NASA Advisory Implementing Instruction

NAII 1050-1C

LAST UPDATED: August 11, 2014
Effective Date: February 25, 2013

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.

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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 SAAM 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.

Change #	Date	Section Number	Description/Comments
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.

Change #	Date	Section Number	Description/Comments
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.

Change #	Date	Section Number	Description/Comments
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.

Change #	Date	Section Number	Description/Comments
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.

Change #	Date	Section Number	Description/Comments
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.

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 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 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

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[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."
[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 referred to as the other Federal "Agency." In Chapter 4, the other party to the International SAA is referred to as the other "Party."

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). Agreements 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.

As discussed in Section 1.1., this Guide focuses on agreements to be concluded under NASA's "other transactions" authority of the Space Act, specifically transactions that generally cannot be concluded under other statutory authority of the Agency. Thus, this Guide does not address, for example, Grants[7] and Cooperative Agreements[8] under the Federal Grