10	2/25/2013	1.5. Reimbursable Agreement	Referenced 1/18/2007 NASA policy regarding Reimbursable SAAs issued by the NASA Associate Administrator, R. Geveden.
11	2/25/2013	1.5. Reimbursable Agreement	Added guidance that other policies may be applicable to Reimbursable SAAs as may be issued by the Mission Directorates, or Procurement.
12	2/25/2013	2.2.5.2. Schedule and Milestones	Added guidance that milestones can be stated with approximate month/year dates, or measure from the effective date of the SAA.
13	2/25/2013	2.2.6.2. Financial Obligations (Reimbursable Agreement Sample Clause) (also, 2.2.6.3)	Clarified that there are 3 payment choices, of which 2 are by electronic means.
14	2/25/2013	2.2.6.2. Financial Obligations (Reimbursable Agreement Sample Clause) (also, 2.2.6.3)	Deleted redundant sentence regarding requirement for advance payments. Added clarifying language (in support of work on behalf of the Partner).
15	2/25/2013	2.2.9. Liability and Risk of Loss	Added unilateral waiver to ISS waiver in 2.2.9.1.2 and to the non-ISS exploration waiver in 2.2.9.1.3 to cover risk from activities not included in "Protected Space Operations."
16	2/25/2013	2.2.9.1. SAAs for Shared Benefits – Cross-Waiver and Flow Down	Changed example of "sharing of substantive benefits" from "shared data and invention rights" to "raw or processed data or invention rights" since NASA currently obtains data rights in reimbursable SAAs.
17	2/25/2013	2.2.9.3. Product Liability	Clarified that commercialization would be of products or processes rather than of deliverables.

18	2/25/2013	2.2.10.1 Intellectual Property Rights – Data Rights	Deleted Related Entities data from the data that will be protected under this clause.
19	2/25/2013	2.2.10.1. Data Rights	Provided guidance that clauses may be included in a SAA that protect data produced by NASA's Related Entities, under certain conditions with a sample contract clause provided in Footnote #50.
20	2/25/2013	2.2.10.1. Data Rights	Added Footnote #80 that the definition of Related Entities for Intellectual Property and Liability are intentionally different.
21	2/25/2013	2.2.10.1.4. Non-technical SAAs (Free Exchange of Data Sample Clause)	Deleted reference and Footnote #59 to NPD 1350.3 "*Strategic Alliances: Building Partnership to Achieve NASA's Mission and Goals*" because that NPD is no longer in effect. Changed example of when the Free Exchange Clause is used from "strategic alliances" to "outreach and education."
22	2/25/2013	2.2.10.1.1.2. and 2.2.10.1.2.1. Intellectual Property Rights – Data Rights –Identified Intellectual Property	Added sample clauses "Identified Intellectual Property" for Annexes where under the corresponding Umbrella Agreement the Parties either do, or do not expect to exchange proprietary data.
23	2/25/2013	2.2.10.3.2. Intellectual Property Rights – Invention and Patent Rights (Long Form Sample Clause)	Added the definition of "Related Entity" to the Long Form Invention and Patent Rights Sample Clause.
24	2/25/2013	2.2.10.3.3. Invention and Patent Rights in SAAs Where NASA's Title Taking Authority Applies (Title Taking Clause)	Updated the "305" title taking clause/analysis.
25	2/25/2013	2.2.10.4. Patent and Copyright Use – Authorization, Consent, and Indemnification	Updated the Authorization and Consent clause/analysis.
26	2/25/2013	2.2.16.6. Right to Terminate (Nonreimbursable Annex Sample Clause)	Added Nonreimbursable Annex sample clause for Right to Terminate.

27	2/25/2013	2.2.25. and 3.2.18. Loan of Government Property	Added guidance that Lent Property can be identified by serial number of other unique identifier.
28	2/25/2013	2.2.27. Signatory Authority	Added a Signatory Sample Clause for Annexes.
29	2/25/2013	3.2.3.2. Purpose and Implementation (Umbrella Agreement Sample Clause)	Corrected terminology by replacing Interagency Umbrella Agreement with Umbrella IAA.
30	2/25/2013	3.2.6. Financial Information; 3.2.12. Right to Terminate; 3.2.15. Dispute Resolution	Updated the Intragovernmental Rules/Financial Obligations reference to the Treasury Financial Manual.
31	2/25/2013	3.2.6.3. Financial Obligations (Reimbursable Annex Sample Clause)	Removed redundant clauses from the Annex that are found in the Umbrella clause.
32	2/25/2013	3.2.9.2. Intellectual Property Rights – Data Rights – (Handling of Data Sample Clause)	Added a handling of data Umbrella clause for IAAs.
33	2/25/2013	3.2.9.2.2. Intellectual Property Rights – Data Rights – (Handling of Data Sample Clause)	Added a new Umbrella Clause for identifying Intellectual Property in Annexes.
34	2/25/2013	3.3.2. Agreement Contents	Added guidance about there being flexibility to modify or exclude some standard clauses in IAAs if the IAA is reviewed for legal sufficiency.
35	2/25/2013	3.3.2. Agreement Contents	Added guidance that OIIR is responsible for the centralized tracking and coordination of all NASA classified IAAs suing the appropriate secure systems.
36	2/25/2013	4.3. International Reimbursable Agreement	Added guidance to review Section 1.5 on Reimbursable SAAs to facilitate a decision on whether an International RSAA is appropriate.
37	2/25/2013	4.6.5. Definitions	Clarified the definition of Related Entities.
38	2/25/2013	4.6.23. Loan of Government Property	Added a section on Loan of Government Property with associated Sample Clause.
39	2/25/2013	4.6.24. Final Provisions	Retitled “Entry into Force, Term and Termination” as “Final Provisions.” Added a new “Final Provisions” for MOUs with variants and “Final Provisions” for Letter Agreements.

40	2/25/2013	Appendix A: Description of Applicable Authorities	Added the Administrator's Memorandum regarding "Coordination of Classified Interagency Agreements" July 23, 2012 and HEOMD's "Tenets for Reimbursable Space Act Agreements Supporting the Commercial Crew Program" June 2012 to the Appendix of Applicable Authorities.
41	6/24/2014	Section 1.3. "The HQ Abstract Review Process"	Incorporated changes to the abstract content requirements and submission criteria, pursuant to NASA Partnership Council (PC) Decision Memorandum PC-2014-05-002 (May 7 & 15, 2014). Also made minor administrative updates to organizational references.
42	6/24/2014	2.2.10.1.1. Intellectual Property Rights - Data Rights (Proprietary Data Exchange Not Expected)	Removed multiple paragraph references regarding use of the restrictive rights notice.
43	6/24/2014	2.2.10.1.2. Intellectual Property Rights - Data Rights (Proprietary Data Exchange Expected)	Removed multiple paragraph references regarding use of the restrictive rights notice.
44	6/24/2014	2.2.10.1.3. Intellectual Property Rights - Data Rights (Reimbursable SAA For the Benefit of a Foreign Entity)	Removed multiple paragraph references regarding use of the restrictive rights notice.
45	6/24/2014	Chapter 3, "Nonreimbursable and Reimbursable Agreements with Federal/State/Local Government Entities"	Updated references to the Treasury Financial Manual's Intragovernmental Business Rules -- now called the Intragovernmental Transaction Guide
46	8/11/2104	Section 1.3. "The HQ Abstract Review Process"	Deleted "reimbursable" in 4 places in "Space Act Agreement Review and Concurrence," Section 3 related to the requirement for Estimated Price Reports (EPRs). EPRs are necessary for both reimbursable and nonreimbursable SAAs.

47	8/11/2104	Section 1.3. "The HQ Abstract Review Process"	Incorporated changes to the abstract submission criteria, pursuant to NASA Partnership Council (PC) Decision Memorandum PC-2014-06-001 (June 5 & 26, 2014). Implemented guidance pertaining to the requirement for internal Center vetting prior to submission to Headquarters, pursuant to PC Decision Memorandums PC-2014-03-001 (March 27, 2014) and PC-2014-05-002 (May 7 & 15, 2014). Made other minor administrative, punctuation, and formatting corrections.
48	9/27/2017	Section 1.1. "Authority and Policy"	Added guidance on the authority NASA relies upon for reimbursable Interagency Agreements.
49	9/27/2017	Section 1.3. "Agreement Formulation Process/Role of the Agreement Manager"	Updated names of databases from "Space Act Agreement Maker" or "SAAM" to "Partnership Agreement Maker" or "PAM" (Updates made throughout SAAG, as necessary.)
50	9/27/2017	Section 1.3. "Agreement Formulation Process/The HQ Abstract Review Process"	Revised section and deleted certain guidance on the abstract review process, which is now located in the Partnerships Guide (NAII 1050-3).
51	9/27/2017	Section 1.3. "Agreement Formulation Process/Negotiating Agreements"	Added guidance on formulating SAAs to avoid disclosing proprietary or sensitive information under the transparency requirements of Section 841(d) of the NASA Transition Authorization Act (NTAA).
52	9/27/2017	1.5. Reimbursable Agreement	Removed references to "partially" to describe reimbursable agreements with waived costs and added footnote regarding guidance on waived costs in NPR 9090.1. (Similar updates from "partially reimbursable" to "reimbursable with waived costs" made throughout SAAG.)
53	9/27/2017	1.6. Interagency Agreement	Revised guidance to provide clarity on use of the Economy Act.
54	9/27/2017	1.8 Funded Agreement	Added guidance on Funded Space Act agreements.

55	9/27/2017	1.10 Loan of Equipment	Deleted guidance in Section 1.10. Guidance on loan of government equipment now provided in Section 2.2.25 and 3.3.2.18.
56	9/27/2017	2.2.2. Authority and Parties	Updated section to include discussion that NASA relies upon its "other transactions" authority for RSAAs and NRSAAs with domestic private sector entities.
57	9/27/2017	2.2.8. Nonexclusivity	Revised section to delete guidance on nonexclusivity, which is now located in the Partnerships Guide (NAII 1050-3).
58	9/27/2017	2.2.10.1.2. Proprietary Data Exchange Expected (Proprietary Exchange Clause)	Revised guidance to reflect changes to clause due to NTAA transparency requirements.
59	9/27/2017	2.2.12. Release of General Information to the Public and Media	Added guidance to reflect changes to the clause due to NTAA transparency requirements.
60	9/27/2017	2.2.25. Loan of Government Equipment	Updated guidance to conform to current OSI guidance on loan of government equipment in NPR 4200.1.
61	9/27/2017	2.2.10.1.2. Intellectual Property Rights - Data Rights (Proprietary Data Exchange Expected Sample Clause), Paragraph H.3.	Due to NTAA transparency requirements, revised clause to provide for identification of background, third party proprietary, and controlled government data in a separate document.
62	9/27/2017	2.2.10.1.2. Intellectual Property Rights - Data Rights (Proprietary Data Exchange Expected Sample Clause), Paragraph H.4.	Revised clause to clarify that data discussed in clause is data identified in paragraph H.2. of the clause.
63	9/27/2017	2.2.10.1.2.1. Intellectual Property Rights – Identified Intellectual Property (Annex Sample Clause where Proprietary Data Exchange Is Expected)	Due to NTAA transparency requirements, revised clause to provide for identification of background, third party proprietary, and controlled government data in a separate document.
64	9/27/2017	2.2.10.1.3. Intellectual Property Rights - Data Rights (Reimbursable SAA For the Benefit of a Foreign Entity Sample Clause)	Due to NTAA transparency requirements, revised clause to provide for identification of background, third party proprietary,

			and controlled government data in a separate document.
65	9/27/2017	2.2.12. Release of General Information to the Public and Media (Sample Clause)	Revised clause to provide notice to the partner of the transparency requirements of the NTAA.
66	9/27/2017	2.2.25. Loan of Government Equipment (Sample Clause)	Revised clause to conform to current OSI guidance on loan of government equipment in NPR 4200.1.
67	9/27/2017	3.3.1. General Guidance	Revised introductory paragraph to include high-level summary of guidance covered in Chapter 3.
68	9/27/2017	3.3.1. General Guidance/Coordination with the Office of International and Interagency Relations	Provided additional guidance on role of the Office of International and Interagency Relations (OIIR) in interagency agreements.
69	9/27/2017	3.3.1. General Guidance/Nonreimbursable IAAs	Added additional guidance to clarify authorities that NASA relies upon for Nonreimbursable IAAs and that flexibility exists with Nonreimbursable IAAs to modify or omit standard clauses for liability, intellectual property, termination rights, priority of use, and release of general information because both parties are part of the Federal government.
70	9/27/2017	3.3.1. General Guidance/Reimbursable IAAs	Revised guidance to state that the best practice is for NASA to mirror the authority that the Requesting Agency cites.
71	9/27/2017	3.3.1. General Guidance/Reimbursable IAAs	Added additional guidance to clarify that flexibility exists with Reimbursable IAAs to modify or omit standard clauses for liability, intellectual property, termination rights, priority of use, and release of general information because both parties are part of the Federal government.
72	9/27/2017	3.3.1. General Guidance/Reimbursable IAAs	Clarified guidance that NASA does not need to consider competition with the private sector with Reimbursable IAAs.

73	9/27/2017	3.3.1. General Guidance/Reimbursable IAAs	Revised discussion of Orders to provide additional guidance on when Orders must be executed.
74	9/27/2017	3.3.1. General Guidance/Reimbursable IAAs	Added guidance on the Department of the Treasury's 7600A and 7600B forms.
75	9/27/2017	3.3.1. General Guidance/Reimbursable IAAs	Provided some additional clarifications on Umbrella Agreements.
76	9/27/2017	3.3.2. Agreement Contents	Revised guidance for clarity and to eliminate guidance that is discussed previously in Chapter 3.
77	9/27/2017	3.3.2.2. Authority and Parties	Revised guidance regarding authority to be consistent with discussion of authority earlier in Chapter 3.
78	9/27/2017	3.3.2.6. Financial Obligations	Deleted guidance that is previously discussed in Chapter 3.
79	9/27/2017	3.3.2.8. Liability and Risk of Loss	Revised guidance for clarity.
80	9/27/2017	3.3.2.9. Intellectual Property Rights	Revised guidance to reflect changes to the clause due to NTAA transparency requirements.
81	9/27/2017	3.3.2.10. Release of General Information to the Public and Media	Added guidance to reflect changes to the clause due to NTAA transparency requirements.
82	9/27/2017	3.3.2.11. Term of Agreement	Revised guidance to include consultation with OIIR for IAAs exceeding five years and to clarify that an expired IAA cannot be extended through a modification.
83	9/27/2017	3.3.2.14. Points of Contact	Revised guidance to clarify that NASA POCs should be civil servants.
84	9/27/2017	3.3.2.18. Loan of Government Equipment	Updated guidance to conform to current OSI guidance on loan of government equipment in NPR 4200.1.
85	9/27/2017	3.2.2.1. Authority and Parties (Sample Clause)	Updated clause for Reimbursable IAAs.
86	9/27/2017	3.2.2.1, Authority and Parties (Nonreimbursable Sample Clause)	Updated clause for Nonreimbursable IAAs
87	9/27/2017	3.2.6.2. Financial Obligations (Reimbursable Agreement Sample Clause)	Added estimated cost to the sample clause consistent with Financial Obligations clauses in other types of agreements and for consistency with NTAA requirements.

88	9/27/2017	3.2.9.2. Intellectual Property Rights – Data Rights – Handling of Data (Sample Clause), Paragraph C	Due to NTAA transparency requirements, revised clause to provide for identification of background, third party proprietary, and controlled government data in a separate document.
89	9/27/2017	3.2.9.2. Intellectual Property Rights – Data Rights – Handling of Data (Sample Clause), Paragraph D	Revised clause to clarify that data discussed in clause is data identified in paragraph B of the clause.
90	9/27/2017	3.2.9.2. Intellectual Property Rights – Data Rights – Handling of Data (Annex Sample Clause)	Due to NTAA transparency requirements, revised clause to provide for identification of background, third party proprietary, and controlled government data in a separate document.
91	9/27/2017	3.2.10. Release of General Information to the Public and Media (Sample Clause)	Revised clause to provide notice to the partner of the transparency requirements of the NTAA.
92	9/27/2017	3.2.18. Loan of Government Equipment (Sample Clause)	Revised clause to conform to current OSI guidance on loan of government equipment in NPR 4200.1.
93	9/29/2017	Chapter 4 Updates	Chapter 4 has been updated. Change log entries are forthcoming.
94	12/22/2023	Chapter 4 Generally	Implemented a new, uniform definition of the term “international agreement” to match the one found in the Case-Zablocki Act.
95	12/22/2023	4.1.1. Agreement Formation Process	Added flow chart to assist OIIR desk officers in determining most appropriate agreement options (e.g. legally binding vs. non-legally binding; international law vs. U.S. Federal Law).
96	12/22/2023	4.6. Standard Clauses For Agreements With Foreign Entities	Provided drafting guidance regarding agreement numbering hierarchy, font size, spacing, parentheticals , and commas.
97	12/22/2023	4.6. Standard Clauses For Agreements With Foreign Entities	Restructured the substance of the chapter so that the explanatory text comes immediately before the model clause
98	12/22/2023	4.6.23. Orbital Debris and Spacecraft Disposal	Added a new clause requiring compliance with the 2007 UN Space Debris Mitigation Guidelines.

99	12/22/2023	4.6.24. Planetary Protection	Added new clause requiring compliance with the COSPAR Planetary Protection Policy.
100	12/22/2023	4.6.25. Lunar Sites Of Historic Or Scientific Value	Added new clause regarding avoidance of interference with historic lunar landing site artifacts, in accordance with the One Small Step Act of 12/31/2020.
101	12/22/2023	4.6.31. Agreements With Foreign Commercial Entities And Reimbursable Agreements With Foreign Governmental Entities	Reorganized the guidance for Agreements with Foreign Commercial Entities that use certain legal clauses from Chapter 2 of the SAAG into a chart for ease of use.

CHAPTER 1. INTRODUCTION

This Space Act Agreements Guide (hereinafter, "Guide") contains references to requirements found in NASA Policy Directives (NPDs), NASA Procedural Requirements (NPRs), NASA Advisory Implementing Instructions (NAIIs), and other guidance. Where possible, for ease of use, the Guide provides links to online versions of these documents. In all cases, the reader should rely on the source documents themselves rather than any summary references found in this Guide.

1.1. AUTHORITY AND POLICY

NASA's organic statute, the National Aeronautics and Space Act (Space Act), 51 U.S.C. §§ 20101-20164, grants NASA broad discretion in the performance of its functions. Specifically, Section 20113(e) of the Space Act authorizes NASA:

> to enter into and perform such contracts, leases, cooperative agreements, or *other transactions* as may be necessary in the conduct of its work and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any State, Territory, or possession, or with any political subdivision thereof, or with any person, firm, association, corporation, or educational institution.[1] (*emphasis added*)

Arrangements concluded under the "other transactions" authority of the Space Act are commonly referred to as Space Act Agreements (SAAs). NASA uses this authority to enter into a wide range of agreements with numerous entities to advance the NASA mission through its activities and programs. There is additional Space Act authority to conduct international cooperative space activities under international agreements.[2] NASA conducts its reimbursable Interagency Agreements (IAAs) with other Federal Agencies under the Economy Act, 31 U.S.C. § 1535, or another reimbursable authority that NASA determines it can rely upon to receive reimbursement from another Federal Agency for goods and/or services.

NASA Policy Directive (NPD) 1050.1, "Authority to Enter into Space Act Agreements" identifies organizational responsibilities, mandatory legal provisions, delegation of signatory authority, and minimum organizational concurrence requirements.[3] The policy permits limited redelegation of signatory authority in writing.[4] This Space Act Agreements Guide (Guide) has been issued as NASA Advisory Implementing Instruction 1050-1 in support of NPD 1050.1. This Guide provides instructions and guidance for developing effective SAAs to meet the needs

[1] Formerly 42 U.S.C. § 2473(c)(5)
[2] 51 U.S.C. §§ 20102(d)(7) and 20115.
[3] NPD 1050.1 paragraph 5.h.
[4] Officials delegated or redelegated responsibility for executing SAAs are referred to herein as "Signing Officials." Individuals who sign SAAs are called "Signatories."

of NASA and the other party to the SAA.[5] Like NPD 1050.1, this Guide is applicable to NASA Headquarters and NASA Centers, including Component Facilities. It is intended to facilitate commonality of SAA terms, consistent practices and oversight of the process for entering SAAs, and consistent treatment of Partners and users of NASA facilities throughout the Agency. Additional policy guidance and information is available on the "Space Act Agreements Community of Practice" website located on the "Inside NASA" portal.[6]

This Guide describes classes of SAAs organized according to the type of activity and identity of the Partner and identifies, in accordance with NPD 1050.1, requirements and provisions that must be in every SAA. It makes no attempt, however, to assemble or reference subject matter related requirements for SAAs. For example, Mission Directorates or program offices typically have subject matter related or other applicable requirements for conducting specific scientific or technical activities, which are not further described in this Guide.

1.2. SPACE ACT AGREEMENT DEFINED

The term "agreement" in its broadest context includes any transaction the Space Act authorizes NASA to conclude (*i.e.*, contracts, leases, grants, cooperative agreements, or other transactions). SAAs establish a set of legally enforceable promises between NASA and the Partner to the SAA requiring a commitment of NASA resources (including goods, services, facilities, or equipment) to accomplish stated objectives.

This Guide does not address, for example, Grants[7] and Cooperative Agreements[8] under the Federal Grants and Cooperative Agreements Act of 1977 (commonly referred to as the Chiles

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[5] For purposes of this Guide, in Chapter 2, the other party to the SAA is referred to as the "Partner." In Chapter 3, the other party to the IAA is generally referred to as the "Federal Agency" for Nonreimbursable IAAs and the "Requesting Agency" for Reimbursable IAAs. In Chapter 4, the other party to the International SAA is referred to as the other "Party."

[6] The Space Act Agreements Community of Practice Website is available at: http://insidenasa.nasa.gov/saa/home/index.html.

[7] 31 U.S.C. § 6304. Using grant agreements: An executive agency shall use a grant agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—

> (1) the principal purpose of the relationship is to transfer a thing of value to the State, local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and
>
> (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

[8] 31 U.S.C. § 6305. Using cooperative agreements: An executive agency shall use a cooperative agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when—

Act (*see* NPR 5800.1, Grant and Cooperative Agreement Handbook), Federal Acquisition Regulation contracts under the Armed Services Procurement Act of 1947 (10 U.S.C. § 2302 *et. seq.*), or real property leaseholds, easements, permits, and licenses. Similarly, this Guide does not address Cooperative Research and Development Agreements (CRADAs) authorized by the Stevenson-Wydler Technology Innovation Act.[9] In general, SAAs are not subject to restrictions on or regulations implementing these other statutory authorities.

This Guide categorizes SAAs according to the type of Partner (*e.g.*, a public or private entity), the choice of law (*e.g.,* U.S. or international), and by the parties' financial obligations. Under a **Reimbursable SAA**, the Partner pays for work NASA conducts for the Partner's benefit, even in cases where NASA might also accrue a benefit.[10] Under a **Nonreimbursable SAA**, each party assumes responsibility for its own costs.[11] Under a **Funded Agreement**, NASA provides funding to the Partner.[12] Under an International SAA, the other Party is a foreign entity. "Foreign entity means a legal entity that is not established under a state or Federal law of the United States and includes a commercial or noncommercial entity or person or governmental entity of a foreign sovereign."[13]

1.3. AGREEMENT FORMATION PROCESS

One of the principal purposes of this Guide is to foster consistent practice in the formation of SAAs at all NASA Centers. To this end, this Guide also prescribes procedures to expedite the conclusion of SAAs.

The process for International Agreements differs from the process outlined below. Contact the Headquarters Office of International and Interagency Relations (OIIR) and refer to Chapter 4 for specific guidance regarding the formation of International Agreements.

In addition, OIIR is responsible for centralized tracking and coordination of NASA classified interagency agreements with other Federal departments and agencies, including the Department of Defense and the Intelligence Community. Contact the OIIR Director for the Export Control

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(1) the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and (2) substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

[9] 15 U.S.C. § 3710, *et seq*. The Stevenson-Wydler Act permits Government-operated federal laboratories to enter into CRADAs for the purpose of transferring federally-developed or-controlled technology to the private sector. The federal laboratory can provide personnel, services, facilities, equipment, intellectual property, or other resources (but not funds) to non-federal parties with or without reimbursement.

[10] *See infra* Section 1.5.

[11] *See infra* Section 1.4.

[12] *See infra* Section 1.8.

[13] NPD 1050.1 paragraph 5.d.

and Interagency Liaison Division (ECILD) and refer to Chapters 1 and 3, as appropriate for specific guidance regarding classified interagency agreements.

Note: As used in this Guide, the phrase, "concluding an SAA," refers to concluding the SAA formation process (initiation, negotiation, review, concurrence, and signature), as opposed to concluding the performance of the SAA by the parties (*e.g.*, completing their responsibilities and milestones under the SAA).

Role of Agreement Manager

Consistent with NPD 1050.1, Section 5.g., an "Agreement Manager" must be identified for each SAA. The primary purpose of the Agreement Manager is to oversee the process required to conclude an SAA in accordance with NPD 1050.1 and this Guide (*i.e.*, initiation, negotiation, review, concurrence, execution by the NASA Signing Official, and storage of the signed version of the non-classified SAA and all documents that are part of the SAA (including, but not limited to, annexes, task orders, or modifications to the SAA as they are developed) in the Partnership Agreements Maker (PAM) database or, for International Agreements, the System for International External Relations Agreements (SIERA) database), within 5 business days of Agreement signature. Copies of signed classified interagency agreements should be provided to OIIR/ECILD for centralized tracking on the appropriate system.

The Agreement Manager may be the individual responsible for SAA formation (*e.g.*, providing a preliminary abstract for review by the Partnership Office within the Headquarters Mission Support Directorate, collecting information needed during the SAA formation process, conducting negotiations, and moving the SAA through the review and concurrence cycle) or may act in a facilitator/oversight role to ensure SAAs are concluded in accordance with NPD 1050.1 and this Guide. Centers and Headquarters offices with delegated authority to conclude SAAs have flexibility to identify one or more individuals as Agreement Manager(s) and to identify individuals to perform the functions identified below in coordination with the Agreement Manager(s). Additionally, existing roles established at Centers to facilitate SAA formation may perform the function of, and be identified as, an Agreement Manager.[14] The Headquarters OIIR is solely responsible for identifying an individual to serve as Agreement Manager for International SAAs.

In the case of International Agreements, the Headquarters OIIR serves in the role of Agreement Manager and will identify a point-of-contact at the Center to complete specific Agreement Manager tasks.[15]

The Agreement Manager is responsible for performing the following tasks (or ensuring that Center personnel identified for this role perform these tasks):

[14] At many Centers these individuals are called "Agreement Specialists."
[15] The tasks that the Point of Contact at the Center is asked to consult on or execute generally include, but are not limited to the first 5 bullets under Section 1 (excluding the requirement to complete the information in PAM).

1. Collecting all data needed to initiate and conclude the SAA in a satisfactory manner, which requires that mutual substantive and procedural expectations are established for NASA and the potential Partner including the following:

    - reviewing the Government-wide Excluded Parties List System (EPLS) to verify that the proposed Agreement Partner has not been suspended or debarred. The debarment and suspension list is available from the General Services Administration (GSA) on its System for Award Management (SAM) site at https://www.sam.gov.

    - developing and circulating any abstract information required to support the preliminary abstract review process (*see below*);

    - completing the information in PAM (or using another approved drafting method);[16]

    - determining resource availability (goods, services, facilities, or equipment);

    - identifying the funding source for NASA's responsibilities;

    - validating the viability of the potential Partner's proposed business case; or in the case of agreements with U.S. Federal, state or local government entities, or foreign government entities, the proposed benefits to NASA and the other party;

    - setting mutually acceptable processing times; and

    - determining when an SAA has been sufficiently reviewed within NASA that it can be shared with the potential SAA Partner. International SAAs require legal review before transmittal to the Department of State or a prospective foreign party.

2. Identifying offices or individuals whose concurrence is required for conclusion of the SAA and establishing a schedule for review by those offices or individuals. To that end, the Agreement Manager must maintain a system for tracking and documenting the review including time required for each phase of the review. For domestic SAAs, note that PAM is an effective system for tracking and documenting the review of proposed SAAs.

3. Monitoring the SAA formation process to ensure NASA meets the pre-established expectations and associated deadlines of the parties.

4. Preparing an adequate "review package" for the NASA Signing Official.

5. Uploading the signed version of the non-classified SAA and all documents that are part of the SAA (including, but not limited to, annexes, task orders, or modifications to the SAA as they are developed) in PAM, or SIERA for International Agreements within 5 business days

[16] International Agreements are drafted by the Office of International and Interagency Relations, and do not use the PAM. Classified interagency agreements are drafted in the appropriate classified system in coordination with OIIR/ECILD.

of Agreement signature. Copies of signed classified interagency agreements should be provided to OIIR/ECILD for centralized tracking on the appropriate system.

6. For domestic SAAs drafted in PAM, if it is later determined that a proposed SAA will not be signed, ensuring that the draft SAA is archived (i.e, removed from the active and in-progress agreements database) in order to maintain the integrity of PAM data.

The Agreement Manager should carry out his or her responsibilities with the following guidance in mind:

The Agreement Manager should facilitate a fair and consistent conclusion of all SAAs. From the perspective of both NASA and its potential Partners, it is important that fairness and consistency guide the initiation and execution of all SAAs. Federal ethics laws and Standards of Conduct require that NASA employees avoid unjustifiable favoritism, whether actual or perceived, in dealing with potential Partners. Since signed SAAs are nearly always available for public review, outside entities may judge the fairness of NASA treatment of Partners by comparing similar SAAs. Similarly situated persons should be treated alike and have equal access to NASA resources. Therefore, as a general rule, NASA's SAAs should be on a nonexclusive basis. Where exclusive arrangements are necessary, competition should be used to the maximum extent practicable to select the Partner. Such competition ensures that interested parties are aware of specific opportunities to work with NASA. It also provides NASA with options for choosing a good Partner. However, sometimes there are valid and important reasons for special terms and conditions offered to a particular Partner. For example, circumstances may exist that warrant exclusivity (*see* Section 2.2.8). If, however, a proposal confers preferential treatment on a Partner (whether actual or perceived), provides for private gain to any party, or presents the likelihood of conflicting financial interests arising from any provisions of the agreement, early advice should be sought from the Office of the General Counsel or Chief Counsel, as appropriate.

The HQ Abstract Review Process

The NASA Partnership Office within HQ Mission Support Directorate is responsible for coordinating the NASA-wide preliminary review of proposed unclassified agreement activities which have a significant impact on the Agency. The primary purposes of the abstract review process are to validate that NASA is being a good steward of U.S. Government resources, ensure the soundness of the financial approach and affirm that the proposed agreement aligns with the Agency's policies, strategic plan, and mission. Accordingly, Centers and Headquarters offices proposing to initiate certain agreements must submit abstracts of key information to the Partnership Office through NASA's Partnership Agreement Maker (PAM) system prior to negotiating or committing to any agreements. For further information about the HQ abstract review process, including abstract submission criteria and content requirements, please see Section IV.A.4 of the NASA Partnerships Guide (NAII 1050-3), available here: https://nodis3.gsfc.nasa.gov/NPD_attachments/N_AII_1050_0003.pdf

Prior to submission to the Partnership Office, the abstract must be properly vetted internally within the submitting Center. This review should include all affected program and functional offices. In particular, all abstracts must be reviewed by the initiating Center's Office of Chief Counsel prior to submission to Headquarters.

The HQ Office of International and Interagency Relations (OIIR) is responsible for the NASA-wide preliminary review of proposed classified interagency agreements. Abstracts are required for all classified activities with a Federal Government entity directly as a partner or indirectly as a beneficiary. Initiating offices should submit an abstract to OIIR on the appropriate secure system for Agency review. OIIR will follow a similar abstract review process as outlined in Section IV.A.4 of the NASA Partnerships Guide, using the appropriate classified systems and appropriately cleared individuals from the NASA Headquarters organizations reviewing the proposed activities.

(b) Space Act Agreement Review and Concurrence

The Agreement Manager is responsible for facilitating the review and concurrence cycle for all SAAs within his or her area of responsibility. Thus, a primary responsibility of the Agreement Manager is to ensure timely involvement, review, and approval by required NASA reviewing offices. To this end, the Agreement Manager works to ensure that reviewing offices are aware of agreed-to processing deadlines and comply with them. Those responsible for reviewing SAAs should utilize a system, such as PAM, for tracking and documenting the dates associated with their review. The PAM is an effective system for tracking and documenting the review of proposed domestic SAAs. If for any reason the review will be delayed (*e.g.*, due to inadequate information regarding the understanding of the parties with regard to key issues, complexity of the transaction, or competing workload priorities), the Reviewer should provide prompt written notice to the Agreement Manager explaining the cause of the delay and providing an estimate of the time necessary to complete review. Failure to involve affected Mission Directorate or Program offices, leadership at affected Centers, resource providers (*e.g.*, goods, services, facilities, and equipment), and key mission support offices (particularly the offices of the Chief Financial Officers (CFOs), the General Counsel or Chief Counsel, as appropriate, and Export Control, where applicable) can often delay development and execution of SAAs. Consequently, early involvement of these offices in a transaction – in addition to any written concurrence required to conclude an SAA – is strongly encouraged.

In particular, the Agreement Manager should ensure early coordination with:

1. The Partnership Office within the HQ Mission Support Directorate for preliminary abstract review if required, or the Office of International and Interagency Relations for preliminary abstract review of classified interagency activities.

2. The Office of the General Counsel (for Headquarters Agreements) or Chief Counsel (for Center Agreements).

    - Early coordination is critical to developing a legally sufficient SAA in a timely manner. NASA attorneys provide advice and counsel related to all aspects of a proposed transaction in addition to determining legal sufficiency; however, the final business decision (or for IAAs with U.S. Federal, state or local governments, or International SAAs with foreign government entities, the assessment of the benefits to NASA and the other Party) is a functional responsibility of the NASA Signing Official. NASA attorneys also provide sound legal guidance on appropriate and effective means for structuring transactions to meet NASA's needs.

- In accordance with NPD 1050.1, all SAAs, including modifications must have legal review prior to execution. The officials authorized, in NPD 1050.1 to execute, amend, and terminate SAAs may establish guidelines for when SAA drafts may be provided to a prospective Partner for initial review (but not execution) prior to legal review (*e.g.*, pre-established categories of routine agreements or agreements with no changes to the standard SAA sample clauses).

- The Agreement Manager should determine whether a proposed SAA falls under the pre-established guidelines for SAAs not requiring legal review of initial SAA drafts or if it requires legal review before an initial draft can be transmitted to a prospective Partner for review.

3. NASA Headquarters officials and Center CFOs responsible for reviewing NASA's proposed resource commitments under SAAs.[17]

   - Center CFOs must be included in all pricing strategy discussions prior to negotiations with potential partners.

   - In accordance with NPD 1050.1, and as detailed in Sections 1.4, 1.5 and 2.2.6 of this Guide and NPR 9090.1, Estimated Price Reports (EPRs) of the value of the NASA resources to be committed under SAAs must be prepared before NASA may enter into SAAs.[18]

   - These EPRs must be reviewed by the Director for Headquarters Operations (for Headquarters SAAs), or the Center CFO (for Center SAAs). They provide the basis for NASA financial management officials to ensure that proposed NASA funding is available.

   - For Reimbursable SAAs in which the Agency recovers less than full cost, the EPRs provide the basis for the NASA Signing Official to determine whether the proposed contribution of the Agreement Partner is fair and reasonable compared to the NASA resources to be committed, NASA program risks, and corresponding benefits to NASA.[19]

4. The Technical Capabilities and Real Property Management (TCRPM) Division for any SAA that includes the use of NASA buildings and facilities by the Partner. Discussions with the Center facilities office, as appropriate, will facilitate TCRPM's review process, as defined in NPR 8800.15, "Real Estate Management Program."

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[17] EPRs are not required for NASA Management Organization (NMO) RSAAs entered into for work done at JPL because costing and resource management is done in accordance with JPL rules and policies pursuant to the JPL contract and reviewed by an NMO Contracting Officer.
[18] EPRs are not required for certain categories of agreements, such as reimbursable travel, consistent with NPR 9090.1.
[19] NPD 1050,1 paragraph 1.a.

Space Act Agreement Recordkeeping

The Agreement Manager is responsible for ensuring that a signed version of the SAA and all documents that are a part of the SAA (including, but not limited to, annexes, task orders, or modifications to the SAA as they are developed) are uploaded into PAM (or SIERA through the Office of International and Interagency Relations for International Agreements). The Agreement Manager is also responsible for ensuring the integrity of PAM data by maintaining current information and status on their SAAs within PAM, and archiving (*i.e.*, removing from the active and in-progress agreements database) unsigned/unexecuted SAAs. Supporting documents such as cost estimates, EPRs, for Reimbursable SAAs, Orders for Reimbursable IAAs, waivers, and insurance certificates should be loaded into PAM with the executed SAA for recordkeeping purposes. For International Agreements and IAAs with other U.S. Federal agencies, including classified IAAs, the Agreement Manager also must provide a copy of the executed Agreement to the Office of International and Interagency Relations.[20]

Negotiating Agreements

Under the NASA Transition Authorization Act (NTAA), all agreements that cite NASA's "other transactions" authority at 51 U.S.C § 20113(e) as authority are required to be posted online in a searchable format.

Therefore, to avoid disclosing proprietary or sensitive information, such agreements should be negotiated to ensure that the information contained in the agreement is publicly releasable. The vast majority of these agreements do not include proprietary or sensitive information. They typically include responsibilities and milestones at a high enough level to identify the types of information to be exchanged and the activities anticipated under the agreement without disclosing any proprietary or sensitive information. For example, the fact that a partner is seeking support from or collaboration with NASA or a description of the general activities under the agreement would not be considered proprietary or sensitive information.

Agreement managers should request a justification from the partner to support negotiations if a partner asks to withhold general information about the agreement activities. Agreement managers should explain NASA's legal obligation to ensure transparency of its efforts. To the extent that a partner seeks to withhold significant aspects of a proposed agreement, the Agreement Manager should consult the Office of Chief Counsel or Office of General Counsel, as appropriate, to assess whether information should be considered proprietary or sensitive and for support in explaining NASA's obligation to disclose its partnership activities.

Ultimately, it is up to NASA and its partner to decide together what should not be released. It is important, however, to include sufficient detail in the agreement to ensure that an outside reviewer would understand the alignment of the activity to NASA's mission (for non-reimbursable agreements) or tie to unique NASA resources (for reimbursable agreements). This type of information is appropriate for disclosure.

1. Agreements should always include:
    a. the identity of the partner,

[20] NPD 1050.1, paragraph 5.g.

b. a summary of the purpose of the agreement sufficient to communicate to a reader the nature of the work and how the work is aligned with one or more of NASA's statutory objectives,
c. the amount of anticipated reimbursement (for reimbursable agreements),
d. the terms and conditions of the agreement, even if negotiations have resulted in variance from NASA standard terms and conditions.

2. Agreements citing 51 U.S.C. § 20113(e) should also include sufficient detail to meet the requirements of NPD 1050.1, *Authority to Enter into Space Act Agreements*:
    a. A description of the respective responsibilities of NASA and the Agreement Partner, with the standard of performance based on a "reasonable efforts" basis, that are stated with sufficient clarity to support preparation of Estimated Price Reports, sound management planning, and efficient Agreement administration.
    b. Identified performance milestones.
    c. Clearly defined financial commitments, including a statement that NASA's performance of the Agreement is subject to the availability of appropriated funds and that no provision of the Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, Title 31 U.S.C. § 1341.
    d. Resource commitments providing that NASA usage of its facilities, equipment, and personnel shall have priority over the usage planned in the Agreement.
    e. Allocation of liability between NASA and the Agreement Partner.
    f. Allocation of intellectual property rights implicated by or created under the Agreement.
    g. Termination rights and obligations.
    h. A fixed expiration date for the Agreement based either on a date certain or upon completion of the obligations under the Agreement, whichever occurs first.

None of the preceding categories of information should require disclosure of proprietary or sensitive information.

Handling Proprietary or Sensitive Information

In the rare case that an agreement requires sensitive or proprietary information to be developed and/or exchanged, such information should be documented separately from the agreement. Although this documentation should not be attached to the agreement, it is appropriate to include the need to develop or exchange additional information in the agreement responsibilities for both NASA and its partner or to reference the documentation of such information in the "Handling of Data" clause. For example, if the partner wishes to identify partner Background Data or other preexisting intellectual property, that information should not be included in the agreement, and would be appropriate for a separate document. All documents containing sensitive or proprietary

information should be appropriately marked in accordance with the data rights clause of the Agreement.

Handling Non-Public Information about NASA Facilities, Assets or Networks

Information that would disclose non-public information such that an outside party could potentially assess security vulnerabilities that could reasonably be expected to endanger the life or physical safety of any individual should not be included in agreements.

Agreement Managers should take care to avoid possibly disclosing security vulnerabilities of NASA facilities, assets and/or networks. To the extent documents such as site drawings, floor plans or similar documents are required to be exchanged to support an agreement, they should be handled separately and not attached to or included in the agreement itself.

1.4. NONREIMBURSABLE AGREEMENT

Nonreimbursable SAAs involve "NASA and one or more Partners in a mutually beneficial activity that furthers NASA's mission, where each party bears the cost of its participation, and there is no exchange of funds between the parties."[21] They permit NASA to offer time and effort of personnel, support services, equipment, expertise, information, or facilities. It is appropriate to use a Nonreimbursable SAA where NASA and its Partner(s) are performing activities collaboratively for which each is particularly suited and for which the end results are of interest to both parties.

Since Nonreimbursable SAAs involve the commitment of NASA resources, the respective contributions of each Partner must be fair and reasonable under the circumstances. It is the responsibility of the Signing Official to determine that the Partner's contribution provides an adequate quid pro quo compared to NASA's contribution based on a cost estimate of the value of the NASA resources to be committed. Therefore, in accordance with NPD 1050.1, before NASA may enter a Nonreimbursable SAA, a cost estimate of the value of the NASA resources to be committed under the SAA must be prepared so that the Signing Official has a basis for determining that the proposed contribution of the Partner is fair and reasonable when compared to the NASA resources to be committed, NASA program risks, and corresponding NASA benefits.[22] The cost estimate may include items such as: civil service labor, civil service travel, contractor costs, costs associated with office space, facilities and utilities used exclusively to support the activity, and other direct costs. In addition, it is ordinarily appropriate for NASA to obtain an estimate of the value of the potential Partner's resource contributions as part of this assessment. (*See* Section 2.2.6 for additional guidance).

As a general rule, all Nonreimbursable SAAs with domestic, nongovernmental entities should be titled "Nonreimbursable Space Act Agreement." At the request of a U.S. state or Federal Government entity, a Nonreimbursable SAA with that entity may be titled "Memorandum of Agreement" (MOA) or "Memorandum of Understanding" (MOU). Additionally, in certain situations, specialized titles have been used to denote specific types of SAAs (*See* Sections 1.10

[21] NPD 1050.1, paragraph 1.b.
[22] NPD 1050.1, paragraph 1.b.

and 2.2.1). The title of the agreement is not determinative. What is important is understanding the respective commitments and responsibilities of the parties. Specific guidance regarding Nonreimbursable SAAs with domestic nongovernmental entities is set forth in Chapter 2. Guidance regarding Nonreimbursable SAAs with Federal, state and local entities are set forth in Chapter 3.

1.5. REIMBURSABLE AGREEMENT

Reimbursable SAAs are agreements where NASA's costs associated with the undertaking are reimbursed by the Partner.[23] A Reimbursable SAA permits the Partner to use NASA goods, services, facilities, or equipment to advance the Partner's own interests. NASA undertakes Reimbursable SAAs when its unique goods, services, facilities, or equipment can be made available to another party in a manner that is consistent and does not interfere with NASA's mission requirements. All such SAAs require preparation of an EPR and its review by the NASA Director for Headquarters Operations (for Headquarters Agreements) or Center CFO (for Center Agreements), or their designees consistent with NPR 9090.1, "Reimbursable Agreements."[24] All Reimbursable SAAs are subject to the provisions of NASA financial management policy for determining, allocating, and billing costs.

Two threshold considerations must be satisfied before NASA can provide reimbursable services. The proposed activity must: (1) be consistent with NASA's mission and (2) involve goods, services, facilities or equipment not reasonably available on the U.S. commercial market from another source.

- The second element of the above threshold consideration is grounded in statute and Executive Branch policy directed at avoiding competition by the Federal Government with the private sector. NASA may perform reimbursable work only if doing so does not result in the Agency competing with the private sector. This requirement is embodied in National Space Policy of the United States (June 28, 2010) which directs the Federal Government to "purchase and use commercial[25] capabilities and services to the maximum practical extent when such capabilities and services are available in the marketplace and meet United States Government requirements… and to refrain from conducting United States space activities that preclude, discourage, or compete with U.S. commercial space activities, unless required by national security or public safety."[26] NASA's policy related to pricing any use of its facilities can be found in NPR 9090.1. NPD 9080.1 further

[23] NASA may waive costs under a Reimbursable SAA, consistent with the OCFO's guidance in NPR 9090.1.
[24] NPR 9090.1, section 2.4 and Appendix C.
[25] The term "commercial" for purposes of the policy is defined as referring to: space goods, services, or activities provided by private sector enterprises that bear a reasonable portion of the investment risk and responsibility for the activity, operate in accordance with typical market-based incentives for controlling cost and optimizing return on investment, and have the legal capacity to offer these goods or services to existing or potential nongovernmental customers."
[26] PPD-4, *National Space Policy* "Commercial Space Guidelines" June 28, 2010.

addresses competition with the private sector: "It is NASA policy not to compete with commercial entities in providing services or goods, property or resources to entities outside the Federal Government." Thus, legal or policy considerations may affect the circumstances in which the Agency can make its facilities or services available if commercial services are otherwise available.[27]

For example, NASA should not agree, if requested, to review a company's engineering plans for soundness and technical feasibility if the service could be provided commercially. (However, if NASA has unique technical expertise in a particular field, then an engineering review requiring that expertise might not be considered commercially available). Such a service would be considered competitive with the private sector. In addition, as a general matter, where NASA is requested to provide a service to a non-Federal entity that it obtains for itself through a contract with a private firm, it should decline to provide that service under a Reimbursable SAA. Exceptions, however, do occur. For example, if NASA has contracted for a service such as training and another agency or entity wants to participate in that training, then a Reimbursable SAA may be used. Another example could involve contracting activities that are expressly required as a condition of cooperation with an international Partner pursuant to an international agreement. Any contemplated exceptions must be coordinated with the Office of the General Counsel or Chief Counsel, as appropriate.

When NASA performs reimbursable work utilizing NASA facilities, the Partner is generally charged the full cost of the activity. When NASA will obtain some additional benefit, *e.g.*, additional negotiated rights to use inventions developed by the Partner or rights in data developed by the Partner beyond the standard government purpose rights license, or some other benefit, there is, at a minimum, a presumptive NASA interest that may justify NASA's accepting less than full reimbursement for the cost of its activities performed under the SAA (*i.e.*, waived costs). In such cases, as with Nonreimbursable SAAs, the NASA Signing Official is responsible for determining that the Partner's contribution provides an adequate quid pro quo when compared to NASA resources to be committed, NASA program risks, and corresponding benefits to NASA.

A determination to charge less than full cost should:

1) Be accomplished consistent with statute and NASA's written regulations and policies;
2) Articulate the market pricing analysis, benefit to NASA, and other legal authority that supports less than full cost recovery; and
3) Account for recovered and unrecovered costs in accordance with NASA financial management policy.

Additionally, statutes other than the Space Act govern Reimbursable Agreements for specified types of facilities or activities. When such statutes prescribe the costs that may or must be

[27] These considerations also would generally prohibit NASA from acting as a purchasing agent or broker on behalf of a non-Federal party for the acquisition of commercially available goods or services.

recovered from the reimbursable customer, those requirements control rather than NASA's more general authority under the Space Act. Any such activities should be accomplished under an Agreement whose terms are consistent with those authorities. Such separate statutory authority includes, but is not limited to, the Commercial Space Launch Act (51 U.S.C. §§ 50901-50923) and the Commercial Space Competitiveness Act (51 U.S.C. § 50501-50506).[28]

Reimbursable SAAs, moreover, must be consistent with NASA policy issued by the NASA Associate Administrator in January 2007.[29] It recommends that Centers undertake reimbursable work in the best interests of the Agency consistent with stated fundamental principles articulated in the criterion, below. Reimbursable work must meet one or more criterion:

1) Sustains facilities and lowers operational costs for current and future needs of NASA's missions;
2) Sustains skills that are currently needed or will be needed in the future to support NASA's mission;
3) Sustains a functional area not adequately funded by NASA programs but needed for present or future support of NASA's missions.

Any Reimbursable SAA with a foreign entity, or for the benefit of a foreign entity, for (1) safety-related analysis and testing in NASA facilities, or (2) fundamental research must meet the requirements of NPD 1370.1, "Reimbursable Utilization of NASA Facilities by Foreign entities and Foreign-Sponsored Research." Among its requirements, which are similar to those articulated above, such SAAs must be consistent with NASA's mission and fulfill one or more of the following conditions:

1) Sustain or enhance facilities and lower operational costs for current and future needs of NASA's missions;
2) Sustain or enhance skills that are or are projected to be needed to support NASA's mission; and,
3) Sustain or enhance a functional area not adequately funded by NASA programs but required for current or future support of NASA's missions.[30]

There may be other policies or guidance applicable to Reimbursable SAAs, such as may be issued by the Mission Directorates for resources under their jurisdiction or the Office of Procurement related to pending procurements or other matters.[31] More broadly, the structuring of Reimbursable SAAs often involve fiscal, legal, and policy issues that require substantial involvement of the offices of the NASA CFO (for Headquarters Agreements) or Center CFO (for Center Agreements), as well as the Office of the General Counsel or Chief Counsel, as appropriate. Thus, early consultation with these offices is recommended. Specific guidance regarding Reimbursable SAAs with domestic nongovernmental entities is set forth in Chapter 2.

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[28] *See*, NPR 9090.1.
[29] Rex D. Geveden, NASA Associate Administrator Memorandum, *Guidance Regarding Space Act Agreements and Pending Review of NASA Agreement Practices* (January 18, 2007).
[30] NPD 1370.1, paragraph 1(f).
[31] *See*, http://insidenasa.nasa.gov/saa/home/index.html.

Guidance regarding Reimbursable Agreements with Federal, state and local entities is set forth in Chapter 3.

1.6. INTERAGENCY AGREEMENT

Interagency Agreements (IAAs) are Nonreimbursable or Reimbursable Agreements in which the Partner is another Federal Agency or department. NASA and the other Federal Agency are each required to determine the scope of their own authority to enter into the IAA. As with Agency SAAs with domestic nongovernmental entities, NASA is authorized to enter into IAAs with Federal Agencies under the National Aeronautics and Space Act.[32] For Reimbursable IAAs, a widely available authority for all Federal Agencies, including NASA, exists in the Economy Act.[33] It authorizes Federal Agencies to obtain goods or services by interagency acquisition or to obtain services by civil servants. All Reimbursable IAAs must include a funding transfer document (herein referred to as an "Order") consistent with guidance provided by the Department of the Treasury. Specific guidance regarding Nonreimbursable and Reimbursable IAA procedures and provisions is set forth in Chapter 3.

1.7. INTERNATIONAL AGREEMENT

International SAAs are Nonreimbursable SAAs or Reimbursable SAAs in which the Partner is a legal entity that is not established under a state or Federal law of the United States, including a commercial, noncommercial, or governmental entity of a foreign sovereign or a foreign person.[34] An International Agreement is used by NASA to establish bilateral or multilateral arrangements to conduct activities pertaining to the work of NASA Mission Directorates and Centers with foreign governments, foreign governmental entities, international organizations, foreign entities, or foreign persons. One category of International Agreements merits special attention – agreements under international law. NASA is required by the Case-Zablocki Act (1 U.S.C. § 112(b)) and its implementing regulations (22 C.F.R. Part 181) to consult with the State Department with respect to each proposed International Agreement with a foreign government, foreign governmental entity, or international organization intended to be binding under international law.

NPD 1360.2, "Initiation and Development of International Cooperation in Space and Aeronautics Programs," provides specific policy and procedural guidelines for entering into international cooperative agreements. Specific guidance regarding International Agreement provisions and the procedures and practice regarding formation of International Agreements is set forth in Chapter 4.

1.8. FUNDED AGREEMENT

The flexibility of the Space Act provides NASA and its SAA partners the means to formulate a relationship that achieves optimal results. A funded SAA permits NASA to transfer appropriated funds to a domestic Partner to fulfill one or more of the Agency's authorized statutory objectives

[32] 51 U.S.C. § 20113.
[33] 31 U.S.C. § 1535.
[34] NPD1050.1, paragraph (1)(d).

under the Space Act.[35] However, funded SAAs can only be used when the Agency objective cannot be accomplished through the use of a procurement contract, grant, or cooperative agreement as determined by the Office of General Counsel. An SAA is not an appropriate instrument to acquire goods or services for NASA's own use or to achieve a "public purpose." [36]

Limited to U.S. Domestic Partners: Funded SAAs are limited to activities undertaken with U.S. domestic partners and are not available to support NASA's international activities or partners.

Pre-ASM and ASM Review, Requirement for Competition: Funded SAAs should be considered in the context of NASA's overall strategic and technology goals and are subject to the requirements of NPD 1000.5, Policy for NASA Acquisition,[37] including the Pre-Acquisition Strategy Meeting Guide, NAII 1000.1 and the Acquisition Strategy Meeting Guide, NAII 1000.2. Funded SAAs may be awarded only after full and open competition and consideration should be given to NASA's obligation under the Space Act to "enable small-business concerns to participate equitably and proportionately…."[38]

Requirement for Decision Memo on Appropriate Use of Authority: Prior to using a funded SAA, the responsible Mission Directorate Associate Administrator (or appropriate functional sponsor) must determine, in consultation with the Office of the General Counsel (OGC) and the Agency Office of Chief Financial Officer (OCFO), that a funded SAA is the appropriate legal instrument for the activity. OGC is responsible for preparing a decision memo documenting the Agency's determination that a funded SAA is the appropriate instrument to meet NASA's objectives in order to support the reviews required under NPD 1000.5.

Role of Partnership Development Team (PDT): Funded SAAs are typically implemented by a PDT, which should include (at a minimum) representatives from the sponsoring HQ program office, Center program office, the Agreements Officer, OGC and Center Office of Chief Counsel (OCC). Coordination with Agency and Center OCFO, Office of Communications (OComms), and the Office of Legislative and Intergovernmental Affairs (OLIA) may be required depending on the nature of the proposed activity. The PDT is responsible for formulating the funded SAA activity in preparation for the pre-ASM and ASM.

Role of Agreements Officer: The Agreements Officer should be identified early enough to provide meaningful support through the ASM process. The Agreements Officer should also have experience supporting make/buy/partner decisions and in making competitive awards of contracts and/or agreements. Finally, because funded SAAs require the obligation and payment of appropriated funds, the Agreements Officer should have a warrant sufficient to enable the effective administration of the SAA.

Project Strategy Briefing: After receiving approval through the ASM, a Project Strategy Briefing (PSB) should be developed for final review and approval by the sponsoring

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[35] *See* 51 U.S.C § 20102.
[36] *See 31 U.S.C.* § 6301 *et seq.*
[37] https://nodis3.gsfc.nasa.gov/displayDir.cfm?t=NPD&c=1000&s=5B
[38] 51 U.S.C. § 20113(e).

organization. The PSB typically includes: Identification of interested parties (if known), Purpose, Background and Objectives, Project Strategy, Technical Goals, Business Considerations, Legal Instrument Analysis, Budget, Cost, Risks, Evaluation and Selection Process, Schedule/Program Milestones, Request for Authority to Proceed and Request for Delegation if the Selection Authority (SA) is not the Mission Director Associate Administrator or equivalent Officer in Charge. The PSB should identify the evaluation board, which will consist of a Partnership Evaluation Panel (PEP), any Ex Officio members who will be supporting the PEP, and the SA. NASA uses the same standards for resolving financial conflicts of interest for Funded SAAs as it does for procurement actions.

Development of Announcement and SAA Template, Release of Announcement: Once Authority to Proceed has been granted after the PSB, the PDT should move forward with finalizing the Announcement for Proposals (AFP), which should include, at a minimum, a description of the purpose and goals for the Funded SAAs, requirements for proposals, the approach for evaluating proposals (including whether diligence or negotiations will be conducted as part of the evaluation), and the template SAA. It may be appropriate to post a synopsis of the competition to obtain feedback or gauge interest in the competition prior to releasing the announcement. Announcements should be publicized on FedBizOpps and a PDT may choose to use the NASA Acquisition Internet Service (NAIS) to conduct the competition.

Evaluation of Proposals: The PDT should also develop an Evaluation Plan for the PEP consistent with the Announcement. In addition to implementing the evaluation approach set forth in the Announcement, the Evaluation Plan must also ensure that the proposed contributions of the partner are taken into consideration to ensure that the selection process, overall, seeks to maximize the value of those contributions and ensure that NASA's contributions are fair and reasonable in light of the partner's contributions.

After the PEP briefs the SA on the results of the evaluation and an award decision has been made, a publicly-releasable selection statement should be developed and signed, after which the SA will make the awards. NASA is required to make funded SAAs publicly available, so coordination with the partners will be needed to appropriately negotiate the SAAs for public release.

Administration of Awards: Because Funded SAAs are developed to advance particular statutory objectives, administration of awards may vary. The PDT should ensure that payments under Funded SAAs are made based on clear and objective criteria set forth in the agreement using a documented decision-making process to approve payments/release of funds. Funds payable under Funded SAAs are subject to the same fiscal limitations on purpose and availability used for procurement contracts.

It is recommended that the PDT review the *HEO Funded Space Act Agreements Best Practices Guide* for further information on considerations and issues associated with administering Funded SAAs.[39]

[39] https://inside.nasa.gov/system/files/283996-508-to1_funded_saa_best_practices_guide_tagged.pdf (NASA only)

1.9. UMBRELLA AGREEMENT (AND ANNEX)

The Umbrella Agreement provides a mechanism for NASA and a Partner to agree to a series of related or phased activities using a single governing instrument that contains all common terms and conditions, and establishes the legal framework for the accompanying Annexes. Individual tasks are implemented through Annexes adopting the terms and conditions of the Umbrella Agreement and adding specific details for each task. For example, an Umbrella Agreement may be advisable where NASA anticipates repeated activities will be performed pursuant to an Agreement, such as repetitive testing or analysis, but has not yet determined the extent of such activities. An Umbrella Agreement allows the parties to proceed with initial tasks contained in Annexes and add additional related tasks in subsequent Annexes as the activity progresses, without requiring an additional Agreement or a formal modification to the underlying Umbrella Agreement. An Umbrella Agreement with accompanying Annexes also may be appropriate when a decision about whether to proceed with later-planned partnership activities depends on the results of earlier activities. In that case, the scope of the project would be defined in the Umbrella Agreement providing that the earlier activities are defined in an initial Annex, with later activities added through additional Annexes, as warranted. Umbrella Agreements may have several Annexes, including Annexes from different NASA Centers signed by the Center undertaking the activity.[40]

Each Annex should be limited to those elements of the Agreement that would appropriately vary from task to task – this could include funding levels, specific responsibilities, a tailored purpose clause, milestones and schedules, responsible technical representatives, or identification of affected NASA facilities. Annexes cannot be used to modify the terms of the Umbrella Agreement itself. An Umbrella Agreement should not be used if all anticipated Annexes cannot be carried out under a single set of terms and conditions. Similarly, an Annex should not be added to an Umbrella Agreement if that Annex would require modification to the Umbrella Agreement to comply with this Guide. For example, if an Annex requires that the intellectual property or liability clauses in the Umbrella Agreement be modified to accommodate the planned task, then a separate Agreement would be necessary to accommodate that particular task.[41] In addition, it is not appropriate to execute Annexes for unrelated activities under a single Umbrella Agreement. For example, conducting a series of cosponsored educational workshops using Annexes under a Nonreimbursable Umbrella Agreement would be appropriate where the workshops were planned to be conducted under the same terms and conditions as defined in the Umbrella Agreement. However, it would not be appropriate to put an Annex in place for a cosponsored educational workshop and for a collaborative development activity under the same Nonreimbursable Umbrella Agreement because of the different legal terms that would apply to the two types of activities. Questions regarding whether a single Umbrella Agreement will

[40] Therefore, an Umbrella Agreement and Annex do not have to be executed by the same Center or same Signing Official. All that is required is that the Umbrella Agreement and all Annexes are executed by a NASA Signing Official with authority to bind the parties as provided in NPD 1050.1.

[41] Data Rights sample clause 2.2.10.1.1.2. "Identified Intellectual Property" may be added to an Annex to specify the protection period for data produced under the Annex and identify protected data exchanged under the Agreement.

support the range of activities contemplated with a particular Partner should be referred to the Headquarters Office of General Counsel or Center Office of Chief Counsel, as appropriate.

Umbrella Agreements and accompanying Annexes are subject to the requirements that apply to SAAs generally. These requirements include:

1) Each Umbrella Agreement should be designated as either Reimbursable or Nonreimbursable. Because the basic terms and conditions of Reimbursable SAAs are different from those of Nonreimbursable SAAs, it is not appropriate to put a Reimbursable Annex under a Nonreimbursable Umbrella Agreement, or vice versa. If the planned activities to be implemented under the Umbrella Agreement will require both Reimbursable and Nonreimbursable terms, separate SAAs are required for the Reimbursable and Nonreimbursable activities.

2) Each executed Umbrella Agreement must include at least one concurrently executed Annex. This is required to satisfy the requirements of NPD 1050.1, paragraph 1(e) which specifies that all SAAs must include responsibilities or performance milestones that are stated with sufficient clarity to support preparation of cost estimates, sound management planning, and efficient SAA administration.

3) Each Annex under an Umbrella Agreement is subject to the same reviews and approvals (including the preliminary abstract review, if applicable) as the initial Umbrella Agreement.

4) Each Umbrella Agreement and Annex must have a designated Agreement Manager who is responsible for the administration of the Agreements and Annexes as specified in NPD 1050.1 and Section 1.3 of this Guide.

5) Each Nonreimbursable Annex must be based on an appropriate *quid pro quo* (*See,* Section 1.4) and each Reimbursable Annex must include an appropriate cost estimate. (*See,* Section 1.5.)

6) Each Umbrella and Annex must be signed by a responsible Signing Official as identified in NPD 1050.1. Signing Officials are officials delegated or redelegated the responsibility for executing SAAs (such as Mission Directorate Associate Administrators).

The approach for Umbrella Agreements and Annexes is generally the same as for other SAAs entered into with private parties. Therefore, the guidance and clauses in Chapter 2 should be utilized, unless the subject area is separately discussed in this Guide. Each Umbrella Agreement should include the standard Agreement Sample Clauses provided in Chapter 2 unless a specific Umbrella Agreement Sample Clause is provided. Additional guidance is provided in Section 2.2 for Nonreimbursable and Reimbursable Umbrella SAAs with domestic nongovernmental entities and in Section 3.3.2 for Nonreimbursable and Reimbursable Umbrella IAAs with other Federal Agencies.

1.10. SPECIALIZED ACTIVITIES AGREEMENTS

1.10.1. RESERVED.

1.10.2. REIMBURSABLE TRAVEL: provides for reimbursement to NASA for travel and subsistence of NASA personnel supporting an outside Partner's activities or where the event is not a "meeting or similar function." Pursuant to NPD 9710.1, "Delegation of Authority to Authorize or Approve Temporary Duty Travel on Official Business and Related Matters," certain delegated officials are authorized to enter into such Reimbursable arrangements when it is determined to be in the best interests of NASA. The actual reimbursement procedures to be followed are contained in NPR 9700.1, "Travel". These reimbursements must be distinguished from gifts of travel and travel expenses from foreign governments which must be accepted and reported in accordance with 5 U.S.C. § 7342.[42] Another type of travel reimbursement to be distinguished from Reimbursable travel under an SAA is reimbursement of travel and related expenses with respect to attendance at a meeting or similar function that must be accepted and reported in accordance with 31 U.S.C. § 1353 and implementing regulations found at 41 C.F.R. Part 304. Under this authority, "meeting or similar function" means a conference, seminar, speaking engagement, symposium, training course, or similar event sponsored or co-sponsored by a non-Federal source that takes place away from the employee's official duty station. Because of sensitive concerns surrounding payment of travel and gift rules, these agreements should be coordinated with NASA's ethics officials in the Office of the General Counsel or Chief Counsel, as appropriate.

1.10.3. SOFTWARE USAGE AGREEMENT (SUA): provides a mechanism for NASA Headquarters or a NASA Center to authorize the release and use of software created by or for NASA. External release of NASA software must comply with NPR 2210.1, "Release of NASA Software." The SUA is the legal document issued by NASA that defines the terms and conditions of release (including any restrictions on use and disclosure of the software). An SUA is a unilateral agreement, formed by the exchange of a promise (recipient's promise to abide by the terms of the SUA) for an act (NASA's transfer of software to the recipient), that binds the recipient to certain stipulations in order to receive software from NASA. The SUA must be signed or otherwise agreed to (*e.g.*, click-wrap license) by the recipient before NASA may provide the software to the recipient.

1.11. NON-AGREEMENTS

Sometimes, where NASA wishes to establish an official relationship with a Partner but the cooperation is not well understood, it may be helpful to enter into a nonbinding arrangement. This may be appropriate if NASA is not committing its resources and does not have requirements mature enough to know what resources would be needed to accomplish the objectives. For example, a nonbinding letter of intent may outline the activities and steps the parties would be willing to take to move toward a binding SAA, if appropriate, once particular program aspects (or milestones, resources) have been identified. In lieu of a nonbinding letter of

[42] *See also,* NPD 1030.1, "Acceptance by Employees of Gifts or Decorations From Foreign Governments or Foreign Individuals."

intent, NASA and the Partner could continue to cooperate on an informal basis and address the agreement issue once a specific program commitment (or milestones, resources) is identified.

At other times, NASA and the Partner, in the course of implementing their joint programs and activities, reach mutual understandings that are intended to document programmatic objectives. These documents, which may be important to the execution of joint activities, may be called agreements or program agreements, but are generally nonbinding even if reviewed and signed by both parties, for example, as is sometimes done with meeting minutes. Some even describe or anticipate the provision of goods or services. Examples include:

- Letter of Intent
- Protocol
- Agreement in Principle
- Technology Plan
- Program Plan
- Action List
- Meeting Minutes
- Working Group Minutes

Such nonbinding "pre-agreements" or program understandings may become binding if they are incorporated by reference in an SAA or if an existing SAA clearly authorizes managers, points-of-contact, or other NASA officials to conclude and incorporate legally binding subordinate agreements. Otherwise, they are generally not legally binding and should not be portrayed as having legal effect. If an agreement has not been concluded in accordance with appropriately delegated authority under NPD 1050.1,[43] it may not be enforceable. For NASA, it is not possible for an individual without appropriate authority to create a legally binding agreement.[44]

[43] *See* Section 1.1 of this Guide.
[44] Note: The concept of "apparent authority," an element of the law of Agency, does not apply to Federal agreements and contracts. An official must have actual authority to create legal obligations for a Federal Agency.

CHAPTER 2. NONREIMBURSABLE AND REIMBURSABLE AGREEMENTS WITH DOMESTIC NONGOVERNMENTAL ENTITIES

2.1. GENERAL GUIDANCE

One purpose of this Guide is to facilitate consistency among Centers, to the extent practicable, in the formation and organization of SAAs, and in the language and provisions of the SAA clauses. Consistency in approach promotes fair treatment of similarly situated Partners and helps expedite the review process within NASA. Accordingly, SAAs with nongovernmental entities should conform, to the extent practicable, to this specific form and should include the following sections, as appropriate, in the order presented.

2.2. AGREEMENT CONTENTS

While not all SAAs will include all of the clauses listed below, the clauses included in any particular SAA should always retain the order provided below, the titles, and, to the greatest extent possible, the clause language provided herein. Clause 26 is provided for Center or SAA specific clauses.

1. Title.
2. Authority and Parties.
3. Purpose.
4. Responsibilities.
5. Schedule and Milestones.
6. Financial Obligations.
7. Priority of Use.
8. Nonexclusivity.
9. Liability and Risk of Loss.
10. Intellectual Property Rights.
11. Use of NASA Name and Emblems.
12. Release of General Information to the Public and Media.
13. Disclaimers.
14. Compliance with Laws and Regulations.
15. Term of Agreement.
16. Right to Terminate.
17. Continuing Obligations.
18. Points of Contact.
19. Dispute Resolution.
20. Investigations of Mishaps and Close Calls.
21. Modifications.
22. Assignment.
23. Applicable Law.
24. Independent Relationship.
25. Loan of Government Equipment.
26. Special Considerations.
27. Signatory Authority.

Nonreimbursable and Reimbursable Umbrella SAAs should include the standard sample clauses provided in Chapter 2 unless a specific Umbrella sample clause is provided, in which case that clause should be used. Specific Umbrella clauses include:

1. Title (sample clauses 2.2.1.3. and 2.2.1.4.);
2. Purpose and Implementation (sample clause 2.2.3.2.);
3. Responsibilities (sample clause 2.2.4.2.);
4. Schedule and Milestones (sample clause 2.2.5.2.);
5. Financial Obligations, if reimbursable (sample clause 2.2.6.3.);
6. Data Rights (Proprietary Data Exchange Not Expected – substitute paragraph C (sample clause 2.2.10.1.1.);
7. Data Rights (Proprietary Data Exchange Expected – substitute paragraphs C and H (sample clause 2.2.10.1.2.);
8. Right to Terminate (sample clause 2.2.16.4. and 2.2.16.5.);
9. Points of Contact (sample clause 2.2.18.2.);
10. Dispute Resolution (sample clause 2.2.19.2.); and
11. Modifications (sample clause 2.2.21.2.).

Nonreimbursable and Reimbursable Annexes should include only the following clauses:

1. Title (sample clause 2.2.1.5.);
2. Purpose (sample clause 2.2.3.3.);
3. Responsibilities (sample clause 2.2.4.3.);
4. Schedule and Milestones (sample clause 2.2.5.3.);
5. Financial Obligations, if reimbursable (sample clause 2.2.6.4.);
6. Data Rights, Identified Intellectual Property (Proprietary Data Exchange Not Expected (sample clause 2.2.10.1.1.2.);
7. Data Rights, Identified Intellectual Property (Proprietary Data Exchange Expected (sample clause 2.2.10.1.2.1.);
8. Term (sample clause 2.2.15.2.);
9. Right to Terminate (sample clause 2.2.16.6.);
10. Points of Contact (sample clause 2.2.18.3.);
12. Modifications (sample clause 2.2.21.3.);
13. Special Considerations (if applicable); and
14. Signatory Authority (sample clause 2.2.27.).

2.2.1. TITLE

SAAs are given a short title stating the type of SAA (Nonreimbursable or Reimbursable), the parties, and the SAA's purpose. Over the years, certain shorthand titles have been created, sometimes used differently at different NASA Centers, to describe more specifically the type of activity covered by the SAA. Examples include "Technical Exchange Agreement" and "Reimbursable Travel Agreement." The legal significance of an agreement is generally not affected by its title. What is significant, rather, is the nature of the particular commitments made by NASA and its Partner.

2.2.1.1. Title (Nonreimbursable Agreement Sample Clause)

2.2.1.2. Title (Reimbursable Agreement Sample Clause)

2.2.1.3. Title (Nonreimbursable Umbrella Agreement Sample Clause)

2.2.1.4. Title (Reimbursable Umbrella Agreement Sample Clause)

2.2.1.5. Title (Annex Agreement Sample Clause)

2.2.2. AUTHORITY AND PARTIES

This section recites NASA's authority to enter into the SAA and identifies the parties by name and address. NASA conducts its Reimbursable and Nonreimbursable SAAs with domestic private sector entities under the "other transactions" authority in the Space Act (51 U.S.C. § 20113(e)).

2.2.2. Authority and Parties (Sample Clause)

2.2.3. PURPOSE

The purpose, often stated in one brief paragraph, succinctly describes why NASA is entering into the SAA. For all SAAs, this section should indicate the purpose and general scope of the planned activities, the subject of any testing, and objectives to be achieved. In addition, except for fully Reimbursable SAAs, the purpose should describe the benefit to NASA and the Partner. For fully Reimbursable agreements, the purpose need only describe how the activity is consistent with NASA's mission.

2.2.3.1. Purpose (Sample Clause)

2.2.3.2. Purpose and Implementation (Umbrella Agreement Sample Clause)

2.2.3.3. Purpose (Annex Sample Clause)

2.2.4. RESPONSIBILITIES

This section describes the actions to be performed by each party to the SAA, including the goods, services, facilities, or equipment to be provided by each. It is in carefully drafting and negotiating the responsibilities section that project and program managers can best use SAAs as management tools.

Generally, the responsibilities section is most helpful when it is divided into two subsections, one describing NASA's responsibilities and the other describing the Partner's responsibilities. An SAA with more than one Partner is possible. Such multiparty SAAs raise special issues that require extensive revision to standard text, and, therefore, early legal counseling is essential. For example, where an SAA allocates responsibilities among several entities, one party's failure to comply with the terms of the SAA may affect the obligations of the remaining parties. Moreover, multiparty SAAs risk placing NASA in a position of guaranteeing the performance of

one of its Partners or becoming involved in obligations running between other parties to the SAA.

In all cases, performance of each party's responsibilities is on a "reasonable efforts" basis. The degree of detail in the responsibilities section will vary depending on the nature of activities to be performed. However, the responsibilities clause must contain sufficient detail to disclose both the core obligations of the parties and the nature of the resources to be committed.[45] If the terms of the cooperation are not well understood, it may be helpful to defer entering into any type of SAA until such cooperation is better understood, or to enter into a non-binding agreement (*See* Section 1.11.) In addition, the responsibilities should be stated with sufficient clarity to support preparation of cost estimates, sound management planning, and efficient agreement administration. Sometimes it is advisable to include definitions of key terms relating to responsibilities where reasonable interpretation could lead to differing conclusions as to a word's meaning.

2.2.4.1. Responsibilities (Sample Clause)

2.2.4.2. Responsibilities (Umbrella Agreement Sample Clause)

2.2.4.3. Responsibilities (Annex Sample Clause)

Note: Certain statutory and Executive Branch policies may restrict NASA's ability to make facilities and services available when such facilities and services may be available commercially.[46]

For complex activities, use of technical annexes, program implementation plans, or similar documents are generally recommended to specify in greater detail the manner in which the activities under the SAA are to be implemented. They afford program managers a mechanism for making adjustments as circumstances warrant without having to amend the SAA itself. The activities specified in technical implementation plans, however, must be within the scope of the responsibilities as set forth in the SAA. If desirable, they can form part of the SAA if incorporated by reference in the text. Because they are not formal agreements, even in cases where the documents are signed, they are not SAAs subject to NPD 1050.1. The documents may therefore be signed by the responsible technical manager for each party concurrently with, or subsequent to, the SAA itself.

2.2.5. SCHEDULE AND MILESTONES

This section sets forth a planned schedule of key dates or events consistent with available information known at the time the SAA is executed. It documents the anticipated progress of the SAA activities. As with responsibilities, performance milestones should be stated with sufficient clarity to support preparation of cost estimates, sound management planning, and efficient agreement administration.

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[45] NPD 1050.1, paragraph 1.e(1).
[46] *See* Sections 1.5 and 2.2.6.

2.2.5.1. Schedule and Milestones (Sample Clause)

2.2.5.2. Schedule and Milestones (Umbrella Agreement Sample Clause)

2.2.5.3. Schedule and Milestones (Annex Sample Clause)

2.2.6. FINANCIAL OBLIGATIONS

This section sets out both NASA's and the Partner's contributions to the SAA to include funding and in-kind contributions (*e.g.*, goods and services), where appropriate.

In Nonreimbursable SAAs, no funding is exchanged and each party supports its own participation in the SAA activity. The contribution of the Partner must be fair and reasonable compared to NASA's contribution. Cost estimates are prepared and used by the Signing Official as a basis for finding that the proposed contribution of the Partner is consistent with policy and represents an adequate *quid pro quo* when compared to NASA resources to be committed, NASA program risks, and corresponding benefits to NASA.[47]

A Nonreimbursable SAA must include a statement that no funds will be transferred pursuant to the SAA. Moreover, since NASA's participation requires its own funding, every SAA should explicitly state that NASA's obligations are subject to the availability of Congressionally appropriated funds and other resources as determined by NASA. At times it might be appropriate to indicate that, where a determination is made that the transfer of funds in the future might be desirable; it will be implemented by a separate SAA or other instrument (*e.g.,* contract, grant or cooperative agreement).

2.2.6.1. Financial Obligations (Nonreimbursable Agreement Sample Clause)

Under Reimbursable SAAs, the Partner pays NASA to provide services for the Partner's benefit. As a general rule, the Partner is required to reimburse NASA's full costs. However, the SAA may provide for less than full cost reimbursement (waived costs) when: (1) a market-based pricing policy is applicable; (2) reimbursement is fair and reasonable when compared to the benefits NASA receives from the work; or (3) costs are prescribed by specific statutory authority other than the Space Act.

A determination to charge less than full cost should: (1) be accomplished consistent with NASA's written regulations and policies; (2) articulate the market-based pricing analysis, benefit to NASA, or other legal authority that supports less than full cost recovery; and (3) account for recovered and unrecovered costs in accordance with NASA financial management policy. All Reimbursable SAAs, regardless of whether full cost is recovered, are subject to NASA's financial management regulations for determining, allocating, and billing costs.

Before a Reimbursable SAA is executed, an EPR for the undertaking must be prepared consistent with guidance from the CFO and must be reviewed by the NASA Director for Headquarters Operations (for Headquarters Agreements) or Center CFOs (for Center

[47] *See,* Section 1.4 for additional guidance on Nonreimbursable SAAs.

Agreements), or their designee.[48] Before NASA may enter a Reimbursable SAA where NASA is reimbursed for less than the full cost of its activities performed under the SAA, the NASA Signing Official must determine that the proposed contribution of the Partner is fair and reasonable compared to the NASA resources to be committed, NASA program risks, and corresponding benefits to NASA. (*See* Section 1.5 herein for additional guidance regarding Reimbursable SAAs).

NASA must receive an amount sufficient to fund any Reimbursable work (either in full or divided by milestone or Annex) before it may begin work under a Reimbursable SAA, unless the agreement is with another Federal Agency, under certain circumstances, or waiver of advance payment is otherwise authorized in NPD 1050.1 and NPR 9090.1.

Note: Under very limited circumstances where hardship is demonstrated or a legal restriction prohibiting advance payments is identified, a waiver may be requested in writing to allow payment after work has been performed by NASA. The waiver should identify the source of NASA funds. However, such exceptions should be limited to work that very clearly could be fully funded by NASA as part of its mission and the funds are certified and allocated to account for costs that may accrue prior to the provision of funds by the Partner. Such a waiver should be submitted as part of the approval process required for Reimbursable SAAs and must be approved by the NASA CFO (for Headquarters Agreements) or Center CFO (for Center Agreements).

2.2.6.2. Financial Obligations (Reimbursable Agreement Sample Clause)

2.2.6.3. Financial Obligations (Reimbursable Umbrella Agreement Sample Clause)

2.2.6.4. Financial Obligations (Reimbursable Annex Sample Clause)

2.2.7. PRIORITY OF USE

This section ensures that NASA does not become legally committed to perform the activities according to any schedule stated in the SAA, in the event other NASA priorities or interests arise. It provides that, in the event of a conflict in scheduling the NASA resources, NASA, at its sole discretion, may determine which use takes priority.[49] However, the SAA should reflect any currently planned milestones.

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[48] *See,* NPR 9090.1, Section 2.4 and Annex C for EPR guidance and requirements.

[49] The Unitary Wind Tunnel Plan Act of 1949, 50 U.S.C. §§ 511 *et seq*., provides that NASA Unitary Wind Tunnels: "[s]hall be available primarily to industry for testing experimental models in connection with the development of aircraft and missiles. Such tests shall be scheduled and conducted in accordance with industry's requirements and allocation of facility time shall be made in accordance with … the public interest, with proper emphasis upon the requirements of each military services and due consideration of civilian needs." 50 U.S.C. § 513(c). NASA's Unitary Wind Tunnels include the Unitary Wind Tunnel Complex at NASA Ames Research Center and the Unitary Wind Tunnel facility at NASA Langley Research Center.

2.2.7. Priority of Use (Sample Clause)

2.2.8. NONEXCLUSIVITY

Section 841(c) of the NTAA requires that SAAs be issued on a nonexclusive basis "to the greatest extent practicable" and imposes public announcement and competition requirements for any "exclusive" SAAs. As a general rule, NASA's SAAs should be on a nonexclusive basis, that is, all non-government parties should have equal access to NASA resources. This helps avoid any appearance of NASA favoritism of one private party over another. Where exclusive arrangements are necessary, competition must be used to the greatest extent practicable to select the Partner as a means of ensuring equal access to NASA facilities and avoiding the appearance of favoritism. Guidance on determining when an SAA is exclusive and use of competitive procedures can be found in the Partnership Guide, Section II.A.1, Fairness, Transparency, and the Use of the Competitive Procedures.

When an exclusive SAA is determined to be appropriate, the resulting SAA should specify in the "Responsibilities" clause that the instrument is provided on an exclusive basis as part of NASA's obligations, and the nonexclusivity sample clause should be omitted. The relevant program or project office, along with the agreement drafter, should provide specific details of the activity so that appropriate terms describing the elements of exclusivity can be included in the tailored Exclusivity Clause.

2.2.8. Nonexclusivity (Sample Clause)

2.2.9. LIABILITY AND RISK OF LOSS

SAAs must address responsibility for potential damages to persons and property arising from activities under the SAA. Determinations of the amount of risk NASA or the Partner should assume will vary according to the type of agreement and the nature of the activity. Establishing appropriate risk allocation arrangements requires informed program, technical, and legal judgments. Early in the negotiations process, the relevant program or project office, along with the agreement drafter, should provide specific details of the activity to the NASA legal counsel so that appropriate clauses are included.

NASA risk allocation clauses primarily address two categories of foreseeable risk:

A. "First Party" liability: personal injury or property damage sustained by the parties to the SAA, and their related entities, including environmental and other economic losses; and

B. "Third Party" liability: personal injury or property damage sustained by individuals or entities that are not signatories to the SAA and entities having no contractual relationship with the parties relating to activities under the SAA.

Generally, unless liability is waived by the other party, each party is responsible for damages arising from its own actions. The general policy for liability/risk of loss in NASA SAAs is:

1) Each party to the SAA assumes the risk of damage to its own property and personnel (and that of its related entities) caused by its own actions (*e.g.*, NASA agrees to be responsible for any damage to NASA property/personnel by NASA employees);

2) Each party to the SAA assumes the risk of Third Party damage caused by its own actions;

3) For Nonreimbursable SAAs, each party waives claims against the other (and the other's related entities) for First Party damage (a *cross-waiver of claims*), unless caused by willful (intentional) misconduct;

4) For Reimbursable SAAs or Reimbursable SAAs with waived costs, the Partner waives claims against NASA (and NASA's related entities) for First Party damage (a *unilateral waiver of claims*), unless caused by willful (intentional) misconduct; and

5) For Reimbursable SAAs or Reimbursable SAAs with waived costs, the Partner assumes the risk of damage to NASA caused by the Partner's own actions.

- For SAAs covering high-risk activities, the Partner is usually required to have insurance in place protecting the Agency. High-risk activities are those activities in which there is a reasonable risk of significant damage to property or a reasonable risk of significant injury to third parties. Unless the likelihood of damage or injury is deemed low or to occur only rarely, there is a reasonable risk of damage or injury. Whether the potential damage to property is deemed "significant" may be assessed based on the possible dollar value of the loss, the criticality of the property to NASA's mission, and the ability to replace or repair the property in a timely manner.

2.2.9.1. SAAs For Shared Benefits – Cross-Waiver And Flow Down

If the SAA calls for sharing of substantive benefits (such as raw or processed data or invention rights) arising from the arrangement – usually Nonreimbursable SAAs – risks will also be shared. In such cases, there should be a *cross-waiver of claims* between NASA and the Partner for damages each causes to the other ("first parties").[50] To give full effect to a cross-waiver, "flow down" provisions should be included. These provisions require that each party's legally "related entities" (*e.g.,* contractors, subcontractors, users, customers, investigators, and their contractors and subcontractors) waive claims against similar entities that may be legally related to any other party participating in an SAA activity.

Cross-waivers are required in SAAs for activities of mutual interest and benefit to NASA and the Partner. In a cross-waiver, each party promises not to bring claims against the other party or the other's related entities for any harm to its property or employees. This means that each party

[50] Claims made by a natural person or by his or her estate, survivors, or subrogees (except when a subrogee is a party to the SAA or is otherwise bound by the terms of the cross-waiver) are excluded from the scope of the cross-waiver.

reciprocally agrees to assume the risk of its own participation in the activity and is thus freed from concern that other parties involved in the activity may bring claims against it.

The fundamental purpose of requiring cross-waivers is to establish boundaries on liability to encourage space and aeronautical projects and other joint endeavors. Cross-waivers promote such endeavors in two ways. First, the potential for litigation is lowered because each party agrees up front to assume responsibility for specified damages it may sustain. Second, insurance costs are reduced by sharply restricting the types of legal claims that may be brought by participating entities against each other.

Cross-waivers are uniquely suited for NASA aerospace activities. The basis of liability that would apply to such activities in the absence of any risk-sharing arrangement is one based on fault, with the responsible party being required to pay for any loss or damage it has caused. To encourage the broadest participation in aerospace activities, NASA seeks to avoid a fault-based regime in favor of one in which each party relinquishes any claims it may have for certain property losses or costs that result from injury to its employees, unless caused by the willful (intentional) misconduct of the other party.

For a cross-waiver to apply, both the entity causing damage and the entity sustaining damage must be involved in activities under the SAA.

Also, for damage NASA or the Partner causes to others ("third parties") the responsible party will be liable. The Partner may wish to obtain insurance for First Party and Third Party damages. On the other hand, NASA – as with all Federal agencies – may not purchase insurance, unless specifically authorized by law, thereby "self insuring" for such risks.

2.2.9.1.1. Liability and Risk of Loss (Cross-Waiver with Flow Down Sample Clause)

SAAs covering missions involving a launch, or related to the ISS program, require use of the cross-waivers with flow down provisions based on 14 C.F.R. § 1266. These cross-waivers apply only if the activities are not covered by 51 U.S.C. §§ 50901-50923 (in which case, the provisions of the license issued by the Federal Aviation Administration under the Act, apply). In addition, both entities must be involved in "protected space operations as defined in 14 C.F.R. § 1266 which may include a wide range of design, transport, flight, and payload activities.

2.2.9.1.2. Liability and Risk of Loss (Cross-Waiver of Liability for Agreements Involving Activities Related to the ISS Sample Clause) (Based on 14 C.F.R. 1266.102)

2.2.9.1.3. Liability and Risk of Loss – Cross-Waiver (Cross-Waiver of Liability for Launch Agreements for Science or Space Exploration Activities Unrelated to the ISS Sample Clause) (Based on 14 C.F.R. 1266.104)

2.2.9.2. SAAs Primarily Benefitting AN SAA Partner – Unilateral Waiver

If the Partner compensates NASA for work under an SAA and NASA does not obtain other substantive benefits—usually Reimbursable SAAs—the Partner bears more risk with respect to the work performed. In such cases, the Partner waives claims (*unilateral waiver*) against NASA.

Unilateral Waivers: Under a unilateral waiver, the Partner waives claims against NASA for damage to its property or injury to its personnel, regardless of which party may be at fault.[51] Typically, these waivers are used when NASA is providing goods or services on a Reimbursable basis, and there is no substantive benefit to NASA under the SAA (such as raw or processed data or invention rights). To give full effect to a unilateral waiver, "flow down" provisions should be included. These provisions require the Partner's legally "related entities" (*e.g.,* contractors, subcontractors, users, customers, investigators, and their contractors and subcontractors) to waive claims against any of NASA's related entities participating in an SAA activity. Under a unilateral waiver, the Partner remains liable for damage to NASA caused by the Partner's own actions.

2.2.9.2.1. Liability and Risk of Loss (Unilateral Waiver with Flow Down Sample Clause)

2.2.9.3. PRODUCT LIABILITY

Third Party claims may include personal injury or property damage arising from an SAA Partner's downstream use or commercialization of NASA products or processes, known as product liability. If product liability is a concern, the product liability clause can be utilized which specifies that the SAA Partner is responsible for the safety of any product or process that it markets, distributes or otherwise provides to the public as a result of the activities under the SAA.

2.2.9.3.1. Liability and Risk of Loss (Product Liability Sample Clause)

Additional product liability protection may be warranted for SAA activities that pose reasonable risk of significant injury to the public from downstream use or commercialization of a NASA deliverable. In such cases, the Agency may require that the Agreement Partner indemnify it from any such claims.

2.2.9.3.2. Liability and Risk of Loss (Product Liability Indemnification Sample Clause)

2.2.9.4. INSURANCE

Insurance for Damage to NASA Property: Private commercial insurance is used to mitigate risk in SAAs when there is a reasonable risk of significant damage to NASA property (a high-risk activity). Insurance is required in an amount sufficient to cover repair or replacement costs of damaged NASA resources regardless of fault. Policies must be on acceptable terms and obtained at no cost to NASA. Insurance provisions in SAAs generally also require that the Office of Chief Counsel, or the General Counsel, as appropriate, review and approve certificates of insurance including material policy exclusions and waivers of subrogation prior to commencement of any covered activity.

[51] This waiver does not apply in circumstances involving criminal or willful (intentional) misconduct.

Two sample clauses -- a short and long form sample clause -- are provided, below. The Long Form sample clause includes more information, such as a definition of "Damage" and a legal point of contact for review of the coverage. It also provides that the Parties may consider alternative methods of protecting Federal property in the event the Partner is unable to obtain the required insurance coverage. Either sample clause is suitable consistent with the requirements of the Center.

2.2.9.4.1. Liability and Risk of Loss (Insurance for Damage to NASA Property Short Form Sample Clause)

2.2.9.4.2. Liability and Risk of Loss (Insurance for Damage to NASA Property Long Form Sample Clause)

Insurance for Third Party Claims: Private commercial insurance is used to mitigate risk in SAAs when there is a reasonable risk of significant injury to third parties or damage to third party property as a result of activities under the SAA (a high-risk activity). A "third party" may include an individual not involved in the SAA activity, or a NASA or contractor employee involved in the SAA activity suing in his or her individual capacity. Insurance coverage for third party claims must be provided on acceptable terms and at no cost to NASA, and the policy must be presented to NASA for review prior to the commencement of any covered activity. NASA attorneys are familiar with insurance principles and can advise on acceptable terms and conditions.

2.2.9.4.3. Liability and Risk of Loss (Insurance Protecting Third Parties Sample Clause)

NASA may allow a Partner to self-insure in lieu of obtaining commercial insurance coverage when examination of the activity indicates that its application is in NASA's best interest, and there is no anticipation of catastrophic loss. To qualify for a self-insurance program, a Partner must demonstrate the ability to sustain the potential losses involved. In making the determination, the following factors may be considered:

1) The soundness of the Partner's financial condition, including available lines of credit.
2) The geographic dispersion of assets, so that the potential of a single loss depleting all the assets is unlikely.
3) The history of previous losses, including frequency of occurrence and the financial impact of each loss.
4) The type and magnitude of risk, such as minor coverage for the deductible portion of purchased insurance or major coverage for hazardous risks.
5) The Partner's compliance with Federal and State laws and regulations.

2.2.9.4.4. Agreement Partner's Self-Insurance for High Risk Activities (Sample Clause)

For SAAs that pose reasonable risk of injury to third parties or damage to third party property, but which damage would not be significant (not high-risk), the Agency may mitigate its risk by requiring the Partner to maintain a Commercial General Liability (CGL) policy and workers

compensation policy. This approach provides some degree of liability protection without requiring a separate policy covering the SAA activities. It may be warranted in circumstances where, for example, the Partner is performing its obligations at a NASA facility.

2.2.9.4.5. Liability and Risk of Loss (Commercial General Liability Insurance)

Insurance Considerations

In determining insurance coverage to be required under an SAA, the following is considered:

- *Rationale for property damage or third party liability insurance coverage:* The Federal Government "self insures" its own activities and is prohibited from obtaining insurance without express statutory authorization. Thus, when NASA performs work for the primary benefit of a private party, that party is usually required to obtain insurance coverage for "high-risk" situations involving a reasonable likelihood of significant damage to high-value NASA facilities or to third parties, and to pay the cost for such insurance.

- *The likelihood of damage and the likely significance of such damage* are factors in deciding whether the activity is "high-risk" and whether NASA should require the Partner to obtain insurance. The purpose is to reduce the cost to NASA and the Federal Treasury in the event of loss or damage to taxpayer-funded facilities being put to use for largely private benefit, or damage to third parties.

- *Repair of damaged facilities:* Insurance proceeds for property damage to NASA facilities should not be payable to NASA because of the impact of the Miscellaneous Receipts Rule. The Partner is the "loss payee" and is contractually responsible for making necessary repairs at NASA's direction. The SAA should require that the insurer fund repairs of property damage at the direction of NASA, or alternatively, that the Partner place the proceeds in escrow and apply the proceeds to repair the damaged property as directed by NASA.

- *Waiver of insurance requirement:* Insurance requirements for an activity determined to be "high-risk" may be waived if recommended by the project manager or other responsible official, reviewed by the Office of General Counsel (for Headquarters Agreements) or the Center Chief Counsel (for Center Agreements), and approved by the NASA Signing Official. Factors to consider in granting a waiver include: 1) the level of NASA interest in the activity, 2) the experience level of the Partner, 3) safety considerations, 4) consideration of NASA's total risk or level of exposure in the event of a loss, and 5) the maximum potential for damage to property relative to the program's ability to repair the property.

- *Third Parties:* The risk of exposure of third parties to injury or damage to third party property including safety to the public from downstream use of a NASA deliverable.

2.2.10. INTELLECTUAL PROPERTY RIGHTS

This section addresses the allocation and protection of intellectual property rights in the following areas:

1) Data rights;
2) Rights in raw data generated under the SAA;
3) Invention and patent rights; and
4) The U.S. Government's authorization and consent to the Partner's use of third party patents and copyrights.

The following factors are considered in determining the terms of the intellectual property provisions in SAAs with domestic nongovernmental Partners:

1) The purpose of the SAA;
2) Whether there is any likelihood that Partner or third party proprietary data or controlled government data (*e.g.*, sensitive, nonpublic government data) will be exchanged under the SAA;
3) Whether NASA's or the Partner's responsibilities involve inventive or creative activities;
4) Whether the Partner is performing work for NASA; and
5) Whether the SAA is for the benefit of a foreign entity.[52]

NASA's goal is to provide consistency in its use of intellectual property rights clauses across the Agency with all nongovernmental entities. For this reason, standard clauses are provided herein. However, since the Space Act permits flexibility in these matters, it may be desirable in limited situations to modify the clauses to fit particular circumstances. Any questions regarding the applicability of, or changes to the standard intellectual property rights sample clauses should be referred to the Office of the General Counsel or Chief Counsel, as appropriate.
Note: The Freedom of Information Act[53] provides for broad release of Federal Agency records to a requestor, unless a specific exemption applies. The intellectual property clauses provide the basis for protection from release by the parties under specific FOIA exemptions (*e.g.*, FOIA exemptions for proprietary information, information disclosing inventions, and information developed by NASA under the SAA and protected under 51 U.S.C. § 20131(b)).[54]

2.2.10.1. DATA RIGHTS

Data rights sample clauses 2.2.10.1.1 through 2.2.10.1.4 adequately cover most circumstances arising under Reimbursable and Nonreimbursable SAAs with domestic nongovernmental entities. Usually the basic rights and protections provided in the applicable clauses should be

[52] "For the benefit of a foreign entity" means that a foreign entity could have access to and use of any deliverable items (including any data) resulting from a Reimbursable SAA by virtue of a contractual or other relationship (including common corporate ownership) with a party having such an SAA with NASA (NPD 1370.1, paragraph (1)(D)(3)).
[53] 5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.
[54] Formerly section 303(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. § 2454(b)).

adopted without change. However, should there be a need to modify the clauses, the Office of the General Counsel or Chief Counsel, as appropriate, should be consulted. The clauses are summarized below, followed by detailed guidance on the use of each clause.

Data Rights sample clauses 2.2.10.1.1 (Proprietary Data Exchange Not Expected) and 2.2.10.1.2 (Proprietary Data Exchange Expected):

- These clauses are structured to facilitate the exchange of data necessary for the performance of the SAA, while providing for the protection of any proprietary data that is exchanged or developed.
- Further, in accordance with 51 U.S.C. § 20131(b), the clauses provide that data produced by NASA under an SAA that would be a trade secret or commercial or financial information that would be privileged or confidential had the data been obtained from the nongovernmental Partner, and thus may have some commercial (or proprietary) value to the Partner, may be protected from disclosure for up to five (5) years. After consultation with the Office of the Chief Counsel, or the Office of the General Counsel, as appropriate, these clauses also may be amended to include protection of data produced by Related Entities of NASA, as long as the appropriate language/clauses are in (or added to) the contracts or agreements with such Related Entities.[55]

- The clauses do not alter the ability of the Partner to assert copyright in its works of authorship created under the SAA, but the Partner is required to grant NASA a license in

[55] An example of such a contract clause is provided, below. Its use could be invoked, for example, by NASA identifying the related agreement and issuing a Contracting Officer's letter of direction to the Related Entity.

Handling and Protection of Government Controlled Contractor Generated Data

(a) In the performance of this contract it is anticipated that the Contractor may generate data which the Government intends to control the release, publication, distribution and use thereof.

(b) For data generated by the Contractor in support of an identified Space Act Agreement, Commercial Space Launch Act Agreement, Commercial Space Competitiveness Act Agreement, or Cooperative Research and Development Agreement; or for data otherwise identified by the Contracting Officer, the Contractor agrees, (if appropriate insert "for a period of [*insert period of time up to 5 years*] from the date of development of such data,") to:

(1) use and disclose such data only to the extent necessary to perform the work required under this contract in support of such agreement, with particular emphasis on restricting disclosure of the data to those persons who have a definite need for the data in order to perform under this contract in support of such agreement;

(2) not reproduce the data unless reproduction of the data is specifically permitted by the Contracting Officer;

(3) refrain from disclosing the data to third parties without the written consent of the Contracting Officer; and

(4) return or deliver the data including all copies thereof to the Contracting Officer or his designated recipient when requested by the Contracting Officer.

the copyrighted material to reproduce, distribute, and prepare derivative works for any purpose.

Data Rights sample clause 2.2.10.1.3 (For the Benefit of a Foreign Entity):

- Where NASA is performing Reimbursable work for a domestic Partner that is for the benefit of a foreign entity, guidance in NPD 1370.1 must be followed. Among other requirements, NPD 1370.1 provides that Reimbursable work for the benefit of a foreign entity must provide a benefit to NASA or to the public. In Reimbursable SAAs for: (1) safety-related analysis and testing in NASA facilities, or (2) fundamental research related to NASA's mission,[56] benefits to NASA or to the public are normally provided through shared data rights or broad dissemination of the results.[57]
- For Reimbursable work of the type mentioned above, Data Rights sample clause 2.2.10.1.3 must be used unless other sufficient benefits to NASA or the public are obtained or other data rights provisions are approved by the Office of International and Interagency Relations, on a case-by-case basis.
- Other domestic SAAs that may be for the benefit of a foreign entity but do not involve fundamental research or safety-related analysis and testing in NASA facilities may incorporate the traditional data rights clauses utilized in other Reimbursable SAAs, clauses 2.2.10.1.1 and 2.2.10.1.2., in accordance with the guidance provided for those clauses.

Data Rights sample clause 2.2.10.1.4 (Free Exchange of Data):

- To be used in SAAs where the parties plan to exchange all data and information without any use and disclosure restrictions, except as required by law. In general, such SAAs are limited to non-technical collaborations such as educational or public outreach.

While consistency is the goal, any of the data rights clauses may be tailored or customized to fit the circumstances. Additionally, NASA project personnel involved in the SAA should be consulted to ensure that the scope of NASA's right to use the Partner's proprietary data is sufficiently broad to carry out programmatic goals. Other matters, such as special treatment of computer software, may be provided as an addition to the Basic clause, described below, when required based on the nature of the activities to be carried out. NASA Policy NPR 2210.1 should be followed when addressing protection of computer software in an SAA.

2.2.10.1.1. Proprietary Data Exchange Not Expected (Basic Clause)

[56] "Fundamental research" means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. Fundamental research is distinct from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons (NPD 1370.1, paragraph (1)(d)(4)).
[57] NPD1370.1.

Data Rights sample clause 2.2.10.1.1, the "Proprietary Data Exchange Not Expected" clause (Basic Clause), is the standard data rights clause to be used in cooperative or collaborative SAAs involving research, experimental, developmental, engineering, demonstration, or design activities[58] where the following types of data are not expected to be exchanged between the parties:

1) Proprietary data developed at the disclosing party's expense outside of the SAA (referred to as background data);
2) Proprietary data of third parties the disclosing party has agreed, or is required, to protect[59] (referred to as third party proprietary data); or
3) Government data, including software and related data, the disclosing party intends to control (referred to as controlled government data).[60]

In such SAAs, data may be developed and exchanged during the term of the SAA. The Basic clause provides details on the permitted use of such data. Further, while proprietary or controlled government data is not intended to be developed or exchanged under SAAs using the Basic clause, protection of such data is provided in the event it is developed or exchanged. To the extent data first produced by the Partner under the SAA that the Partner considers to be proprietary is furnished to NASA, the clause sets out the permitted use of such proprietary data. Part of the quid pro quo consideration received from the Partner includes the right of the U.S. Government to disclose such data for U.S. Government purposes.[61]

Data first produced by NASA under the SAA that would qualify as proprietary data if it had been obtained from the Partner,[62] can be restricted upon request by the Partner for a period of up to five (5) years (where the Partner has not made such a request, NASA has discretion to restrict such data). Typically, NASA designates the restriction period to be 1 or 2 years. NASA project personnel involved in the SAA should be consulted to ensure that the restriction period is no longer than necessary. During the restricted period such data can only be disclosed and used by the U.S. Government for U.S. Government purposes. After the restricted period such data can be used for any purpose. Data disclosing an invention owned by NASA for which patent protection

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[58] In SAAs for non-technical collaboration (*e.g.*, educational or public outreach), the parties normally design to exchange all data without restrictions. In such SAAs, sample clause 2.2.10.1.4 discussed below, is used.

[59] The Trade Secrets Act (18 U.S.C. § 1905) requires Government employees to protect from unauthorized disclosure information received in the course of their employment or official duties that embody trade secrets or comprise commercial or financial information that is privileged or confidential.

[60] This may include Controlled Unclassified Information (CUI), also referred to as Sensitive But Unclassified (SBU) data. *See,* NASA Interim Directive 5.24, "Sensitive But Unclassified (SBU) Controlled Information NMI 1600-55," for definition and protection required for SBU data.

[61] *Government purpose* means any activity in which the United States Government is a party. The term includes competitive government procurements but does not include the rights to use or disclose for commercial purposes or to authorize others to do so.

[62] 51 U.S.C. § 20131(b) (formerly 303(b) of the National Aeronautics and Space Act of 1958, 42 U.S.C. § 2454(b)).

is being considered is not generally restricted under these provisions. Under Umbrella SAAs such data would be produced under an Annex. Because the protection period may vary from Annex to Annex, an alternate paragraph is provided for Umbrella SAAs allowing the protection period to be specified in the Annex in which the data is produced.[63]

Additionally, recognizing that 51 U.S.C. § 20112(a)(3)[64] requires NASA to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, and that the dissemination of the results of NASA activities is one of the considerations for entering into most SAAs, the Basic clause addresses the rights of the parties related to their respective ability to publish the results obtained from the SAA. The parties agree to coordinate any proposed publication of results with each other in a manner that allows each party a reasonable amount of time to review and comment on any proposed publication.[65]

The Basic clause also recognizes the right of the Partner to assert copyright in works produced both outside of and under the SAA. However, with respect to works produced outside of the SAA, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works only for carrying out the receiving party's responsibilities under the SAA. With respect to works produced under the SAA, the receiving party and others acting on its behalf may reproduce, distribute, and prepare derivative works for any purpose. Finally, the Basic clause addresses data disclosing an invention and data subject to export control.

2.2.10.1.1. Intellectual Property Rights - Data Rights (Proprietary Data Exchange Not Expected Sample Clause)

In Umbrella SAAs, Data requiring protection may be produced by NASA under individual Annexes. The Annex sample clause is used to specify the length of time that data first developed by NASA under the SAA that would qualify as proprietary data if it had been obtained from the Partner will be restricted.

2.2.10.1.1.2. Intellectual Property Rights – Data Rights (Annex Sample Clause—Proprietary Data Exchange Not Expected)

2.2.10.1.2. Proprietary Data Exchange Expected (Proprietary Exchange Clause)

Data Rights sample clause 2.2.10.1.2 the "Proprietary Data Exchange Expected" clause (Proprietary Exchange clause), is used in the same type of SAAs as the Basic clause but where there is any likelihood that the following type of data will be developed under the SAA or exchanged between the parties:

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[63] *See* sample clause 2.2.10.1.1.2.1 Identified Intellectual Property (Sample Clause for Annexes where proprietary data exchange is expected to occur).
[64] Formerly Section 203 of the National Aeronautics and Space Act of 1958 (42 U.S.C. § 2473(a)(3)).
[65] Publication rights discussed here are different and should be distinguished from both rights in raw data (unanalyzed data generally of a scientific nature) generated under an agreement and release of general information to the public.

1) Background data;
2) Third party proprietary data; or
3) Controlled government data.

The Proprietary Data Exchange Expected clause includes all the same terms as the Basic clause and, in addition, adds detailed data handling provisions since more procedural specificity is necessary to address matters that arise under these SAAs.

The Proprietary Data Exchange Expected clause provides for the identification of specific background, third party proprietary, and government controlled data, if any, that the parties expect will be, or may need to be, exchanged under the SAA in a separate document outside of the SAA[66] and addresses permissible use of all such data. The Proprietary Data Exchange Expected clause also includes data handling provisions that specify the responsibilities of the Parties related to the protection of all such data. To the extent such data can be identified at the beginning of the SAA, this clause provides for such data to be specifically identified in documentation outside of the SAA. Under Umbrella SAAs, such data would be exchanged under an Annex. An alternate paragraph is provided for Umbrella SAAs allowing the identification of such data in documentation separate from the Annex under which it will be exchanged.[67] The data handling provisions in the clause require that for data to be protected it must be marked with a restrictive notice. Thus, even if specific background, proprietary or controlled government data cannot be identified before the SAA begins, such data will be protected under the clause if marked with a restrictive notice**.** Any document identifying background, proprietary or controlled government data pursuant to the Proprietary Data Exchange Expected clause should be appropriately marked with a restrictive notice in accordance with this clause.

The Proprietary Data Exchange Expected clause permits the Partner to orally or visually disclose information it believes to be proprietary data, provided: (1) before such oral or visual disclosure is made, the Partner advises NASA that such information is considered to be proprietary data, and (2) within ten (10) calendar days after such oral or visual disclosure is made, the Partner reduces the information to a tangible, recorded form that is appropriately marked and provides the marked data to NASA.

A provision is provided for use in the event that access to, acquisition of, or delivery of classified material is required under the SAA. If classified material is used under the SAA, it requires the Partner to provide a completed Contract Security Classification Specification (DD Form 254 or equivalent) to the NASA Point of Contact.

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[66] The transparency requirements of Section 841(d) of the NTAA require that all SAAs be disclosed on a public website within 60 days of signing. Accordingly, any propriety or sensitive data should be exchanged in documentation outside of the SAA. The Propriety Data Exchange Expected clause reflect this practice of not including proprietary or sensitive data in the SAA. *See* Section 1.3, *Negotiating Agreements* for additional guidance on NTAA transparency requirements.

[67] *See infra* sample clause 2.2.10.1.2.1 Identified Intellectual Property (Sample Clause for Annexes where proprietary data exchange is expected to occur).

2.2.10.1.2. Intellectual Property Rights - Data Rights (Proprietary Data Exchange Expected Sample Clause)

Data Rights sample clause 2.2.10.1.2.1, the "Intellectual Property Rights – Identified Intellectual Property" clause is to be used in Annexes to Umbrella SAAs to:

1) Specify the length of time that data first developed by NASA under the SAA Annex that would qualify as proprietary data if it had been obtained from the Partner will be restricted; and
2) Acknowledge that specific background, third-party proprietary, and controlled government data, if any, that will be exchanged under the Annex will be identified in a separate document.

2.2.10.1.2.1. Intellectual Property Rights - Data Rights (Annex Sample Clause – Proprietary Data Exchange Expected)

2.2.10.1.3. Reimbursable SAAs For the Benefit of a Foreign Entity

NPD 1370.1 provides that when certain Reimbursable work performed for a domestic Partner ultimately benefits a foreign entity, the SAA must provide benefits to NASA or to the public. Such benefits are normally obtaining through shared data rights or broad dissemination of results obtained under the SAA. Data Rights sample clause 2.2.10.1.3, the "For the Benefit of a Foreign Entity" sample clause, should be used in Reimbursable SAAs with domestic Partners where the Reimbursable work is for fundamental research or for safety related analysis and testing in NASA facilities and the work is ultimately for the benefit of a foreign entity, unless other sufficient benefits to NASA or the public are obtained or other data rights provisions are approved by Office of International and Interagency Relations, on a case-by-case basis.[68]

In addition to addressing the subject matter addressed in sample clauses 2.2.10.1.1 and 2.2.10.1.2, sample clause 2.2.10.1.3 addresses additional guidance regarding potential disclosure and use of export controlled data. Finally, third party proprietary data or controlled government data is not normally provided to Partners under the SAA. However, if disclosure of such data is required to support an SAA that provides a scientific, technical, economic, or foreign policy benefit to NASA and the U.S. public, the sample clause addresses permissible use and required protection of such data.

2.2.10.1.3. Intellectual Property Rights - Data Rights (Reimbursable SAA For the Benefit of a Foreign Entity Sample Clause)

Where a Reimbursable SAA with a domestic party is for the benefit of a foreign entity but is not for fundamental research or for safety-related analysis and testing in NASA facilities, Data Rights clauses 2.2.10.1.1 and 2.2.10.1.2 are used in accordance with applicable guidance for those clauses as provided above.

[68] *See supra* Section 1.5.

2.2.10.1.4. Non-technical SAAs (Free Exchange of Data Sample Clause)

Data Rights sample clause 2.2.10.1.4, the "Free Exchange of Data" clause, is generally used only in SAAs involving non-technical activities such as outreach and education, SAAs for educational or public outreach, or community or public affairs events. In such situations, the parties typically plan to exchange all data and information without any use and disclosure restrictions except as required by law. In these types of SAAs, if NASA or the Partner plan to develop or exchange data that may have use or disclosure restrictions, the Office of General Counsel, or Chief Counsel, as appropriate, should be consulted to determine the proper data rights provisions.

2.2.10.1.4. Intellectual Property Rights - Data Rights (Free Exchange of Data Sample Clause)

2.2.10.2. RIGHTS IN RAW DATA GENERATED UNDER THE AGREEMENT

The Data Rights clauses 2.2.10.1.1 to 2.2.10.1.3, address the rights of the parties to publish the overall results obtained under an SAA. In addition to the applicable Data Rights clause from Section 2.2.10.1 above, sample clause 2.2.10.2, "Rights in Raw Data" is used in SAAs that include fundamental research or analysis of raw data[69] by one or more identified Principal Investigators (PIs). Such SAAs are generally related to research resulting from earth or space science missions, or analysis of Earth or space science satellite raw data. The Rights in Raw Data sample clause addresses rights in raw data generated under the SAA as well as publication of final results of the research. Use of this clause requires the PI(s) and the exclusive use period of data for the PI or an identified group of researchers to be specifically identified in the SAA.[70]

For space science activities, the SAA may reserve for the PIs a limited period of exclusive use of the raw data. The parties usually agree that the raw data derived from experiments will be reserved to the PIs named in the SAA for scientific analysis purposes and first publication rights for a set period of time. The reservation period should be as brief as practicable, and should not exceed one year. The period begins with receipt of the raw data and any associated (*e.g.*, spacecraft) data in a form suitable for analysis. In appropriate instances, PIs may be requested to share the data with other investigators, including interdisciplinary scientific and guest investigators, to enhance the scientific return from the mission (or program). Any such data-sharing procedures should be established in the SAA taking into consideration the first publication rights of the PIs. Following the period of exclusive use, the parties customarily agree to deposit the data in designated data repositories or data libraries in order to make the data available to the broader scientific community.

In contrast, it is the practice in the Earth Science community to make its data widely available as soon as practicable after its acquisition and on-orbit calibration and validation. Their SAAs generally do not include any period of exclusive access for any user group, including PIs. The data is generally deposited in data repositories or data libraries available to the public.

2.2.10.2. Intellectual Property Rights - Rights in Raw Data (Sample Clause)

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[69] "Raw data" refers to unanalyzed data usually of a scientific nature.

[70] The Principal Investigator(s) is identified in the Points of Contact clause (*see infra* Section 2.2.17). The exclusive use period is designated in the Rights in Raw Data sample clause.

2.2.10.3. INVENTION AND PATENT RIGHTS

The invention and patent rights sample clauses reflect NASA's basic approach that has evolved over the years under commonly encountered circumstances. Which clause, if any, is most appropriate generally depends upon three basic criteria:

1) Whether the SAA will involve technical activities;
2) Whether 51 U.S.C. § 20135(b)[71] applies to the SAA (section 20135(b) applies when the Partner is performing work under the SAA for NASA rather that for the Partner's own benefit); and
3) The probability that an invention will result from the SAA.

In summary, sample clauses 2.2.10.3.1 and 2.2.10.3.2 are intended for use when 51 U.S.C. § 20135(b) does *not* apply to the SAA (*i.e.*, where the Partner *is not performing work under the SAA for NASA* but is participating in the collaborative activities for its own benefit). Sample clause 2.2.10.3.1 is used when there is a low probability of an invention resulting from the proposed activities. Sample clause 2.2.10.3.2 is used where there is greater than a low probability that an invention will result from the proposed activities. Sample clause 2.2.10.3.3 is intended for use when 51 U.S.C. § 20135(b) *does* apply to the SAA (*i.e.*, where the partner *is performing work under the SAA for NASA)*. In the case where the partner is performing work for NASA, the probability of an invention resulting from the proposed work is not a consideration for clause selection. These concepts are described in more detail below.

In SAAs involving non-technical activities, the probability of a resultant invention is generally negligible. Examples of such non-technical SAAs include strategic alliances,[72] SAAs for educational or public outreach, or community or public affairs events. These are the same sort of SAAs where Data Rights sample clause 2.2.10.1.4, "Free Exchange of Data" is used. In this sort of SAA, as a general rule, no invention and patent rights clause is required.

Note on Licensing: If a partner requests a license in an invention made under an SAA by a NASA employee or employee of a NASA related entity (where NASA acquires title from its related entity), the invention must be licensed in accordance with 37 C.F.R. Part 404, *Licensing of Government Owned Inventions*, and NASA must retain a government-purpose license. NASA will use reasonable efforts to grant the partner an exclusive or partially exclusive license, consistent with the requirements of 37 C.F.R. Part 404. Any license to the partner will be subject to the retention of a government purpose license and a nonexclusive license to the NASA related entity (where title is acquired from a related entity). Consistent with Government-wide regulations, all licenses to the partner will be revocable. For example, the license may be revoked if the invention is not commercialized consistent with NASA (and Government-wide) policy on licensing inventions. Normally, licenses are royalty-bearing and thus provide an opportunity for royalty-sharing with the Government employee-inventor consistent with NASA and Government-wide policy under the National Technology Transfer and Advancement Act.[73]

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[71] Formerly section 305(a) of the National Aeronautics and Space Act (42 U.S.C. § 2457).
[72] NPD 1350.3.
[73] 15 U.S.C. § 3710 *et seq.*, as amended (P.L. 104-113).

Additionally, under Government-wide policy, NASA may share royalties with a partner-inventor who assigns patent rights directly to the Government.

NASA's "Title Taking" Authority

A SAA is an "other transaction" authorized by 51 U.S.C. § 20113(e) and is not a procurement contract.[74] The fact that an SAA is not a procurement contract is important in the intellectual property area because a different allocation of rights results under a procurement contract than under an SAA.[75]

Under the Space Act[76], when NASA transfers funds or title to inventions[77] to a Partner or if a nongovernmental Partner *performs work of an inventive type for NASA* (rather than for the Partner's own benefit), then NASA is required to take title to any inventions created by the Partner under the Agreement. When this happens, the Partner may seek to retain title to inventions it makes under the SAA through a petition for waiver,[78] and NASA receives a government purpose license in the invention instead of title. On the other hand, if a Partner *does not perform work of an inventive type for NASA* (which is generally true under most collaborative and reimbursable SAAs), then NASA's title taking authority does not apply, and NASA and the Partner can negotiate invention and patent rights according to the activities of the SAA and the contributions of the parties. A case-by-case analysis is required to determine whether work to be performed by the Partner under the SAA *is being performed for NASA* (as opposed to being performed by the Partner for its own benefit). For factors to consider when making this determination, refer to the description of the sample clause 2.2.10.3.3, Title Taking Authority, below.

2.2.10.3.1. Invention and Patent Rights in SAAs with Little Likelihood of an Invention Resulting (Short Form Clause)

Invention and patent rights sample clause 2.2.10.3.1, the Short Form clause, is to be used in SAAs involving technical activities where, in general, the probability that an invention may result from the activities to be carried out under the SAA by either NASA or the Partner is low[79] (*e.g.*, use of facilities to provide test and evaluation of a Partner's hardware, or a technology exchange agreements), and the Partner *is not performing work for NASA*. The Short Form assures that no background rights in intellectual property are to be acquired. In addition, in the

[74] The principal purpose of a procurement contract is to obtain property or services, such as the performance of work of an inventive type, for the direct benefit or use of the Government.
[75] *See* FAR Part 27 and NASA Far Supp. Part 1827.
[76] 51 U.S.C. § 20135.
[77] NASA has limited authority to transfer funds or title to inventions under its Space Act authority. Please consult with Office of General Counsel, or Chief Counsel, as appropriate, before proceeding with an SAA under these circumstances.
[78] *See* NASA's Patent Waiver Regulations at 14 C.F.R. Part 1245, Subpart 1.
[79] As discussed above, for SAAs involving non-technical activities such as educational or public outreach (including community or communications events), no Invention and Patent Rights provision is necessary because it is assumed that the probability of a resultant invention for these activities is negligible.

unlikely event that an invention may be made under the SAA, the Short Form adopts the policy that each party keeps rights to its own intellectual property (which would occur under the common law, lacking an express agreement to the contrary). The clause also provides that should there be a joint invention, the parties will discuss and agree on rights and responsibilities for the filing of patent applications, and the licensing of such applications and resulting patents. Therefore, this clause is used in SAAs when the proposed work will not be performed for NASA, and the probability is low that either party will carry out inventive (or creative) activities under the SAA.

2.2.10.3.1. Intellectual Property Rights - Invention and Patent Rights (Short Form Sample Clause)

2.2.10.3.2. Invention and Patent Rights in SAAs with Likelihood of an Invention Resulting (Long Form Clause)

Invention and patent rights sample clause 2.2.10.3.2, the Long Form clause, is to be used in SAAs involving technical activities (*e.g.*, design, engineering, research, development, and experimental activities) where the probability that an invention may result from the activities to be carried out under the SAA by either NASA or the Partner is greater than a low probability (*i.e.*, there is a medium or high likelihood that work of an inventive type will result), and the Partner *is not performing work for NASA*. For example, if proposed activities under the SAA involve research and development (R&D), the probability that an invention may result from the R&D activities is greater than a low probability. Thus, in situations where the Long Form is used, while the Partner may perform work of the type that could result in inventions being made, the Partner is not performing such work of an inventive type *for* NASA.

As under the Short Form, the principle that each party keeps rights to its own intellectual property applies. Thus, NASA generally acquires no rights to any invention made solely by the Partner, but may negotiate a license to use a Partner invention for research, experimental, and evaluation purposes. As an incentive to commercialize NASA developed technology, NASA will use reasonable efforts to grant the Partner a license[80] (on terms and conditions to be negotiated) to any invention made under the SAA by NASA employees or a NASA related entity (where NASA acquires title from its related entity). Normally, NASA grants licenses only to inventions on which it has filed, or intends to file, a patent application. As to joint inventions (inventions made jointly by the Partner and NASA or its related entities where NASA acquires title from its related entity), NASA and the Partner as joint owners of the invention may enter into a Joint Ownership Agreement to address the patent prosecution and commercialization responsibilities and NASA may agree to refrain from exercising its undivided interest in joint inventions in a manner inconsistent with the Partner's commercial interests.

2.2.10.3.2. Intellectual Property Rights - Invention and Patent Rights (Long Form Sample Clause)

[80] In accordance with the requirements of 37 C.F.R. Part 404.

2.2.10.3.3. Invention and Patent Rights in SAAs Where NASA's Title Taking Authority Applies (Title Taking Clause)

Invention and patent rights sample clause 2.2.10.3.3, the Title Taking clause, is to be used in SAAs where NASA transfers funds or title to inventions[81] to a Partner or a Partner *is performing work for NASA*. The probability that the proposed work may result in an invention is not a consideration for use of the Title Taking clause. For example, even if there is a low probability that work of an inventive type will result, if the work is being performed for NASA and an invention does result (however unlikely), the Title Taking clause is the proper clause. In SAAs where NASA's title taking authority under 51 U.S.C. § 20135(b) applies, title to inventions developed by the Partner vest in the U.S. Government. However, under the waiver provisions of 51 U.S.C. § 20135(g), the Partner may receive title through the NASA waiver process.[82] NASA liberally grants waivers to SAA Partners for the purpose of commercializing the waived invention.

A case-by-case analysis is required to determine when work to be performed by the Partner under the SAA *is being performed for NASA*. To make this determination, the following factors should be considered:

1) Whether the Partner will be reimbursing NASA for its contributions – Generally, under Reimbursable SAAs, work is not being done "for NASA," and NASA's title taking authority does not apply to rights in inventions.

2) Whether work under the SAA involves research and development (R&D) – Generally, if R&D activities to be performed by the Partner are intended for NASA's direct benefit, NASA's title taking authority applies. If research and development activities of the Partner relate to a cooperative effort "with NASA" rather than a directed effort "for NASA," NASA's title taking authority does not apply. In determining whether the SAA is a true cooperative arrangement, the Partner's planned use of any inventions developed under the SAA, while not determinative, should be considered. For example, the Partner is more likely to perform inventive work for its own benefit if marketing the technology in the commercial marketplace is the primary economic rationale for entering the SAA (*e.g.*, the Partner has an existing commercial market for the technology at issue). Alternatively, the Partner is more likely to perform inventive work for NASA if selling the technology to NASA is the primary economic rationale for entering the SAA (*e.g.*, the Partner is historically a NASA contractor and plans to sell the inventive work back to NASA).

3) Whether work to be performed by the Partner under the SAA is required by NASA in order to meet a specific identified mission or programmatic requirement—Generally, under Nonreimbursable SAAs, if work to be performed by the Partner is not needed to satisfy a specific identified mission/programmatic requirement, then the Partner's work is not being performed for NASA and

[81] *See* Section 2.2.10.3, "NASA's 'Title Taking' Authority," above.
[82] *See* NASA's Patent Waiver Regulations at 14 C.F.R. § 1245, Subpart 1.

> NASA's title taking authority does not apply, even if achievements or advancements that may result from a Partner's efforts will benefit NASA to the extent the agency decides to incorporate them into a NASA program at a future time. If, on the other hand, the primary purpose of the SAA is to produce a specific technology (or improvement to an existing technology) needed to accomplish an identified mission/programmatic requirement, then the work is being performed for NASA, and NASA's title taking authority applies.[83]

When the foregoing analysis indicates that work is being performed for NASA, the Title Taking sample clause 2.2.10.3.3 should be used. When it is determined that work is not being performed for NASA, sample clause 2.2.10.3.3 does not apply, and the appropriate invention and patent rights clause is selected from sample clauses 2.2.10.3.1 or 2.2.10.3.2 as described above. The Office of the General Counsel or Chief Counsel, as appropriate, should be included early in the determination of whether work is being performed for NASA.

2.2.10.3.3. Intellectual Property Rights - Invention and Patent Rights (Title Taking Sample Clause)

2.2.10.4. Patent And Copyright Use – Authorization, Consent, And Indemnification

One of the remedies available to a patent owner for patent infringement is an injunction preventing the alleged infringer from making, using, or selling the patented invention. However, under 14 U.S.C. § 1498(a), such an injunction is not available when the use or manufacture is by or for the United States and with the authorization and consent of the U.S. Government. Similarly, one of the remedies available to a copyright owner for copyright infringement is an injunction preventing the alleged infringer from reproducing the copyrighted work, preparing derivative works based upon the copyrighted work, distributing copies of the copyrighted work to the public, or performing or displaying the copyrighted work publicly. However, under 14 U.S.C. § 1498(b), such an injunction is not available when such infringement is by or for the United States and with the authorization and consent of the U.S. Government. In both cases, the intellectual property rights owner's sole remedy is an action against the United States in the U.S. Court of Federal Claims for the recovery of his or her reasonable and entire compensation.[84]

Generally, if the Invention and Patent Rights Title Taking sample clause is included in an SAA (*i.e.*, where the Partner is performing work under the SAA for NASA), and the NASA patent or intellectual property counsel determines that activities of the Partner, or its related entities, required to fulfill the purpose of the SAA are likely to be legally enjoined by a patent or copyright owner in the U.S., then the Authorization and Consent (A&C) sample clause should be included in order to avoid an injunction. This also avoids any legal arguments regarding whether authorization and consent, if not expressed, should be implied because of the beneficial

[83] Please consult with Counsel before proceeding with an SAA under these circumstances. In most cases, a procurement contract will be the appropriate property instrument rather than an SAA. Further, proceeding with an SAA under this scenario is likely to create conflicts of interest for the Partner that could interfere with the Partner's participation in future NASA work.
[84] Essentially, the U.S. Government has waived sovereign immunity with respect to monetary compensation for patent or copyright infringement, but not with respect to injunction.

cooperation involved in the SAA. If the clause was not initially included in the SAA, it can be added by the parties by mutual agreement. The A&C sample clause may be included in SAAs that do not include the Title Taking clause if the NASA patent or intellectual property counsel determines that its inclusion may be necessary to fulfill the purpose of the SAA.

Whenever the A&C sample clause is included in an SAA, the NASA patent or intellectual property counsel should be consulted to determine whether the Indemnification Clause sample clause 2.2.10.4.2 should be included to protect the U.S. Government financially if infringement liability is incurred.

2.2.10.4.1. Patent and Copyright Use - Authorization and Consent (Sample Clause)

2.2.10.4.2. Patent and Copyright Use - Indemnification (Sample Clause)

2.2.11. USE OF NASA NAME AND EMBLEMS

Sample clause 2.2.11, which addresses the Partner's use of the NASA name and emblems, should be used in all SAAs. The Space Act prohibits the knowing use of the words 'National Aeronautics and Space Administration' or the letters 'NASA' in connection with a product or service "in a manner reasonably calculated to convey the impression that such product or service has the authorization, support, sponsorship, or endorsement of, or the development, use or manufacture by, or on behalf of [NASA] which does not, in fact, exist."[85] Consequently, NASA's policy is to allow the NASA name and initials to be used in non-NASA publications (*e.g.*, advertisements, promotional literature, etc.) only if:

1) The use is factual and does not, either expressly or by implication, endorse a commercial product, service or activity; and
2) The use does not mislead in any manner.

For example, statements pertaining to facts surrounding the use of a product or service can be permitted provided subjective statements regarding the selection, use, and performance of the product or service are not used. Any proposed public use by Partners of the NASA name or initials must be submitted in advance to NASA Office of Communications for review and approval.

Use of NASA emblems/devices (*i.e.*, NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) is governed by 14 C.F.R. Part 1221 and requires prior review and approval by the NASA Office of Communications.

Permission to use the NASA name or emblems/devices should not be granted in an SAA without the prior written approval of the NASA Office of Communications.

2.2.11. Use of NASA Name and Emblems (Sample Clause)

[85] 51 U.S.C. § 20141 (formerly Section 311 of the National Aeronautics and Space Act of 1958, 42 U.S.C. § 2459(b)).

2.2.12. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA

Normally, SAAs should address how NASA and the Partner will handle public dissemination of information related to its own activities, such as use of press releases. The recommended clause provides that either party may release information regarding its own participation in the SAA. However, to the extent that any public release of information includes discussion of the activities of the other party, the parties should seek to consult with each other beforehand on the content of any such releases.

Under the transparency requirements of Section 841(d) of the NTAA, each SAA will be posted to a public website in a searchable format within 60 days of signature. The recommended clause provides notice to the Partner that the SAA will be posted on NASA's website, without redactions,[86] pursuant to this transparency requirement of the NTAA.

2.2.12. Release of General Information to the Public and Media (Sample Clause)

2.2.13. DISCLAIMERS

2.2.13.1. DISCLAIMER OF WARRANTY

The Disclaimer of Warranty clause should be used when NASA provides goods or services for use by nongovernmental Partners. This sample clause provides that goods (*e.g.*, equipment, facilities, technical information, etc.) and services are provided "as is" and without any guarantee that such goods and services are reliable, free of any known defects, or in a certain condition.

2.2.13.1. Disclaimer of Warranty (Sample Clause)

2.2.13.2. DISCLAIMER OF ENDORSEMENT

NASA does not endorse or sponsor any commercial product, service, or activity. Therefore, all SAAs with nongovernmental Partners should include a Disclaimer of Endorsement clause. The sample clause provides that NASA's participation in the SAA does not constitute NASA's endorsement of the results of any SAA activity, including designs, hardware, or test analysis, among others.

2.2.13.2. Disclaimer of Endorsement (Sample Clause)

2.2.14. COMPLIANCE WITH LAWS AND REGULATIONS

This section places the Partner on notice that it must comply with all laws and regulations and government policies that affect or relate to the performance of the SAA. The clause calls special attention to safety, security, export control, environmental, and suspension and debarment laws

[86] For guidance regarding the transparency requirement of the NTAA and the need to structure agreements for posting without redaction, *see* Section 1.3, *Negotiating Agreements*.

because any violations (non-compliance) may result in civil or criminal penalties. The clause also calls attention to NASA security policy and guidelines, including standards on badging and facility access.

2.2.14. Compliance With Laws and Regulations (Sample Clause)

2.2.15. TERM OF AGREEMENT

This section sets forth the duration of the SAA which must state a definite term. The "Effective Date," the date the SAA enters into force, is the date of last signature. Because of uncertainties as to rate of progress, the ending date (*e.g.,* expiration date) may be determined based on two possible triggers – arrival at a date certain, or completion of both parties' obligations, whichever comes first. This approach allows NASA to close out the SAA if all related activity is accomplished ahead of schedule, without having to terminate the SAA.

NASA limits its SAAs to one five-year term in all but very few cases because commitment of resources far into the future may be problematic due to changing budgets and program objectives. For the same reason, use of an automatic renewal provision is problematic. Where a commitment exceeding five (5) years is essential to the fundamental objectives of the SAA, or use of an automatic renewal provision is sought, early consultation with the Office of the General Counsel or Chief Counsel, as appropriate, is essential. For SAAs that are for the benefit of a foreign entity, early consultation with the Office of International and Interagency Relations is essential.

In the event performance will not be completed by the agreed upon end date, the parties may mutually agree to extend the term of the SAA by executing a modification. Any modification must be executed consistent with the terms in the "Modifications" sample clause 2.2.20 prior to the SAA expiration date. Use of a modification to extend an SAA is preferable to any long-term commitment by NASA. Any attempt to use a modification to extend or revive the term of an expired SAA is ineffective.

2.2.15.1. Term of Agreement (Sample Clause)

2.2.15.2. Term of Annex (Sample Clause)

2.2.16. RIGHT TO TERMINATE

This section delineates the conditions under which either party can terminate an SAA. The termination notice must be in writing. It can be effected by letter, email, or facsimile. In drafting this clause, consideration should be given to the length of time needed for notice to minimize programmatic impacts. For SAAs involving low-risk activities, it often makes sense to provide that either party may terminate after thirty (30) days notice. Longer termination notice periods may be required where termination has far-reaching programmatic or budgetary implications. Such SAAs may also provide for negotiation of a termination agreement during

this period to address outstanding issues, such as disposition of property used for activities under the SAA.

Note: Sample Clause 2.2.16.3 is only used in very rare circumstances, for example, when the Partner is funding infrastructure improvements to NASA property that must be completed before the Partner can obtain any benefit from the up-front investment. In such cases the Partner usually desires assurances that its investment in the infrastructure improvements will not be easily lost by a unilateral termination of the SAA by NASA. The question to be asked in deciding whether to use Sample Clause 2.2.16.3 is whether the benefit to NASA justifies a significant limitation of its termination rights as found in that clause.

2.2.16.1. Right to Terminate (Nonreimbursable Agreement Sample Clause)

2.2.16.2. Right to Terminate (Reimbursable Agreement Sample Clause)

2.2.16.3. Right to Terminate (Reimbursable Agreement Requiring High Certainty of Support Sample Clause)

2.2.16.4. Right to Terminate (Nonreimbursable Umbrella Agreement Sample Clause)

2.2.16.5. Right to Terminate (Reimbursable Umbrella Agreement Sample Clause)

2.2.16.6. Right to Terminate (Nonreimbursable Annex Sample Clause)

2.2.16.7. Right to Terminate (Reimbursable Annex Sample Clause)

2.2.17. CONTINUING OBLIGATIONS

The SAA should specify the rights and obligations of the Parties that, by their nature, would continue beyond the expiration or termination of the SAA (*e.g.,* "Liability and Risk of Loss," and "Intellectual Property Rights"). For Reimbursable SAAs, "Financial Obligations" also survive termination or expiration of the SAA and should be included in this clause.

2.2.17. Continuing Obligations (Sample Clause)

2.2.18. POINTS OF CONTACT

To establish clear interfaces, management, project level, or in some cases, program level Points of Contact (POCs) should be specified as required to facilitate good communication during the SAA activity. In larger projects, there may be program managers identified as having management oversight, and program scientists designated as key officials for all science goals. For NASA, the POCs should always be NASA employees. Principal Investigators should also be identified in SAAs if the Intellectual Property Rights – Rights in Raw Data sample clause 2.2.10.2 is used.

2.2.18.1. Points of Contact (Sample Clause)

2.2.18.2. Points of Contact (Umbrella Sample Clause)

2.2.18.3. Points of Contact (Annex Sample Clause)

2.2.19. DISPUTE RESOLUTION

In general, all SAAs should include a dispute resolution clause. The clause outlines the specific procedures to be followed in the event of a dispute. SAAs include language stating that all parties agree to consult promptly with each other on all issues involving interpretation, implementation, or performance of the SAA. Generally, issues are handled at the working level before being elevated to a higher level if the parties cannot achieve resolution. If the parties are unable to reach resolution at this second tier, the NASA official at that level, or one level higher (depending on the complexity and visibility of the SAA activity) should provide to the Partner, in writing, its final Agency decision. This final Agency decision becomes part of an administrative record of the dispute.

Note: With rare exception, the NASA Administrator should not be involved in dispute resolution activities. Use of the Administrator as the designated official for making a final Agency decision requires consultation with the Offices of the Administrator and the General Counsel. The Center Agreement Manager should seek guidance from the Office of the Chief Counsel or Office of the Center Director regarding the appropriateness of designating the Center Director the official for making final Agency decisions in disputes.

In very limited instances, NASA may agree to an approach that permits possible settlement of disputes through an agreed form of resolution, such as non-binding arbitration or mediation (alternative dispute resolution). However, in such cases, the decision of whether to submit a specific dispute to some form of alternative dispute resolution is made on a case-by-case basis based on mutual agreement at that time (after initiation of the dispute). Agreement to any arbitration clause is highly unusual and requires specific approval by the General Counsel.

2.2.19.1. Dispute Resolution (Sample Clause)

2.2.19.2. Dispute Resolution (Umbrella Sample Clause)

2.2.20. INVESTIGATIONS OF MISHAPS AND CLOSE CALLS

For domestic activities where there is the possibility of a serious accident or mission failure occurring and the parties include non-U.S. Government personnel, it is advisable to include a mishap and close call investigation clause in the SAA. A determination to include such a clause should be closely reviewed in conjunction with the liability determination made under Section 2.2.9, "Liability and Risk of Loss." At a minimum, SAAs involving activities related to the ISS and SAAs supporting any launch activities should include sample clause 2.2.20, "Investigations

of Mishaps and Close Calls." NASA mishaps and close calls are conducted pursuant to NPR 8621.1, "NASA Procedural Requirements for Mishap and Close Call Reporting, Investigating and Recordkeeping," which may be applicable to the SAA.

2.2.20. Investigations of Mishaps and Close Calls (Sample Clause)

2.2.21. MODIFICATIONS

This section requires that any modification (amendment) to the SAA be executed in writing and signed by an authorized representative of each party, which for NASA is the Signing Official or, in some cases, his or her designee. When modifying an Umbrella Agreement, consideration should be given to its effect on executed Annexes. Annexes are not considered modifications.

2.2.21.1. Modifications (Sample Clause)

2.2.21.2. Modifications (Umbrella Sample Clause)

2.2.21.3. Modifications (Annex Sample Clause)

2.2.22. ASSIGNMENT

As a general rule, assignment of an SAA is not advisable or practical. This clause precludes any assignment of the SAA or any rights under the SAA to other entities without the express written permission of the Signing Official or designee.

2.2.22. Assignment (Sample Clause)

2.2.23. APPLICABLE LAW

As NASA is an agency of the Federal Government, U.S. Federal law governs its domestic activities, and the SAA should state explicitly this choice of law. Failure to include this clause, or making reference to state law, even where Federal law is silent, carries legal risk. It could result in the Partner seeking to establish jurisdiction for a suit against NASA (the Agency or a Federal officer) in a state court or otherwise applying state law to Federal activities. This would be in violation of Federal law that establishes the Department of Justice as the only authority that can consent to state jurisdiction in litigation involving Federal agencies (28 U.S.C. § 1441 *et seq.*).

2.2.23. Applicable Law (Sample Clause)

2.2.24. INDEPENDENT RELATIONSHIP

In this Guide, the non-NASA party to an SAA is referred to as the "Partner." However, this shorthand designation is not intended to create a formal business organization or "partnership" as that term is normally used in the legal context. Therefore, a clause indicating that the parties to the SAA remain independent entities, and that the rights and obligations of the parties shall be only those expressly set forth in the SAA, should be included in every SAA.

2.2.24. Independent Relationship (Sample Clause)

2.2.25. LOAN OF GOVERNMENT EQUIPMENT

On occasion, government equipment (as defined in NPR 4200.1) is loaned to a Partner in support of a SAA. NPD 4200.1C requires that all loans of government equipment be done pursuant to NASA Form 893 (NF 893). Accordingly, if government equipment is to be loaned in support of a SAA, an NF 893 needs to be entered into by the parties.

For loans of NASA personal property that does not meet the definition of equipment under NPR 4200, Centers may use the NF 893 or another form of loan instrument/language as long as the instrument or language is consistent with law and provides protection for NASA comparable to NF 893, as determined by counsel.

Sample clause 2.2.25 (adjusted as necessary for different loan instruments) should be included in all SAAs.

2.2.25. Loan of Government Equipment (Sample Clause)

2.2.26. SPECIAL CONSIDERATIONS

This section is reserved for additional Center specific requirements. No sample clause is provided.

2.2.27. SIGNATORY AUTHORITY

This section provides a signature block, as well as the typed name, title, and date of signature for the responsible Signatories for each party. Two original copies should be signed by both parties. During negotiations, care should be taken to identify and confirm that the signatories have authority to bind the parties; usually they are senior management officials (authority for NASA Signing Officials is provided in NPD 1050.1). However, NASA does not require or recommend that the Partner's Signatory be required to demonstrate the requisite authority through provision of company documents, such as a formal delegation of authority.

2.2.27.1. Signatory Authority (Sample Clause)

2.2.27.2. Signatory Authority (Annex Sample Clause)

APPENDIX TO CHAPTER 2. SAMPLE CLAUSES – NONREIMBURSABLE AND REIMBURSABLE AGREEMENTS WITH DOMESTIC NONGOVERNMENTAL ENTITIES

2.2. AGREEMENT CONTENTS

2.2.1. TITLE

2.2.1.1. TITLE (NONREIMBURSABLE AGREEMENT SAMPLE CLAUSE)

Nonreimbursable [*subtitle, as appropriate*] Space Act Agreement between the National Aeronautics and Space Administration [*Center Name*] and [*name of Partner*] for _____ [*state brief purpose*].

2.2.1.2. TITLE (REIMBURSABLE AGREEMENT SAMPLE CLAUSE)

Reimbursable [*subtitle, as appropriate*] Space Act Agreement between the National Aeronautics and Space Administration [*Center Name*] and [*name of Partner*] for _____ [*state brief purpose*].

2.2.1.3. TITLE (NONREIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE)

Nonreimbursable [*subtitle, as appropriate*] Space Act Umbrella Agreement between the National Aeronautics and Space Administration [*Center Name*] and [*name of Partner*] for _____ [*state brief purpose*].

2.2.1.4. TITLE (REIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE)

Reimbursable [*subtitle, as appropriate*] Space Act Umbrella Agreement between the National Aeronautics and Space Administration [*Center Name*] and [*name of Partner*] for _____ [*state brief purpose*].

2.2.1.5. TITLE (ANNEX AGREEMENT SAMPLE CLAUSE)

Annex between the National Aeronautics and Space Administration [*Center Name*] and [*name of Partner*] under Space Act Umbrella Agreement **No.** _____, Dated _____ (Annex Number _____).

2.2.2. AUTHORITY AND PARTIES (SAMPLE CLAUSE)

In accordance with the National Aeronautics and Space Act (51 U.S.C. § 20113(e)), this Agreement is entered into by the National Aeronautics and Space Administration [Center name], located at _____ (hereinafter referred to as "NASA" [or "NASA [Center initials]]") and _____ located at _____ (hereinafter referred to as "Partner" or [insert Partner name or acronym, as appropriate]). NASA and Partner may be individually referred to as a "Party" and collectively referred to as the "Parties."

2.2.3. PURPOSE

2.2.3.1. PURPOSE (SAMPLE CLAUSE)

This Agreement shall be for the purpose of _____.

2.2.3.2. PURPOSE AND IMPLEMENTATION (UMBRELLA AGREEMENT SAMPLE CLAUSE)

This Umbrella Agreement (hereinafter referred to as the "Agreement" or "Umbrella Agreement") shall be for the purpose of _____.

The Parties shall execute one (1) Annex Agreement (hereinafter referred to as the "Annex") concurrently with this Umbrella Agreement. The Parties may execute subsequent Annexes under this Umbrella Agreement consistent with the purpose and terms of this Umbrella Agreement. This Umbrella Agreement shall govern all Annexes executed hereunder; no Annex shall amend this Umbrella Agreement. Each Annex will detail the specific purpose of the proposed activity, responsibilities, schedule and milestones, and any personnel, property or facilities to be utilized under the task. This Umbrella Agreement takes precedence over any Annexes. In the event of a conflict between the Umbrella Agreement and any Annex concerning the meaning of its provisions, and the rights, obligations and remedies of the Parties, the Umbrella Agreement is controlling.

2.2.3.3. PURPOSE (ANNEX SAMPLE CLAUSE)

This Annex shall be for the purpose of _____.

2.2.4. RESPONSIBILITIES

2.2.4.1. RESPONSIBILITIES (SAMPLE CLAUSE)

A. NASA [*Center initials*] will use reasonable efforts to:

1.
2.
3.

B. Partner will use reasonable efforts to:

1.
2.
3.

2.2.4.2. RESPONSIBILITIES (UMBRELLA AGREEMENT SAMPLE CLAUSE)

A. NASA [*Center initials*] will use reasonable efforts to:

1. Provide support of projects undertaken in any Annex;
2. Provide internal coordination of approvals for Annexes;
3. Provide for a single point of contact for Annex development and operations.

B. Partner will use reasonable efforts to:

1. Provide support of projects undertaken in any Annex;
2. Provide internal coordination of approvals for Annexes;

3. Provide for a single point of contact for Annex development and operations.

2.2.4.3. RESPONSIBILITIES (ANNEX SAMPLE CLAUSE)

A. NASA [*Center initials*] will use reasonable efforts to:

1.
2.
3.

B. Partner will use reasonable efforts to:

1.
2.
3.

2.2.5. SCHEDULE AND MILESTONES

2.2.5.1. SCHEDULE AND MILESTONES (SAMPLE CLAUSE)

The planned major milestones for the activities defined in the "Responsibilities" Article are as follows: [*state milestones with approximate month/year dates or measure from the effective date of the SAA*].

2.2.5.2. SCHEDULE AND MILESTONES (UMBRELLA AGREEMENT SAMPLE CLAUSE)

The planned major milestones for the activities defined in the "Responsibilities" Article are as follows: [*state milestones with approximate month/year dates or measure from the effective date of the SAA*]. The Parties shall execute one (1) Annex concurrently with this Umbrella Agreement. The initial Annex and any subsequent Annexes will be performed on the schedule and in accordance with the milestones set forth in each respective Annex.

2.2.5.3. SCHEDULE AND MILESTONES (ANNEX SAMPLE CLAUSE)

The planned major milestones for the activities for this Annex defined in the "Responsibilities" Article are as follows:

2.2.6. FINANCIAL OBLIGATIONS

2.2.6.1. FINANCIAL OBLIGATIONS (NONREIMBURSABLE AGREEMENT SAMPLE CLAUSE)

There will be no transfer of funds between the Parties under this Agreement and each Party will 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).

2.2.6.2. FINANCIAL OBLIGATIONS (REIMBURSABLE AGREEMENT SAMPLE CLAUSE)

A. Partner agrees to reimburse NASA an estimated cost of *($ total dollars*) for NASA to carry out its responsibilities under this Agreement. In no event will NASA transfer any U.S. Government funds to Partner under this Agreement. Payment must be made by Partner in advance of initiation of NASA's efforts on behalf of the Partner. [*For incremental payments, insert payment schedule.*]

B. Payment shall be payable to the National Aeronautics and Space Administration through the NASA Shared Services Center (NSSC) (*choose one form of payment*): (*1*) U.S. Treasury FEDWIRE Deposit System, Federal Reserve Wire Network Deposit System; (*2*) pay.gov at www.nssc.nasa.gov/customerservice (select "Pay NASA" from the Quick Links to the left of the page); *or* (*3*) check. A check should be payable to NASA and sent to: NASA Shared Services Center; FMD – Accounts Receivable; For the Accounts of:_____ [*Please indicate which NASA Center*]; Bldg. 1111, C Road; Stennis Space Center, MS 39529. Payment by electronic transfer (#1 or #2, above), is strongly encouraged, and payment by check is to be used only if circumstances preclude the use of electronic transfer. All payments and other communications regarding this Agreement shall reference the Center name, title, date, and number of this Agreement.

C. NASA will not provide services or incur costs beyond the existing payment. Although NASA has made a good faith effort to accurately estimate its costs, it is understood that NASA provides no assurance that the proposed effort under this Agreement will be accomplished for the above estimated amount. Should the effort cost more than the estimate, Partner will be advised by NASA as soon as possible. Partner shall pay all costs incurred and has the option of canceling the remaining effort, or providing additional funding in order to continue the proposed effort under the revised estimate. Should this Agreement be terminated, or the effort completed at a cost less than the agreed-to estimated cost, NASA shall account for any unspent funds within [*insert timeframe, cannot exceed one (1) year*] after completion of all effort under this Agreement, and promptly thereafter return any unspent funds to Partner.

D. Notwithstanding any other provision of this Agreement, 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).

2.2.6.3. Financial Obligations (Reimbursable Umbrella Agreement Sample Clause)

A. Partner agrees to reimburse NASA as set forth in each Annex for NASA to carry out its responsibilities under this Agreement. Partner shall make payment in advance of initiation of NASA's efforts on behalf of the Partner. Advance payments shall be scheduled to ensure that funds are resident with NASA before Federal obligations are incurred in support of work on behalf of the Partner.

B. Payment shall be payable to the National Aeronautics and Space Administration through the NASA Shared Services Center (NSSC) (*choose one form of payment*): (*1*) U.S. Treasury FEDWIRE Deposit System, Federal Reserve Wire Network Deposit System; (2) pay.gov at www.nssc.nasa.gov/customerservice (select "Pay NASA" from the Quick Links to the left of the page); or (*3*) check. A check should be payable to NASA and sent to: NASA Shared Services Center; FMD – Accounts Receivable; For the Accounts of:_____ [*At the time of payment, please indicate which NASA Center for the Umbrella Agreement or annex, as appropriate*]; Bldg 1111, C Road; Stennis Space Center, MS 39529. Note that Annexes may originate from different Centers. Each payment shall be properly identified by Center. Payment by electronic transfer [#1 or #2, above], is strongly encouraged, and payment by check is to be used only if circumstances preclude the use of electronic transfer. All payments and other communications regarding this Agreement shall reference the Center name, title, date, and number of this Agreement.

C. Notwithstanding any other provision of this Agreement, 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).

2.2.6.4. Financial Obligations (Reimbursable Annex Sample Clause)

A. Partner agrees to reimburse NASA an estimated cost of [*$ total dollars*] for NASA to carry out its responsibilities under this Annex. [*For incremental payments, insert payment schedule.*] Each payment shall be marked with *[insert Center and Annex number].*

B. NASA will not provide services or incur costs beyond the current funding. Although NASA has made a good faith effort to accurately estimate its costs, it is understood that NASA provides no assurance that the proposed effort under this Annex will be accomplished for the estimated amount. Should the effort cost more than the estimate, Partner will be advised by NASA as soon as possible. Partner shall pay all costs incurred and have the option of canceling the remaining effort, or providing additional funding in order to continue the proposed effort under the revised estimate. Should this Annex be terminated, or the effort completed at a cost less than the agreed-to estimated cost, NASA shall account for any unspent funds within [*insert timeframe, cannot exceed one year*] after completion of all effort under this Annex, and promptly thereafter, at Partner's option return any unspent funds to Partner or apply any such unspent funds to other activities under the Umbrella Agreement.

2.2.7. PRIORITY OF USE (SAMPLE CLAUSE)

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, Partner 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 Partners, NASA, in its sole discretion, shall determine the priority as between those Partners. This Agreement does not obligate NASA to seek alternative government property or services under the jurisdiction of NASA at other locations.

2.2.8. NONEXCLUSIVITY (SAMPLE CLAUSE)

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

2.2.9. LIABILITY AND RISK OF LOSS

2.2.9.1. SAAs For Shared Benefits – Cross-Waiver And Flow Down

2.2.9.1.1. Liability and Risk of Loss (Cross-Waiver with Flow Down Sample Clause)

A. Each Party hereby waives any claim against the other Party, employees of the other Party, the other Party's Related Entities (including but not limited to contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors or subcontractor at any tier), or employees of the other Party's Related Entities for any injury to, or death of, the waiving Party's employees or the employees of its Related Entities, or for damage to, or loss of, the waiving Party's property or the property of its Related Entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

B. Each Party further agrees to extend this cross-waiver to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or of its Related Entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement. Additionally, each Party shall require that their Related Entities extend this cross-waiver to their Related Entities by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or of its Related Entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement.

2.2.9.1.2. Liability and Risk of Loss (Cross-Waiver of Liability for Agreements Involving Activities Related to the ISS Sample Clause) (Based on 14 C.F.R. 1266.102)

A. The objective of this Article is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the

International Space Station (ISS). The Parties intend that the cross-waiver of liability be broadly construed to achieve this objective.

B. For the purposes of this Article:

1. The term "Damage" means:

a. Bodily injury to, or other impairment of health of, or death of, any person;

b. Damage to, loss of, or loss of use of any property;

c. Loss of revenue or profits; or

d. Other direct, indirect, or consequential Damage.

2. The term "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads, persons, or both.

3. The term "Partner State" includes each Contracting Party for which the Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

4. The term "Payload" means all property to be flown or used on or in a Launch Vehicle or the ISS.

5. The term "Protected Space Operations" means all Launch Vehicle or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of this Agreement, the IGA, MOUs concluded pursuant to the IGA, and implementing arrangements. It includes, but is not limited to:

a. Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch Vehicles or Transfer Vehicles, the ISS, Payloads, or instruments, as well as related support equipment and facilities and services; and
b. All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

"Protected Space Operations" also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA.

"Protected Space Operations" excludes activities on Earth which are conducted on return from the ISS to develop further a Payload's product or process for use other than for ISS-related activities in implementation of the IGA.

6. The term "Related Entity" means:

a. A contractor or subcontractor of a Party or a Partner State at any tier;
b. A user or customer of a Party or a Partner State at any tier; or
c. A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier.

The terms "contractor" and "subcontractor" include suppliers of any kind.

The term "Related Entity" may also apply to a State, or an agency or institution of a State, having the same relationship to a Partner State as described in paragraphs B.6.a. through B.6.c. of this Article or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph B.5. above.

7. The term "Transfer Vehicle" means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

C. Cross-waiver of liability:

1. Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs C.1.a. through C.1.d. of this Article based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

a. Another Party;
b. A Partner State other than the United States of America;
c. A Related Entity of any entity identified in paragraph C.1.a. or C.1.b. of this Article; or
d. The employees of any of the entities identified in paragraphs C.1.a. through C.1.c. of this Article.

2. In addition, each Party shall, by contract or otherwise, extend the cross-waiver of liability, as set forth in paragraph C.1. of this Article, to its Related Entities by requiring them, by contract or otherwise, to:

a. Waive all claims against the entities or persons identified in paragraphs C.1.a. through C.1.d. of this Article; and

b. Require that their Related Entities waive all claims against the entities or persons identified in paragraphs C.1.a. through C.1.d. of this Article.

3. For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

4. Notwithstanding the other provisions of this Article, this cross-waiver of liability shall not be applicable to:

a. Claims between a Party and its own Related Entity or between its own Related Entities;
b. Claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to this Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;
c. Claims for Damage caused by willful misconduct;
d. Intellectual property claims;
e. Claims for Damage resulting from a failure of a Party to extend the cross-waiver of liability to its Related Entities, pursuant to paragraph C.2. of this Article; or
f. Claims by a Party arising out of or relating to another Party's failure to perform its obligations under this Agreement.

5. Nothing in this Article shall be construed to create the basis for a claim or suit where none would otherwise exist.

D. To the extent that activities under this Agreement are not within the definition of "Protected Space Operations," defined above, the following unilateral waiver of claims applies to activities under this Agreement.

1. Partner 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, Partner employees or the employees of Partner's related entities, or for damage to, or loss of, Partner's property or the property of its related entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

2. Partner 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 Agreement.

2.2.9.1.3. Liability and Risk of Loss – Cross-Waiver (Cross-Waiver of Liability for Launch Agreements for Science or Space Exploration Activities Unrelated to the ISS Sample Clause) (Based on 14 C.F.R. 1266.104)

A. The objective of this Article is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space. The Parties intend that the cross-waiver of liability be broadly construed to achieve this objective.

B. For purposes of this Article:

1. The term "Damage" means:
   a. Bodily injury to, or other impairment of health of, or death of, any person;
   b. Damage to, loss of, or loss of use of any property;
   c. Loss of revenue or profits; or
   d. Other direct, indirect, or consequential Damage.

2. The term "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth which carries Payloads, persons, or both.

3. The term "Payload" means all property to be flown or used on or in a Launch Vehicle.

4. The term "Protected Space Operations" means all Launch Vehicle or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an agreement for launch services. Protected Space Operations begins at the signature of this Agreement and ends when all activities done in implementation of this Agreement are completed. It includes, but is not limited to:

   a. Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch Vehicles or Transfer Vehicles, Payloads, or instruments, as well as related support equipment and facilities and services; and
   b. All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

"Protected Space Operations" excludes activities on Earth that are conducted on return from space to develop further a Payload's product or process for use other than for the activities within the scope of an agreement for launch services.

5. The term "Related Entity" means:

   a. A contractor or subcontractor of a Party at any tier;
   b. A user or customer of a Party at any tier; or
   c. A contractor or subcontractor of a user or customer of a Party at any tier.

The terms “contractor” and “subcontractor” include suppliers of any kind.

The term “Related Entity” may also apply to a State, or an agency or institution of a State, having the same relationship to a Party as described in paragraphs B.5.a. through B.5.c. of this Article, or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph B.4. above.

6. The term “Transfer Vehicle” means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

C. Cross-waiver of liability:

1. Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs C.1.a. through C.1.d. of this Article based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:

a. The other Party;
b. A party to another NASA agreement that includes flight on the same Launch Vehicle;
c. A Related Entity of any entity identified in paragraphs C.1.a. or C.1.b. of this Article; or
d. The employees of any of the entities identified in paragraphs C.1.a. through C.1.c. of this Article.

2. In addition, each Party shall extend the cross-waiver of liability, as set forth in paragraph C.1. of this Article, to its own Related Entities by requiring them, by contract or otherwise, to:

a. Waive all claims against the entities or persons identified in paragraphs C.1.a. through C.1.d. of this Article; and
b. Require that their Related Entities waive all claims against the entities or persons identified in paragraphs C.1.a. through C.1.d. of this Article.

3. For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

4. Notwithstanding the other provisions of this Article, this cross-waiver of liability shall not be applicable to:

a. Claims between a Party and its own Related Entity or between its own Related Entities;
b. Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to this Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;
c. Claims for Damage caused by willful misconduct;
d. Intellectual property claims;
e. Claims for Damage resulting from a failure of a Party to extend the cross-waiver of liability to its Related Entities, pursuant to paragraph C.2. of this Article; or
f. Claims by a Party arising out of or relating to another Party's failure to perform its obligations under this Agreement.

5. Nothing in this Article shall be construed to create the basis for a claim or suit where none would otherwise exist.

D. To the extent that activities under this Agreement are not within the definition of "Protected Space Operations," defined above, the following unilateral waiver of claims applies to activities under this Agreement.

1. Partner 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, Partner employees or the employees of Partner's related entities, or for damage to, or loss of, Partner's property or the property of its related entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

2. Partner 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 Agreement.

2.2.9.2. SAAs Primarily Benefitting an SAA Partner – Unilateral Waiver

2.2.9.2.1. Liability and Risk of Loss (Unilateral Waiver with Flow Down Sample Clause)

A. Partner 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, Partner employees or the employees of Partner's

related entities, or for damage to, or loss of, Partner's property or the property of its related entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

B. Partner 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 Agreement.

2.2.9.3. PRODUCT LIABILITY

2.2.9.3.1. Liability and Risk of Loss (Product Liability Sample Clause)

With respect to products or processes resulting from a Party's participation in an SAA, each Party that markets, distributes, or otherwise provides such product, or a product designed or produced by such a process, directly to the public will be solely responsible for the safety of the product or process.

2.2.9.3.2. Liability and Risk of Loss (Product Liability Indemnification Sample Clause)

In the event the U.S. Government incurs any liability based upon Partner's, or Partner's Related Entity's, use or commercialization of products or processes resulting from a Party's participation under this Agreement, Partner agrees to indemnify and hold the U.S. Government harmless against such liability, including costs and expenses incurred by the U.S. Government in defending against any suit or claim for such liability.

2.2.9.4. INSURANCE

2.2.9.4.1. Liability and Risk of Loss (Insurance for Damage to NASA Property Short Form Sample Clause)

A. Partner shall, at no cost to NASA, maintain throughout the term of the Agreement, insurance covering loss of or damage to U.S. Government property as a result of any activities conducted under this Agreement. The policy must be on terms acceptable to NASA, and cover the cost of repair or replacement, or the fair market value of (as reasonably determined by NASA) any U.S. Government property (real or personal) damaged as a result of activities conducted under this Agreement, including performance by the U.S. Government or the U.S. Government's contractors or subcontractors, at any tier.

B. Partner shall, prior to conducting any activities under this agreement, furnish to NASA certificates of insurance including material policy exclusions and waivers of subrogation evidencing such insurance. Said certificates shall state the amount of all deductibles and shall contain evidence that the policy or policies shall not be canceled or altered without at least thirty (30) calendar days prior written notice to NASA. It is understood and agreed that NASA shall be under no obligation to provide access to its facilities or equipment under this Agreement until the insurance required by this section has been obtained by Partner and accepted by NASA.

C. In the event U.S. Government property is damaged as a result of activities conducted under this agreement, Partner (as an insured loss payee) shall be solely responsible for the repair and restoration of such property subject to NASA direction. Partner's liability for such repair and restoration shall not exceed the agreed insurance policy limits.

2.2.9.4.2. Liability and Risk of Loss (Insurance for Damage to NASA Property Long Form Sample Clause)

A. Partner shall, at no cost to NASA, maintain throughout the term of the Agreement, insurance to cover the loss of or Damage to U.S. Government property as a result of any activities conducted under this Agreement. The policy must cover the cost of replacing (at fair market value, as reasonably determined by NASA) or repairing any U.S. Government property (real or personal) Damaged as a result of any performance of this Agreement, including performance by the U.S. Government or its contractors or subcontractors, at any tier. "Damage" shall mean damage to, loss of, or loss of use of any property; soil, sediment, surface water, ground water, or other environmental contamination or damage; loss of revenue or profits; other direct damages; or any indirect, or consequential damage arising therefrom.

B. The insurance required under this subparagraph shall provide coverage in an amount acceptable to NASA. All terms and conditions in the policy shall be acceptable to NASA, and shall require thirty (30) days notice to NASA of any cancellation or change affecting coverage. The policy shall cover all risks of loss except that it may exclude Damage caused by the U.S. Government's willful misconduct. The insurance policy shall provide that the insurer waives its right as a subrogee against U.S. Government contractors, subcontractors, or related entities for damage.

C. Upon obtaining the insurance required under this paragraph, or upon obtaining any modification or amendment thereof, Partner shall personally deliver, or send by registered or certified mail, postage prepaid, two copies of such insurance policy, or such modification or amendment, to NASA at the following address, or at such address as NASA may, from time to time, designate in writing:

National Aeronautics and Space Administration
Attn: Associate General Counsel (Commercial and Intellectual Property Law)
Washington, DC 20546
Or, *[Chief Counsel's Office, where appropriate]*

D. An insurance policy whose terms and conditions are reviewed and approved by NASA, or an agreement on an alternative method of protection, is a condition precedent to Partner's access to or use of U.S. Government property or U.S. Government services under this Agreement.

E. In the event Partner is unable to obtain insurance coverage required by subparagraph A. above, the Parties agree to consider, subject to review, approval and agreement by NASA, alternative methods of protecting U.S. Government property (*e.g.*, by acceptable self-insurance or purchase of an appropriate bond).

F. In the event U.S. Government property is Damaged as a result of activities conducted under this agreement, Partner (whether as an insured loss payee or under an alternate protection method) shall be solely responsible for the repair and restoration of such property subject to NASA direction. Partner's liability for such repair and restoration shall not exceed the agreed insurance policy or other protection method limits.

2.2.9.4.3. Liability and Risk of Loss (Insurance Protecting Third Parties Sample Clause)

A. For purposes of this Article, the following definitions shall be applicable:

1. "Liability" shall include payments made pursuant to United States' treaty or other international obligations, any judgment by a court of competent jurisdiction, administrative and litigation costs, and settlement payments.

2. "Damage" shall mean bodily injury to, or other impairment of health of, or death of any person; damage to, loss of, or loss of use of any property; soil, sediment, surface water, ground water, or other environmental contamination or damage; loss of revenue or profits; other direct damages; or any indirect, or consequential damage arising therefrom.

B. Liability and Damage:

1. Partner shall, at no cost to NASA, maintain insurance protecting the U.S. Government and U.S. Government contractors and subcontractors, at any tier, from any Liability as a result of any activities conducted under this Agreement, including launch and associated activities, resulting in Damage to:

a. Partner's employees or agents; and
b. Third parties, including U.S. Government employees, and U.S. Government contractor and subcontractor employees.

2. Insurance required under subparagraph B.1.a. above may be satisfied through a liability insurance policy or policies under subparagraph B.1.b. above. Notwithstanding any other requirement for notice in this Agreement, upon obtaining the insurance required under subparagraph B.1., or upon obtaining any modification or amendment thereof, Partner shall personally deliver, or send by registered or certified mail, postage prepaid, two copies of such insurance policy, or such modification or amendment, to NASA at the following address, or at such address as NASA may from time to time designate in writing:

National Aeronautics and Space Administration
Attn: Associate General Counsel (Commercial and Intellectual Property Law)
Washington, DC 20546

Or,

[*Chief Counsel's Office, where appropriate*]

3. Partner shall maintain insurance with terms and conditions as are currently available in the market for reasonable insurance premiums, taking into account renewals, but shall not be obligated to provide insurance limits in excess of $500,000,000 coverage. Partner shall provide to NASA certificates of insurance, and associated policies, evidencing the insurance required thereunder within a reasonable time before Partner begins to use Government property or Government services. Unless Partner provides evidence that such a condition in an insurance policy is not available at a reasonable premium, the insurance policy shall provide for the right of the U.S. Government to settle reasonably a claim after consultation with Partner and its underwriters.

4. Partner's insurance obtained pursuant to subparagraph B.1. shall not be the exclusive recourse of the United States in the event Liability exceeds the amount of coverage. The United States reserves the right to bring an action against any responsible party for Liability incurred by the United States under domestic or international law.

5. Each Party agrees to cooperate with the other in obtaining any information, data, reports, contracts, and similar materials in connection with the presentation or defense of any claim by either Party under any policy of insurance purchased to meet the requirements of this Article. If the U.S. Government takes control of the defense of its interests, which would otherwise have been within Partner's responsibility as established in this Article without the concurrence of Partner, Partner shall be released from any liability to the U.S. Government on account of the claim.

2.2.9.4.4. Agreement Partner's Self-Insurance for High Risk Activities (Sample Clause)

A. Partner shall submit, in writing, information on its proposed self-insurance program to NASA and obtain NASA's approval of the program. The submission shall be by segment or segments of the Partner's business to which the program applies and shall include:

1. A complete description of the program, including any resolution of the board of directors authorizing and adopting coverage, including types of risks, limits of coverage, assignments of safety and loss control, and legal service responsibilities;
2. If available, the corporate insurance manual and organization chart detailing fiscal responsibilities for insurance;
3. The terms regarding insurance coverage for any Government property;
4. The Partner's latest financial statements;
5. Any self-insurance feasibility studies or insurance market surveys reporting comparative alternatives;
6. Loss history, premiums history, and industry ratios;
7 A formula for establishing reserves, including percentage variations between losses paid and losses reserved;
8. Claims administration policy, practices, and procedures;
9. The method of calculating the projected average loss; and
10. A disclosure of all captive insurance company and reinsurance agreements, including methods of computing cost.

B. Programs of self-insurance covering Partner's insurable risks, including the deductible portion of purchased insurance, may be approved when examination of a program indicates that its application is in NASA's interest.

C. Once NASA has approved a program, the Partner must submit to that official for approval any major proposed changes to the program. Any program approval may be withdrawn if NASA finds that either:

1. Any part of a program does not comply with the requirements of this Article; or
2. Conditions or situations existing at the time of approval that were a basis for original approval of the program have changed to the extent that a program change is necessary.

D. To qualify for a self-insurance program, a Partner must demonstrate ability to sustain the potential losses involved. In making the determination, NASA shall consider the following factors:

1. The soundness of the Partner's financial condition, including available lines of credit.
2. The geographic dispersion of assets, so that the potential of a single loss depleting all the assets is unlikely.
3. The history of previous losses, including frequency of occurrence and the financial impact of each loss.
4. The type and magnitude of risk, such as minor coverage for the deductible portion of purchased insurance or major coverage for hazardous risks.
5. The Partner's compliance with Federal and State laws and regulations.

E. NASA will not approve self-insurance for catastrophic risks. Should performance of responsibilities under this Agreement create the risk of catastrophic losses, NASA may, in limited situations, agree to indemnify Partner to the extent authorized by law.

2.2.9.4.5. Liability and Risk of Loss (Commercial General Liability Insurance)

A. Insurance Coverage and Amounts.

Partner shall, at all times during the term of this Agreement and at Partner's sole cost and expense, obtain and keep in force the insurance coverage and amounts set forth in this section 1. Partner shall maintain commercial general liability insurance, including contractual liability, broad form property damage liability, fire, legal liability, products and completed operations, and medical payments, with limits not less than $1,000,000 per occurrence and aggregate, insuring against claims for bodily injury, personal injury and property damage arising from activities under this Agreement. The policy shall contain an exception to any pollution exclusion that insures damage or injury arising out of heat, smoke or fumes from a hostile fire. Any general aggregate shall apply on a per location basis. If Partner uses owned, hired or non-owned vehicles, Partner shall maintain business auto liability insurance with limits not less than $1,000,000 per accident covering such vehicles. Partner shall carry workers' compensation insurance for all of its employees in statutory limits as required by state law and employer's liability insurance that affords not less than $500,000 for each coverage. Any deductibles selected by Partner for any insurance policy described in this section 1 shall be the sole responsibility of Partner.

B. Insurance Requirements.

1. All insurance and all renewals thereof shall be issued by companies with a rating of at least "A-" "VIII" (or its equivalent successor) or better in the current edition of Best's Insurance Reports (or its equivalent successor, or, if there is no equivalent successor rating, otherwise acceptable to NASA) and be licensed to do and doing business in [*STATE*].

2. Each policy shall be endorsed to provide that the policy shall not be canceled or materially altered without thirty (30) days prior written notice to NASA and shall remain in effect notwithstanding any such cancellation or alteration until such notice shall have been given to NASA and such period of thirty (30) days shall have expired.

3. The commercial general liability and any automobile liability insurance shall be endorsed to name NASA (and any other parties designated by NASA) as an additional insured, shall be primary and noncontributing with any insurance which may be carried by NASA, and shall afford coverage for all claims based on any act, omission, event or condition that occurred or arose (or the onset of which occurred or arose) during the policy period.

4. Partner shall deliver certificates of insurance and endorsements, acceptable to NASA, to NASA before the commencement of activities under this Agreement and at least ten (10) days before expiration of each policy. Such documents shall be delivered to the address for certificate holder set forth below. If Partner fails to insure or fails to furnish any such insurance certificate, endorsement or policy, NASA shall have the right from time to time to effect such insurance for the benefit of Partner or NASA or both of them, and Partner shall pay to NASA on written demand, as additional reimbursement under this Agreement, all premiums paid by NASA. Each certificate of insurance shall list the certificate holder as follows:

National Aeronautics and Space Administration
[*CENTER*]
Attn: Office of the Chief Counsel
Mail Stop [*MS*]
[*ADDRESS*]

5. If NASA at any time believes that the limits or extent of coverage or deductibles with respect to any of the insurance required in this Agreement are insufficient, NASA may determine the proper and reasonable limits and extent of coverage and deductibles for such insurance and such insurance shall thereafter be carried with the limits and extent of coverage and deductibles as so determined until further change pursuant to the provisions of this Agreement.

6. No approval by NASA of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by NASA of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible. By requiring insurance, NASA makes no representation or warranty that coverage or limits will necessarily be adequate to protect Partner, and such coverage and limits shall not be deemed as a limitation on

Partner's liability under any indemnities granted to NASA in this Agreement.

7. Failure of NASA to demand such certificate or other evidence of full compliance with these insurance requirements or failure of NASA to identify a deficiency from evidence that is provided shall not be construed as a waiver of Partner's obligation to maintain such insurance**.**

2.2.10. INTELLECTUAL PROPERTY RIGHTS

2.2.10.1. DATA RIGHTS

2.2.10.1.1. Intellectual Property Rights - Data Rights (Proprietary Data Exchange Not Expected Sample Clause)

A. General

1. "Related Entity" as used in this Data Rights Article[87] means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner, that is assigned, tasked, or contracted to perform activities under this Agreement.
2. "Data," means recorded information, regardless of form, the media on which it is recorded, or the method of recording.
3. "Proprietary Data," means Data embodying trade secrets developed at private expense or commercial or financial information that is privileged or confidential, and that includes a restrictive notice, unless the Data is:
   a. known or available from other sources without restriction;
   b. known, possessed, or developed independently, and without reference to the Proprietary Data;
   c. made available by the owners to others without restriction; or
   d. required by law or court order to be disclosed.
4. Data exchanged under this Agreement is exchanged without restriction except as otherwise provided herein.
5. Notwithstanding any restrictions provided in this Article, the Parties are not restricted in the use, disclosure, or reproduction of Data provided under this Agreement that meets one of the exceptions in 3. above. If a Party believes that any exceptions apply, it shall notify the other Party before any unrestricted use, disclosure, or reproduction of the Data.
6. The Parties will not exchange preexisting Proprietary Data under this Agreement unless authorized herein or in writing by the owner.
7. If the Parties exchange Data having a notice that the Receiving Party deems is ambiguous or unauthorized, the Receiving Party shall tell the Providing Party. If the notice indicates a restriction, the Receiving Party shall protect the Data under this Article unless otherwise directed in writing by the Providing Party.
8. The Data rights herein apply to the employees and Related Entities of Partner. Partner shall ensure that its employees and Related Entity employees know about and are bound by the obligations under this Article.

[87] Note: "Related Entities" is defined differently for the Intellectual Property provisions than for the Liability and Risk of Loss provisions.

9. Disclaimer of Liability: NASA is not restricted in, or liable for, the use, disclosure, or reproduction of Data without a restrictive notice, or for Data Partner gives, or is required to give, the U.S. Government without restriction.

B. Data First Produced by Partner Under this Agreement

If Data first produced by Partner or its Related Entities under this Agreement is given to NASA, and the Data is Proprietary Data, and it includes a restrictive notice, NASA will use reasonable efforts to protect it. The Data will be disclosed and used (under suitable protective conditions) only for U.S. Government purposes.

C. Data First Produced by NASA Under this Agreement

If Partner requests that Data first produced by NASA under this Agreement be protected, and NASA determines it would be Proprietary Data if obtained from Partner, NASA will use reasonable efforts to mark it with a restrictive notice and protect it for [*insert a period of up to five years, typically one or two years*] after its development. During this restricted period the Data may be disclosed and used (under suitable protective conditions) for U.S. Government purposes only, and thereafter for any purpose. Partner must not disclose the Data without NASA's written approval during the restricted period. The restrictions placed on NASA do not apply to Data disclosing a NASA-owned invention for which patent protection is being considered.

[*Umbrella Agreements – use the following substitute paragraph C.*]

C. Data First Produced by NASA under this Agreement

If Partner requests that Data first produced by NASA under this Agreement be protected, and NASA determines it would be Proprietary Data if obtained from Partner, NASA will mark the Data with a restrictive notice and will use reasonable efforts to protect it for the period of time specified in the Annex under which the Data is produced. During this restricted period the Data may be disclosed and used (under suitable protective conditions) for U.S. Government purposes only, and thereafter for any purpose. Partner must not disclose the Data without NASA's written approval during the restricted period. The restrictions placed on NASA do not apply to Data disclosing a NASA-owned invention for which patent protection is being considered.

D. Publication of Results

The National Aeronautics and Space Act (51 U.S.C. § 20112) requires NASA to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof. As such, NASA may publish unclassified and non-Proprietary Data resulting from work performed under this Agreement. The Parties will coordinate publication of results allowing a reasonable time to review and comment.

E. Data Disclosing an Invention

If the Parties exchange Data disclosing an invention for which patent protection is being considered, and the furnishing Party identifies the Data as such when providing it to the Receiving Party, the Receiving Party shall withhold it from public disclosure for a reasonable time (one (1) year unless otherwise agreed or the Data is restricted for a longer period herein).

F. Copyright

Data exchanged with a copyright notice and with no restrictive notice is presumed to be published. The following royalty-free licenses apply:

1. If indicated on the Data that it was produced outside of this Agreement, it may be reproduced, distributed, and used to prepare derivative works only for carrying out the Receiving Party's responsibilities under this Agreement.
2. Data without the indication of F.1. is presumed to be first produced under this Agreement. Except as otherwise provided in paragraph E. of this Article, and in the *Inventions and Patent Rights* Article of this Agreement for protection of reported inventions, the Data may be reproduced, distributed, and used to prepare derivative works for any purpose.

G. Data Subject to Export Control

Whether or not marked, technical data subject to the export laws and regulations of the United States provided to Partner under this Agreement must not be given to foreign persons or transmitted outside the United States without proper U.S. Government authorization.

2.2.10.1.1.2. Intellectual Property Rights – Identified Intellectual Property (Annex Sample Clause Where Proprietary Data Exchange Is Not Expected)

Data produced under this Annex which is subject to paragraph C. of the *Intellectual Property Rights - Data Rights* Article of the Umbrella Agreement will be protected for the period of [*insert a period of up to five years, typically one or two years*].

2.2.10.1.2. Intellectual Property Rights - Data Rights (Proprietary Data Exchange Expected Sample Clause)

A. General

1. "Related Entity" as used in this Data Rights Article means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner that is assigned, tasked, or contracted to perform activities under this Agreement.
2. "Data" means recorded information, regardless of form, the media on which it is recorded, or the method of recording.
3. "Proprietary Data" means Data embodying trade secrets developed at private expense or commercial or financial information that is privileged or confidential, and that includes a restrictive notice, unless the Data is:
    a. known or available from other sources without restriction;

b. known, possessed, or developed independently, and without reference to the Proprietary Data;
c. made available by the owners to others without restriction; or
d. required by law or court order to be disclosed.

4. Data exchanged under this Agreement is exchanged without restriction except as otherwise provided herein.
5. Notwithstanding any restrictions provided in this Article, the Parties are not restricted in the use, disclosure, or reproduction of Data provided under this Agreement that meets one of the exceptions in 3., above. If a Party believes that any exceptions apply, it shall notify the other Party before any unrestricted use, disclosure, or reproduction of the Data.
6. The Parties will not exchange preexisting Proprietary Data under this Agreement unless authorized herein or in writing by the owner.
7. If the Parties exchange Data having a notice that the Receiving Party deems is ambiguous or unauthorized, the Receiving Party shall tell the Providing Party. If the notice indicates a restriction, the Receiving Party shall protect the Data under this Article unless otherwise directed in writing by the Providing Party.
8. The Data rights herein apply to the employees and Related Entities of Partner. Partner shall ensure that its employees and Related Entity employees know about and are bound by the obligations under this Article.
9. Disclaimer of Liability: NASA is not restricted in, or liable for, the use, disclosure, or reproduction of Data without a restrictive notice, or for Data Partner gives, or is required to give, the U.S. Government without restriction.
10. Partner may use the following or a similar restrictive:

> **Proprietary Data Notice**
> The data herein include Proprietary Data and are restricted under the Data Rights provisions of Space Act Agreement [*provide applicable identifying information*].

Partner should also mark each page containing Proprietary Data with the following or a similar legend: "**Proprietary Data – Use And Disclose Only Under the Notice on the Title or Cover Page**."

B. Data First Produced by Partner Under this Agreement

If Data first produced by Partner or its Related Entities under this Agreement is given to NASA, and the Data is Proprietary Data, and it includes a restrictive notice, NASA will use reasonable efforts to protect it. The Data will be disclosed and used (under suitable protective conditions) only for U.S. Government purposes.

C. Data First Produced by NASA Under this Agreement

If Partner requests that Data first produced by NASA under this Agreement be protected, and NASA determines it would be Proprietary Data if obtained from Partner, NASA will mark it with a restrictive notice and use reasonable efforts to protect it for [*insert a period of up to five years, typically one or two years*] after its development. During this restricted period the Data may be disclosed and used (under suitable protective conditions) for U.S. Government purposes only, and thereafter for any purpose. Partner must not disclose the Data without NASA's written

approval during the restricted period. The restrictions placed on NASA do not apply to Data disclosing a NASA owned invention for which patent protection is being considered.

[*Umbrella Agreements – use the following substitute paragraph C.*]

C. Data First Produced by NASA Under this Agreement

If Partner requests that Data first produced by NASA or its Related Entities under this Agreement be protected, and NASA determines it would be Proprietary Data if obtained from Partner, NASA will mark the Data with a restrictive notice and will use reasonable efforts to protect it for the period of time specified in the Annex under which the Data is produced. During this restricted period the Data may be disclosed and used (under suitable protective conditions) for U.S. Government purposes only, and thereafter for any purpose. Partner must not disclose the Data without NASA's written approval during the restricted period. The restrictions placed on NASA do not apply to Data disclosing a NASA owned invention for which patent protection is being considered.

D. Publication of Results

The National Aeronautics and Space Act (51 U.S.C. § 20112) requires NASA to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof. As such, NASA may publish unclassified and non-Proprietary Data resulting from work performed under this Agreement. The Parties will coordinate publication of results allowing a reasonable time to review and comment.

E. Data Disclosing an Invention

If the Parties exchange Data disclosing an invention for which patent protection is being considered, and the furnishing Party identifies the Data as such when providing it to the Receiving Party, the Receiving Party shall withhold it from public disclosure for a reasonable time (one (1) year unless otherwise agreed or the Data is restricted for a longer period herein).

F. Copyright

Data exchanged with a copyright notice and with no restrictive notice is presumed to be published. The following royalty-free licenses apply.

1. If indicated on the Data that it was produced outside of this Agreement, it may be reproduced, distributed, and used to prepare derivative works only for carrying out the Receiving Party's responsibilities under this Agreement.
2. Data without the indication of F.1. is presumed to be first produced under this Agreement. Except as otherwise provided in paragraph E. of this Article, and in the *Invention and Patent Rights* Article of this Agreement for protection of reported inventions, the Data may be reproduced, distributed, and used to prepare derivative works for any purpose.

G. Data Subject to Export Control

Whether or not marked, technical data subject to the export laws and regulations of the United States provided to Partner under this Agreement must not be given to foreign persons or transmitted outside the United States without proper U.S. Government authorization.

H. Handling of Background, Third Party Proprietary, and Controlled Government Data

1. NASA or Partner (as Disclosing Party) may provide the other Party or its Related Entities (as Receiving Party):

a. Proprietary Data developed at Disclosing Party's expense outside of this Agreement (referred to as Background Data);

b. Proprietary Data of third parties that Disclosing Party has agreed to protect or is required to protect under the Trade Secrets Act (18 U.S.C. § 1905) (referred to as Third Party Proprietary Data); and

c. U.S. Government Data, including software and related Data, Disclosing Party intends to control (referred to as Controlled Government Data).

2. All Background, Third Party Proprietary and Controlled Government Data provided by Disclosing Party to Receiving Party shall be marked by Disclosing Party with a restrictive notice and protected by Receiving Party in accordance with this Article.

3. Disclosing Party provides the following Data to Receiving Party. The lists below may not be comprehensive, are subject to change, and do not supersede any restrictive notice on the Data.

a. Background Data:

The Disclosing Party's Background Data, if any, will be identified in a separate document.

b. Third Party Proprietary Data:

The Disclosing Party's Third Party Proprietary Data, if any, will be identified in a separate document.

c. Controlled Government Data:

The Disclosing Party's Controlled Government Data, if any, will be identified in a separate document.

d. Notwithstanding H.4., NASA software and related Data will be provided to Partner under a separate Software Usage Agreement (SUA). Partner shall use and protect the related Data in accordance with this Article. Unless the SUA authorizes retention, or Partner enters into a license under 37 C.F.R. Part 404, the related Data shall be disposed of as NASA directs:

[*Insert name and NASA Case # of the software; if none, insert "None."*]

4. For such Data identified with a restrictive notice pursuant to H.2., Receiving Party shall:

a. Use, disclose, or reproduce such Data only as necessary under this Agreement;

b. Safeguard such Data from unauthorized use and disclosure;

c. Allow access to such Data only to its employees and any Related Entity requiring access under this Agreement;

d. Except as otherwise indicated in 4.c., preclude disclosure outside Receiving Party's organization;

e. Notify its employees with access about their obligations under this Article and ensure their compliance, and notify any Related Entity with access about their obligations under this Article; and
f. Dispose of such Data as Disclosing Party directs.

[*Umbrella Agreement – use the following substitute paragraph H.*]

H. Handling of Background, Third Party and Controlled Government Data

1. NASA or Partner (as Disclosing Party) may provide the other Party or its Related Entities (as Receiving Party):
   a. Proprietary Data developed at the Disclosing Party's expense outside of this Agreement (referred to as Background Data);
   b. Proprietary Data of third parties that the Disclosing Party has agreed to protect or is required to protect under the Trade Secrets Act (18 U.S.C. § 1905) (referred to as Third Party Proprietary Data); and
   c. U.S. Government Data, including software and related Data, the Disclosing Party intends to control (referred to as Controlled Government Data).
2. All Background, Third Party Proprietary and Controlled Government Data provided by Disclosing Party to Receiving Party shall be marked by Disclosing Party with a restrictive notice and protected by Receiving Party in accordance with this Article.
3. Identification of Data:
   a. All Background, Third Party Proprietary and Controlled Government Data provided by Disclosing Party shall be identified in the Annex under which it will be provided.
   b. Notwithstanding H.4., NASA software and related Data provided to Partner shall be identified in the Annex under which it will be used. Software and related Data will be provided to Partner under a separate Software Usage Agreement (SUA). Partner shall use and protect the related Data in accordance with this Article. Unless the SUA authorizes retention, or Partner enters into a license under 37 C.F.R. Part 404, the related Data shall be disposed of as instructed by NASA.
4. For such Data identified with a restrictive notice pursuant to H.2., Receiving Party shall:
   a. Use, disclose, or reproduce such Data only as necessary under this Agreement;
   b. Safeguard such Data from unauthorized use and disclosure;
   c. Allow access to such Data only to its employees and any Related Entity requiring access under this Agreement;
   d. Except as otherwise indicated in 4.c., preclude disclosure outside Receiving Party's organization;
   e. Notify its employees with access about their obligations under this Article and ensure their compliance, and notify any Related Entity with access about their obligations under this Article; and
   f. Dispose of such Data as Disclosing Party directs.

I. Oral and visual information

If Partner discloses Proprietary Data orally or visually, NASA will have no duty to restrict, or liability for disclosure or use, unless Partner:

1. Orally informs NASA before initial disclosure that the Data is Proprietary Data, and
2. Reduces the Data to tangible form with a restrictive and gives it to NASA within ten (10) calendar days after disclosure.

[*Note: Add paragraph J only if National Security Classified Information will be exchanged – rarely used.*]

J. Classified Material

If classified material is used under this Agreement, Partner must provide a completed Contract Security Classification Specification (DD Form 254 or equivalent) to the NASA Point of Contact. Handling of classified material must be consistent with NASA and U.S Federal Government statutes, regulations, and policies.

2.2.10.1.2.1. Intellectual Property Rights – Identified Intellectual Property (Annex Sample Clause where Proprietary Data Exchange Is Expected)

A. Data produced under this Annex which is subject to paragraph C. of the *Intellectual Property Rights - Data Rights* Article of the Umbrella Agreement will be protected for the period of [*insert a period of up to five years, typically one or two years*].

B. Under paragraph H. of the *Intellectual Property Rights - Data Rights* Article of the Umbrella Agreement, Disclosing Party provides the following Data to Receiving Party. The lists below may not be comprehensive, are subject to change, and do not supersede any restrictive notice on the Data provided.

1. Background Data:
   The Disclosing Party's Background Data, if any, will be identified in a separate document.
2. Third Party Proprietary Data:
   The Disclosing Party's Third Party Proprietary Data, if any, will be identified in a separate document.
3. Controlled Government Data:
   The Disclosing Party's Controlled Government Data, if any, will be identified in a separate document.
4. The following software and related Data will be provided to Partner under a separate Software Usage Agreement:
   [*Insert name and NASA Case # of the software; if none, insert "None."*]

2.2.10.1.3. Intellectual Property Rights - Data Rights (Reimbursable SAA For the Benefit of a Foreign Entity Sample Clause)

A. General

1. "Related Entity" as used in this Data Rights Article means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner, that is assigned, tasked, or contracted to perform activities under this Agreement.
2. "Data" means recorded information, regardless of form, media on which it is recorded, or the method of recording.
3. "Proprietary Data" means Data embodying trade secrets developed at private expense or commercial or financial information that is privileged or confidential, and that includes a restrictive notice, unless the Data is:
    a. known or available from other sources without restriction;
    b. known, possessed, or developed independently, and without reference to the Proprietary Data;
    c. made available by the owners to others without restriction; or
    d. required by law or court order to be disclosed.
4. Data exchanged under this Agreement is exchanged without restriction except as otherwise provided herein.
5. Notwithstanding any restrictions provided in this Article, the Parties are not restricted in the use, disclosure, or reproduction of Data provided under this Agreement that meets one of the exceptions in 3., above. If a Party believes that any exceptions apply, it shall notify the other Party before any unrestricted use, disclosure, or reproduction of the Data.
6. The Parties will not exchange preexisting Proprietary Data under this Agreement unless authorized herein or in writing by the owner.
7. If the Parties exchange Data having a notice that the Receiving Party deems to be ambiguous or unauthorized, the Receiving Party shall tell the Providing Party. If the notice indicates a restriction, the Receiving Party shall protect the Data under this Article unless otherwise directed in writing by the providing Party.
8. The Data rights herein apply to the employees and Related Entities of Partner. Partner shall ensure that its employees and Related Entity employees know about and are bound by the obligations under this Article.
9. Disclaimer of Liability: NASA is not restricted in, or liable for, the use, disclosure, or reproduction of Data without a restrictive notice, or for Data Partner gives, or is required to give, the U.S. Government without restriction.
10. Partner may use the following or a similar restrictive:

    Proprietary Data Notice
    The data herein include Proprietary Data and are restricted under the Data Rights provisions of Space Act Agreement [*provide applicable identifying information*].

11. Partner should also mark each page containing Proprietary Data with the following or a similar legend: "**Proprietary Data – Use And Disclose Only Under the Notice on the Title or Cover Page**."

B. Data First Produced by Partner Under this Agreement

If Data first produced by Partner or its Related Entities under this Agreement is given to NASA, and the Data is Proprietary Data, and it includes a restrictive notice, NASA will use reasonable efforts to protect it. The Data will be disclosed and used (under suitable protective conditions) only for U.S. Government purposes.

C. Data First Produced by NASA under this Agreement

If Partner requests that Data first produced by NASA under this Agreement be protected, and NASA determines it would be Proprietary Data if obtained from Partner, NASA will mark it with a restrictive notice and use reasonable efforts to protect it for one (1) year after its development. During this restricted period the Data may be disclosed and used (under suitable protective conditions) for U.S. Government purposes only, and thereafter for any purpose. Partner must not disclose the Data without NASA's written approval during the restricted period. The restrictions placed on NASA do not apply to Data disclosing a NASA- owned invention for which patent protection is being considered.

D. Publication of Results

The National Aeronautics and Space Act (51 U.S.C. § 20112) requires NASA to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof. As such, NASA may publish unclassified and non-Proprietary Data resulting from work performed under this Agreement. The Parties will coordinate publication of results allowing a reasonable time for review and comment.

E. Data Disclosing an Invention

If the Parties exchange Data disclosing an invention for which patent protection is being considered, and the furnishing Party identifies the Data as such when providing it to the Receiving Party, the Receiving Party shall withhold it from public disclosure for a reasonable time (one (1) year unless otherwise agreed, or the Data is restricted for a longer period herein).

F. Copyright

Data exchanged with a copyright notice and with no restrictive notice is presumed to be published. The following royalty-free licenses apply:

1. If indicated on the Data that it was produced outside of this Agreement, it may be reproduced, distributed, and used to prepare derivative works only for carrying out the Receiving Party's responsibilities under this Agreement.
2. Data without the indication of 1. is presumed to be first produced under this Agreement. Except as otherwise provided in paragraph E. of this Article, and in the *Inventions and Patent Rights* Article of this Agreement for protection of reported inventions, the Data may be reproduce, distributed, and used to prepare derivative works for any purpose.

G. Data Subject to Export Control

1. NASA may provide export controlled technical data to Partner only upon obtaining proper U.S. Government authorization and any required export license(s) in compliance with the export laws and regulations of the United States.
2. If NASA provides export controlled technical data to Partner, Partner may provide the export controlled technical data to its employees who need it to perform Partner's responsibilities under this Agreement.
3. Whether or not marked, Partner shall not, without proper U.S. Government authorization, provide any export controlled technical data provided to Partner under this Agreement to any foreign persons other than its employees under paragraph 2. above, or transmit such export controlled technical data outside the United States.

H. Handling of Background, Third Party Proprietary, and Controlled Government Data

1. NASA or Partner (as Disclosing Party) may provide the other Party or its Related Entities (as Receiving Party):
    a. Proprietary Data developed at Disclosing Party's expense outside of this Agreement (referred to as Background Data);
    b. Proprietary Data of third parties that Disclosing Party has agreed to protect or is required to protect under the Trade Secrets Act (18 U.S.C. § 1905) (referred to as Third Party Proprietary Data); and
    c. U.S. Government Data, including software and related Data, Disclosing Party intends to control (referred to as Controlled Government Data).
2. All Background, Third Party Proprietary and Controlled Government Data provided by Disclosing Party to Receiving Party shall be marked by Disclosing Party with a restrictive notice and protected by Receiving Party in accordance with this Article.
3. Disclosing Party provides the following Data to Receiving Party. The lists below may not be comprehensive, are subject to change, and do not supersede any restrictive notice on the Data.
    a. Background Data:
        The Disclosing Party's Background Data, if any, will be identified in a separate document.
    b. Third Party Proprietary Data:
        The Disclosing Party's Third Party Proprietary Data, if any, will be identified in a separate document. [*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]
    c. Controlled Government Data:
        The Disclosing Party's Controlled Government Data, if any, will be identified in a separate document.
    d. Notwithstanding H.4., NASA software and related Data will be provided to Partner under a separate Software Usage Agreement (SUA). Partner shall use and protect the related Data in accordance with this Article. Unless the SUA authorizes retention, or Partner enters into a license under 37 C.F.R. Part 404, the related Data shall be disposed of as NASA directs:
        [*Insert name and NASA Case # of the software; if none, insert "None."*]

4. For such Data identified with a restrictive notice pursuant to H.2., Receiving Party shall:

a. Use, disclose, or reproduce such Data only as necessary under this Agreement;
b. Safeguard such Data from unauthorized use and disclosure;
c. Allow access to such Data only to its employees and any Related Entity requiring access under this Agreement;
d. Except as otherwise indicated in 4.c., preclude disclosure outside Receiving Party's organization;
e. Notify its employees with access about their obligations under this Article and ensure their compliance, and notify any Related Entity with access about their obligations under this Article; and
f. Dispose of such Data as Disclosing Party directs.

I. Oral and visual information

If Partner discloses Proprietary Data orally or visually, NASA will have no duty to restrict, or liability for disclosure or use, unless Partner:

1. Orally informs NASA before initial disclosure that the Data is Proprietary Data, and
2. Reduces the Data to tangible form with a restrictive notice, and gives it to NASA within ten (10) calendar days after disclosure.

2.2.10.1.4. Intellectual Property Rights - Data Rights (Free Exchange of Data Sample Clause)

Information and data exchanged under this Agreement is exchanged without restrictions unless required by national security regulations (*e.g.*, classified information) or as otherwise provided in this Agreement or agreed to by the Parties for specifically identified information or data (*e.g.*, information or data specifically marked with a restrictive notice).

2.2.10.2. INTELLECTUAL PROPERTY RIGHTS - RIGHTS IN RAW DATA (SAMPLE CLAUSE)

A. Raw Data

Raw data (*i.e.*, unanalyzed data) and related Data produced under this Agreement is reserved to Principal Investigators (and Co-Investigators if any) named in this Agreement for scientific analysis and first publication rights for [*insert a period of time generally not more than one year*] beginning with receipt of the Data in a form suitable for analysis. Subject to the provisions of the *Intellectual Property Rights - Data Rights* Article of this Agreement, NASA and Partner may also use the Data during the restricted period. This use will not prejudice the investigators' first publication rights.

B. Final Results

1. Final results shall be made available to the scientific community through publication in appropriate journals or other established channels as soon as practicable and consistent with good scientific practice. Under the *Publication of Results* provision of the *Intellectual Property Rights - Data Rights* Article of this Agreement, the Parties shall coordinate proposed publications allowing a reasonable time for review and comment.
2. NASA and Partner have a royalty-free right to reproduce, distribute, and use published final results for any purposes. Partner must notify publisher of NASA's rights.

2.2.10.3. INTELLECTUAL PROPERTY RIGHTS – INVENTION AND PATENT RIGHTS

2.2.10.3.1. Intellectual Property Rights - Invention and Patent Rights (Short Form Sample Clause)

A. "Related Entity" as used in this Invention and Patent Rights Article means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner assigned, tasked, or contracted with to perform activities under this Agreement.

B. The invention and patent rights herein apply to employees and Related Entities of Partner. Partner shall ensure that its employees and Related Entity employees know about and are bound by the obligations under this Article.

C. NASA has determined that 51 U.S.C. § 20135(b) does not apply to this Agreement. Therefore, title to inventions made (conceived or first actually reduced to practice) under this Agreement remain with the respective inventing party(ies). No invention or patent rights are exchanged or granted under this Agreement. NASA and Partner will use reasonable efforts to report inventions made jointly by their employees (including employees of their Related Entities). The Parties will consult and agree on the responsibilities and actions to establish and maintain patent protection for joint invention, and on the terms and conditions of any license or other rights exchanged or granted between them.

2.2.10.3.2. Intellectual Property Rights - Invention and Patent Rights (Long Form Sample Clause)

A. General

1. NASA has determined that 51 U.S.C. § 20135(b) does not apply to this Agreement. Therefore, title to inventions made (conceived or first actually reduced to practice) under this Agreement remain with the respective inventing party(ies). No invention or patent rights are exchanged or granted under this Agreement, except as provided herein.
2. "Related Entity" as used in this Invention and Patent Rights Article means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner assigned, tasked, or contracted with to perform activities under this Agreement.

3. The invention and patent rights herein apply to employees and Related Entities of Partner. Partner shall ensure that its employees and Related Entity employees know about and are bound by the obligations under this Article.

B. NASA Inventions

NASA will use reasonable efforts to report inventions made under this Agreement by its employees. Upon request, NASA will use reasonable efforts to grant Partner, under 37 C.F.R. Part 404, a negotiated license to any NASA invention made under this Agreement. This license is subject to paragraph E.1. of this Article.

C. NASA Related Entity Inventions

NASA will use reasonable efforts to report inventions made under this Agreement by its Related Entity employees, or jointly between NASA and Related Entity employees, where NASA has the right to acquire title. Upon request, NASA will use reasonable efforts to grant Partner, under 37 C.F.R. Part 404, a negotiated license to any of these inventions where NASA has acquired title. This license is subject to paragraph E.2. of this Article.

D. Joint Inventions With Partner

The Parties will use reasonable efforts to report, and cooperate in obtaining patent protection on, inventions made jointly between NASA employees, Partner employees, and employees of either Party's Related Entities. Upon timely request, NASA may, at its sole discretion and subject to paragraph E. of this Article:

1. refrain from exercising its undivided interest inconsistently with Partner's commercial business; or
2. use reasonable efforts to grant Partner, under 37 C.F.R. Part 404, an exclusive or partially exclusive negotiated license.

E. Rights to be Reserved in Partner's License

Any license granted Partner under paragraphs B., C., or D. of this Article is subject to the following:

1. For inventions made solely or jointly by NASA employees, NASA reserves the irrevocable, royalty-free right of the U.S. Government to practice the invention or have it practiced on behalf of the United States or on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.
2. For inventions made solely or jointly by employees of a NASA Related Entity, NASA reserves the rights in 1. above, and a revocable, nonexclusive, royalty-free license retained by the Related Entity under 14 C.F.R. § 1245.108 or 37 C.F.R. § 401.14 (e).

F. Protection of Reported Inventions

For inventions reported under this Article, the Receiving Party shall withhold all invention reports or disclosures from public access for a reasonable time (1 year unless otherwise agreed or unless restricted longer herein) to facilitate establishment of patent rights.

G. Patent Filing Responsibilities and Costs

1. The invention and patent rights herein apply to any patent application or patents covering an invention made under this Agreement. Each Party is responsible for its own costs of obtaining and maintaining patents covering sole inventions of its employees. The Parties may agree otherwise, upon the reporting of any invention (sole or joint) or in any license granted.
2. Partner shall include the following in patent applications for an invention made jointly between NASA employees, its Related Entity employees and Partner employees:

The invention described herein may be manufactured and used by or for the U.S. Government for U.S. Government purposes without the payment of royalties thereon or therefore.

[*Note: Partner should be informed that it can locate NASA technology available for licensing by visiting the following website address – http://technology.nasa.gov.*]

2.2.10.3.3. Intellectual Property Rights - Invention and Patent Rights (Title Taking Sample Clause)

A. Definitions

1. "Administrator" means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.
2. "Patent Representative" means the NASA [*enter Center name*] Patent Counsel (or Chief Counsel at Centers with no Patent Counsel). Send Patent Representative correspondence to:
   Patent Counsel [*or enter other NASA official if no Patent Counsel*]
   [*enter mailing address*]
3. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the U.S.C.
4. "Made," in relation to any invention, means the conception or first actual reduction to practice.
5. "Practical application" means to:
   a. manufacture, in the case of a composition or product;
   b. practice, in the case of a process or method; or
   c. operate, in case of a machine or system;
in each case, under conditions establishing the invention is being used, and its benefits are publicly available on reasonable terms, as permitted by law.

6. “Related Entity” as used in this Invention and Patent Rights Article means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner assigned, tasked, or contracted with to perform activities under this Agreement.
7. “Manufactured substantially in the United States” means over fifty percent (50%) of a product’s components are manufactured in the United States. This requirement is met if the cost to Partner of the components mined, produced, or manufactured in the United States exceeds fifty percent (50%) percent of the cost of all components (considering only the product and its components). This includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations under Federal Acquisition Regulation 25.103(a) and (b) exist, are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

B. Allocation of principal rights

1. *Presumption of NASA title in Partner inventions*.
a. Partner inventions under this Agreement are presumed made as specified in subparagraphs (A) or (B) of 51 U.S.C. § 20135(b)(1). The above presumption is conclusive unless Partner’s invention disclosure to the Patent Representative includes a written statement with supporting details, demonstrating that the invention was not made as specified above.
b. Regardless of whether title to such an invention is subject to an advance waiver or a petition for individual waiver, Partner may still file the statement in B.1.a.. The Administrator (or Administrator’s designee) will review the information from Partner and any other related information and will notify Partner of his or her determination.
2. *NASA Property rights in Partner inventions*. Inventions made under this Agreement where the presumption of paragraph B.1.a. of this Article is conclusive or when a determination exists that it was made under subparagraphs (A) or (B) of 51 U.S.C. § 20135(b)(1) are the exclusive property of the United States as represented by NASA. The Administrator may waive all or any part of the United States’ rights to Partner, as provided in paragraph B.3. of this Article.
3. *Waiver of property rights by NASA*.
a. NASA Patent Waiver Regulations, 14 C.F.R. Part 1245, Subpart 1, use *Presidential Memorandum on Government Patent Policy of February 18, 1983* as guidance in processing petitions for waiver of rights under 51 U.S.C. § 20135(g) for any invention or class of inventions made or that may be made under subparagraphs (A) or (B) of 51 U.S.C. § 20135(b)(1).
b. Under 14 C.F.R. Part 1245, Subpart 1, Partner may petition, prior to execution of the Agreement or within thirty (30) days after execution, for advance waiver of any inventions Partner may make under this Agreement. If no petition is submitted, or if petition is denied, Partner (or an employee inventor of Partner) may still petition for waiver of rights to an identified subject invention within eight (8) months after disclosure under paragraph E.2. of this Article, or within

such longer period if authorized under 14 C.F.R.§ 1245.105. *See* paragraph J. of this Article for procedures.

4. *NASA inventions*.

a. No invention or patent rights in NASA or its Related Entity's inventions are exchanged or granted under this Agreement except as provided herein.

b. Upon request, NASA will use reasonable efforts to grant Partner a negotiated license, under 37 C.F.R. Part 404, to any NASA invention made under this Agreement.

c. Upon request, NASA will use reasonable efforts to grant Partner a negotiated license, under 37 C.F.R. Part 404, to any invention made under this Agreement by employees of a NASA Related Entity, or jointly between NASA and NASA Related Entity employees, where NASA has title.

C. Minimum rights reserved by the Government

1. For Partner inventions subject to a NASA waiver of rights under 14 C.F.R. Part 1245, Subpart 1, the Government reserves:

a. an irrevocable, royalty-free license to practice the invention throughout the world by the United States or any foreign government under any treaty or agreement with the United States; and

b. other rights as stated in 14 C.F.R. § 1245.107.

2. Nothing in this paragraph grants to the Government any rights in inventions not made under this Agreement.

D. Minimum rights to Partner

1. Partner is granted a revocable, nonexclusive, royalty-free license in each patent application or patent in any country on an invention made by Partner under this Agreement where the Government has title, unless Partner fails to disclose the invention within the time limits in paragraph E.2. of this Article. Partner's license extends to its domestic subsidiaries and affiliates within its corporate structure. It includes the right to grant sublicenses of the same scope if Partner was legally obligated to do so at the time of this Agreement. The license is transferable only with approval of the Administrator except to a successor of that part of Partner's business to which the invention pertains.

2. Partner's domestic license may be revoked or modified by the Administrator but only if necessary to achieve expeditious practical application of the invention where a third party applies for an exclusive license under 37 C.F.R. Part 404. The license will not be revoked in any field of use or geographic area where Partner has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. A license in any foreign country may be revoked or modified at the discretion of the Administrator if Partner, its licensees, or its domestic subsidiaries or affiliates fail to achieve practical application in that country.

3. Before revocation or modification, Partner will receive written notice of the Administrator's intentions. Partner has thirty (30) days (or such other time as authorized by the Administrator) to show cause why the license should not be revoked or modified. Partner may appeal under 14 C.F.R. § 1245.112.

E. Invention disclosures and reports

1. Partner shall establish procedures assuring that inventions made under this Agreement are internally reported within six (6) months of conception or first actual reduction to practice, whichever occurs first. These procedures shall include the maintenance of laboratory notebooks or equivalent records, other records reasonably necessary to document the conception or the first actual reduction to practice of inventions, and records showing that the procedures were followed. Upon request, Partner shall give the Patent Representative a description of such procedures for evaluation.
2. Partner shall disclose an invention to the Patent Representative within two (2) months after the inventor discloses it in writing internally or, if earlier, within six (6) months after Partner becomes aware of the invention. In any event, disclosure must be before any sale, or public use, or publication known to Partner. Partner shall use the NASA New Technology Reporting system at http://ntr.ndc.nasa.gov/. Invention disclosures shall identify this Agreement and be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, or sale, or public use of the invention, and whether a manuscript describing the invention was submitted or accepted for publication. After disclosure, Partner shall promptly notify NASA of the acceptance for publication of any manuscript describing an invention, or of any sale or public use planned by Partner.
3. Partner shall give NASA Patent Representative:
    a. Interim reports every twelve (12) months (or longer period if specified by Patent Representative) from the date of this Agreement, listing inventions made under this Agreement during that period, and certifying that all inventions were disclosed (or there were no such inventions) and that the procedures of paragraph E.1. of this Article were followed.
    b. A final report, within three (3) months after completion of this Agreement, listing all inventions made or certifying there were none, and listing all subcontracts or other agreements with a Related Entity containing a *Patent and Invention Rights* Article (as required under paragraph G of this Article) or certifying there were none.
    c. Interim and final reports shall be submitted at http://ntr.ndc.nasa.gov/.
4. Partner shall provide available additional technical and other information to the NASA Patent Representative for the preparation and prosecution of a patent application on any invention made under this Agreement where the Government retains title. Partner shall execute all papers necessary to file patent applications and establish the Government's rights.
5. Protection of reported inventions. NASA will withhold disclosures under this Article from public access for a reasonable time (1 year unless otherwise agreed or unless restricted longer herein) to facilitate establishment of patent rights.
6. The contact information for the NASA Patent Representatives is provided at http://prod.nais.nasa.gov/portals/pl/new_tech_pocs.html.

F. Examination of records relating to inventions

1. The Patent Representative or designee may examine any books (including laboratory notebooks), records, and documents of Partner relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this Agreement to determine whether:

a. Any inventions were made under this Agreement;

b. Partner established the procedures in paragraph E.1. of this Article; and

c. Partner and its inventors complied with the procedures.

2. If the Patent Representative learns of an unreported Partner invention he or she believes was made under this Agreement, he or she may require disclosure to determine ownership rights.

3. Examinations under this paragraph are subject to appropriate conditions to protect the confidentiality of information.

G. Subcontracts or Other Agreements

1. a. Unless otherwise directed by Patent Representative, Partner shall include this *Invention and Patent Rights* Article (modified to identify the parties) in any subcontract or other agreement with a Related Entity (regardless of tier) for the performance of experimental, developmental, or research work.

b. For subcontracts or other agreements at any tier, NASA, the Related Entity, and Partner agree that the mutual obligations created herein constitute privity of contract between the Related Entity and NASA with respect to matters covered by this Article.

2. If a prospective Related Entity refuses to accept the Article, Partner:

a. shall promptly notify Patent Representative in writing of the prospective Related Entity's reasons for refusal and other information supporting disposition of the matter; and

b. shall not proceed without Patent Representative's written authorization.

3. Partner shall promptly notify Patent Representative in writing of any subcontract or other agreement with a Related Entity (at any tier) containing an *Invention and Patent Rights* Article. The notice shall identify:

a. the Related Entity;

b. the applicable *Invention and Patent Rights* Article;

c. the work to be performed; and

d. the dates of award and estimated completion.

Upon request, Partner shall give a copy of the subcontract or other agreement to Patent Representative.

4. In any subcontract or other agreement with Partner, a Related Entity retains the same rights provided Partner in this Article. Partner shall not require any Related Entity to assign its rights in inventions made under this Agreement to Partner as consideration for awarding a subcontract or other agreement.

5. Notwithstanding paragraph G.4., in recognition of Partner's substantial contribution of funds, facilities or equipment under this Agreement, Partner may, subject to the NASA's rights in this Article:

a. acquire by negotiation rights to inventions made under this Agreement by a Related Entity that Partner deems necessary to obtaining and maintaining private support; and
b. if unable to reach agreement under paragraph G.5.a. of this Article, request from Patent Representative that NASA provide Partner such rights as an additional reservation in any waiver NASA grants the Related Entity under NASA Patent Waiver Regulations, 14 C.F.R. Part 1245, Subpart 1. Partner should advise the Related Entity that unless it requests a waiver, NASA acquires title to all inventions made under this Agreement. If a waiver is not requested, or is not granted, Partner may then request a license from NASA under 37 C.F.R. Part 404. A Related Entity requesting waiver must follow the procedures in paragraph J. of this Article.

H. Preference for United States manufacture

Products embodying inventions made under this Agreement or produced using the inventions shall be manufactured substantially in the United States. Patent Representative may waive this requirement if domestic manufacture is not commercially feasible.

I. March-in rights

For inventions made under this Agreement where Partner has acquired title, NASA has the right under 37 C.F.R. § 401.6, to require Partner, or an assignee or exclusive licensee of the invention, to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to responsible applicant(s), upon reasonable terms. If Partner, assignee or exclusive licensee refuses, NASA may grant the license itself, if necessary:

1. because Partner, assignee, or exclusive licensee has not, or is not expected within a reasonable time, to achieve practical application in the field of use;
2. to alleviate health or safety needs not being reasonably satisfied by Partner, assignee, or exclusive licensee;
3. to meet requirements for public use specified by Federal regulations being not reasonably satisfied by Partner, assignee, or exclusive licensee; or
4. because the requirement in paragraph H of this Article was not waived, and Partner, assignee, or exclusive licensee of the invention in the United States is in breach of the requirement.

J. Requests for Waiver of Rights

1. Under NASA Patent Waiver Regulations, 14 C.F.R. Part 1245, Subpart 1, an advance waiver may be requested prior to execution of this Agreement, or within thirty (30) days afterwards. Waiver of an identified invention made and reported under this Agreement may still be requested, even if a request for an advance waiver was not made or was not granted.
2. Each request for waiver is by petition to the Administrator and shall include:
    a. an identification of the petitioner, its place of business and address;

b. if petitioner is represented by counsel, the name, address, and telephone number of counsel;
c. the signature of the petitioner or authorized representative; and
d. the date of signature.

3. No specific form is required, but the petition should also contain:
a. a statement that waiver of rights is requested under the NASA Patent Waiver Regulations;
b. a clear indication of whether the petition is an advance waiver or a waiver of an individual identified invention;
c. whether foreign rights are also requested and for which countries;
d. a citation of the specific section(s) of the regulations under which are requested;
e. whether the petitioner is an entity of or under the control of a foreign government; and
f. the name, address, and telephone number of the petitioner's point-of-contact.

4. Submit petitions for waiver to the Patent Representative for forwarding to the Inventions and Contributions Board. If the Board makes findings to support the waiver, it recommends to the Administrator that waiver be granted. The Board also informs Patent Representative if there is insufficient time or information to process a petition for an advance waiver without unduly delaying the execution of the Agreement. Patent Representative will notify petitioner of this information. Once a petition is acted on, the Board notifies petitioner. If waiver is granted, any conditions, reservations, and obligations are included in the Instrument of Waiver. Petitioner may request reconsideration of Board recommendations adverse to its request.

2.2.10.4. PATENT AND COPYRIGHT USE – AUTHORIZATION, CONSENT, AND INDEMNIFICATION

2.2.10.4.1. Patent and Copyright Use - Authorization and Consent (Sample Clause)

To avoid interruption of this Agreement, NASA gives the U.S. Government's authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture of any invention or work covered by a U.S. patent or copyright in the performance of Partner's responsibilities under this Agreement, including performance by any Related Entity.

2.2.10.4.2. Patent and Copyright Use - Indemnification (Sample Clause)

If the U.S. Government incurs liability for the infringement of privately-owned U.S. patents or copyrights as a result of performance by Partner or its Related Entity under this Agreement, Partner shall indemnify and hold the U.S. Government harmless against such liability, including costs and expenses of defending against any suit or claim for the infringements.

2.2.11. USE OF NASA NAME AND EMBLEMS (SAMPLE CLAUSE)

A. NASA Name and Initials

Partner 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. Except for releases under the "Release of General Information to the Public and Media" Article, Partner must submit any proposed public use of the NASA name or initials (including press releases and all promotional and advertising use) to the NASA Associate Administrator for the Office of Communications or designee ("NASA Communications") for review and approval. Approval by NASA Office of Communications shall be based on applicable law and policy governing the use of the NASA name and initials.

B. NASA Emblems

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. Partner must submit any proposed use of the emblems to NASA Communications for review and approval.

2.2.12. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA (SAMPLE CLAUSE)

NASA or Partner may, consistent with Federal law and this Agreement, release general information regarding its own participation in this Agreement as desired.

Pursuant to Section 841(d) of the NASA Transition Authorization Act of 2017, Public Law 115-10 (the "NTAA"), NASA is obligated to publicly disclose copies of all agreements conducted pursuant to NASA's 51 U.S.C. §20113(e) authority in a searchable format on the NASA website within 60 days after the agreement is signed by the Parties. The Parties acknowledge that a copy of this Agreement will be disclosed, without redactions, in accordance with the NTAA.

2.2.13. DISCLAIMERS

2.2.13.1. DISCLAIMER OF WARRANTY (SAMPLE CLAUSE)

Goods, services, facilities, or equipment provided by NASA under this Agreement are provided "as is." NASA makes no express or implied warranty as to the condition of any such goods, services, facilities, or equipment, or as to the condition of any research or information generated under this Agreement, or as to any products made or developed under or as a result of this Agreement including as a result of the use of information generated hereunder, or as to the merchantability or fitness for a particular purpose of such research, information, or resulting product, or that the goods, services, facilities or equipment provided will accomplish the intended results or are safe for any purpose including the intended purpose, or that any of the above will not interfere with privately-owned rights of others. Neither the government nor its contractors shall be liable for special, consequential or incidental damages attributed to such equipment, facilities, technical information, or services provided under this Agreement or such research, information, or resulting products made or developed under or as a result of this Agreement.

2.2.13.2. DISCLAIMER OF ENDORSEMENT (SAMPLE CLAUSE)

NASA does not endorse or sponsor any commercial product, service, or activity. NASA's participation in this Agreement or provision of goods, services, facilities or equipment under this Agreement does not constitute endorsement by NASA. Partner agrees that nothing in this Agreement will be construed to imply that NASA authorizes, supports, endorses, or sponsors any product or service of Partner resulting from activities conducted under this Agreement, regardless of the fact that such product or service may employ NASA-developed technology.

2.2.14. COMPLIANCE WITH LAWS AND REGULATIONS (SAMPLE CLAUSE)

A. The Parties shall comply with all applicable laws and regulations including, but not limited to, safety; security; export control; environmental; and suspension and debarment laws and regulations. Access by a Partner to NASA facilities or property, or to a NASA Information Technology (IT) system or application, is contingent upon compliance with NASA security and safety policies and guidelines including, but not limited to, standards on badging, credentials, and facility and IT system/application access.

B. With respect to any export control requirements:

1. The Parties will comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120 through 130, and the Export Administration Regulations (EAR), 15 C.F.R. Parts 730 through 799, in performing work under this Agreement or any Annex to this Agreement. In the absence of available license exemptions or exceptions, the Partner shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data and software, or for the provision of technical assistance.

2. The Partner shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of work under this Agreement or any Annex under this Agreement, including instances where the work is to be performed on-site at NASA and where the foreign person will have access to export-controlled technical data or software.

3. The Partner will be responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions or exceptions.

4. The Partner will be responsible for ensuring that the provisions of this Article apply to its Related Entities.

C. With respect to suspension and debarment requirements:

1. The Partner hereby certifies, to the best of its knowledge and belief, that it has complied, and shall comply, with 2 C.F.R. Part 180, Subpart C, as supplemented by 2 C.F.R. Part 1880, Subpart C.

2. The Partner shall include language and requirements equivalent to those set forth in subparagraph C.1., above, in any lower-tier covered transaction entered into under this Agreement.

2.2.15. TERM OF AGREEMENT

2.2.15.1. TERM OF AGREEMENT (SAMPLE CLAUSE)

This 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 [*enter a term from one to five*] years from the Effective Date, whichever comes first.

2.2.15.2. TERM OF ANNEX (ANNEX SAMPLE CLAUSE)

This Annex 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 [*enter a number from 1-5*] years from the Effective Date, whichever comes first, unless such term exceeds the duration of the Umbrella Agreement. The term of this Annex shall not exceed the term of the Umbrella Agreement. The Annex automatically expires upon the expiration of the Umbrella Agreement.

2.2.16.1. RIGHT TO TERMINATE (NONREIMBURSABLE AGREEMENT SAMPLE CLAUSE)

Either Party may unilaterally terminate this Agreement by providing thirty (30) calendar days written notice to the other Party.

2.2.16.2. RIGHT TO TERMINATE (REIMBURSABLE AGREEMENT SAMPLE CLAUSE)

Either Party may unilaterally terminate this Agreement by providing thirty (30) calendar days written notice to the other Party. In the event of such termination, Partner will be obligated to reimburse NASA for all costs for which the Partner was responsible and that have been incurred in support of this Agreement up to the date the termination notice is received by NASA. Where Partner terminates this Agreement, Partner will also be responsible for termination costs.

2.2.16.3. RIGHT TO TERMINATE (REIMBURSABLE AGREEMENT REQUIRING HIGH CERTAINTY OF SUPPORT SAMPLE CLAUSE)

A. NASA's commitment under this Agreement to make available government property and services required by Partner may be terminated by NASA, in whole or in part,
(a) upon a declaration of war by the Congress of the United States, or (b) upon a declaration of a national emergency by the President of the United States, or (c) upon Partner's failure to make payments as set forth in the "Financial Obligations" Article, or (d) upon Partner's failure to meet its obligations under the Agreement, or (e) upon a NASA determination, in writing, that NASA is required to terminate such services for reasons beyond its control. For purposes of this Article, reasons beyond NASA's control are reasons which make impractical or impossible NASA's or its contractors' or subcontractors' performance of this Agreement. Such reasons include, but are not limited to, acts of God or of the public enemy, acts of the U.S. Government other than

NASA, in either its sovereign or contractual capacity (to include failure of Congress to appropriate sufficient funding), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.

B. In the event of termination for reasons given above, NASA will seek to provide reasonable advance notice and will seek to mitigate the effect of such termination, if possible, and will enter into discussions with Partner for that purpose. For the use of property or services provided for on a fixed-price basis, the costs incurred by the United States, including termination costs, shall not exceed the fixed price of the services which would have been provided had termination not occurred. For use of property or services provided on a cost basis, partner will be liable for all costs, consistent with law and NASA policy, which are incurred by NASA in the provision of property or services, including termination costs associated with the Agreement activities.

C. NASA shall not be liable for any costs, loss of profits, revenue, or other direct, indirect, or consequential damages incurred by Partner, its contractors, subcontractors, or customers as a result of the termination by NASA pursuant to paragraph A of this Article.

D. Partner shall have the right to terminate, in whole or in part, this Agreement at any time. In the event of such termination, Partner will be obligated to reimburse NASA for all its costs which have been incurred in support of this Agreement up to the date the termination notice was received by NASA as well as those costs which are incurred as a result of such termination.

E. This Article is not intended to limit or govern the right of NASA or Partner, in accordance with law, to terminate its performance under this Agreement, in whole or in part, for Partner's or NASA's breach of a provision in this Agreement.

2.2.16.4. RIGHT TO TERMINATE (NONREIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE)

Either Party may unilaterally terminate this Umbrella Agreement or any Annex(es) by providing thirty (30) calendar days written notice to the other Party. Termination of an Annex does not terminate this Umbrella Agreement. However, the termination or expiration of this Umbrella Agreement also constitutes the termination of all outstanding Annexes.

2.2.16.5. RIGHT TO TERMINATE (REIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE)

Either Party may unilaterally terminate this Umbrella Agreement or any Annex(es) by providing thirty (30) calendar days written notice to the other Party. Termination of an Annex does not terminate this Umbrella Agreement. However, the termination or expiration of this Umbrella Agreement also constitutes the termination of all outstanding Annexes. In the event of termination of any of the Annex(es), Partner will be obligated to reimburse NASA for all its costs which have been incurred in support of that Annex(es) up to the date the termination notice was received by NASA. In the event of termination of this Umbrella Agreement, Partner will be obligated to reimburse NASA for all costs which it incurred in support of this Umbrella Agreement up to the date the termination notice was received by NASA. Where Partner terminates this Umbrella Agreement or any Annex(es), Partner will also be responsible for those costs which are incurred as a result of such termination.

2.2.16.6. RIGHT TO TERMINATE (NONREIMBURSABLE ANNEX SAMPLE CLAUSE)

Either Party may unilaterally terminate this Annex by providing thirty (30) calendar days written notice to the other Party.

2.2.16.7. RIGHT TO TERMINATE (REIMBURSABLE ANNEX SAMPLE CLAUSE)

Either Party may unilaterally terminate this Annex by providing thirty (30) calendar days written notice to the other Party.

2.2.17. CONTINUING OBLIGATIONS (SAMPLE CLAUSE)

The rights and obligations of the Parties that, by their nature, would continue beyond the expiration or termination of this Agreement, *e.g.*, "Liability and Risk of Loss" and "Intellectual Property Rights" related clauses [*and "Financial Obligations" if Reimbursable*] shall survive such expiration or termination of this Agreement.

2.2.18.1. POINTS OF CONTACT (SAMPLE CLAUSE)

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

Management Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

Technical Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

[*Note: Add one or more Points of Contact identifying Principal Investigators, if the sample clause 2.2.10.2. Intellectual Property Rights - Rights in Raw Data (Sample Clause) is included in the SAA*.]

Principal Investigators:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

2.2.18.2. POINTS OF CONTACT (UMBRELLA SAMPLE CLAUSE)

The following personnel are designated as the Points of Contact between the Parties in the performance of this Agreement. Annexes may designate Points of Contact for purposes of the Annex activities.

Management Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

Technical Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

[*Note: Add one or more Points of Contact identifying Principal Investigators, if the sample clause 2.2.10.2. Intellectual Property Rights - Rights in Raw Data (Sample Clause) is included in the SAA*.]

Principal Investigators:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

2.2.18.3. POINTS OF CONTACT (ANNEX SAMPLE CLAUSE)

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

Management Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

Technical Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

[*Note: Add one or more Points of Contact identifying Principal Investigators, if the sample clause 2.2.10.2. Intellectual Property Rights - Rights in Raw Data (Sample Clause) is included in the SAA*.]

Principal Investigators:

NASA	Partner
Name	Name
Title	Title
Email	Email

Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

2.2.19. DISPUTE RESOLUTION

2.2.19.1. DISPUTE RESOLUTION (SAMPLE CLAUSE)

Except as otherwise provided in the Article entitled "Priority of Use," the Article entitled "Intellectual Property Rights – Invention and Patent Rights" (for those activities governed by 37 C.F.R. Part 404), and those situations where a pre-existing statutory or regulatory system exists (*e.g.,* under the Freedom of Information Act, 5 U.S.C. § 552), all disputes concerning questions of fact or law arising under this 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 the Partner will consult and attempt to resolve all issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, the dispute will be referred to the signatories to this 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, will issue a written decision that will 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 agency decision.

2.2.19.2. DISPUTE RESOLUTION (UMBRELLA SAMPLE CLAUSE)

Except as otherwise provided in the Article entitled "Priority of Use," the Article entitled "Intellectual Property Rights – Invention and Patent Rights" (for those activities governed by 37 C.F.R. Part 404), and those situations where a pre-existing statutory or regulatory system exists (*e.g.,* under the Freedom of Information Act, 5 U.S.C. § 552), all disputes concerning questions of fact or law arising under this Agreement or Annex shall be referred by the claimant in writing to the appropriate person identified in this Agreement for purposes of the activities undertaken in the Agreement, or Annex(es) for purposes of the activities undertaken in the Annex(es) as the "Points of Contact." The persons identified as the "Points of Contact" for NASA and the Partner will consult and attempt to resolve all issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, the dispute will be referred to the signatories to this 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, will issue a written decision that will 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 agency decision.

2.2.20. INVESTIGATIONS OF MISHAPS AND CLOSE CALLS (SAMPLE CLAUSE)

In the case of a close call, mishap or mission failure, the Parties agree to provide assistance to each other in the conduct of any investigation. For all NASA mishaps or close calls, Partner agrees to comply with NPR 8621.1, "NASA Procedural Requirements for Mishap and Close Call Reporting, Investigating, and Recordkeeping" and [*insert Center safety policies, as appropriate*].

2.2.21. MODIFICATIONS

2.2.21.1. MODIFICATIONS (SAMPLE CLAUSE)

Any modification to this Agreement shall be executed, in writing, and signed by an authorized representative of NASA and the Partner.

2.2.21.2. MODIFICATIONS (UMBRELLA SAMPLE CLAUSE)

Any modification to this Umbrella Agreement shall be executed, in writing, and signed by an authorized representative of NASA and the Partner. Accompanying Annexes may be modified under the same terms. Modification of an Annex does not modify the Umbrella Agreement.

2.2.21.3. MODIFICATIONS (ANNEX SAMPLE CLAUSE)

Any modification to this Annex shall be executed, in writing, and signed by an authorized representative of NASA and the Partner. Modification of an Annex does not modify the terms of the Umbrella Agreement.

2.2.22. ASSIGNMENT (SAMPLE CLAUSE)

Neither this Agreement nor any interest arising under it will be assigned by the Partner or NASA without the express written consent of the officials executing, or successors, or higher- level officials possessing original or delegated authority to execute this Agreement.

2.2.23. APPLICABLE LAW (SAMPLE CLAUSE)

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

2.2.24. INDEPENDENT RELATIONSHIP (SAMPLE CLAUSE)

This Agreement is not intended to constitute, create, give effect to or otherwise recognize a joint venture, partnership, or formal business organization, or agency agreement of any kind, and the rights and obligations of the Parties shall be only those expressly set forth herein.

2.2.25. LOAN OF GOVERNMENT (SAMPLE CLAUSE)

The parties shall enter into a NASA Form 893, *Loan of NASA Equipment*, for NASA equipment loaned to Partner.

2.2.26. SPECIAL CONSIDERATIONS (NO SAMPLE CLAUSE)

2.2.27. SIGNATORY AUTHORITY

2.2.27.1. SIGNATORY AUTHORITY (SAMPLE CLAUSE)

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

Approval:

NASA [*Center initials*]	**Partner**
_____	_____
Name	**Name**
_____	_____
Title	**Title**
_____	_____
Date	**Date**

2.2.27.2. SIGNATORY AUTHORITY (ANNEX SAMPLE CLAUSE)

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

Approval:

NASA [*Center initials*]	**Partner**
_____	_____
Name	**Name**
_____	_____
Title	**Title**
_____	_____
Date	**Date**

CHAPTER 3. NONREIMBURSABLE AND REIMBURSABLE AGREEMENTS WITH FEDERAL/STATE/LOCAL GOVERNMENT ENTITIES

3.1. GENERAL GUIDANCE

The Space Act provides authority for NASA to enter into nonreimbursable and reimbursable agreements with agencies of the Federal Government and with state/local governments, including state and local colleges and universities (public partners).[88] These agreements constitute a formal statement of understanding between NASA and the public partner requiring a commitment of NASA resources (including goods, services, facilities or equipment) to accomplish stated objectives.

3.2. AGREEMENTS WITH STATE/LOCAL GOVERNMENT ENTITIES

The approach for these binding interagency SAAs with state and local government entities is generally the same as those entered into with private parties. Therefore, the guidance and clauses in Chapter 2 should be followed.

*Note: Regarding use of the liability and risk clause in section 2.2.9.1 (*2.2.9.1. SAAs For Shared Benefits – Cross-Waiver And Flow Down*), to the extent that a state or local government entity is required to waive claims, especially for International Space Station activities and launch agreements for science or space exploration, it may be prudent to verify the entity's authority to waive claims on behalf of the state. For example, state universities are provided certain authorities by the state which are generally found in their articles of incorporation. A review of these articles may provide evidence of any such required authority. To the extent that a state university does not possess authority to waive claims on behalf of the state, it may be prudent to request that the state sign the SAA on behalf of the university.*

3.3. AGREEMENTS WITH FEDERAL GOVERNMENT ENTITIES

3.3.1. GENERAL GUIDANCE

Nonreimbursable and Reimbursable Interagency Agreements with other Federal Agencies (IAAs) are similar to those entered into with private parties. Both are subject to the requirements of NPD 1050.1, including the abstract process, and require legal review prior to signature. IAAs differ from SAAs with commercial partners in a few significant ways by virtue of both parties to the agreement being Federal Agencies. This Chapter provides additional guidance on Nonreimbursable and Reimbursable IAAs, including Umbrella IAAs, and notes several of the key differences between SAAs with commercial entities and IAAs (particularly Reimbursable IAAs).

[88] 51 U.S.C. § 20113.

Coordination with the Office of International and Interagency Relations

Coordination with the Headquarters Office of International and Interagency Relations (OIIR) is required under NPD 1050.1, which designates OIIR as responsible for the review of all IAAs and abstracts (as required) with other Federal Agencies.[89] In addition, OIIR is responsible for centralized tracking and coordination of all NASA classified IAAs using the appropriate secure systems. Contact the OIIR Director for the Export Control and Interagency Liaison Division (ECLID) and refer to Chapter 1 for specific guidance regarding classified IAAs.

Nonreimbursable IAAs

As with Nonreimbursable SAAs with domestic nongovernmental entities, Nonreimbursable IAAs involve "NASA and one or more Partners in a mutually beneficial activity that furthers NASA's mission, where each party bears the cost of its participation and there is no exchange of funds between the parties."[90] They permit NASA to utilize its goods, services, facilities or equipment to meet its obligations under the Nonreimbursable IAA. It is appropriate to use a Nonreimbursable IAA where NASA and another Federal Agency are performing activities collaboratively for which each is particularly suited and for which the end results are of interest to both parties. NASA conducts its Nonreimbursable IAAs with other Federal Agencies under the "other transactions" authority in the Space Act (51 U.S.C. 20113(e)). The other Federal Agency must determine its own authority for engaging in the Nonreimbursable IAA, including whether it may rely on NASA's authority under 51 U.S.C. 20113(e).

While Nonreimbursable IAAs must conform to NPD 1050.1, flexibility exists to modify or not include certain clauses, because both NASA and the other Federal Agency are part of the U.S. Government. These include the liability and risk of loss, intellectual property, termination rights, priority of use, and release of general information clauses. Although inclusion of these standard Nonreimbursable IAA clauses is preferred, it may be signed without these clauses. The OCC or OGC, as appropriate, must review the Nonreimbursable IAA, however, and conclude that omission of the clauses is appropriate for the particular Nonreimbursable IAA.

Reimbursable IAAs

As with Reimbursable SAAs with domestic nongovernmental entities, Reimbursable IAAs permit Federal Agencies to use NASA's goods, services, facilities, or equipment to advance the other Federal Agency's interests, and NASA's costs associated with the undertaking are reimbursed by the other Federal Agency. Generally, under Reimbursable IAAs, the Federal Agency requesting goods and services from NASA is referred to as the "Requesting Agency," and NASA, as the Federal Agency supplying the goods and services, is referred to as the "Servicing Agency." The guidance in this Chapter specifically addresses the situation where NASA is the Servicing Agency.

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[89] NPD 1050.1I (5)(c). In addition, Agreement Managers are responsible for providing the Office of International and Interagency Relations a courtesy copy of the draft IAA and a copy of the signed IAA.
[90] NPD 1050.1.

Reimbursable IAAs differ from private sector Reimbursable SAAs in several key ways:

- *Reimbursable Authority:* Because Reimbursable IAAs entail the transfer of appropriated funds, both NASA and the Requesting Agency must have legal authority to transfer the funds under the Reimbursable IAA.[91] The best practice is for NASA to cite the authority that the Requesting Agency relies upon for its authority, provided NASA has determined that it also may rely upon the authority to receive funds for the proposed reimbursable activities.[92] This practice of "mirroring" the Requesting Agency's authority clarifies the legal basis for the transaction when the authority provides for both the transfer and acceptance of funds.

  There are a number of reimbursable authorities that Federal Agencies may rely upon for interagency transactions. Each reimbursable authority will have its own requirements for when and how the authority may be used to support an interagency reimbursable agreement, which may include requirements for calculating reimbursable costs under the agreement.

  - *Economy Act*. The Economy Act provides a widely available authority for Federal Agencies (including NASA) to reimburse another Federal Agency for goods and services.[93] There are two fundamental categories of interagency reimbursable transactions under the Economy Act: (1) assisted acquisitions, and (2) reimbursable work performed by Federal employees.[94] Economy Act transactions that involve assisted acquisitions are subject to the requirements of both the Economy Act and the requirements of the Federal Acquisition Regulations (FAR).[95] Economy Act transactions that primarily involve reimbursable work performed by Federal employees (other than acquisition assistance) or interagency activities where contracting is incidental to the purpose of the transaction are not subject to the FAR.

    Per the requirements of the Economy Act, NASA must incur obligations to fill the order for the Requesting Agency within the period of availability of the funds to be charged. If NASA has not provided goods or services, or entered into an authorized contract to provide such goods or services, during the period of

[91] *See generally* GAO Redbook Chapter 2, Section 3.a. "Transfer".
[92] If NASA determines that it cannot rely upon the authority that the Requesting Agency cites, the OCC, in consultation with the Center CFO (or OGC in consultation with HQ OCFO for HQ IAAs), may need to consider whether it is necessary for NASA to rely upon its "other transactions" authority under the Space Act.
[93] 31 U.S.C. § 1535.
[94] *See generally*, Federal Acquisition Regulations, Part 17.5.
[95] FAR Part 17.502-2 requires the Requesting Agency to furnish a copy of its Determination and Finding (D&F) to the Servicing Agency with the request for an Order. If the Requesting Agency provides a copy of the D&F to NASA, the agreement manager should store the D&F in PAM as part of the record for the Reimbursable IAA.

availability of the funds, then pursuant to the Economy Act, NASA must deobligate the funds at the end of the period of availability of the funds transferred.

The Economy Act also prescribes reimbursement of actual costs (as opposed to direct costs). Waiver of NASA's actual costs is not permissible under the Economy Act. Calculation of actual costs, however, may take into account excluded costs.[96] Excluded costs are those costs that would otherwise be billed to a reimbursable customer, but are excluded in order to comply with statutory or agency requirements.[97] Likewise, NASA may enter into a collaborative reimbursable agreement with another Federal Agency customer in which NASA and the other Federal Agency customer collaborate on a joint project. Under such agreements, the actual costs assessed to the customer reflect only the scope of the work that NASA performs for that customer.[98]

- *Other Authorities*. Although the Economy Act is the most commonly cited government-wide reimbursable authority, there are other government-wide reimbursable authorities available to all Federal Agencies that allow the transfer of funds to a Servicing Agency for specific activities.[99] When a more specific authority than the Economy Act exists for the particular reimbursable activity, NASA must rely upon the more specific authority for engaging in the reimbursable activity if it is determined that the authority is one upon which NASA may rely.[100]

  A Requesting Agency might cite its own agency-specific reimbursable authority, rather than a Government-wide authority. The Requesting Agency's specific authority must permit it to transfer funds to another Federal Agency for certain activities. If the Requesting Agency relies upon a reimbursable authority specific to itself, the Agreement Manager should consult with the OCC or OGC, as appropriate, early in the development of the Reimbursable IAA.

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[96] NPR 9090.1, Section 4.3, discusses the calculation of "actual costs" for purposes of Economy Act agreements.
[97] *See* NPR 9090.1, Section 4.4.
[98] NPR 9090.1, Section 3.2.6.2, provides additional guidance on calculating the actual cost of collaborative reimbursable agreements. Note that a collaborative reimbursable agreement does not allow NASA and the other Federal Agency to "pool" funds to pay for goods or services. Collaborative reimbursable agreements allow NASA to pay for its own scope of work in support of a collaborative project, while NASA receives reimbursement from the other Federal Agency for that Agency's scope of work in support of the collaborative project.
[99] For example, the Government Employees Training Act (GETA), 5 U.S.C. § 4104, allows Federal Agencies to reimburse another Federal Agency for participation in its training courses or use of its facilities for government employee training purposes.
[100] Federal Acquisition Regulations, Part 17.502-2(b).

- *Required Clauses under NPD 1050.1*: Although Reimbursable IAAs must conform to NPD 1050.1, flexibility exists to modify or not include certain clauses in the Reimbursable IAA, because both NASA and the Requesting Agency are part of the U.S. Government. Although inclusion of these clauses is preferred, if NASA is presented with a Reimbursable IAA drafted by the Requesting Agency and it does not include liability and risk of loss, intellectual property, priority of use, release of general information, or termination rights, the Reimbursable IAA may be signed without these clauses. The OCC or OGC, as appropriate, must review the Reimbursable IAA, however, and conclude that omission or modification of the clauses is appropriate for the particular Reimbursable IAA.

- *Competition with the Private Sector*: For Reimbursable SAAs with domestic nongovernmental entities, NASA may perform reimbursable work only if doing so does not result in NASA competing with what is reasonably available from the domestic private sector. However, for a Reimbursable IAA, NASA does not have to consider whether the reimbursable work would compete with the private sector.

- *Preferential Treatment*: For Reimbursable SAAs with domestic nongovernmental entities, the recommended approach is to provide NASA resources on a nonexclusive basis to avoid NASA favoring one private party over another. Moreover, competition is recommended where the SAA with a domestic nongovernmental entity provides the Partner an opportunity for direct commercial gain. These considerations are not applicable to Reimbursable IAAs. If a Requesting Agency seeks goods or services from NASA, NASA does not have to consider whether another Federal Agency might also seek those services, thereby possibly placing that Federal Agency at a disadvantage, even in cases where those resources are limited.

- *Funding Document (Order)*: Reimbursable IAAs must be accompanied by at least one funding document (Order), which allows for the obligation and transfer of funds.

  The Reimbursable IAA and the Order may be combined in one document, provided the essential elements of both are contained in the combined document. For example, for Economy Act interagency assisted acquisitions, the Reimbursable IAA and Order may be drafted in any form or document that is acceptable to both parties, provided it includes (i) a description of the supplies or services required, (ii) delivery requirements, (iii) a funds citation, (iv) a payment provision, and (v) authority for the acquisition, as may be appropriate.[101]

  The Order does not need to be processed at the same time as the Reimbursable IAA. The Order must be executed, however, prior to the commencement of any activities under the Reimbursable IAA because the Order provides spending authority from the Requesting Agency. Although spending authority must be made available through an Order prior to NASA commencing the activities, the Requesting Agency does not need to actually transfer the funding in advance . There may be some circumstances, however, where

[101] FAR 17.503(b).

funding should be provided in advance of commencing activities.[102],. In no circumstances, however, should NASA provide services or incur costs for activities for which the spending authority or advance has not been provided under an Order.

- *7600 Forms:* The Department of the Treasury has developed standard interagency agreement forms, commonly referred to as the "7600A" and "7600B" forms, which may be used for interagency transactions under the Economy Act and other reimbursable authorities.[103] Whether NASA and the Requesting Agency use a 7600A and 7600B form for their Reimbursable IAA is a decision for the parties. The 7600A and B forms should not be used for Nonreimbursable IAAs.

  Much like NASA's standard Reimbursable IAA, the 7600A provides the General Terms and Conditions (GT&C) that govern the interagency agreement, and the 7600B serves as the Order. Together, the 7600A and 7600B constitute a complete Reimbursable IAA (*i.e.* – the written agreement with the terms and conditions and the Order). Therefore, a separate written agreement with its own terms and conditions, such as a Memorandum of Agreement, should not accompany the 7600A and 7600B.[104] Each 7600A must be accompanied by at least one 7600B, but a 7600A may have multiple Orders for goods or severable services under the GT&Cs of one 7600A.[105]

  As with any other form of Reimbursable IAA, the 7600A and 7600B must comply with the requirements of NPD 1050.1, including the preliminary abstract process, and are subject to legal review by the OCC or OGC, as appropriate, as well as OIIR. The 7600 forms that constitute the Reimbursable IAA must be uploaded into PAM, along with any supporting documents, such as attachments to the 7600 forms. All attachments to the 7600 forms should include the IAA number from the 7600 forms and be listed in the Blocks on the 7600 forms for which the additional text is attached.

  - *7600A Form*. The 7600A identifies the parties to the Reimbursable IAA and the legal authority that will govern the reimbursable activity. The 7600A also must contain a description of both parties' responsibilities with sufficient clarity to support preparation of cost estimates, sound management planning, and efficient agreement

[102] These circumstances will be determined by the NASA Office of Chief Financial Officer for Headquarters Reimbursable IAAs or the Center Chief Financial Officer for Center Reimbursable IAAs. *See* NPR 9090.2, Section 2.2.3.4.c.

[103] The 7600A and 7600B forms, as well as detailed instructions on filling out the forms, are available on the Financial Management Service's Financial Management and Budget Standardization website: https://www.fiscal.treasury.gov/fsreports/ref/fincMgmtStdzn/iaa_forms.htm.

[104] Although a separate written agreement should not accompany both a 7600A and 7600B, a Requesting Agency may provide a written agreement with terms and conditions (such as a Memorandum of Agreement) and use a 7600B as the Order.

[105] Block 28 of the 7600B will ask the Requesting Agency to specify whether the order for services is "Severable" or "Non-Severable." The box for "Not Applicable" is generally only checked for an Order for goods.

management. Similarly, NASA and the Requesting Agency should include milestones to accompany the responsibilities, so that the parties memorialize their mutual understanding of the major steps and timeline for achieving the purpose of the Reimbursable IAA. The responsibilities and milestones may be drafted in the field for "Roles and Responsibilities for the Requesting Agency and the Servicing Agency" (Block 12) or, if there is insufficient space in Block 12, the responsibilities and milestones may be included in an attachment, and the Agreement Manager should make note of the attachment in Block 12.

The 7600A's GT&C do not include all of the standard clauses required by NPD 1050.1. As discussed above, however, because both parties to a Reimbursable IAA are Federal Agencies, flexibility exists for modifying or not including certain clauses because both parties are Federal Agencies. In particular, the 7600A GT&C do not include clauses governing liability and risk of loss, priority of use, data rights, invention and patent rights, release of general information to the public and media, and loan of government equipment. Although the 7600A is legally sufficient and may be signed without these clauses, inclusion of these clauses in the 7600A is preferred. The clauses may be drafted in the field for "Servicing Agency Clauses" (Block 20) or, if there is insufficient space in Block 20, the additional clauses may be included in an attachment, and the Agreement Manager should make note of the attachment in Block 20.

Amendment of the 7600A must be implemented through another 7600A; a 7600B cannot be used to amend a 7600A. The field for "GT&C Action" (Block 4) provides an option for selecting the action for "Amendment" of a 7600A. In addition to checking this action, an amendment number should be added to the IAA Number found at the top of the 7600A to provide an identifier for the amendment. Only those blocks in the 7600A that need to be amended should be filled out, along with an explanation for the amendment. Authorization of an amendment to the 7600A requires official signatures of both NASA and the Requesting Agency.

- *7600B Form*. The 7600B provides all of the information required to place the Order for the reimbursable work, including the Requesting Agency's bona fide need and delivery requirements for the expected goods and/or services, and creates a fiscal obligation for the related funds. Each Order under a 7600A requires a separate 7600B. Often, there will be only one 7600B Order under a 7600A. As discussed above, however, there may be multiple 7600B Orders placed under one 7600A, provided the 7600A is still in effect and the Order falls within the scope of the 7600A. Much like Annexes under an Umbrella Reimbursable IAA, consideration should be given to whether each new Order placed through a 7600B should be abstracted.

  Modification of a 7600B must be executed through another 7600B. The field for "Order Action" (Block 25) provides an option for selecting the action for "Modification" of a 7600B. In addition to checking this action, a modification number should be added to the IAA Number found at the top of the 7600B to provide

an identifier for the amendment. In the Order Action field, list the affected Order blocks being modified and explain the modifications being made. The field for "Funding Modification Summary by Line" (Block 26) should be filled out if the modification involves adding, deleting, or changing funding for an Order Line. Finally, authorization of an Order Modification requires official signatures of both the Requesting Agency and NASA in relation to the modification. For example, if there is a funding modification, then the Funds Approving Officials must sign the 7600B modification.

Umbrella IAAs

As with Umbrella SAAs with domestic nongovernmental entities, Umbrella IAAs provide a mechanism for NASA and the other Federal Agency to agree to a series of related or phased activities using a single governing instrument. For both Reimbursable and Nonreimbursable Umbrella IAAs, the Umbrella IAA sets forth all of the common terms and conditions governing the whole of the transaction and establishes the legal framework for the accompanying Annexes. Each Annex under the Umbrella IAA must provide a description of the specific activity to be implemented through the Annex, including the responsibilities and milestones of each party.

For Reimbursable Umbrella IAAs, each Annex requires at least one Order that allows for the transfer of funds associated with the reimbursable activities undertaken in the Annex. As with Reimbursable IAAs, it may be possible to incorporate the essential elements of both the Annex and the Order in one document, provided the form and content of the document is acceptable to both parties and satisfies the legal requirements of the authority.

3.3.2. AGREEMENT CONTENTS

The following clauses provide the recommended approach for both Nonreimbursable and Reimbursable IAAs with Federal Agencies. Since both NASA and the other Federal Agency are part of the U.S. Government, Agreement Managers have more latitude with IAAs to modify or even exclude some standard clauses that would otherwise be required in an SAA with a commercial partner. As long as the OCC or OGC, as appropriate, reviews the IAA and concludes that it is legally sufficient and appropriate to the circumstances, the Agreement Manager is not required to include all the standard IAA clauses. Inclusion of these following clauses is preferred, however, to ensure that the parties have a "meeting of the minds" as to how matters will be governed under the IAA. Accordingly, to the extent practicable, Agreement Managers are strongly encouraged to include the following sections, as appropriate, in the order presented.

1. Title
2. Authority and Parties
3. Purpose
4. Responsibilities
5. Schedule and Milestones

6. Financial Obligations
7. Priority of Use
8. Liability and Risk of Loss
9. Intellectual Property Rights
10. Release of General Information to the Public
11. Term of Agreement
12. Right to Terminate
13. Continuing Obligations
14. Points of Contact
15. Dispute Resolution
16. Modifications
17. Applicable Law
18 Loan of Government Equipment
19. Signatory Authority

Nonreimbursable and Reimbursable Umbrella IAAs should include the standard sample clauses provided in Chapter 3 unless a specific Umbrella IAA sample clause is provided, in which case that clause should be used. Specific Umbrella IAA clauses include:

1. Title (sample clauses 3.2.1.3. and 3.2.1.4.);
2. Purpose (sample clause 3.2.3.2.);
3. Responsibilities (sample clause 3.2.4.2.);
4. Schedule and Milestones (sample clause 3.2.5.2.);
5. Financial Obligations, if reimbursable (sample clause 3.2.6.3.);
6. Right to Terminate (sample clause 3.2.12.3. and 3.2.12.4.);
7. Points of Contact (sample clause 3.2.14.2.);
8. Dispute Resolution (sample clause 3.2.15.2.); and
9. Modifications (sample clause 3.2.16.2.).

Nonreimbursable and Reimbursable Umbrella IAA Annexes should include only the following clauses:

1. Title (sample clause 3.2.1.5.);
2. Purpose (sample clause 3.2.3.3.);
3. Responsibilities (sample clause 3.2.4.3.);
4. Schedule and Milestones (sample clause 3.2.5.3.);
5. Financial Obligations, if reimbursable (sample clause 3.2.6.4.);
6. Intellectual Property Rights – Data Rights – Identified Intellectual Property (sample clause 3.2.9.2.1.)
7. Term (sample clause 3.2.11.2.);
8. Right to Terminate (sample clause 3.2.12.5.);
9. Points of Contact (sample clause 3.2.14.3.);
10. Modifications (sample clause 3.2.16.3.);
11. Loan of Government Equipment (sample clause 3.2.18.); and
12. Signatory Authority (sample clause 3.2.19.).

3.3.2.1. TITLE

IAAs are given a short title stating the type of agreement (Nonreimbursable or Reimbursable), the parties, and the agreement's purpose. Sometimes other Federal Agencies prefer to use the title "Memorandum of Agreement" or "Memorandum of Understanding," which is acceptable. The legal significance of an agreement is generally not affected by its title. What is significant, rather, is the nature of the particular commitments made by NASA and the other Federal Agency, including whether the IAA is Reimbursable or Nonreimbursable.

3.2.1.1. Title (Nonreimbursable Agreement Sample Clause)

3.2.1.2. Title (Reimbursable Agreement Sample Clause)

3.2.1.3. Title (Nonreimbursable Umbrella Agreement Sample Clause)

3.2.1.4. Title (Reimbursable Umbrella Agreement Sample Clause)

3.2.1.5. Title (Annex Agreement Sample Clause)

3.3.2.2. AUTHORITY AND PARTIES

This section cites the legal authority for NASA and the other Federal Agency to enter into the IAA. A Multiparty IAA with more than one Federal Agency is possible. In addition, the parties are identified by name and address.

3.2.2. Authority and Parties (Sample Clause)

3.3.2.3. PURPOSE

The purpose, often stated in one brief paragraph, succinctly describes why NASA is entering into the IAA. For all IAAs, this section should indicate the purpose and general scope of the planned activities, the subject of any testing, and objectives to be achieved.

3.2.3.1. Purpose (Sample Clause)

3.2.3.2. Purpose and Implementation (Umbrella Agreement Sample Clause)

3.2.3.3. Purpose (Annex Sample Clause)

3.3.2.4. RESPONSIBILITIES

Generally, the responsibilities section is most helpful when it is divided into two subsections, one describing NASA's responsibilities and the other describing the other Federal Agency's responsibilities. Responsibilities should be stated with sufficient clarity to support preparation of cost estimates, sound management planning and efficient agreement management. Sometimes it

is advisable to include definitions of key terms relating to responsibilities where reasonable interpretation could lead to differing conclusions as to a word's meaning. Multiparty IAAs raise special issues that require extensive revision to standard text, and therefore, early legal counseling is essential. In all cases, performance of each party's responsibilities is on a "reasonable efforts" basis.

3.2.4.1. Responsibilities (Sample Clause)

3.2.4.2. Responsibilities (Umbrella IAA Sample Clause)

3.2.4.3. Responsibilities (Annex Sample Clause)

3.3.2.5. SCHEDULE AND MILESTONES

This section sets forth a planned schedule of key dates or events consistent with available information known at the time the IAA is executed. It documents the anticipated progress of the IAA activities. As with responsibilities, performance milestones should be stated with sufficient clarity to support preparation of cost estimates, sound management planning, and efficient agreement administration.

3.2.5.1. Schedule and Milestones (Sample Clause)

3.2.5.2. Schedule and Milestones (Umbrella Agreement Sample Clause)

3.2.5.3. Schedule and Milestones (Annex Sample Clause)

3.3.2.6. FINANCIAL OBLIGATIONS

Depending on the type of agreement, Nonreimbursable or Reimbursable, one of the following sample clauses should be used. With Nonreimbursable IAAs, each Agency bears the cost of its participation and there is no exchange of funds between the parties. With Reimbursable IAAs, NASA's costs associated with the undertaking are reimbursed by the Requesting Agency.

3.2.6.1. Financial Obligations (Nonreimbursable Agreement Sample Clause)

3.2.6.2. Financial Obligations (Reimbursable Agreement Sample Clause)

3.2.6.3. Financial Obligations (Reimbursable Umbrella Agreement Sample Clause)

3.2.6.4. Financial Obligations (Reimbursable Annex Sample Clause)

3.3.2.7. PRIORITY OF USE

This section ensures that NASA and the other Federal Agency do not become legally committed to perform the activities according to any schedule stated in the IAA, in the event other Federal

priorities or interests arise. It provides that, in the event of a conflict in scheduling Federal resources, each party determines the priority for the use of its own resources.

3.2.7. Priority of Use (Sample Clause)

3.3.2.8. LIABILITY AND RISK OF LOSS

Liability between Federal Agencies usually is allocated by having each party assume its own risks.[106] As appropriate, the risk of liability can be otherwise allocated as agreed by the parties.

3.2.8.1. Liability and Risk of Loss (Sample Clause)

IAAs covering missions involving a launch, or related to the International Space Station (ISS) program, require use of cross-waivers with flow down provisions based on 14 C.F.R. § 1266. These cross-waivers apply only if the activities are not covered by 51 U.S.C. §§ 50901-50923 (in which case, the provisions of the license issued by the Federal Aviation Administration applies). In addition, both entities must be involved in "protected space operations," which may include a wide range of design, transport, flight, and payload activities.

IAAs covering missions related to the ISS program should utilize sample clause 3.2.8.2.

3.2.8.2. Liability and Risk of Loss (Cross-Waiver of Liability for Agreements Involving Activities Related to the ISS Sample Clause)

IAAs for missions involving a launch for science or space exploration should utilize sample clause 3.2.8.3.

3.2.8.3. Liability and Risk of Loss (Cross-Waiver of Liability for Launch Agreements for Science or Space Exploration Activities Unrelated to the ISS Sample Clause)

3.3.2.9. INTELLECTUAL PROPERTY RIGHTS

For IAAs with other Federal Agencies, a simplified approach to intellectual property rights is sufficient to protect NASA's interests. Sample clauses for the allocation and protection of rights are discussed in three areas: (1) data rights; (2) handling of data; and (3) invention and patent rights. For additional guidance related to intellectual property rights, see Chapter 2, Section 2.2.10.

[106] Where the agreement activities may result in a significant impact on the environment, the agreement should address how the National Environmental Policy Act (NEPA) requirements will be met, to include which party will be the lead agency or whether a formal cooperating agency relationship will be established (*see* NPR 8580.1).

Normally, Federal Agencies exchange data and information without any use and disclosure restrictions, except as required by law, as is provided in sample clause 3.2.9.1 "Free Exchange of Data".

3.2.9.1. Intellectual Property Rights – Data Rights – Free Exchange of Data (Sample Clause)

However, where there is any likelihood that NASA and the other Federal Agency will exchange third party proprietary data or data (including software) that NASA or the other Federal Agency intend to control, the sample clause 3.2.9.2 "Handling of Data" should be included in the IAA in addition to sample clause 3.2.9.1, "Free Exchange of Data".

3.2.9.2. Intellectual Property Rights – Data Rights – Handling of Data (Sample Clause)

For Umbrella IAAs (which contain substitute paragraph C), related Annexes should include Data Rights sample clause 3.2.9.2.1, the "Intellectual Property Rights – Identified Intellectual Property" clause to:

1) Acknowledge that specific background, third-party proprietary, and controlled government data, if any, that will be exchanged under the Annex will be identified in a separate document; and
2) List NASA software and related Data to be used under the Annex (which will be provided under a separate Software Usage Agreement (SUA)).

3.2.9.2.1. Intellectual Property Rights – Data Rights – Identified Intellectual Property (Annex Sample Clause)

Treatment of Invention and Patent Rights should be addressed in all IAAs. Sample clause 3.2.9.3 "Invention and Patent Rights" recognizes that custody and administration of an invention remains with the inventing agency, but the invention is owned by the U.S. Government rather than any single Federal Agency. Additionally, NASA and the other Federal Agency agree to consult, as appropriate, about future actions to establish patent protection for joint inventions.

3.2.9.3. Intellectual Property Rights – Patent and Invention Rights (Sample Clause)

3.3.2.10. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA

Normally, IAAs should address how each party will handle public dissemination of information related to its activities, such as use of press releases. The recommended clause provides that either party may release information regarding its own participation in the IAA. However, to the extent that any public release of information includes discussion of the activities of the other Federal Agency, the parties should seek to consult with each other beforehand on the content of any such releases.

Under the transparency requirements of Section 841(d) of the NTAA, SAAs (which includes IAAs that cite to 51 U.S.C. § 20113(e)) will be posted to a public website in a searchable format within 60 days of signature. The recommended clause provides notice to the Partner that, if the

IAA cites to 51 U.S.C. § 20113(e), the IAA will be posted on NASA's website, without redactions,[107] pursuant to this transparency requirement of the NTAA.

3.2.10. Release of General Information to the Public and Media (Sample Clause)

3.3.2.11. TERM OF AGREEMENT

This section sets forth the duration of the IAA which must state a definite term. The "Effective Date," the date the IAA enters into force, is the date of last signature. Because of uncertainties as to rate of progress, the ending date (*e.g.* expiration date) may be determined based on two possible triggers—arrival at a date certain, or completion of both parties' obligations, whichever comes first. This approach allows NASA to close out the IAA if all related activity is accomplished ahead of schedule without having to terminate the IAA.

NASA limits its IAAs to one five-year term in all but very few cases because any commitment of resources far into the future may be problematic due to changing budgets and program objectives. For the same reason, use of an automatic renewal provision is problematic. Where a commitment exceeding five (5) years is essential to the fundamental objectives of the IAA, or use of an automatic renewal provision is sought, early consultation with the Office of the General Counsel or Chief Counsel, as appropriate, as well as the Office of International and Interagency Relations is essential.

In the event performance will not be completed by the agreed upon end date, the parties may mutually agree to extend the term of the IAA by executing a modification. Any modification must be executed consistent with the terms in the "Modifications" clause 3.2.16 prior to the IAA expiration date. Use of a modification to extend an IAA is preferable to any long-term commitment by NASA. An expired IAA cannot be extended through a modification.

3.2.11.1. Term of Agreement (Sample Clause)

For Umbrella IAAs, the term of the Annex may not exceed the term of the Umbrella IAA.

3.2.11.2. Term of Annex (Annex Sample Clause)

3.3.2.12. RIGHT TO TERMINATE

This section delineates the conditions under which either party can terminate an IAA. The termination notice must be in writing. It can be effected by letter, email, or facsimile. In drafting this clause, consideration should be given to the length of time needed for notice to minimize programmatic impacts. For IAAs involving low risk activities, it often makes sense to provide that either party may terminate after thirty (30) days notice. Longer termination notice periods may be required where termination has far-reaching programmatic or budgetary implications. For Reimbursable IAAs, the sample clause incorporates language addressing

[107] For guidance regarding the transparency requirement of the NTAA and the need to structure agreements for posting without redaction, *see* Section 1.3, *Negotiating Agreements*.

termination costs consistent with the Department of the Treasury's "Intragovernmental Transaction Guide."[108]

3.2.12.1. Right to Terminate (Nonreimbursable Sample Clause)

3.2.12.2. Right to Terminate (Reimbursable Sample Clause)

3.2.12.3. Right to Terminate (Umbrella Nonreimbursable Sample Clause)

3.2.12.4. Right to Terminate (Umbrella Reimbursable Sample Clause)

3.2.12.5. Right to Terminate (Annex Sample Clause)

3.3.2.13. CONTINUING OBLIGATIONS

The IAA should specify the rights and obligations of the Parties that, by their nature, would continue beyond the expiration or termination of the IAA (*e.g.,* "Liability and Risk of Loss," and "Intellectual Property Rights"). For Reimbursable IAAs, "Financial Obligations" also survives termination or expiration of the IAA and should be included in this clause.

3.2.13. Continuing Obligations (Sample Clause)

3.3.2.14. POINTS OF CONTACT

To establish clear management interfaces, project level, or in some cases, program level Points of Contact (POCs) should be specified as required to facilitate good communication during the IAA activity. In larger projects, there may be program managers identified as having management oversight, and program scientists designated as key officials for all science goals. NASA POCs should be NASA civil servants.

3.2.14.1. Points of Contact (Sample Clause)

3.2.14.2. Points of Contact (Umbrella Sample Clause)

3.2.14.3. Points of Contact (Annex Sample Clause)

3.3.2.15. DISPUTE RESOLUTION

This clause outlines the dispute resolution procedures to be followed for Agreements with other Federal Agencies. It incorporates guidance provided by the Department of the Treasury's "Intragovernmental Transaction Guide."[109]

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[108]The Department of the Treasury, "Intragovernmental Transaction Guide", Treasury Financial Manual, Vol. 1, Chapter 2, Part 4700, Appendix 10.
[109]The Department of the Treasury, "Intragovernmental Transaction Guide", Treasury Financial Manual, Vol. 1, Chapter 2, Part 4700, Appendix 10.

3.2.15.1. Dispute Resolution (Sample Clause)

3.2.15.2. Dispute Resolution (Umbrella IAA Sample Clause)

3.3.2.16. MODIFICATIONS

This section requires that any modification (amendment) to the IAA be executed in writing and signed by an authorized representative of each party, which for NASA is a Signing Official or, in some cases, his or her designee. When modifying an Umbrella IAA, consideration should be given to its effect on executed Annexes. Annexes are not considered modifications.

3.2.16.1. Modifications (Sample Clause)

3.2.16.2. Modifications (Umbrella Sample Clause)

3.2.16.3. Modifications (Annex Sample Clause)

3.3.2.17. APPLICABLE LAW

As NASA and the other Federal Agency are agencies of the Federal Government, U.S. Federal law governs their domestic activities, and the IAA should state explicitly this choice of law.

3.2.17. Applicable Law (Sample Clause)

3.3.2.18. LOAN OF GOVERNMENT EQUIPMENT

On occasion, government equipment (as defined in NPR 4200.1) is loaned to a Partner in support of an IAA. NPD 4200.1C requires that all loans of government equipment be done pursuant to NASA Form 893 (NF 893). Accordingly, if government equipment is to be loaned in support of an IAA, an NF 893 needs to be entered into by the parties.

For loans of NASA personal property that does not meet the definition of equipment under NPR 4200, Centers may use the NF 893 or another form of loan instrument/language as long as the instrument or language is consistent with law and provides protection for NASA comparable to NF 893, as determined by counsel.

Sample clause 3.2.18. (adjusted as necessary for different loan instruments) should be included in all IAAs.

3.2.18. Loan of Government Equipment (Sample Clause)

3.3.2.19. SIGNATORY AUTHORITY

This clause provides a signature block, as well as the typed name, title, and date of signature for the responsible Signing Official of each Federal Agency. Two (2) original copies should be signed by both parties. During the negotiations, care should be taken to identify and confirm that appropriate senior managers are signing for each party, both in terms of management responsibilities and signatory authority. As a general rule, the Signing Officials should have similar levels of management responsibility. With respect to signatory authority, in contrast to agreements with non-Federal entities, the concept of "apparent authority," an element of the law of agency, does not apply to IAAs. An official must have actual (original or delegated) authority to create legal obligations for a Federal Agency.

3.2.19. Signatory Authority (Sample Clause)

APPENDIX 3. SAMPLE CLAUSES – NONREIMBURSABLE AND REIMBURSABLE AGREEMENTS WITH FEDERAL GOVERNMENT ENTITIES

3.1. AGREEMENT CONTENTS

3.2.1. TITLE

3.2.1.1. TITLE (NONREIMBURSABLE AGREEMENT SAMPLE CLAUSE)

Nonreimbursable [*subtitle, as appropriate*] Interagency Agreement between the National Aeronautics and Space Administration [*Center Name*] and [*name of other Federal Agency*] for _____ [*state brief purpose*].

3.2.1.2. TITLE (REIMBURSABLE AGREEMENT SAMPLE CLAUSE)

Reimbursable [*subtitle, as appropriate*] Interagency Agreement between the National Aeronautics and Space Administration [*Center Name*] and [*name of other Federal Agency*] for _____ [*state brief purpose*].

3.2.1.3. TITLE (NONREIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE)

Nonreimbursable [*subtitle, as appropriate*] Umbrella Interagency Agreement between the National Aeronautics and Space Administration [*Center Name*] and [*name of other Federal Agency*] for _____ [*state brief purpose*].

3.2.1.4. TITLE (REIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE)

Reimbursable [*subtitle, as appropriate*] Umbrella Interagency Agreement between the National Aeronautics and Space Administration [*Center Name*] and [*name of other Federal Agency*] for _____ [*state brief purpose*].

3.2.1.5. TITLE (ANNEX AGREEMENT SAMPLE CLAUSE)

Interagency Annex between the National Aeronautics and Space Administration [*Center Name*] and [*name of other Federal Agency*] under Umbrella Interagency Agreement **No.** _____, Dated _____. (Annex Number _____)

3.2.2. AUTHORITY AND PARTIES (SAMPLE CLAUSE – *APPLIES TO ALL IAAS*)

3.2.2.1. AUTHORITY AND PARTIES (REIMBURSABLE AGREEMENT SAMPLE CLAUSE) The National Aeronautics and Space Administration [Center name], located at _____ (hereinafter referred to as "NASA" or "NASA [Center initials]") enters into this Interagency Agreement (hereinafter referred to as "IAA" or "Agreement") in accordance with [provide citation to legal authority]. [Other Federal Agency], located at _____ (hereinafter referred to as "[Agency acronym]"), enters into this IAA in accordance with [provide citation to legal authority]. NASA and [Agency acronym] may be individually referred to as a "Party" and collectively referred to as the "Parties."

3.2.2.2. AUTHORITY AND PARTIES (NONREIMBURSABLE AGREEMENT SAMPLE CLAUSE) The National Aeronautics and Space Administration [Center name], located at _____ (hereinafter referred to as "NASA" or "NASA [Center initials]") enters into this Interagency Agreement (hereinafter referred to as "IAA" or "Agreement") in accordance with the National Aeronautics and Space Act, 51 U.S.C. § 20113(e). [Other Federal Agency], located at _____ (hereinafter referred to as "[Agency acronym]"), enters into this IAA in accordance with [provide citation to legal authority]. NASA and [Agency acronym] may be individually referred to as a "Party" and collectively referred to as the "Parties."

3.2.3. PURPOSE

3.2.3.1. PURPOSE (SAMPLE CLAUSE)

This IAA shall be for the purpose of [*state purpose*].

3.2.3.2. PURPOSE AND IMPLEMENTATION (UMBRELLA AGREEMENT SAMPLE CLAUSE)

This Umbrella IAA (hereinafter referred to as the "IAA" or "Umbrella IAA") shall be for the purpose of [*state purpose*].

The Parties shall execute one (1) Annex Agreement (hereinafter referred to as the "Annex") concurrently with this Umbrella IAA. The Parties may execute subsequent Annexes under this Umbrella IAA consistent with the purpose and terms of this Umbrella IAA. This Umbrella IAA shall govern all Annexes executed hereunder; no Annex shall amend this Umbrella IAA. Each Annex will detail the specific purpose of the proposed activity, responsibilities, schedule and milestones, and any goods, services, facilities or equipment to be utilized under the task. This Umbrella IAA takes precedence over any Annexes. In the event of a conflict between the Umbrella IAA and any Annex concerning the meaning of its provisions, and the rights, obligations and remedies of the Parties, the Umbrella IAA is controlling.

3.2.3.3. PURPOSE (ANNEX SAMPLE CLAUSE)

This Annex shall be for the purpose of [*state purpose*].

3.2.4. RESPONSIBILITIES

3.2.4.1. RESPONSIBILITIES (SAMPLE CLAUSE)

A. NASA [*Center initials*] will use reasonable efforts to:

1.
2.
3.

B. [*Other Federal Agency*] will use reasonable efforts to:

1.

2.
3.

3.2.4.2. RESPONSIBILITIES (UMBRELLA IAA SAMPLE CLAUSE,)

A. NASA [*Center initials*] will use reasonable efforts to:

1. Provide support of projects undertaken in any Annex;
2. Provide internal coordination of approvals for Annexes;
3. Provide for a single point of contact for Annex development and operations.

B. [*Other Federal Agency*] will use reasonable efforts to:

1. Provide support of projects undertaken in any Annex;
2. Provide internal coordination of approvals for Annexes;
3. Provide for a single point of contact for Annex development and operations.

3.2.4.3. RESPONSIBILITIES (ANNEX SAMPLE CLAUSE)

A. NASA [*Center initials*] will use reasonable efforts to:

1.
2.
3.

B. [*Other Federal Agency*] will use reasonable efforts to:

1.
2.
3.

3.2.5. SCHEDULE AND MILESTONES

3.2.5.1. SCHEDULE AND MILESTONES (SAMPLE CLAUSE)

The planned major milestones for the activities defined in the "Responsibilities" Article are as follows: [*state milestones with approximate month/year dates or measure from the Effective Date of the IAA*].

3.2.5.2. SCHEDULE AND MILESTONES (UMBRELLA AGREEMENT SAMPLE CLAUSE)

The planned major milestones for the activities defined in the "Responsibilities" Article are as follows: [*state milestones*]. The Parties will execute one (1) Annex concurrently with this Umbrella Agreement. The initial Annex and any subsequent Annexes will be performed on the schedule and in accordance with the milestones set forth in each respective Annex.

3.2.5.3. SCHEDULE AND MILESTONES (ANNEX SAMPLE CLAUSE)

The planned major milestones for the activities in the Annex defined in the "Responsibilities" Article are as follows: [*state milestones with approximate month/year dates or measure from the Effective Date of the Annex.*]

3.2.6. FINANCIAL OBLIGATIONS

3.2.6.1. FINANCIAL OBLIGATIONS (NONREIMBURSABLE AGREEMENT SAMPLE CLAUSE)

There will be no transfer of funds between the Parties under this Agreement and each Party will 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).

3.2.6.2. FINANCIAL OBLIGATIONS (REIMBURSABLE AGREEMENT SAMPLE CLAUSE)

[*Other Federal Agency*] agrees to reimburse NASA an estimated cost of [*$ total dollars*] in connection with the provision of goods or services. Reimbursable budget authority shall be made available in advance of NASA's efforts. The fund transfer will be effected through a separate funding document ("Order") which includes a description of the products or services to be provided and key project or acquisition milestones associated with the funds. (*See* The Department of the Treasury's *Intragovernmental Transaction Guide* (Treasury Financial Manual, Vol. 1, Chapter 2, Part 4700, Appendix 10 (hereinafter, the "Intragovernmental Transaction Guide")). Funding Orders may not be used to modify the terms of the IAA.

Notwithstanding any other provision of this Agreement, 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).

3.2.6.3. FINANCIAL OBLIGATIONS (REIMBURSABLE UMBRELLA AGREEMENT SAMPLE CLAUSE)

[*Other Federal Agency*] agrees to reimburse NASA in connection with the provision of goods or services in accordance with law. Reimbursable budget authority shall be made available in advance of NASA's efforts. Each fund transfer under this IAA or any Annexes entered into hereunder, will be effected through a separate funding document ("Order") which includes a description of the products or services to be provided and key project or acquisition milestones associated with the funds. (*See* The Department of the Treasury's *Intragovernmental Transaction Guide* (Treasury Financial Manual, Vol. 1, Chapter 2, Part 4700, Appendix 10 (hereinafter, the "Intragovernmental Transaction Guide")). Funding Orders may not be used to modify the terms of the IAA.

Notwithstanding any other provision of this Agreement, 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, Title 31 U.S.C. § 1341.

3.2.6.4. FINANCIAL OBLIGATIONS (REIMBURSABLE ANNEX SAMPLE CLAUSE)

[*Other Federal Agency*] agrees to reimburse NASA an estimated cost of [*$ total dollars*] for NASA to carry out its responsibilities under this Annex.

3.2.7. PRIORITY OF USE (SAMPLE CLAUSE)

Any schedule or milestone in this IAA is estimated based upon the Parties' current understanding of the projected availability of its respective goods, services, facilities, or equipment. In the event that either Party's projected availability changes, NASA or [*Other Federal Agency*], respectively, shall be given reasonable notice of that change, so that the schedule and milestones may be adjusted accordingly. The Parties agree that NASA's and [*Other Federal Agency*]'s use of its own goods, services, facilities, or equipment shall have priority over the use planned in this IAA.

3.2.8. LIABILITY AND RISK OF LOSS

3.2.8.1. LIABILITY AND RISK OF LOSS (SAMPLE CLAUSE)

Each Party agrees to assume liability for its own risks arising from or related to activities conducted under this IAA.

3.2.8.2. LIABILITY AND RISK OF LOSS (CROSS-WAIVER OF LIABILITY FOR AGREEMENTS INVOLVING ACTIVITIES RELATED TO THE ISS SAMPLE CLAUSE)

The Code of Federal Regulations (14 C.F.R. § 1266.102) establishes a cross-waiver of liability between the parties to agreements for activities related to the International Space Station, and requires that such cross-waiver be flowed down to the parties' Related Entities. In furtherance of this requirement, the Parties agree to ensure that their respective applicable related entities are subject to the cross-waiver as set forth in 14 C.F.R. § 1266.102.

3.2.8.3. LIABILITY AND RISK OF LOSS (CROSS-WAIVER OF LIABILITY FOR LAUNCH AGREEMENTS FOR SCIENCE OR SPACE EXPLORATION ACTIVITIES UNRELATED TO THE ISS SAMPLE CLAUSE)

The Code of Federal Regulations (14 C.F.R. § 1266.104) establishes a cross-waiver of liability between the parties to agreements for science or space exploration activities unrelated to the International Space Station which involve a launch, and requires that such cross-waiver be flowed down to the parties' related entities. In furtherance of this requirement, the Parties agree to ensure that their respective applicable Related Entities are subject to the cross-waiver as set forth in 14 C.F.R. § 1266.104.

3.2.9. INTELLECTUAL PROPERTY RIGHTS

3.2.9.1. INTELLECTUAL PROPERTY RIGHTS – DATA RIGHTS – FREE EXCHANGE OF DATA (SAMPLE CLAUSE)

NASA and [*other Federal Agency*] agree that the information and data exchanged in furtherance of the activities under this IAA will be exchanged without use and disclosure restrictions unless required by national security regulations (*e.g.*, classified information) or as otherwise provided in this IAA or agreed to by NASA and [*other Federal Agency*] for specifically identified information or data (*e.g.*, information or data specifically marked with a restrictive notice).

3.2.9.2. INTELLECTUAL PROPERTY RIGHTS – DATA RIGHTS – HANDLING OF DATA (SAMPLE CLAUSE)

A. In the performance of this Agreement, NASA or [*other Federal Agency*] (as "Disclosing Party") may provide the other Party (as "Receiving Party") with:

1. Data of third parties that the Disclosing Party has agreed to handle under protective arrangements or is required to protect under the Trade Secrets Act (18 U.S.C. § 1905) ("Third Party Proprietary Data"), or
2. Government data, including software, the use and dissemination of which, the Disclosing Party intends to control ("Controlled Government Data").

B. All Third Party Proprietary Data and Controlled Government Data provided by Disclosing Party to Receiving Party shall be marked by Disclosing Party with a restrictive notice and protected by Receiving Party in accordance with this Article.

C. Disclosing Party provides the following Data to Receiving Party. The lists below may not be comprehensive, are subject to change, and do not supersede any restrictive notice on the Data.

1. Third Party Proprietary Data:

   The Disclosing Party's Third Party Proprietary Data, if any, will be identified in a separate document.

2. Controlled Government Data:

   The Disclosing Party's Controlled Government Data, if any, will be identified in a separate document.

3. Notwithstanding paragraph D of this Article, NASA software and related Data will be provided to [*other Federal Agency*] under a separate Software Usage Agreement (SUA). [*Other Federal Agency*] shall use and protect the related data in accordance with this Article:

   [*Insert name and NASA Case # of the software; if none, insert "None"*]

[*Umbrella Agreement – use the following substitute paragraph C*]

C. Identification of Data:

1. Third Party Proprietary Data and Controlled Government Data shall be identified in the Annex under which it will be provided.
2. NASA software and related Data shall be identified in the Annex under which it will be used, and provided under a separate Software Usage Agreement (SUA). [*Other Federal Agency*] shall use and protect the related data in accordance with this clause.

D. For such Data identified with a restrictive notice pursuant to paragraph B of this Article, including Data identified in an accompanying funding document, Receiving Party shall:

1. Use, disclose, or reproduce such Data only as necessary under this Agreement;
2. Safeguard such Data from unauthorized use and disclosure;
3. Allow access to such Data only to its employees and any related entity requiring access under this Agreement;
4. Except as otherwise indicated in D.3., preclude disclosure outside Receiving Party's organization;
5. Notify its employees with access about their obligations under this Article and ensure their compliance, and notify any related entity with access about their obligations under this Article; and
6. Dispose of such Data as Disclosing Party directs.

E. If the Parties exchange Data having a notice deemed ambiguous or unauthorized by the receiving Party, it should tell the providing Party. If the notice indicates a restriction, the receiving Party must protect the Data under this Article unless otherwise directed in writing by the providing Party.

F. Notwithstanding any restrictions provided in this Article, the Parties are not restricted in the use, disclosure, or reproduction of Data provided under this Agreement that is:

1. known or available from other sources without restriction;
2. known, possessed, or developed independently, and without reference to the Proprietary Data;
3. made available by the owners to others without restriction; or
4. required by law or court order to be disclosed.

If a Party believes that any exceptions apply, it shall notify the other Party before any unrestricted use, disclosure, or reproduction of the Data.

3.2.9.2.1. INTELLECTUAL PROPERTY RIGHTS – DATA RIGHTS – IDENTIFIED INTELLECTUAL PROPERTY (ANNEX SAMPLE CLAUSE)

A. Under paragraph C of the *Intellectual Property Rights - Data Rights - Handling of Data* Article of the Umbrella Agreement, Disclosing Party provides the following Data to Receiving Party. The lists below may not be comprehensive, are subject to change, and do not supersede any restrictive notice on the Data.

1. Third Party Proprietary Data:

The Disclosing Party's Third Party Proprietary Data, if any, will be identified in a separate document.

2. Controlled Government Data:
   The Disclosing Party's Controlled Government Data, if any, will be identified in a separate document.
3. The following software and related Data will be provided to [*other Federal Agency*] under a separate Software Usage Agreement:
   [*Insert name and NASA Case # of the software; if none, insert "None."*]

3.2.9.3. INTELLECTUAL PROPERTY RIGHTS – INVENTION AND PATENT RIGHTS (SAMPLE CLAUSE)

Unless otherwise agreed upon by NASA and [*other Federal Agency*], custody and administration of inventions made (conceived or first actually reduced to practice) under this IAA will remain with the respective inventing Party. In the event an invention is made jointly by employees of the Parties (including by employees of an Party's contractors or subcontractors for which the U.S. Government has ownership), the Parties will consult and agree as to future actions toward establishment of patent protection for the invention.

3.2.10. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA (SAMPLE CLAUSE)

NASA or [*other Federal Agency*] may, consistent with Federal law and this Agreement, release general information regarding its own participation in this IAA as desired. Insofar as participation of the other Party in this IAA is included in a public release, NASA and [*other Federal Agency*] will seek to consult with each other prior to any such release, consistent with the Parties' respective policies.

Pursuant to Section 841(d) of the NASA Transition Authorization Act of 2017, Public Law 115-10 (the "NTAA"), NASA is obligated to publicly disclose copies of all agreements conducted pursuant to NASA's 51 U.S.C. §20113(e) authority in a searchable format on the NASA website within 60 days after the agreement is signed by the Parties. The Parties acknowledge that, if this IAA is entered into pursuant to NASA's 51 U.S.C. §20113(e) authority, this IAA will be disclosed, without redaction, in accordance with the NTAA.

3.2.11. TERM OF AGREEMENT

3.2.11.1. TERM OF AGREEMENT (SAMPLE CLAUSE)

This IAA 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 [*enter a term from one to five*] years from the Effective Date, whichever comes first.

3.2.11.2. TERM OF ANNEX (ANNEX SAMPLE CLAUSE)

This Annex 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 [*enter a term from one to five*] years from the Effective Date, whichever comes first, unless such term exceeds the duration of the Umbrella IAA. The term of this Annex shall not exceed the term of the Umbrella IAA. The Annex shall automatically expire upon the expiration of the Umbrella IAA.

3.2.12. RIGHT TO TERMINATE

3.2.12.1. RIGHT TO TERMINATE (NONREIMBURSABLE SAMPLE CLAUSE)

Either Party may unilaterally terminate this Agreement by providing thirty (30) calendar days written notice to the other Party.

3.2.12.2. RIGHT TO TERMINATE (REIMBURSABLE SAMPLE CLAUSE)

Either Party may unilaterally terminate this Agreement by providing thirty (30) calendar days written notice to the other Party. In the event of such termination, the Parties will agree to the terms of the termination, including costs attributable to each party and the disposition of awarded and pending actions. (*See* the Intragovernmental Transaction Guide.)

3.2.12.3. RIGHT TO TERMINATE (UMBRELLA NONREIMBURSABLE SAMPLE CLAUSE)

Either Party may unilaterally terminate this Umbrella IAA or any Annex(es) by providing thirty (30) calendar days written notice to the other Party. Termination of an Annex does not terminate this Umbrella Agreement. However, the termination or expiration of this Umbrella IAA also constitutes the termination of all outstanding Annexes.

3.2.12.4. RIGHT TO TERMINATE (UMBRELLA REIMBURSABLE SAMPLE CLAUSE)

Either Party may unilaterally terminate this Umbrella IAA or any Annex(es) by providing thirty (30) calendar days written notice to the other Party. Termination of an Annex does not terminate this Umbrella IAA. However, the termination or expiration of this Umbrella IAA also constitutes the termination of all outstanding Annexes. In the event of such termination, the parties will agree to the terms of the termination, including costs attributable to each party and the disposition of awarded and pending actions. (*See* the Intragovernmental Transaction Guide.)

3.2.12.5. RIGHT TO TERMINATE (ANNEX SAMPLE CLAUSE)

Either Party may unilaterally terminate this Annex by providing thirty (30) calendar days written notice to the other Party.

3.2.13. CONTINUING OBLIGATIONS (SAMPLE CLAUSE)

The rights and obligations of the Parties that, by their nature, would continue beyond the expiration or termination of this Agreement, *e.g.*, "Liability and Risk of Loss" and "Intellectual

Property Rights" and related clauses [and "Financial Obligations" *if reimbursable*] shall survive such expiration or termination of this Agreement.

3.2.14. POINTS OF CONTACT

3.2.14.1. POINTS OF CONTACT (SAMPLE CLAUSE)

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

Management Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

Technical Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

3.2.14.2. POINTS OF CONTACT (UMBRELLA SAMPLE CLAUSE)

The following personnel are designated as the Points of Contact between the Parties in the performance of this IAA. Annexes may designate Points of Contact for purposes of the Annex activities.

Management Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

Technical Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

3.2.14.3. POINTS OF CONTACT (ANNEX SAMPLE CLAUSE)

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

Management Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

Technical Points of Contact:

NASA	Partner
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

3.2.15. DISPUTE RESOLUTION

3.2.15.1. DISPUTE RESOLUTION (SAMPLE CLAUSE)

All disputes concerning questions of fact or law arising under this IAA shall be referred by the claimant in writing to the appropriate person identified in this IAA as the "Points of Contact." The persons identified as the "Points of Contact" for NASA and [*other Federal Agency*] will consult and attempt to resolve all issues arising from the implementation of this IAA. If they are unable to come to agreement on any issue, the dispute will be referred to the signatories to this IAA, or their designees, for joint resolution after the Parties have separately documented in writing clear reasons for the dispute. As applicable, disputes will be resolved pursuant to The Department of the Treasury's *Intragovernmental Transaction Guide* (Treasury Financial Manual, Vol. 1, Chapter 2, Part 4700, Appendix 10 (hereinafter, the "Intragovernmental Transaction Guide")).

3.2.15.2. DISPUTE RESOLUTION (UMBRELLA SAMPLE CLAUSE)

All disputes concerning questions of fact or law arising under this IAA shall be referred by the claimant in writing to the appropriate person identified in this IAA for purposes of the activities

undertaken in the IAA, or Annex(es) for purposes of the activities undertaken in the Annex(es), as the "Points of Contact." The persons identified as the "Points of Contact" for NASA and the [*other Federal Agency*] will consult and attempt to resolve all issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, the dispute will be referred to the signatories to the IAA, or Annex, as appropriate, or their designees, for joint resolution after the Parties have separately documented in writing clear reasons for the dispute. As applicable, disputes will be resolved pursuant to The Department of the Treasury's *Intragovernmental Transaction Guide* (Treasury Financial Manual, Vol. 1, Chapter 2, Part 4700, Appendix 10 (hereinafter, the "Intragovernmental Transaction Guide")).

3.2.16. MODIFICATIONS

3.2.16.1. MODIFICATIONS (SAMPLE CLAUSE)

Any modification to this IAA shall be executed, in writing, and signed by an authorized representative of NASA and the [*other Federal Agency*].

3.2.16.2. MODIFICATIONS (UMBRELLA SAMPLE CLAUSE)

Any modification to this IAA shall be executed, in writing, and signed by an authorized representative of NASA and the [*other Federal Agency*]. Accompanying Annexes may be modified under the same terms. Modification of an Annex does not modify the Umbrella Agreement.

3.2.16.3. MODIFICATIONS (ANNEX SAMPLE CLAUSE)

Any modification to this Annex shall be executed, in writing, and signed by an authorized representative of NASA and the [*other Federal Agency*]. Modification of an Annex does not modify the terms of the Umbrella Agreement.

3.2.17. APPLICABLE LAW (SAMPLE CLAUSE)

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

3.2.18. LOAN OF GOVERNMENT EQUIPMENT (SAMPLE CLAUSE)

The parties shall enter into a NASA Form 893, *Loan of NASA Equipment*, for NASA equipment loaned to [*other Federal Agency*].

3.2.19. SIGNATORY AUTHORITY (SAMPLE CLAUSE)

Approved and authorized on behalf of each Party by:

NASA [*Center initials*]	**[*Other Federal Agency*]**
_____	_____
Name	**Name**
_____	_____
Title	**Title**
_____	_____
Date	**Date**

CHAPTER 4. AGREEMENTS WITH FOREIGN ENTITIES

4.1. GENERAL GUIDANCE AND PROCESS

NASA requires a legally binding agreement when a significant commitment of NASA resources will be dedicated to a joint project, when there is an exchange of sensitive, non-public information, goods, or technical data, when the activity could cause death or serious injury to persons or damage to property, or when intellectual property may be created during the cooperation. There are also various situations where no legally binding agreement is necessary, including when a "statement of intent" or "joint understanding" done at a significantly high level is used to recognize mutually beneficial areas of potential cooperation, when a working group is established to discuss concepts and strategies, when a high level joint press release or joint web publication is sufficient to publicize activities, when only publicly available information will be exchanged, or when one or more foreign co-investigators to a U.S. citizen principal investigator on a NASA mission or NASA-funded project is involved.

It is NASA policy to engage in international cooperative projects that provide technical, scientific, or economic benefits to the United States. Such projects could include foreign participation in NASA activities, NASA participation in foreign activities, and other international collaborative efforts. International cooperative efforts should contribute to NASA's overall program objectives and U.S. national policies, such as maintenance and enhancement of U.S. industrial competitiveness. All agreements between NASA and foreign parties should further these goals and should be within the scientific, technical, and budgetary capabilities of each party. Generally, NASA's cooperative activities with foreign entities are not directed toward the joint development of technology or toward products or processes that are potentially of near-term commercial value.

The Office of International and Interagency Relations (OIIR) is responsible for overall policy coordination for all of NASA's international projects. OIIR is also responsible for the negotiation, execution, amendment, and termination of agreements with foreign entities. The appropriate Program Office is responsible for the technical, scientific, programmatic, and management aspects of the joint activity. Program Offices should treat execution of an agreement with a foreign partner the same as any other important early program milestone. Early consultation with OIIR is critical to ensure appropriate steps are taken to execute the agreement. The Office of the General Counsel (OGC) will assist and advise OIIR and the program to ensure all aspects of the agreement are consistent with the applicable law and Agency policy, and will also assist and advise the Agency during the negotiation of the text with the foreign entity. OIIR serves as Agreement Manager for agreements with foreign entities and will identify a point of contact in the appropriate Mission Directorate or Center.

Agreement Managers should use Chapter 4 for most nonreimbursable agreements with foreign entities, including agreements with foreign governments, foreign space agencies, other foreign governmental entities, and other types of foreign entities. Such an agreement is usually styled as a Memorandum of Understanding (MOU), Agreement (either letter or dual-signature format), or Implementing Arrangement (IA), as described further in Section 4.2 (Forms of Agreements).

However, agreements with certain foreign entities including foreign commercial entities, as well as reimbursable agreements with foreign entities, use predominantly Chapter 2 provisions. See Section 4.3.2 (Nonreimbursable Agreements with Foreign Commercial Entities), Section 4.4 (Reimbursable Agreements with Foreign Entities), and Section 4.6.31 (Agreements with Foreign Commercial Entities and Reimbursable Agreements with Foreign Governmental Entities).

4.1.1. AGREEMENT FORMATION PROCESS

As Agreement Manager, OIIR will generally rely on a Mission Directorate or Center Point of Contact to perform various tasks, such as determining the available resources (personnel, goods, services, or facilities), specifying the responsibilities of each party, identifying the funding source for NASA's responsibilities, and assisting OIIR in determining the proposed benefits to NASA and the foreign entity.

Abstract requirements are detailed in Chapter 4 of the Partnerships Guide. Most international activities, or activities that are for the benefit of a foreign entity, will require an abstract. If an abstract is required, the Mission Directorate or Center Point of Contact is responsible for the development and circulation of the abstract, and OIIR will not begin developing the agreement until the Mission Directorate or Center Point of Contact notifies OIIR that the abstract has been approved through the Headquarters Mission Support Directorate (MSD) process.

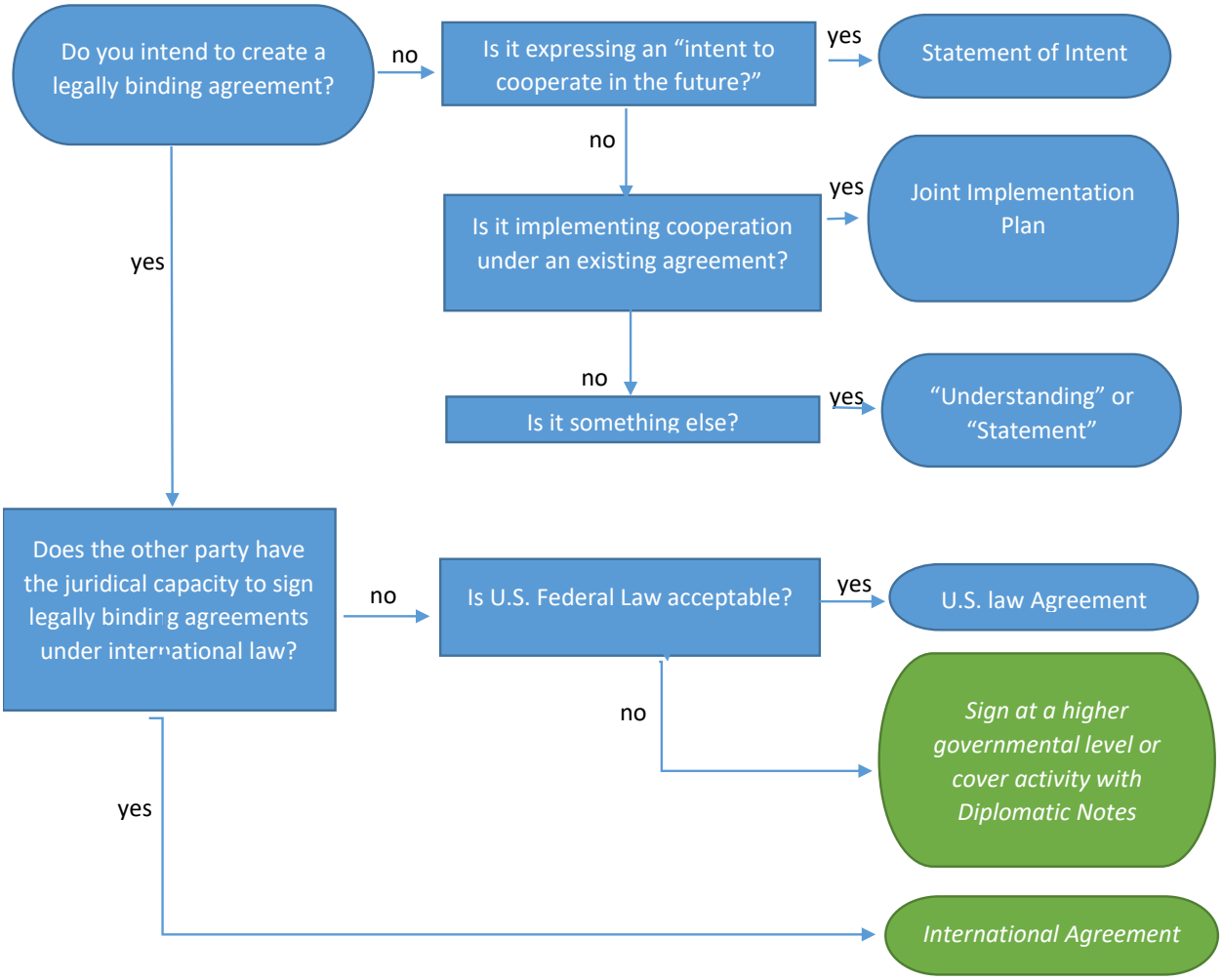
OIIR will outline the timeframe for the execution of the agreement as well as the concurrence cycle, both of which will vary depending on the subject, other party, and complexity of the agreement. OIIR drafts agreements with foreign entities, generally without using the Space Act Agreement Maker. The Mission Directorate or Center Point of Contact should clearly communicate any deadlines early in order for OIIR to construct an appropriate timeline.

OIIR will be responsible for negotiating the agreement with the foreign party, including determining when it is appropriate to share a draft of the agreement with the foreign party.

OIIR, after consulting with OGC, will also determine whether a given cooperative activity should use a legally binding international agreement,[110] a legally binding U.S. Federal law agreement, or a non-binding instrument. Please see the flow chart on the following page for factors to consider in making this determination. Regardless of whether international law or U.S. law governs the agreement, NASA's performance of its responsibilities under an agreement is always subject to applicable U.S. laws and regulations and availability of appropriated funds. Similarly, the other party's performance of its responsibilities under any agreement is subject to its country's applicable laws and regulations and availability of appropriated funds.

[110] This Guide uses the term "International Agreement" to refer specifically to agreements governed by international law. U.S. Federal law agreements with foreign entities are not International Agreements as the term is used here and in 22 CFR Part 181, "Coordination, Reporting, and Publication of International Agreements." A party to an international agreement must be a state, state agency, or intergovernmental organization.

Drafting and Concluding Agreements with Foreign Entities



Note: Green boxes and italics indicate that the agreement must go through the C-175 process. See Section 4.1.2.

The NASA Administrator has delegated authority to sign agreements with foreign entities to the Associate Administrator for OIIR. The OIIR Associate Administrator may further delegate this authority to the Mission Directorate Associate Administrators, the Officials-in-Charge of Headquarters Offices, the Center Directors, and the NASA Office of JPL Management and Oversight (NOJMO) Director. OIIR should memorialize such delegations in writing. See NPD 1050.7, Authority to Enter into Partnership Agreements, paragraphs 5d and 6. When the OIIR Deputy Associate Administrator or OIIR Division Directors sign agreements, they are exercising the authority of the OIIR Associate Administrator and therefore do not require a specific delegation of authority.

4.1.2. CIRCULAR 175 PROCESS

NASA's international agreements must comply with the procedural guidelines provided in the Case-Zablocki Act (1 U.S.C. § 112(b)) and its implementing regulations (22 C.F.R. Part 181). Before negotiating and executing an international agreement, OIIR must submit the draft agreement (if governed by international law) to the State Department Bureau of Oceans and International Environmental and Scientific Affairs (OES). Every Agency of the Government, including NASA, must comply with the provisions set out in the Case-Zablocki Act and its implementing regulations. The State Department Legal Adviser, and in most cases the Assistant Legal Adviser for Treaty Affairs (L/T), determines whether any undertaking, document, or set of documents constitutes or would constitute an international agreement within the meaning of the Case-Zablocki Act or 1 U.S.C. § 112a. L/T considers various factors in making this determination, including the identity and intention of the parties (*e.g.*, whether they intend the agreement to be legally binding), the significance of the arrangement, the verbiage used in the text, as well as other factors specified in the applicable regulations. Agreements that choose U.S. Federal law as the governing law (see Section 4.1.1 and Section 4.6.27) are not considered International Agreements and are therefore not required to be coordinated with L/T or notified to Congress. However, there are instances, often involving political sensitivities, when NASA affirmatively requests State Department review of such proposed cooperation. See also State Department Foreign Affairs Manual 11 FAM 700.

Following interagency review coordinated by the State Department, known as the Circular 175 or C-175 process, the State Department typically gives NASA authorization to negotiate and conclude the International Agreement, subject to the approval of the following offices at the State Department: OES, Legal, and the relevant country desk. These offices will review any changes between the approved text and the text arrived at through negotiations and must approve the text before NASA signs the agreement. At that time, the State Department will give NASA approval to sign the agreement. NASA works through OES to coordinate this State approval process. Sometimes, NASA may only receive authority to negotiate an agreement and must seek a second C-175 review for authority to conclude the agreement. Once NASA and the other party negotiate the international agreement and NASA receives any final approvals required, an authorized NASA signatory may sign the agreement. See Section 4.1.1 (Agreement Formation Process).

The Case-Zablocki Act requires that the State Department report significant international commitments of the United States to the foreign relations committees of the U.S. Senate and House of Representatives. Per 22 CFR Part 181.5, NASA must transmit a certified copy of such agreements to L/T as soon as possible and no later than 15 days after entry into force.

4.1.3. AGREEMENTS WITH FOREIGN UNIVERSITIES, INSTITUTES, AND NONPROFITS

The Sections of this Chapter addressing nonreimbursable and reimbursable agreements (Sections 4.3 and 4.4, respectively) are divided into subsections based on whether the counterparty is a

foreign governmental entity or a foreign commercial entity. However, NASA also enters into agreements with foreign entities that are neither governmental nor commercial. These include, for example, universities, institutes, and nonprofit organizations. Depending on the particular circumstances, such an agreement may follow the guidance for governmental counterparties (Sections 4.3.1 and 4.4.1) or for commercial counterparties (Sections 4.3.2 and 4.4.2).

OIIR and OGC will determine which approach is appropriate for agreements with foreign entities that are not clearly governmental or commercial. OIIR and OGC will consider various factors, including the following:

- If the cooperation with the foreign entity is a component of cooperation with a separate foreign governmental entity, the agreement is more likely to follow the form of an agreement with a governmental entity.
- If the foreign entity is primarily a for-profit entity, even when affiliated with a university or other non-profit entity, the agreement will more likely resemble an agreement with a commercial entity. OIIR or OGC may need to ask the counterparty about its legal status (*e.g.*, whether it is a non-profit or for-profit organization).
- If NASA has a history of cooperation with the foreign entity, OIIR and OGC may take into account the forms of prior agreements with the foreign entity.

Regardless of whether an agreement follows the guidance for governmental or commercial counterparties, all agreements with foreign non-governmental entities must specify that U.S. Federal law is the governing law, because non-governmental entities lack capacity to enter into agreements under International Law. See Section 4.6.27 (Choice of Law) for additional guidance.

4.2. FORMS OF AGREEMENTS

Agreements with foreign entities can take various forms. OIIR will determine which form is most appropriate, in consultation with the other party. For factors to consider in determining the most appropriate form, please see the flow chart in Section 4.1.1 (Agreement Formation Process).

4.2.1. MOUS AND AGREEMENTS (LETTER AND DUAL-SIGNATURE)

Memoranda of Understanding (MOUs) and Agreements (either letter or dual-signature format) are two of the most common forms of agreements that NASA uses to document bilateral or multilateral[111] international activities. Whether an agreement is styled and titled as an MOU or Agreement has no legal effect on the agreement, and NASA has flexibility as to the form used.

[111] It is strongly preferred that there are only two parties to an International Agreement. While it is possible to have multiple parties to an International Agreement, such International Agreements are more complex and require very precise drafting to ensure clear delineation of responsibilities.

Generally, NASA uses MOUs for long-term or large-scale projects, or if there is an established practice of using MOUs with the other party. Sometimes, MOUs may envision subsequent, more detailed documents called Implementing Arrangements that serve to further expound upon each party's responsibilities under the MOU.

NASA typically uses Agreements (either letter or dual-signature format) for more routine or minor cooperation, such as study phase projects, smaller science cooperation, or simple data exchanges. NASA uses agreements in letter format when one party is proposing cooperation to the other party, or when the signatories will not be in the same physical location when signing the agreement. A letter agreement does not enter into force until the counterparty signs and electronically delivers a written affirmative reply. By contrast, NASA typically uses dual-signature agreements when both parties wish to sign the agreement at the same time.

4.2.2. FRAMEWORK AGREEMENTS AND IMPLEMENTING ARRANGEMENTS

Framework agreements establish legal frameworks for space cooperation, and in some cases aeronautics cooperation, with foreign space agencies and other governmental institutions by specifying clauses (*e.g.*, Liability and Risk of Loss, Transfer of Goods and Technical Data, and Intellectual Property Rights) to govern the specific activities that are set forth in implementing arrangements concluded by the agencies under the applicable framework agreement. Framework agreements are useful in facilitating cooperation with international parties with which NASA conducts a wide range of space and aeronautics activities.

The United States has concluded framework agreements both at the government level and, where a foreign space agency has legal capacity to make binding international commitments, at the agency level. Framework agreements at the government level may need to be approved by the other government's legislature, which can take several years.

Once a framework agreement is signed and enters into force, NASA enters into cooperation with the foreign space agency (or other governmental agency) pursuant to implementing arrangements. Implementing arrangements document a specific activity that is within the scope of the framework agreement and include the specific responsibilities of the parties and other terms necessary for the cooperation. Although the clauses used in implementing arrangements differ based on the content of the relevant framework agreement, implementing arrangements generally include the following clauses contained in Section 4.6: Purpose of Cooperation, Responsibilities, Points of Contact, Release of Results and Public Information, and Final Provisions. In certain instances, depending on the terms of the framework agreement, additional or supplementary clauses may be included (*e.g.*, Data Rights, Liability and Risk of Loss, and Intellectual Property Rights). Implementing arrangements should also include a "Relationship to the Framework Agreement" clause, which is an order-of-precedence provision generally stating that in the event of an inconsistency between the framework agreement and the implementing arrangement, the framework agreement controls. NASA frequently uses templates to draft implementing arrangements based upon preauthorization from the State Department. Such templates expedite and facilitate State Department review.

4.2.3. EXCHANGE OF DIPLOMATIC NOTES

A foreign space agency may need assistance from its Ministry of Foreign Affairs to conclude an agreement, for example, if the other space agency does not have the juridical capacity to conclude agreements binding under international law. In such cases, the United States and the government of the counterparty exchange diplomatic notes confirming the acceptance of the terms of the underlying agreement and acknowledging that all legal requirements for entry into force have been met. It is the exchange of diplomatic notes that constitutes the binding agreement, not the instrument between the two space agencies. Agreements concluded by diplomatic notes typically require another exchange of diplomatic notes for amendment or termination. The Final Provisions article of an agreement generally describes conditions for entry into force, amendment, and termination. NASA OIIR and OGC will work with State Department lawyers on the content of diplomatic notes.

4.3. NONREIMBURSABLE AGREEMENTS WITH FOREIGN ENTITIES

NASA has independent legal authority under the Space Act (51 U.S.C. §§ 20102(d)(7) and 20115) to conclude agreements on behalf of the United States for the purpose of conducting aeronautics and space activities with foreign governments and other foreign entities. See Section 1.1 (Authority and Policy). NASA uses its authority to engage in programs of international cooperation through nonreimbursable agreements with foreign entities, as well as reimbursable agreements with foreign governmental entities (see Section 4.4.1). This authority is separate from NASA's general "other transactions" authority under the Space Act. Although nonreimbursable agreements are sometimes colloquially referred to as "cooperative agreements," this Guide refers to such agreements as nonreimbursable for consistency and to avoid confusion with Cooperative Research and Development Agreements (CRADAs), which are executed under a different statutory authority and are not addressed in this Guide. See Section 1.2 (Space Act Agreement Defined).

Generally, NASA's cooperative activities with foreign entities do not include the joint development of technology, or products or processes that are potentially of near-term commercial value. Any such cooperative activities must be consistent with established Agency policies and processes. Whether or not to conclude an agreement for a particular activity is ultimately a determination to be made by OIIR in consultation with OGC.

Because it is NASA policy to conduct research with foreign entities on a cooperative, no-exchange-of-funds basis, NASA does not normally fund foreign research proposals or foreign research efforts that are part of U.S. research proposals. Rather, as an example, when NASA makes a broad agency announcement (BAA) award that involves foreign participation, the parties must implement cooperative research efforts via agreements between NASA and the sponsoring foreign agency or funding/sponsoring institution, under which the parties agree to each bear the cost of discharging their respective responsibilities. See NASA FAR Supplement clause 1835.016-70(a) (48 C.F.R. § 1835.016-70), "Foreign participation under broad agency announcements (BAAs)."

For further policy and procedural guidelines on nonreimbursable agreements with foreign entities, please refer to NPD 1360.2B, "Initiation and Development of International Cooperation in Space and Aeronautics Programs."

4.3.1. NONREIMBURSABLE AGREEMENTS WITH FOREIGN GOVERNMENTAL ENTITIES

Many of NASA's foreign partners are foreign governments, foreign space agencies, other foreign governmental agencies, or international organizations. Agreement Managers should use the model clauses in Section 4.6 to draft nonreimbursable agreements with foreign governmental partners.

A nonreimbursable agreement with a foreign government or international organization may require NASA to purchase goods or services from a foreign entity in order to meet a mutual goal set out in the agreement. If the foreign entity requires monetary payment, NASA must enter into a Federal Acquisition Regulation (FAR) contract with the foreign entity. In order for NASA to issue the FAR contract on a sole source basis without full and open competition, the international agreement must explicitly provide that the proposed FAR contract is an express condition of the foreign party's participation in the project, and the party's participation must be a necessary and critical component without which the project could not proceed. See 10 U.S.C. § 2304(c)(4), 41 U.S.C. § 3304(a)(4), and FAR Part 6.302-4. Alternatively, NASA may use other FAR exceptions, if available. There are other circumstances in which NASA may procure from a foreign entity, which are outside the scope of this Guide. These contracts will be included in required NASA reports to Congress regarding NASA contracts and subcontracts performed overseas and amounts of purchases from foreign entities.[112] Early advice should be sought from OGC for any planned purchases involving foreign entities.

4.3.2. NONREIMBURSABLE AGREEMENTS WITH FOREIGN COMMERCIAL ENTITIES

Foreign commercial entities with which NASA concludes nonreimbursable agreements should generally be treated like domestic commercial entities in accordance with the provisions of Chapter 2. This is to assure comparable treatment for all commercial entities. However, nonreimbursable agreements with foreign commercial entities differ from nonreimbursable agreements with domestic commercial entities in a few key ways. For nonreimbursable agreements with foreign commercial entities, the Agreement Manager should use Chapter 2 to

[112] See, for example, Buy America Act requirement outlined in Title VIII, Subtitle C, Section 8306 of the U.S. Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (P.L. 110-28), NASA Authorization Act of 2005 § 709, 51 U.S.C § 30704, and Iran, North Korea, and Syria Nonproliferation Act (P.L. 106-178, amended by P.L. 107-228, P.L. 109-112, P.L. 109-353, P.L. 110-329).

draft the agreement, but then should make the changes indicated in Section 4.6.31 (Agreements with Foreign Commercial Entities and Reimbursable Agreements with Foreign Governmental Entities) to incorporate the appropriate Chapter 4 provisions. Nonreimbursable agreements with foreign commercial entities are rare, due to the concern that they may place U.S. commercial entities at a disadvantage. Agreement Managers should evaluate proposals for such agreements with due scrutiny.

All agreements with foreign commercial entities must specify that U.S. Federal law is the governing law. See Section 4.6.27 (Choice of Law) for additional guidance.

4.4. REIMBURSABLE AGREEMENTS WITH FOREIGN ENTITIES

NASA enters into reimbursable agreements to facilitate use by foreign entities of NASA facilities, goods, and services consistent with U.S. law and policy on similar terms and conditions to a Reimbursable Space Act Agreement with a domestic party (see Chapter 2). Section 1.5 provides general guidance on reimbursable agreements and should be reviewed in determining whether a reimbursable agreement with a foreign entity is appropriate in particular circumstances. Like domestic Reimbursable Space Act Agreements, they must be concluded under U.S. Federal law. See Section 4.6.27 (Choice of Law).

NASA may accept reimbursement for use of NASA facilities and for unique goods and services that are developed in-house and are not generally available on the commercial market from any U.S. source (*e.g.*, specially tested integrated circuits uniquely designed for interplanetary spacecraft). The proposed activity must be consistent with NASA's mission. NASA may allow non-Federal entities to use its space-related facilities on a reimbursable basis only if the NASA Administrator (or designee) determines that "equivalent commercial services are not available on reasonable terms." See 51 U.S.C. § 50504. NASA should not act as a purchasing agent or broker for a party's acquisition of reasonably commercially available goods or services.

NASA may also provide goods or perform services on a reimbursable basis to support a foreign entity as a minor component of a broader cooperative activity with a party, as specified in a separate nonreimbursable agreement. The broader agreement may be governed by international or U.S. Federal law. Actual performance of the reimbursable work would be pursuant to a separate reimbursable agreement, concluded under U.S. Federal law. This process ensures that standard reimbursable agreement requirements to which all parties are subject (*e.g.*, intellectual property, liability, financial obligations, and priority of use) apply to the reimbursable work.

All costs of a reimbursable activity must be borne by the foreign party, with advance payment to NASA, and the agreement should include specific instructions specifying payment procedures.

4.4.1. REIMBURSABLE AGREEMENTS WITH FOREIGN GOVERNMENTAL ENTITIES

NASA executes reimbursable agreements with foreign governments, foreign space agencies, other foreign governmental agencies, and international organizations under 51 U.S.C. §§ 20102(d)(7) and 20115 of the Space Act. The Agreement Manager should use Chapter 2 to draft the agreement, but then should make the changes indicated in Section 4.6.31 (Agreements with Foreign Commercial Entities and Reimbursable Agreements with Foreign Governmental Entities) to incorporate the appropriate Chapter 4 provisions.

4.4.2. REIMBURSABLE AGREEMENTS WITH FOREIGN COMMERCIAL ENTITIES

NASA executes reimbursable agreements with foreign commercial entities under 51 U.S.C. § 20113(e) of the Space Act (NASA's "other transactions" authority). The Agreement Manager should use Chapter 2 to draft the agreement, but then should make the changes indicated in Section 4.6.31 (Agreements with Foreign Commercial Entities and Reimbursable Agreements with Foreign Governmental Entities) to incorporate the appropriate Chapter 4 provisions.

Pursuant to the NASA Transition Authorization Act of 2017 (NTAA), NASA must publish agreements concluded under this § 20113(e) authority.

4.5. SPECIALIZED AGREEMENTS

4.5.1. AGREEMENTS RELATED TO THE INTERNATIONAL SPACE STATION

In January 1998, the Governments of the International Space Station (ISS) Partner States signed the "Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America Concerning Cooperation on the Civil International Space Station" (the Intergovernmental Agreement or IGA) that established the legal framework for ISS cooperation. At the same time, NASA signed four separate bilateral ISS Memoranda of Understanding with the other ISS Cooperating Agencies (the Canadian Space Agency, the European Space Agency, the Government of Japan, and the Russian Space Agency, now the State Space Corporation ROSCOSMOS), which further elaborated on the IGA to establish the programmatic basis for ISS cooperation. The IGA and ISS Memoranda of Understanding have enabled a complex network of subordinate agreements and programmatic commitments between NASA and each of the ISS Cooperating Agencies for design, development, operation, and utilization of the ISS.

Agreements related to the ISS follow a unique format and contain provisions specific to cooperation pursuant to or enabled by the IGA and ISS Memoranda of Understanding. OIIR will work with OGC to draft appropriate language, which will vary with different agreements and the different ISS Cooperating Agencies.

The IGA and ISS Memoranda of Understanding provide for the use of unique "barter" and "offset" transactions for goods and services for which the ISS Cooperating Agencies share responsibility. While the IGA and MOUs do not define the terms, "barter" in the ISS context typically refers to trades of goods and services among the ISS partners, while "offset" refers to contributions intended to satisfy a financial obligation or responsibility of a partner. For example, a partner may use a barter to compensate another partner for launch or communications costs, or use an offset to satisfy its responsibility for its share of ISS Common System Operations Costs. The purpose of this unique category of agreements is to minimize the exchange of funds in the implementation of ISS cooperation, an objective emphasized in the IGA and the ISS Memoranda of Understanding.

NASA uses reimbursable agreements to provide ISS Cooperating Agencies additional goods and services related to ISS cooperation. These agreements may in part follow Chapter 2 and Chapter 4 provisions, but they will also include provisions unique to the ISS program. NASA may also enter into reimbursable agreements related to the ISS that authorize full or partial reimbursement through barter and offset arrangements.

NASA concludes agreements for utilization of the U.S. allocation of ISS laboratory accommodations and resources. These agreements take various forms, including individual nonreimbursable agreements and agreements under a September 2002 arrangement regarding life sciences flight experiments.[113] While the IGA and the ISS Memoranda of Understanding contain numerous provisions applicable to ISS utilization (particularly with regard to liability), NASA agreements for utilization of the U.S. allocation – including those with ISS Partners – generally are, by definition, not related to design, development, or operation of the ISS facility itself, but rather are for use of ISS accommodations and resources. As such, those agreements may contain terms and conditions additional to those in the IGA and the ISS Memoranda of Understanding.

With the completion and increased utilization of the ISS, there is growing interest in expanding utilization of the ISS to non-ISS Partner States, ongoing ISS work related to exploration beyond low Earth orbit, and expanded commercial activities on the ISS. NASA will continue to develop appropriate agreements for such international cooperation.

Given that agreements related to the ISS have many unique elements, early consultation with OIIR and OGC is key.

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[113] See Arrangement among the Canadian Space Agency, the European Space Agency, the National Aeronautics and Space Administration of the United States of America and the National Space Development Agency of Japan [now the Japan Aerospace Exploration Agency] concerning International Space Life Sciences Flight Experiments on the International Space Station.

4.5.2. PROPERTY LOAN AGREEMENTS

Property loan agreements are agreements whose primary purpose is the loan of NASA property, such as agreements with exhibitors. The NASA program or project that is loaning the property must complete a NASA Form 893, Loan of NASA Equipment, after the agreement is concluded. Both the agreement and the Form 893 are required; the Form 893 on its own cannot serve as the agreement. A property loan agreement should not exceed four years in duration and cannot be used to permanently give away U.S. Government property. Agreement Managers should include NASA Property Management on the concurrence routing for the agreement.

Loaned property must be used in support of official NASA activities. NASA may loan equipment to (1) private individuals and entities if it is in the best interest of the Government and the equipment is unique to NASA; (2) other federal agencies if it is in the public interest; and (3) nonprofit or educational institutions for research purposes if it *will* be used to satisfy a NASA mission requirement and *will not* be used on a Government contract. See NPR 2400.1H, NASA Equipment Management Procedural Requirements, 3.4 Loan of NASA Equipment.

Property loan agreements include several special provisions, which are described in Section 4.6.26.2 (Freestanding Property Loan Agreement).

4.5.3. VISITING RESEARCHER AGREEMENTS

When a foreign national serves as a visiting researcher at a NASA center, NASA enters into a visiting researcher agreement (VRA) with the visiting researcher's home institution. The VRA contains specialized provisions addressing matters such as visa requirements, IP rights, and NASA systems access. Because NASA enters into the VRA with the visiting researcher's home institution, rather than directly with the visiting researcher, the VRA requires the home institution to ensure that the visiting researcher complies with the relevant provisions of the VRA. A program office that needs to draft a VRA should contact OIIR.

Similarly, when a NASA civil servant serves as a visiting researcher at a foreign entity, NASA may enter into a VRA with the foreign entity. NASA will generally enter into a VRA if the relevant NASA Mission Directorate has approved the activity and the activity is not related to ongoing collaboration under an existing agreement. Agreement Managers should review requests to enter into VRAs for NASA researchers abroad using the same criteria and process as any other international partnership.

4.6. STANDARD CLAUSES FOR AGREEMENTS WITH FOREIGN ENTITIES

An agreement should describe each party's individual responsibilities, technically and financially, and clearly define each element of the project. It should also establish clearly defined managerial and technical interfaces and provisions for the protection of export-controlled,

proprietary, or otherwise sensitive technology and provide for allocation of risk. A well-defined agreement will result in each party retaining intellectual property rights in the technology and hardware it has developed independently of the other party, while typically providing that scientific results be shared between the cooperating parties and often with the international community.

U.S. practice reserves certain words and phrases for use only in legally binding agreements, while other words and phrases generally signal that the parties intend an instrument to be non-binding in nature. Therefore, Agreement Managers must take care to use appropriate terminology and phrasing when drafting agreements and other instruments. Consult OGC for guidance on appropriate terminology.

In addition, Agreement Managers should use neat and consistent formatting when drafting an agreement. In general, Agreement Managers should follow the formatting guidance below. Agreement Managers have discretion to depart from these general formatting guidelines, for example to ensure consistency with a prior agreement or to accommodate partner requests, but Agreement Managers should strive for consistency both within individual documents as well as across NASA agreement practice.

- Agreements should use single-spaced 12-point Times New Roman font.
- Clauses should be numbered and titled using a consistent hierarchy of numbering. This should typically be, in descending order: Upper-case Roman numerals, upper-case letters, Arabic numerals, lower-case letters, and lower-case Roman numerals ("I. A. 1. a. i.").
- Agreements typically use Oxford commas (a comma before the final item in a list).
- Spacing between sentences (*i.e.*, one space or two spaces after a period) should be consistent throughout the agreement.
- Definitions of terms should be placed in parentheses, without quotation marks; *e.g.*, the National Aeronautics and Space Administration (NASA). There is no need to use words like "hereafter," "hereinafter," or "hereinafter referred to as" when defining terms.

MOUs and agreements include the following standard clauses. The clauses are generally in the order presented below, but the order may be changed based on past practice or at a partner's request. Standard clauses may be omitted when unnecessary or inapplicable. Additional clauses may be added as appropriate for specific situations.

Clause Hierarchy

I. UPPER-CASE ROMAN NUMERALS
A. Upper-case letters
1. Arabic numerals
a. Lower-case letters
i. Lower-case Roman numerals

4.6.1. TITLE

MOUs and dual-signature agreements usually have titles that state the type of agreement, the parties, and the agreement's purpose. The title generally appears on a separate title page. Agreements in letter format typically do not contain a title.

[Memorandum of Understanding/Agreement]
between the
National Aeronautics and Space Administration [*ALT:* of the United States of America]
and the
[*Party*] [*ALT:* of [*Country*]]
Concerning the
[*briefly state purpose*]

4.6.2. TABLE OF CONTENTS

MOUs generally contain a table of contents that lists the articles in the MOU. Agreements (letter and dual-signature format) typically do not contain a table of contents.

4.6.3. PREAMBLE/INTRODUCTORY LANGUAGE

MOUs typically contain introductory language describing the general nature and purpose of the cooperative project. This clause: (1) references relevant prior agreements between the United States, NASA, and the government or agency of the other country; (2) recalls previous related collaborations; (3) references any other relevant agreements, including, in some cases, relevant treaties (*e.g.*, related to outer space or protection of the environment); (4) explains how the proposal for the cooperative project came about (*e.g.*, in response to an Announcement of Opportunity (AO), technical discussions, joint statement/statement of intent, or political invitation); and (5) delineates any relationships with other international mandates, groups, or projects. Additionally, parties sometimes include descriptions of their relevant national policies or mandates.

In MOUs, some or all of this information may be contained in a formally styled section known as a "preamble," which can be lengthy in some instances. Alternatively, some or all of this information may be included in a Purpose of Cooperation clause (see Section 4.6.5). The preamble is not an "operative" article of the MOU and therefore should not contain commitments of the parties or obligation-like language such as the verbs "shall" or "will." Instead, drafters of such instruments should use hortatory words such as "intend to," "should," or "is expected to." To the extent the preamble describes anticipated events such as mission details (*e.g.*, "The Artemis Program will land the first woman and the first person of color on the surface of the Moon"), the preamble can include the following sentence at the beginning of the section:

[*To be used if the preamble uses "will" to describe the mission or cooperation:*] This Preamble describes the Parties' expectations regarding [*name of mission*].

Dual-signature agreements begin with introductory language that introduces the parties and the purpose of the agreement. The introductory language will also reference any other applicable agreements.

Letter agreements begin with the recipient's address and a customary letter greeting, followed by a paragraph introducing the parties and sometimes the purpose of the agreement. The introductory language will also reference any other applicable agreements. Additional relevant background may be included in this clause as well.

[*Address*]

Dear [*Party*]:

The National Aeronautics and Space Administration (NASA) and [*Party*] have expressed a mutual interest in pursuing cooperation on [*TBD*]. [*Include additional explanatory language as necessary.*]

4.6.4. AUTHORITY

This clause recites NASA's authority to enter into the agreement and, if desired, the other party's authority to enter into the agreement. OGC recommends inclusion of this Authority article where applicable, because it is useful to distinguish agreements concluded under NASA's international cooperation authority (51 U.S.C. §§ 20102(d)(7) and 20115) from agreements concluded under NASA's other transactions authority (51 U.S.C. §20113(e)). Pursuant to Section 841 of the NTAA, NASA must publicly disclose on its website any agreements it enters into pursuant to its other transactions authority under 51 U.S.C. §20113(e).

This sample clause does not apply to reimbursable agreements with foreign commercial entities, which are concluded under 51 U.S.C. § 20113(e). See Section 2.2.2 (Authorities and Parties), Section 4.4.2 (Reimbursable Agreements with Foreign Commercial Entities), and Section 4.6.31 (Agreements with Foreign Commercial Entities and Reimbursable Agreements with Foreign Governmental Entities).

ARTICLE IV. AUTHORITY

NASA enters into this [MOU/Agreement] in accordance with the National Aeronautics and Space Act (51 U.S.C. §§ 20102(d)(7) and 20115). [[*Party*] enters into this [MOU/Agreement] in accordance with [its applicable law(s)…].]

4.6.5. PURPOSE OF COOPERATION

This clause provides an overview of the cooperation. It briefly describes the cooperative project, including the purpose and general scope of the activities planned, and outlines the agreed-upon scientific and technical objectives of the overall mission. This clause should also clearly describe or identify the basis for the mutual interest of both parties in the project and any relevant additional background.

There is no standard format for this clause. The drafter may choose a format based on the nature and scope of the project. This clause is generally in paragraph format and numbered for clarity when necessary. In some letter agreements, the purpose of cooperation clause is included as part of the introductory language and is not a separate clause.

In some study phase or other early cooperation stage agreements, the parties may want to emphasize that the cooperation is only preliminary or limited to the stage of cooperation described and that further agreement(s) would be necessary should the parties decide that further cooperation on the activity is warranted. With or without that explicit disclaimer, the scope of an agreement is always limited to the responsibilities set forth in the agreement.

Purpose of Cooperation is not an "operative" article of the agreement and therefore should not contain commitments of the parties or obligation-like language such as the verbs "shall" or "will." The Agreement Manager may consider adding a sentence clarifying that anticipated mission details described in this article represent the parties' expectations regarding the mission. See Section 4.6.3 (Preamble/Introductory Language).

ARTICLE V. PURPOSE OF COOPERATION

The purpose of this [Memorandum of Understanding/Agreement/letter] is to establish a[n] [nonreimbursable] agreement (the [MOU/Agreement]), between NASA and the [*Party*] (individually a Party, or together the Parties), detailing the cooperation regarding [*TBD*]. [*To be used if this article uses "will" to describe the mission or cooperation:* This Article describes the Parties' expectations regarding [name of mission].] [*Include additional background and description of cooperation as necessary.*]

[*Add, when appropriate*]
This [MOU/Agreement] does not constitute a commitment by NASA or [*Party*] to proceed with [*ALT 1:* further cooperation regarding [*activity*] [*ALT 2:* the development of [*activity*] [*ALT 1:* beyond the scope laid out in this [MOU/Agreement] [*ALT 2:* as a result of [this study/these studies]]. If the Parties decide to proceed with any aspect of further cooperation on [*activity*], such cooperation shall be conducted in accordance with one or more separate agreements.

4.6.6. DEFINITIONS

This clause contains the definition of "Contributing Entities" as that definition is used in the Intellectual Property Rights clause (Section 4.6.17). Contributing Entities is defined more narrowly than Related Entities because it is meant to capture only entities that may produce intellectual property in the course of activities under the agreement.

This clause also contains the definition of "Related Entities" for the purpose of the entire agreement. Related Entities is defined broadly because the clauses that use it are meant to apply to a wide range of entities. For example, the Liability and Risk of Loss clause (Section 4.6.14) is intended to establish a broadly construed cross-waiver so as to encourage participation in the

exploration and use of outer space. Likewise, under the Transfer of Goods and Technical Data clause (Section 4.6.16), export-controlled goods and technical data may be transferred to a variety of entities, including foreign governmental entities. The phrase "including suppliers of any kind" is meant to cover instances in which there may be an entity that provides a necessary product or service to a contractor or subcontractor, such that the entity is effectively performing activities under the agreement but is technically not in a contractual relationship with the contractor or subcontractor.

ARTICLE VI. DEFINITIONS

For the purposes of this Article, the terms "contractors" and "subcontractors" include suppliers of any kind.

A. "Contributing Entity" means a contractor, subcontractor, grantee, or other entity having a legal relationship with a Party that is assigned, tasked, or contracted to perform activities under this [MOU/Agreement].
B. "Related Entity" means:
    1. A contractor, subcontractor, user, or customer of a Party at any tier;
    2. A contractor or subcontractor of a user or customer of a Party at any tier;
    3. A grantee or any other cooperating entity or investigator of a Party at any tier;
    4. A contractor or subcontractor of a grantee or any other cooperating entity or investigator of a Party at any tier; or
    5. A State, or agency or institution of a State, where such State, agency, or institution is an entity described above or is otherwise involved in the activities undertaken pursuant to this [MOU/Agreement].

[*Additional definitions may be added to this article depending on the MOU/Agreement.*]

4.6.7. RESPONSIBILITIES

This article precisely delineates the actions to be performed by each party in order to conduct the cooperative project, along with the benefits or rights accruing to each side. Enumerated responsibilities depend upon the nature of the project and may include items such as management roles; data exchange; provision of hardware; integration/testing of goods, including spacecraft or other equipment; launch; tracking and data acquisition; data processing, archiving and distribution; reporting requirements; participation in working groups and meetings; mission operations; supporting ground observations; interconnection security; and post-mission data analysis. Each party commits to use "reasonable efforts" to perform its responsibilities.

An agreement generally should not require joint development of goods. Each party should agree to develop and deliver its own goods according to a stated set of requirements.

The parties, when necessary, may develop non-legally binding implementation plans at a lower level than a binding agreement, to more specifically identify each party's responsibilities and

how the responsibilities will be carried out. The agreement should address the anticipated role of such nonbinding implementation plans in a "Management and Documentation" clause (Section 4.6.13).

When NASA loans equipment to the other party, or vice versa, the Responsibilities clause should describe the steps that the borrowing party shall take to protect such equipment. See Section 4.5.2 (Property Loan Agreements) and Section 4.6.26 (Property Loan Agreement Provisions).

ARTICLE VII. RESPONSIBILITIES

A. NASA shall use reasonable efforts to:
   1. [*TBD*];
   2. [*TBD*]; and
   3. [*TBD*].

B. [*Party*] shall use reasonable efforts to:
   1. [*TBD*];
   2. [*TBD*]; and.
   3. [*TBD*].

C. The Parties shall use reasonable efforts to:
   1. [*TBD*];
   2. [*TBD*]; and
   3. [*TBD*].

4.6.8. DATA RIGHTS

This article addresses the parties' exchange of and right to use the data (often of a scientific nature) resulting from the activities under the agreement, as well as the availability of data to others. This clause varies greatly depending on the nature of the cooperation and program that the agreement covers. The Agreement Manager must work with the relevant Program Office to ensure the clause contains appropriate language. This clause should not address classified information, which is never shared under a Space Act Agreement. Agreement Managers with questions regarding classified information should contact OGC and the Office of Protective Services.

In rare circumstances, the parties may agree that the raw scientific data derived from experiments will be reserved to the Principal Investigators (PIs) for scientific analysis purposes and first publication rights for a set period of time, usually not exceeding one year. The period begins with receipt of the raw data and any associated data (*e.g.*, spacecraft data) in a form suitable for analysis. PIs may be required to share the data with other investigators, including interdisciplinary scientific and guest investigators, to enhance the scientific return from the mission under procedures decided by a group designated under the agreement. Such "reserved

use" periods are not usually included in Earth science agreements or in other agreements where the parties desire rapid, open, and unrestricted data access.

An agreement usually grants the parties access to and use of the raw data and any associated data, but during the reserved use period, such parties' use must not prejudice the first publication rights of the PIs. The parties customarily agree that, following any reserved use period, the data will be deposited with designated data repositories or data libraries and thereafter will be made available to the scientific community for further scientific use.

The following text is the Data Rights clause typically included in Science Mission Directorate (SMD) agreements. It may serve as a template for other mission directorate agreements as well.

ARTICLE VIII. DATA RIGHTS

The Parties shall have access to and use of all scientific data generated by the [*NAME*] mission. All scientific data shall be archived within and made publicly available through the [*e.g.*, NASA Planetary Data System (PDS)] or equivalent repository as soon as practicable and consistent with good scientific practice, but no later than six months after receipt on ground. The Points of Contact shall develop and mutually agree upon a Data Management Plan that describes plans for data access and use by both the Parties and the public.

[*ALT for NASA Science Mission Directorate-led flight missions (or other activities as required).*]

A. NASA and [Party] shall mutually develop an Open Science and Data Management Plan (OSDMP) that specifies details of cooperation, communication, and handling of Scientific Data, Software, and Publications in accordance with applicable policies, laws, or regulations associated with the Parties. The OSDMP shall ensure data, publications, and software are archived and publicly available by meeting the following objectives:
    1. Enable scientific reusability and reproducibility through the public sharing of the Level 1 and above scientific mission data, including necessary metadata, calibration information, Algorithm Theoretical Basis Documents, simulated products, and documentation. Level 1 and above scientific mission data shall be shared on a public, full, free, open, and unrestricted basis by NASA and [Party] with no period of exclusive access. A period after scientific mission data have been obtained may be allowed for activities such as commissioning, calibration, and validation of the data. This period shall be as short as possible and not exceed six months.
    2. Enable broad participation in public science events organized by the mission for which NASA or the [Party] is the primary sponsor.
    3. Implement Open-Source Software practices for software development to enable scientific reusability and reproducibility. NASA and [Party] intend to implement, in cooperation, the principles of open-source in developing new software for the generation of scientific products, including opportunities for contributions from

the community and the use of a Permissive Software license where feasible. This does not include Restricted, Commercial, or enhancements to existing software.
4. Make publications describing the mission openly accessible upon publication to maximize the usability of scientific information produced by the mission.]

4.6.9. FINANCIAL ARRANGEMENTS

Where NASA and a foreign party are engaged in a cooperative effort, each party commits to funding its own activities, subject to its respective funding procedures. Therefore, nonreimbursable agreements contain a clause specifying that there be no exchange of funds and requiring notification and consultation in the event that a party encounters funding problems.

ARTICLE IX. FINANCIAL ARRANGEMENTS

A. Each Party shall bear the costs of discharging its respective obligations under this [MOU/Agreement], including travel and subsistence of personnel and transportation of all goods for which it is responsible.
B. The ability of each Party to carry out its obligations is subject to its funding procedures and available funds. Should either Party encounter budgetary problems that may affect the activities to be carried out under this [MOU/Agreement], the Party encountering the problems shall notify and consult with the other Party as soon as possible.

4.6.10. SCHEDULE AND MILESTONES

This clause addresses the schedule for the activity outlined in the agreement. It should contain a detailed statement of planned schedule and milestones and may express the intentions of NASA and the other party for activities to occur at a specific time. This sample clause allows flexibility in performance and timing of these milestones so that changes in the schedule will generally not require amendments to the agreement. If the schedule is delayed past the expiration date of the agreement, NASA and the partner will generally agree to an extension of the agreement, to be signed shortly before the original expiration date. This clause may be omitted if the activity does not require a detailed timeline.

ARTICLE X. SCHEDULE AND MILESTONES

[*Provide a detailed statement of schedule and milestones, followed by the paragraph below.*]

The above schedule and milestones are estimated based upon the Parties' current understanding of the projected availability of their goods, services, and facilities. In the event that either Party's projected availability changes, it shall give the other Party reasonable notice of that change, so that the Parties may adjust the schedule and milestones accordingly.

4.6.11. PRIORITY OF USE

NASA's use of NASA goods, services, and facilities will always take precedence over non-NASA use. Therefore, NASA reserves the right to schedule use around NASA requirements. This clause is primarily relevant for reimbursable agreements, which are generally concluded on a non-interference basis with NASA (or other U.S. Government) requirements for NASA facilities, though it can be included in nonreimbursable agreements if appropriate.

ARTICLE XI. PRIORITY OF USE

The Parties agree that the furnishing Party's use of its own goods, services, and facilities shall have priority over the use planned in this [MOU/Agreement]. Should a conflict arise, the furnishing Party, in its sole discretion, shall determine whether to exercise its priority.

4.6.12. POINTS OF CONTACT

An agreement should specify points of contact at the program level, and in some cases at the project level, in order to establish clear management interfaces for the cooperative activity. In larger projects, an agreement may specify distinct roles for program and project managers and scientists. Some agreements also include "Agreement Points of Contact," who are typically the OIIR Agreement Manager and the foreign counterpart. Because specific individuals may change positions over the lifetime of a project, this clause may designate position titles rather than individual names as points of contact. A party may change its points of contact unilaterally by informing the other party in writing.

Points of contact serve as official communications channels regarding the parties' respective activities, and therefore at least one NASA point of contact should be a NASA civil servant employee. The NASA program point of contact may be located either at Headquarters or a Center. Points of Contact may also play a role in consultation and dispute resolution procedures (Section 4.6.28).

ARTICLE XII. POINTS OF CONTACT

A. The NASA Point[s] of Contact for this [MOU/Agreement] [is/are]:
B. The [*Party*] Point[s] of Contact for this [MOU/Agreement] [is/are]:
C. Each Party shall communicate any change in its contact information in writing to the other Party.

4.6.13. MANAGEMENT AND DOCUMENTATION

This clause generally contains the joint program management mechanisms and interfaces, which are highly particular to specific program needs. Agreements covering large endeavors may require separate management provisions to describe the management interfaces, joint management mechanisms, control and decision authority processes, and review procedures.

If appropriate, the clause should state the parties' intent to have a lower-level implementation plan and specify approval authority for it (*e.g.*, a jointly chaired control board or individuals designated by title). The implementation plan should include an "order of precedence" provision, stating that the MOU or Agreement governs in the event of conflict between the MOU or Agreement and the implementation plan.

4.6.14. LIABILITY AND RISK OF LOSS – CROSS-WAIVER

Nonreimbursable agreements with foreign partners normally include cross-waivers of liability. The fundamental purpose of cross-waivers of liability in NASA agreements is to encourage participation in the exploration and use of outer space. NASA intends that the cross-waivers of liability in its agreements be broadly construed to achieve this purpose.

In a cross-waiver, the parties agree to waive claims for damages caused by the other, except in very limited circumstances. Moreover, each party pledges that not only will it waive claims against the other party, but also that it will ensure that any entity related to it will waive claims against the other party or any entity related to the other party, except in the same very limited circumstances.

The NASA standard cross-waiver does not apply when a Federal Aviation Administration (FAA) cross-waiver is otherwise applicable. See Paragraph D of 4.6.14.2 and 4.6.14.3.

4.6.14.1. CROSS-WAIVER FOR AGREEMENTS INVOLVING AERONAUTICS OR TERRESTRIAL ACTIVITIES

An agreement involving aeronautical or terrestrial activities (*i.e.*, no spaceflight activities) should use the following cross-waiver, which is simpler than the standard spaceflight cross-waiver.

ARTICLE XIV. LIABILITY AND RISK OF LOSS

A. For purposes of this Article, "Damage" means:
   1. Bodily injury to, other impairment of health of, or death of any person;
   2. Damage to, loss of, or loss of use of any property;
   3. Loss of revenue or profit; or
   4. Other direct, indirect, or consequential damage.

B. Each Party hereby waives any claim against the other Party, employees of the other Party, the other Party's Related Entities, or employees of the other Party's Related Entities for Damage arising from or related to activities conducted under this [MOU/Agreement].
C. Each Party further agrees to extend this cross-waiver to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or of its Related Entities for Damage arising from or related to activities conducted under this [MOU/Agreement]. Additionally, each Party shall require that their Related Entities extend this cross-waiver to other Related Entities of that Party by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or its Related Entities for Damage arising from or related to activities conducted under this [MOU/Agreement].
D. Notwithstanding the other provisions of this Article, this cross-waiver of liability shall not apply to:
    1. Claims between a Party and its own Related Entity or between its own Related Entities;
    2. Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to this [MOU/Agreement] or is otherwise bound by the terms of this cross-waiver) for bodily injury to, other impairment of health of, or death of such person;
    3. Intellectual property claims;
    4. Claims for Damage caused by willful misconduct;
    5. Claims for Damage resulting from a failure of a Party to extend the cross-waiver of liability to its Related Entities pursuant to paragraph C. above; or
    6. Claims by a Party arising out of or relating to the other Party's failure to perform its obligations under this [MOU/Agreement].
E. In the event of third-party claims, the Parties shall consult promptly on any potential liability, on any apportionment of such liability, and on the defense of such claim.
F. Nothing in this Article shall be construed to create the basis for a claim or suit where none would exist.

4.6.14.2. CROSS-WAIVER FOR AGREEMENTS INVOLVING SPACE ACTIVITIES (NON-ISS)

Per 14 CFR Part 1266.104, an agreement involving spaceflight activity not related to the ISS should use the following cross-waiver.

ARTICLE XIV. LIABILITY AND RISK OF LOSS

A. The objective of this Article is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space. The Parties intend that the cross-waiver of liability be broadly construed to achieve this objective.
B. For purposes of this Article:
    1. "Damage" means:
        a. Bodily injury to, other impairment of health of, or death of any person;

b. Damage to, loss of, or loss of use of any property;
c. Loss of revenue or profits; or
d. Other direct, indirect, or consequential damage.

2. "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth that carries Payloads, persons, or both.
3. "Payload" means all property to be flown on or used on or in a Launch Vehicle.
4. "Protected Space Operations" means all activities, including Launch Vehicle or Transfer Vehicle activities and Payload activities on Earth, in outer space, or in transit between Earth and outer space, in implementation of this [MOU/Agreement]. Protected Space Operations begins at the signature of this [MOU/Agreement] and ends when all activities done in implementation of this [MOU/Agreement] are completed. It includes, but is not limited to:
    a. Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch Vehicles or Transfer Vehicles, Payloads, or instruments, as well as related support equipment and facilities and services; and
    b. All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

    "Protected Space Operations excludes activities on Earth that are conducted on return from space to develop further a Payload's product or process for use other than activities within the scope of this [MOU/Agreement].
5. "Transfer Vehicle" means any vehicle that operates in space and transfers Payloads, persons, or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

C. Cross-waiver of liability:

1. Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs a. through d. below based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:
    a. The other Party;
    b. A Party to another NASA agreement that includes flight on the same Launch Vehicle;
    c. A Related Entity of any entity identified in paragraph a. or b. above; or
    d. The employees of any of the entities identified in paragraphs a. through c. above.
2. In addition, each Party shall, by contract or otherwise, extend the cross-waiver of liability, as set forth in paragraph C.1. of this Article, to its Related Entities by requiring them, by contract or otherwise, to:
    a. Waive all claims against entities or persons identified in paragraphs C.1.a. through C.1.d. of this Article; and

b. Require that other Related Entities of that Party waive all claims against the entities or persons identified in paragraphs C.1.a. through C.1.d. of this Article.

3. For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972 (the Liability Convention), where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.
4. Notwithstanding the other provisions of this Article, this cross-waiver of liability shall not apply to:
    a. Claims between a Party and its own Related Entity or between its own Related Entities;
    b. Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of such person;
    c. Claims for Damage caused by willful misconduct;
    d. Intellectual property claims;
    e. Claims for Damage resulting from a failure of a Party to extend the cross-waiver of liability to its Related Entities, pursuant to paragraph C.2. of this Article; or
    f. Claims by a Party arising out of or relating to the other Party's failure to perform its obligations under this [MOU/Agreement].
5. In the event of third-party claims that may arise out of, *inter alia*, the Liability Convention, the Parties shall consult promptly on any potential liability, on any apportionment of such liability, and on the defense of such claim.
6. Nothing in this Article shall be construed to create the basis for a claim or suit where none would otherwise exist.

D. [*ALT for agreements involving FAA-licensed launches:* This cross-waiver shall not be applicable when 51 U.S.C. Subtitle V, Chapter 509 is applicable.]

4.6.14.3. CROSS-WAIVER FOR AGREEMENTS INVOLVING SPACE ACTIVITIES (ISS)

Per 14 CFR Part 1266.102, agreements involving ISS activities should use the following cross-waiver. It is very similar to the general cross-waiver for spaceflight activities in Section 4.6.14.2, with the addition of specific references to ISS activities, the IGA, and the ISS Memoranda of Understanding.

ISS Implementing Arrangements pursuant to the IGA and ISS Memoranda of Understanding will usually incorporate the cross-waiver by reference to the higher-level agreement. Agreement Managers should use the ISS-specific cross-waiver to flow down the IGA cross-waiver to non-IGA parties. Agreement Managers should also use this cross-waiver when an agreement is not concluded under the IGA or ISS Memoranda of Understanding but nevertheless has a connection to the ISS.

ARTICLE XIV. LIABILITY AND RISK OF LOSS

A. The objective of this Article is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the [International Space Station (ISS)][ISS]. The Parties intend that the cross-waiver of liability be broadly construed to achieve this objective.
B. For purposes of this Article:
    1. "Damage" means:
        a. Bodily injury to, other impairment of health of, or death of any person;
        b. Damage to, loss of, or loss of use of any property;
        c. Loss of revenue or profits; or
        d. Other direct, indirect, or consequential damage.
    2. "Launch Vehicle" means an object, or any part thereof, intended for launch, launched from Earth, or returning to Earth that carries Payloads, persons, or both.
    3. "Payload" means all property to be flown on or used on or in a Launch Vehicle.
    4. "Partner State" includes each Contracting Party for which the Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding Between the National Aeronautics and Space Administration of the United States of America and the Government of Japan Concerning Cooperation on the Civil International Space Station (NASA-Japan MOU) to assist the Government of Japan's Cooperating Agency in the implementation of the NASA-Japan MOU.
    5. "Protected Space Operations" means all activities, including Launch Vehicle or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space, in implementation of this [MOU/Agreement], the IGA, Memoranda of Understanding concluded pursuant to the IGA, and implementing arrangements. It includes, but is not limited to:
        a. Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch Vehicles or Transfer Vehicles, the ISS, Payloads, or instruments, as well as related support equipment and facilities and services; and
        b. All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

        "Protected Space Operations" also includes all activities related to evolution of the ISS, as provided for in Article 14 (Evolution) of the IGA.

        "Protected Space Operations excludes activities on Earth that are conducted on return from the ISS to develop further a Payload's product or process for use other than for ISS-related activities in implementation of the IGA.
    6. "Transfer Vehicle" means any vehicle that operates in space and transfers Payloads, persons, or both between two different space objects, between two

different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

C. Cross-waiver of liability:

1. Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs a. through d. below based on Damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for Damage, whatever the legal basis for such claims, against:
    a. Another Party;
    b. A Partner State other than the United States of America;
    c. A Related Entity of any entity identified in paragraph a. or b. above; or
    d. The employees of any of the entities identified in paragraphs a. through c. above.
2. In addition, each Party shall, by contract or otherwise, extend the cross-waiver of liability, as set forth in paragraph C.1. of this Article, to its Related Entities by requiring them, by contract or otherwise, to:
    a. Waive all claims against entities or persons identified in paragraphs C.1.a. through C.1.d. of this Article; and
    b. Require that other Related Entities of that Party waive all claims against the entities or persons identified in paragraphs C.1.a. through C.1.d. of this Article.
3. For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.
4. Notwithstanding the other provisions of this Article, this cross-waiver of liability shall not apply to:
    a. Claims between a Party and its own Related Entity or between its own Related Entities;
    b. Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of such person;
    c. Claims for Damage caused by willful misconduct;
    d. Intellectual property claims;
    e. Claims for Damage resulting from a failure of a Party to extend the cross-waiver of liability to its Related Entities, pursuant to paragraph C.2. of this Article; or
    f. Claims by a Party arising out of or relating to the other Party's failure to perform its obligations under this [MOU/Agreement].

5. Nothing in this Article shall be construed to create the basis for a claim or suit where none would otherwise exist.

D. [*ALT for agreements involving FAA-licensed launches:* This cross-waiver shall not be applicable when 51 U.S.C. Subtitle V, Chapter 509 is applicable.]

4.6.15. REGISTRATION OF SPACE OBJECTS

An agreement should use this clause when the cooperation involves the launch of space objects. The Convention on the Registration of Objects Launched into Outer Space (the Registration Convention)[114] provides for national registration by launching states of space objects and mandates the United Nations to maintain a central registry. Under the Registration Convention, when there are two or more launching states, they are to determine jointly which one of them will register the object. Therefore, agreements involving spaceflight should identify the registering state. Factors to consider in making this determination include: which party will provide the launch, which party will provide the spacecraft, whether the spacecraft is to remain in orbit, and which party will conduct the majority of the day-to-day operations of the spacecraft. Registration is usually done by a country's Ministry of Foreign Affairs (for the United States, the State Department); therefore, the agreement should state that the relevant party will request that its government register the object.

If the other party is registering the object and the party's government is not a party to the Registration Convention, the Agreement Manager should use the alternate form of this clause, which references the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (OST)[115] and a 1961 United Nations General Assembly Resolution.[116] If the Agreement Manager is unsure whether the other party is a party to the Registration Convention, the Agreement Manager should consult the list of current parties to the Registration Convention, available from the Office of Outer Space Affairs (OOSA) of the United Nations Committee on Peaceful Uses of Outer Space (COPUOS) at http://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/status/index.html. If NASA is assuming the responsibility of requesting that its government register the spacecraft, the Agreement Manager should use ALT 1 below, as the United States is a party to the Registration Convention.

ARTICLE XV. REGISTRATION OF SPACE OBJECTS

[*ALT 1: This clause is used when the registering state is a party to the Registration Convention.*]

[114] Convention on Registration of Objects Launched into Outer Space, Nov. 12, 1974, 28 U.S.T. 695, T.I.A.S. No. 8480, 1023 U.N.T.S. 15.
[115] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, January 27, 1967, 18 U.S.T 2410, T.I.A.S No. 6347, 610 U.N.T.S. 205.
[116] United Nations General Assembly Resolution 1721 B(XVI) of December 20, 1961.

[[NASA]/[*Party*]] shall request that its government register [*space object name(s)*] as [a] space object[s] in accordance with the Convention on the Registration of Objects Launched into Outer Space of November 12, 1974.

[*ALT 2: This alternate clause is used when the registering state is not a party to the Registration Convention.*]

[*Party*] shall [*ALT 1:* request its government register] [*ALT 2:* request its government register or arrange for another government to register] [*space object name(s)*] as [a] space object[s] in accordance with United Nations General Assembly Resolution 1721 B(XVI) of December 20, 1961 and Article VIII of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of January 27, 1967.

4.6.16. TRANSFER OF GOODS AND TECHNICAL DATA

This clause addresses the transfer of hardware and its associated technical data (*e.g.*, data directly related to the interfaces, integration, testing, use, or operation of an item of hardware) required for the parties to meet their obligations under the agreement. The provision also covers the rights and obligations of the parties with respect to transferred proprietary technical data and export-controlled goods and data.

A significant percentage of NASA's international activities may involve transfers by NASA or other U.S. parties of commodities, software, or technologies to foreign parties. These transfers are generally subject to export control laws and regulations, regardless of whether they occur in the United States, overseas, or in space. Export controls are imposed on such transfers and activities to prevent the proliferation of ballistic missile technology, protect national security, and further U.S. foreign policy objectives. Each party is obligated to transfer to the other party only those technical data and goods necessary to fulfill the transferring party's responsibilities under the agreement.

This clause allows the parties to exchange data without restrictions, except for proprietary or export-controlled data. The clause precludes the unwarranted transfer of technology by limiting use of all marked proprietary technical data, marked export-controlled data, and goods transferred under the agreement to the specific purposes of the programs implemented by the agreement. This clause does not authorize transfer of export-controlled technical data or hardware that is controlled for Missile Technology (MT) reasons without an export license issued by the appropriate regulatory authority. See NASA's Export Control Program, NPD 2190.1B and NPR 2190.1C.

Under paragraph B of this article, an agreement may never require a party to violate laws and regulations related to export control (or, for the avoidance of doubt, any laws or regulations to which the party is otherwise subject).

ARTICLE XVI. TRANSFER OF GOODS AND TECHNICAL DATA

A. The Parties are obligated to transfer only those goods and technical data (including software) necessary to fulfill their respective responsibilities under this [MOU/Agreement], in accordance with the provisions in this Article, notwithstanding any other provisions of this [MOU/Agreement].
B. All activities under this [MOU/Agreement] shall be carried out in accordance with all applicable laws and regulations, including those laws and regulations pertaining to export control.
C. The transfer of technical data for the purpose of discharging the Parties' responsibilities with regard to interface, integration, and safety shall normally be made without restriction, except as required by this Article.
D. All transfers of goods and proprietary or export-controlled technical data are subject to the following provisions.
    1. In the event a Party or its Related Entity finds it necessary to transfer such goods or data, for which protection is to be maintained, such goods shall be specifically identified and such data shall be marked.
    2. The identification for such goods and the marking on such data shall indicate that the goods and data shall be used by the receiving Party and its Related Entities only for the purposes of fulfilling the receiving Party's or Related Entities' responsibilities under this [MOU/Agreement], and that such goods and data shall not be disclosed or retransferred to any other entity without the prior written permission of the furnishing Party.
    3. The receiving Party and its Related Entities shall abide by the terms of the notice and protect any such goods and data from unauthorized use and disclosure.
E. All goods and marked proprietary or export-controlled technical data exchanged in the performance of this [MOU/Agreement] shall be used by the receiving Party or Related Entity exclusively for the purposes of the [MOU/Agreement]. Upon completion of the activities under this [MOU/Agreement], the receiving Party or Related Entity shall return or otherwise dispose of all goods and marked proprietary or export-controlled technical data provided under this [MOU/Agreement], as directed by the furnishing Party or Related Entity.
F. The Parties shall cause their Related Entities to be bound by the provisions of this Article through contractual mechanisms or equivalent measures.

4.6.17. INTELLECTUAL PROPERTY RIGHTS

Agreements with foreign entities should address the allocation of rights in any intellectual property that may arise under the proposed activity. In general, NASA's cooperative activities with foreign entities do not include the joint development of technology, products, or processes that are potentially of commercial value. Each party is fully responsible, technically and financially, for a clearly defined element of the project.

Nonreimbursable agreements with a foreign governmental entity should contain the sample clause below. The provisions allow each party to retain intellectual property rights in the technology and hardware it has developed independently of the other party, while also allowing the parties to share scientific results with each other and with the international community. The sample clause also addresses the rights of "Contributing Entities" of the parties. See Section 4.6.6 (Definitions) for the differences between Related Entities and Contributing Entities.

Nonreimbursable agreements with foreign commercial entities and reimbursable agreements with foreign governmental or commercial entities do not include this clause. Instead, those agreements include the applicable Chapter 2 data rights clause in Section 2.2.10 (Intellectual Property Rights – Data Rights), excluding subclause (G) (Data Subject to Export Control). See Section 4.6.31.

ARTICLE XVII. INTELLECTUAL PROPERTY RIGHTS

A. Nothing in this [MOU/Agreement] shall be construed as granting, either expressly or by implication, to the other Party any rights to, or interest in, any inventions or works of a Party or its Contributing Entities made prior to the entry into force of, or outside the scope of, this [MOU/Agreement], including any patents (or similar forms of protection in any country) corresponding to such inventions or any copyrights corresponding to such works.
B. Any rights to, or interest in, any invention or work made in the performance of this [MOU/Agreement] solely by one Party or any of its Contributing Entities, including any patents (or similar forms of protection in any country) corresponding to such invention or any copyright corresponding to such work, shall be owned by such Party or Contributing Entity. Allocation of rights to, or interest in, such invention or work between such Party and its Contributing Entities shall be determined by applicable laws, rules, regulations, and contractual obligations.
C. It is not anticipated that there will be any joint inventions made in the performance of this [MOU/Agreement]. Nevertheless, in the event that an invention is jointly made by the Parties in the performance of this [MOU/Agreement], the Parties shall, in good faith, consult and agree within 30 calendar days as to:
    1. The allocation of rights to, or interest in, such joint invention, including any patents (or similar forms of protection in any country) corresponding to such joint invention;
    2. The responsibilities, costs, and actions to be taken to establish and maintain patents (or similar forms of protection in any country) for each such joint invention; and
    3. The terms and conditions of any license or other rights to be exchanged between the Parties or granted by one Party to the other Party.
D. For any jointly authored work by the Parties, should the Parties decide to register the copyright in such work, they shall, in good faith, consult and agree as to the responsibilities, costs, and actions to be taken to register copyrights and maintain copyright protection (in any country).
E. Subject to the provisions of Article [*TBD*] (Transfer of Goods and Technical Data) and Article [*TBD*] (Release of Results and Public Information), each Party shall have an

irrevocable royalty-free right to reproduce, prepare derivative works, distribute, and present publicly, and authorize others to do so on its behalf, any copyrighted work resulting from activities undertaken in the performance of this [MOU/Agreement] for its own purposes, regardless of whether the work was created solely by, or on behalf of, the other Party or jointly with the other Party.

4.6.18. RELEASE OF RESULTS AND PUBLIC INFORMATION

This clause sets out each party's right to release public information regarding their own activities, as well as the obligation to coordinate with the other party before releasing information about the other party's activities. This clause also provides for release of scientific results to the scientific community and specifies certain categories of information that may not be disclosed without the other party's permission.

ARTICLE XVIII. RELEASE OF RESULTS AND PUBLIC INFORMATION

A. The Parties retain the right to release to the public information regarding their own activities under this [MOU/Agreement]. The Parties shall coordinate with each other in advance concerning releasing to the public information that relates to the other Party's responsibilities or performance under this [MOU/Agreement].
B. The Parties shall make the results available to the general scientific community [*ALT 1:* through publication in appropriate journals or by presentations at scientific conferences as soon as possible and in a manner consistent with good scientific practices.] [*ALT 2:* , as appropriate and agreed between the Parties, in a timely manner.]
C. The Parties acknowledge that the following data or information does not constitute public information and that such data or information shall not be included in any publication or presentation by a Party under this Article without the other Party's prior written permission:
    1. Data furnished by the other Party in accordance with the Article "Transfer of Goods and Technical Data" that are marked as export-controlled or proprietary; or
    2. Information about an invention of the other Party before an application for a patent (or similar form of protection in any country) has been filed or a decision not to file has been made.

4.6.19. EXCHANGE OF PERSONNEL AND ACCESS TO FACILITIES

An agreement should include this clause if activities under the agreement may require a party to temporarily send personnel to the other party's facilities or access the other party's systems. The clause addresses appropriate access to the other party's facilities, property, and information technology systems.

ARTICLE XIX. EXCHANGE OF PERSONNEL AND ACCESS TO FACILITIES

A. To facilitate implementation of the activities conducted under this [MOU/Agreement], the Parties may support the exchange of a limited number of personnel [*ALT:* including contractors and subcontractors] from each Party, at an appropriate time and under conditions mutually agreed between the Parties. [*Additional details of such an exchange may be included.*]
B. Access by the Parties to each other's facilities or property, or to each other's Information Technology (IT) systems or applications, is contingent upon compliance with each other's respective security and safety policies and guidelines including, but not limited to: standards on badging, credentials, and facility and IT system access, including use of Interconnection Security Agreements (ISAs), when applicable.

4.6.20. CUSTOMS CLEARANCE AND MOVEMENT OF GOODS

An agreement should include this clause when the activity will require importation of goods into the United States or the territory of the other party. This clause requires each party to facilitate free customs clearance into and out of its respective country and to bear any duties or taxes that its country nevertheless imposes. The procedures for duty-free import of articles into the United States under NASA's international programs are described in 14 C.F.R. Part 1217, "Duty-Free Entry of Space Articles."

ARTICLE XX. CUSTOMS CLEARANCE AND MOVEMENT OF GOODS

A. Each Party shall facilitate free customs clearance and waiver of all applicable customs duties and taxes for goods necessary for the implementation of this [MOU/Agreement]. In the event that any customs duties or taxes of any kind are nonetheless levied on such goods, such customs duties or taxes shall be borne by the Party of the country levying such customs duties or taxes.
B. Each Party shall also facilitate the movement of goods into and out of its territory as necessary to comply with this [MOU/Agreement].

4.6.21. OWNERSHIP OF GOODS AND DATA

An agreement should include this clause when the activity involves temporary transfer of goods or data to another party. This clause states that each party retains ownership of its goods and data, unless otherwise agreed in writing. Each party agrees to return any of the other party's goods and data in its possession at the conclusion of the project, acknowledging that in some situations this is not feasible (*e.g.*, the activity calls for destructive testing, the item is designed to be destroyed in flight, or the item is to be launched into space).

ARTICLE XXI. OWNERSHIP OF GOODS AND DATA

Unless otherwise agreed in writing, each Party shall retain ownership of all goods and data it provides to the other Party under the terms of this [MOU/Agreement], without prejudice to any individual rights of ownership of the Parties' respective Related Entities. To the extent feasible and recognizing that goods [*ALT:* sent into space or] integrated into the other Party's goods cannot be returned, each Party agrees to return the other Party's goods and data in its possession at the conclusion of activities under this [MOU/Agreement].

4.6.22. INVESTIGATIONS OF CLOSE CALLS, MISHAPS, AND MISSION FAILURES

An agreement involving launch activities, or any other activities where a serious accident or mission failure could occur, should include this clause. See also NPR 8621.1D, "NASA Procedural Requirements for Mishap and Close Call Reporting, Investigating and Recordkeeping."

ARTICLE XXII. INVESTIGATIONS OF CLOSE CALLS, MISHAPS, AND MISSION FAILURES

In the case of a close call, mishap, or mission failure, the Parties agree to provide assistance to each other in the conduct of any investigation, bearing in mind the provisions of the Article "Transfer of Goods and Technical Data." In the case of activities under this [MOU/Agreement] that might result in the death of or serious injury to persons or substantial loss of or damage to property, the Parties agree to establish a process for investigating each close call, mishap, or mission failure.

4.6.23. ORBITAL DEBRIS AND SPACECRAFT DISPOSAL

NASA normally uses this clause for missions that launch objects into space. This article affirms the parties' intent to comply with the U.N. COPUOS Space Debris Mitigation Guidelines. The Space Debris Mitigation Guidelines are the result of more than a decade of work undertaken by the COPUOS Scientific and Technical Subcommittee (STSC) and were endorsed by the U.N. General Assembly in its Resolution 62/217 of December 22, 2007. The Guidelines, which are not binding as a matter of international law, reflect existing practice as developed by a number of national and international organizations and space agencies. The Guidelines apply to mission planning and the operation of newly designed spacecraft and orbital stages.

When incorporating this provision into an agreement, OIIR should consult with appropriate officials in the mission directorates and the Office of Safety and Mission Assurance (OSMA).

ARTICLE XXIII. ORBITAL DEBRIS AND SPACECRAFT DISPOSAL

For cooperative activities pursued under this [Agreement/MOU], the Parties shall act consistently with the Space Debris Mitigation Guidelines of the United Nations Committee on

the Peaceful Uses of Outer Space, endorsed by the United Nations General Assembly in its Resolution 62/217 of December 22, 2007.

4.6.24. PLANETARY PROTECTION

Planetary protection is the practice of protecting solar system bodies from contamination by Earth life ("forward contamination") and protecting Earth from possible life forms that may be returned from other solar system bodies ("backward contamination"). Agreement Managers should consult with appropriate officials in the mission directorates and OSMA, specifically the Office of Planetary Protection, to determine whether to include this clause in a given agreement.

In this clause, the parties agree to comply with the Committee on Space Research (COSPAR)'s Planetary Protection Policy. COSPAR was established by the International Council for Science in 1959. COSPAR issued its Planetary Protection Policy in 2002 and subsequently amended it in 2011, 2014, 2017, 2020, and 2021.

Several NASA Procedural Requirements (NPRs) and NASA Interim Directives (NIDs) also address planetary protection requirements. NPR 8715.24 addresses planetary protection for robotic extraterrestrial missions, and NID 8715.129 addresses biological planetary protection for human missions to Mars.

ARTICLE XXIV. PLANETARY PROTECTION

For cooperative activities pursued under this [Agreement/MOU], the Parties shall apply planetary protection measures based on their respective applicable policies and requirements, consistent with the guidelines contained in the Committee on Space Research (COSPAR) Planetary Protection Policy and Implementation Guidelines, put in place on June 3, 2021.

4.6.25. LUNAR SITES OF HISTORIC OR SCIENTIFIC VALUE

The 2011 document "NASA's Technical Recommendations to Space-Faring Entities: How to Protect and Preserve Historic and Scientific Value of U.S. Government Artifacts" sets forth NASA's detailed technical recommendations regarding the protection and preservation of U.S. Government historic and scientific sites on the Moon. These recommendations were developed over the course of more than two years by a team of NASA scientific, engineering, policy, legal, and programmatic experts, as well as private sector mission planners, historic preservation experts, and academic experts in various fields. The recommendations seek to ensure that a spacecraft's potential landing sites, overflights, rover surface operations, and disposal sites do not include, and are not in the vicinity of, U.S. Government artifacts on the lunar surface.

The One Small Step to Protect Human Heritage in Outer Space Act, enacted on December 31, 2020, requires the NASA Administrator to add the 2011 recommendations or successor

guidelines as a condition or requirement to contracts, grants, agreements, partnerships, or other arrangements for lunar activities carried out by, for, or in partnership with NASA, with limited exceptions.

ARTICLE XXV. LUNAR SITES OF HISTORIC OR SCIENTIFIC VALUE

The Parties share the objectives of preserving lunar sites of historic or scientific value. NASA shall endeavor to provide guidance to [*Party*] with respect to protecting such sites, consistent with "NASA's Technical Recommendations to Space-Faring Entities: How to Protect and Preserve Historic and Scientific Value of U.S. Government Artifacts," published in 2011. Both Parties shall endeavor to avoid interference with historic lunar landing site artifacts.

4.6.26. LOAN OF GOVERNMENT PROPERTY

4.6.26.1 LOAN OF GOVERNMENT PROPERTY WITHIN A BROADER AGREEMENT

NASA sometimes loans government property to a foreign partner as part of an agreement covering a broader cooperative project. An Agreement Manager should use the sample clause below when the terms of the property loan are included in an agreement covering a collaboration for which the loan is merely one element of the parties' respective responsibilities. This sample clause is drafted assuming that NASA is loaning property to the partner, but the Agreement Manager can reverse the responsibilities for the opposite situation or can make the clause bilateral if each party intends to loan property to the other.

ARTICLE XXVI. LOAN OF GOVERNMENT PROPERTY

A. In order to further activities set forth in this Agreement, NASA shall lend the following Government property (the Property) to [*Party*]: [*insert list of property or refer to appropriate documentation*].
B. NASA is not providing the Property to [*Party*] as a substitute for [*Party*] purchasing the same type of property under any contract or grant that [*Party*] has, or may have, with a third party. The Property is not excess to NASA's requirements and its use is anticipated upon its return to NASA.
C. All Property is loaned in "as is" condition with no expressed or implied warranties of any kind.
D. In support of this loan, [*Party*] shall:
    1. Install, operate, and maintain the Property at [*Party*'s] expense;
    2. Furnish all utilities (*e.g.*, water, electricity) and operating materials required for the operation of the Property;
    3. Assume full responsibility for the care, protection, use, and liability of the Property while on loan;
    4. Bear all costs associated with receipt, use, and return of the Property, including, but not limited to, disassembly, assembly, shipping, customs duties, receiving,

installing, handling, packaging, licensing, and storing of the Property, including the cost to return the Property to NASA;
5. Be responsible for any damage to or loss of the Property during transit;
6. Report all damage to, or loss or destruction of, the Property to the NASA Point of Contact (POC) named in the Article "Points of Contact" within 10 calendar days from the date of the discovery thereof;
7. In the event the Property is lost, damaged, or destroyed, at NASA's option, repair or replace the Property or pay to NASA an amount of money sufficient to compensate for the loss, damage, or destruction (such amount may exceed the value of the Property because NASA may incur other expenses as a result of replacing lost or destroyed property);
8. Identify, mark, inspect, and inventory the Property promptly upon receipt, maintain suitable records for each piece of Property, perform an annual inventory during the term of this Agreement, until such time as the Property is returned to NASA, and report these results to the NASA POC;
9. Not loan, transfer, or redeliver the Property to any third party;
10. Provide advanced written notice to NASA prior to relocating the Property;
11. Not modify or alter the Property without advanced written approval from NASA;
12. Grant NASA access to the Property immediately upon request;
13. Transport the Property in accordance with good commercial practice;
14. Use the Property only for the purpose stated in this Agreement;
15. Return the Property to NASA before the expiration or termination of this Agreement, and in no event later than [*insert number of years, not to exceed four*] years from the entry into force of this Agreement; and
16. Return the Property to NASA in the same condition as received, except for normal wear and tear.

4.6.26.2 FREESTANDING PROPERTY LOAN AGREEMENT

For an agreement whose primary purpose is the loan of NASA property (*i.e.*, not part of a broader program of cooperation), such as an agreement for a foreign exhibit, the Agreement Manager should draft the agreement in accordance with the guidance on nonreimbursable agreements (see Section 4.3; see also Section 4.5.2 (Property Loan Agreements)). The agreement should include, at a minimum, the standard provisions on Authority, Purpose of Cooperation, Responsibilities, Financial Arrangements, Schedule and Milestones, Priority of Use, Points of Contact, Transfer of Goods and Technical Data, Choice of Law (if using U.S. Federal law), Consultation and Dispute Resolution, and Final Provisions. The Agreement Manager should supplement these standard clauses with the specific provisions below.

The introductory paragraphs (Section 4.6.3) must contain a statement of purpose and description of the activity, as follows. Agreement Managers may include additional information as well, such as the history of the relationship and cooperation between the parties. The property loan agreement should be completed before the NASA Form 893, with both documents required to be able to complete the loan.

This Agreement is for the purpose of NASA lending certain Government property associated with [*name of the activity; provide additional detail as necessary*] to [*Party*]. NASA shall record a detailed listing of the property to be loaned (the Property) on NASA Form 893 (Loan of NASA Equipment).

The Agreement Manager must add the following provisions at the end of the Authority clause (Section 4.6.4). NASA does not have authority to loan property to a party in place of a purchase by that party, and NASA does not have authority to provide any kind of warranties for loaned property.

The Property is not being provided to [*Party*] as a substitute for [*Party*] purchasing of the same type of property under any contract or grant that [*Party*] has, or may have, with a third party. The Property is not excess to NASA's requirements and its use is anticipated upon its return to NASA.

All Property is loaned in "as is" condition with no expressed or implied warranties of any kind.

A property loan agreement should contain the following in the Responsibilities clause (Section 4.6.7):

ARTICLE VII. RESPONSIBILITIES

A. NASA shall use reasonable efforts to carry out the following responsibilities:
   1. Lend the Property to [*Party*] for the duration of this Agreement and for the sole purpose stated in this Agreement; and
   2. Complete a NASA Form 893 (Loan of NASA Equipment) prior to shipping the Property to [*Party*].

B. In support of this loan, [*Party*] shall:
   1. Install, operate, and maintain the Property at [*Party*'s] expense;
   2. Furnish all utilities (*e.g.*, water, electricity) and operating materials required for the operation of the Property;
   3. Assume full responsibility for the care, protection, use, and liability of the Property while on loan;
   4. Bear all costs associated with receipt, use, and return of the Property, including, but not limited to, disassembly, assembly, shipping, customs duties, receiving, installing, handling, packaging, licensing, and storing of the Property, including the cost to return the Property to NASA;
   5. Be responsible for any damage to or loss of the Property during transit;
   6. Report all damage to, or loss or destruction of, the Property to the NASA Point of Contact (POC) named in the Article "Points of Contact" within 10 calendar days from the date of the discovery thereof;
   7. In the event the Property is lost, damaged, or destroyed, at NASA's option, repair or replace the Property or pay to NASA an amount of money sufficient to compensate for the loss, damage, or destruction (such amount may exceed the value of the Property because NASA may incur other expenses as a result of replacing lost or destroyed property);

8. Identify, mark, inspect, and inventory the Property promptly upon receipt, maintain suitable records for each piece of Property, perform an annual inventory during the term of this Agreement, until such time as the Property is returned to NASA, and report these results to the NASA POC;
9. Not loan, transfer, or redeliver the Property to any third party;
10. Provide advanced written notice to NASA prior to relocating the Property;
11. Not modify or alter the Property without advanced written approval from NASA;
12. Grant NASA access to the Property immediately upon request;
13. Transport the Property in accordance with good commercial practice;
14. Use the Property only for the purpose stated in this Agreement;
15. Return the Property to NASA before the expiration or termination of this Agreement, and in no event later than [*insert number of years not to exceed four*] years from the entry into force of this Agreement; and
16. Return the Property to NASA in the same condition as received, except for normal wear and tear.

4.6.27. CHOICE OF LAW

Agreements governed by international law do not require a choice of law clause. Agreements governed by U.S. Federal law must include a choice of law clause.

In some instances, NASA's counterparty lacks capacity to sign agreements governed by international law. In such cases, the agreement may be signed at a higher governmental level (such as foreign ministry to foreign ministry) or brought into force through the exchange of diplomatic notes. If the foreign governmental entity remains unable to conclude the agreement under international law by one of these means, the agreement will designate U.S. Federal law as the governing law. This is a long-standing NASA practice used to make the agreement legally binding. NASA generally does not enter into agreements governed by foreign law. This policy is grounded in the recognition that, while foreign government agencies are often reluctant to conclude agreements under U.S. Federal law, it would be inequitable for the foreign agency's lack of legal capacity to conclude international agreements to result in the application of foreign law to NASA. This also helps to ensure that NASA treats both foreign and domestic commercial entities alike.

The agreement must be governed by a specific body of law, either international law or U.S. Federal law, in order to ensure the agreement is legally binding. While all provisions of an agreement are important, NASA must secure certain provisions as legally binding commitments, including Liability and Risk of Loss, Transfer of Goods and Technical Data, Intellectual Property Rights, Customs Clearance and Movement of Goods, and Consultation and Dispute Resolution, due to potential legal ramifications.

All agreements with foreign commercial entities are governed by U.S. Federal law and therefore must include a choice of law clause.

NASA's independent legal authority under the Space Act to conclude agreements (51 U.S.C. §§ 20102(d)(7) and 20115) includes agreements under international law and under U.S. law. Regardless of the choice of law, NASA's performance of its responsibilities under any agreement is subject to applicable U.S. laws, and the foreign partner's performance of its responsibilities is subject to its applicable laws.

ARTICLE XXVI. CHOICE OF LAW

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

4.6.28. CONSULTATION AND DISPUTE RESOLUTION

All agreements must include a dispute resolution clause. The clause provides that both parties agree to consult promptly with each other on all issues involving interpretation, implementation, or performance of the agreement. The parties should generally attempt to handle issues at the working level before elevating them. If the parties cannot settle a matter at the initial level, they will refer it to the next higher-level official at each party. Depending on the complexity and sensitivity of the agreement, the parties may escalate a dispute further if necessary.

With rare exceptions, the NASA Administrator should not be involved in dispute resolution activities. Agreement Managers must consult with the Office of the Administrator and OGC before designating the Administrator as the official responsible for making a final Agency decision. However, an agreement may provide that NASA will refer disputes to "the NASA Administrator or the Administrator's designee."

In very limited instances NASA may agree to a clause that permits settlement of disputes through an agreed form of resolution, such as non-binding arbitration or mediation. However, the clause must provide that, at the time of the dispute, both parties must agree to submission of the specific matter in dispute. The inclusion of any such clause is unusual and requires specific OGC approval.

Because specific employees may leave or change positions, this clause should designate points of contact for dispute resolution by titles rather than individual names.

ARTICLE XXVIII. CONSULTATION AND DISPUTE RESOLUTION

The Parties agree to consult promptly with each other on all issues involving interpretation, implementation, or performance of this [MOU/Agreement]. Such issues shall first be referred to the [appropriate points of contact (*may be another term, such as Program Managers or Project Managers*)] named above for the Parties. If they are unable to come to agreement, then the dispute shall be referred to the [*titles of signatories*] or their designated representatives for joint resolution. [Any dispute that cannot be resolved at this level shall be referred to [*titles of more*

senior official for each side]/[the Administrator of NASA and [*Head of Agency for the other party*], or their designees.]]

4.6.29. FINAL PROVISIONS

This clause specifies an agreement's duration and procedures for entry into force, amendment, and termination. The entry into force date of an agreement is usually the date of last signature, but in any case may not be before both parties have signed the agreement.

An agreement must specify its duration. The duration can be measured by a specific period of time (*e.g.*, 3 years) or the earlier of a specific period of time and a project milestone (*e.g.*, 3 years, or 3 years from the date of launch of the [name of] spacecraft, whichever is earlier). When tying an agreement's duration to a specific event (*e.g.*, launch of a spacecraft), be sure to select an event that is both unequivocal and easily identifiable. Do not select an ambiguous, vague, or hard to pinpoint event, such as "3 years after the data analysis is complete." When determining the duration of an agreement, the Agreement Manager should include sufficient time for completion of data analysis and subsequent activities that occur after completion of a mission. The Associate Administrator for OIIR, or his/her designee, must approve inclusion of an automatic renewal clause or conclusion of an agreement with no termination date.

The parties typically may amend an agreement by written agreement. Because extensions to agreements are a form of amendment, there is no need for a separate extension provision. Amendments, including simple extensions, may require State Department Circular 175 review prior to negotiation and conclusion. See Section 4.1.2 (Circular 175 Process).

Either party to an agreement may terminate the agreement upon written notice to the other. This notice generally must be presented to the other party in advance of the desired termination date, usually at least three to six months. The final provisions clause specifies which obligations of the parties survive the termination or expiration of the agreement.

4.6.29.1. FINAL PROVISIONS – BINDING MOUS AND AGREEMENTS

Agreement Managers should use the following final provisions for MOUs and Agreements intended to have binding legal effect under international or U.S. Federal law.

Some agreements only enter into force upon an exchange of diplomatic notes between the United States and the government of the cooperating agency. See Section 4.2.3 (Exchange of Diplomatic Notes). Several paragraphs in this clause have alternate text for agreements requiring an exchange of diplomatic notes.

In a letter agreement, this clause provides for the agreement to enter into force on the date of the other party's affirmative reply. Using the form of response letter provided in Section 4.6.30.2 will help ensure that the date of entry into force is clear.

ARTICLE XXIX. FINAL PROVISIONS

A. [*ALT MOU and Dual-sig Agreement:* This [MOU/Agreement] shall enter into force upon [the date of the last] signature by the Parties [*ALT Diplomatic Notes:* and the conclusion of an exchange of diplomatic notes between the Governments of the Parties incorporating its terms and conditions].]
[*ALT Letter*: This Agreement shall enter into force upon [*Party*]'s affirmative reply.]
B. This [MOU/Agreement] shall remain in force [*ALT 1:* through [*specific date*]] [*ALT 2:* for [*TBD*] years].
C. The Parties may amend this [MOU/Agreement] in writing [*ALT Diplomatic Notes:* , provided that the exchange of diplomatic notes remains in force].
D. Either Party may terminate this [MOU/Agreement] at any time by giving the other Party at least [*TBD*] months' written notice of its intent to terminate. In the event of termination, the terminating Party shall endeavor to minimize any negative impact of such termination on the other Party.
E. Notwithstanding termination or expiration of this [MOU/Agreement], the rights and obligations under the Articles "Liability and Risk of Loss", "Transfer of Goods and Technical Data", "Intellectual Property Rights", "Release of Results and Public Information", "Ownership of Goods and Data", and "Consultation and Dispute Resolution" shall continue to apply, unless otherwise agreed by the Parties.

4.6.29.2. FINAL PROVISIONS – NON-BINDING INSTRUMENTS

The final provisions of a nonbinding instrument require different terminology than those of a binding agreement. For example, nonbinding instruments "commence" and "apply" rather than "enter into force," are "modified" rather than "amended," and are "discontinued" rather than "terminated." For further guidance on drafting nonbinding instruments, consult OGC.

SECTION XXIX. FINAL PROVISIONS

A. This MOU is intended to commence upon signature by the Participants.
B. This MOU applies [*ALT 1:* through [*specific date*]] [*ALT 2:* for [*TBD*] years].
C. The Participants may modify this MOU in writing.
D. Either Participant may discontinue this MOU at any time by giving the other Participant at least [*TBD*] months' written notice of its intent to discontinue. In the event of discontinuation, the discontinuing Participant should endeavor to minimize any negative impact of such discontinuation on the other Participant.
E. [*ALT 1:* This MOU does not impose, nor is it intended to impose, any legal commitments on the Participants.] [*ALT 2:* This MOU is not a legally binding commitment.] [*Alt 3:* This MOU constitutes a political commitment and is not legally binding.]

4.6.30. SIGNATORIES

Agreement Managers and their foreign counterparts should endeavor to identify signing officials early in negotiations. They should also take care to confirm that the signing officials (usually senior officials) have the authority to bind the parties and that each party has the authority to perform all of its obligations under the agreement.

4.6.30.1. SIGNATORIES – MOUS AND DUAL-SIGNATURE AGREEMENTS

MOUs and dual-signature agreements should include a signature block, the date of signature for each signing official, and the place of signature. The signature block may differ in some cases; for example, only identifying the signing official by title or only indicating the governments that the signatories represent.

[*ALT 1 (If signed in same place and on same date)*]

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this [MOU/Agreement].

[*ALT Binding:* Done] [*ALT Nonbinding:* Signed] at [*TBD*] in two originals, in the English [*ALT:* and *TBD*] language[s], [*ALT Binding:* both texts being equally authentic,] this _____ day of _____, 20[*TBD*].

FOR THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	FOR [*PARTY*]
_____	_____
[*Name*]	[*Name*]
[*Title*]	[*Title*]

[*ALT 2 (If done at different places or on different dates)*]

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this [MOU/Agreement] in two originals, in the English [*ALT:* and *TBD*] language[s] [*ALT Binding:* , both texts being equally authentic].

FOR THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	FOR [*PARTY*]
_____	_____
[*Name*]	[*Name*]
[*Title*]	[*Title*]

[*Date*]	[*Date*]
[*Place*]	[*Place*]

4.6.30.2. SIGNATORIES – LETTER AGREEMENTS

Letter agreements are usually proposed by NASA and accepted by the other party, but the reverse is acceptable. In such case, NASA will send the affirmative reply.

If the above terms and conditions are acceptable to [*Party*], I propose that this letter, together with your written affirmative reply, constitute the Agreement between NASA and [*Party*].

Sincerely,

_____
[*Name*]
[*Title*]

[*Date*]

The other party must then respond with language along the lines of the following. The response should include a date, because the date of the response serves as the entry into force date for a letter agreement.

Thank you for your letter dated [*date*] concerning [*TBD – should parallel the letter agreement's introductory language*]. [*Party*] agrees with the terms and conditions as outlined in your letter. Consequently, I acknowledge that your letter, together with this affirmative reply, shall constitute an agreement between NASA and [*Party*].

Sincerely,

[*Name*]
[*Title*]

[*Date*]

4.6.31. AGREEMENTS WITH FOREIGN COMMERCIAL ENTITIES AND REIMBURSABLE AGREEMENTS WITH FOREIGN GOVERNMENTAL ENTITIES

Certain agreements with foreign entities are drafted using Chapter 2 of this Guide, incorporating some Chapter 4 provisions. For agreements (both nonreimbursable and reimbursable) with foreign commercial entities and reimbursable agreements with foreign governmental entities, the Agreement Manager should draft the agreement using Chapter 2 provisions with the

modifications indicated in the chart below. For further guidance on these types of agreements, see Section 4.3.2 (Nonreimbursable Agreements with Foreign Commercial Entities), Section 4.4.1 (Reimbursable Agreements with Foreign Governmental Entities), and Section 4.4.2 (Reimbursable Agreements with Foreign Commercial Entities). For agreements with foreign entities that are not clearly governmental or commercial, see Section 4.1.3 (Agreements with Foreign Universities, Institutes, and Nonprofits).

	Nonreimbursable – Commercial	**Reimbursable – Governmental**	**Reimbursable – Commercial**
Authority	51 U.S.C. §§ 20102(d)(7) and 20115 apply. • Delete 2.2.2 (Authority and Parties) • Add 4.6.4 (Authority) • Delete the second paragraph of 2.2.12 (Release of General Information to the Public and Media) (does not apply under this authority)		No change – 51 U.S.C. § 20113(e) applies.
Definitions	• Add 4.6.6 (Definitions) • Delete definitions of Related Entity in 2.2.9 (Liability and Risk of Loss) articles and in 2.2.10 (Intellectual Property Rights) articles • Replace the term "Related Entity" with the term "Contributing Entity" in 2.2.10 (Intellectual Property Rights) articles		
Export Control	• Delete subclause (G) (Data Subject to Export Control) of the applicable Data Rights Clause in 2.2.10 (Intellectual Property Rights – Data Rights) • Add 4.6.16 (Transfer of Goods and Technical Data) • Delete 2.2.20 (Investigations of Mishaps and Close Calls) • Add 4.6.22 (Investigations of Close Calls, Mishaps, and Mission Failures)		
Dispute Resolution	• Delete 2.2.19 (Dispute Resolution) • Add 4.6.28 (Consultation and Dispute Resolution)		
Final Provisions	• Delete 2.2.15 (Term of Agreement), 2.2.16 (Right to Terminate), 2.2.17 (Continuing Obligations), and 2.2.21 (Modifications) • Add 4.6.29 (Final Provisions)		
General Drafting	• Throughout the agreement, replace the term "Partner" with "Party" or the name of the party, as appropriate • Throughout the agreement, replace the verb "will" with "shall" for legally binding commitments		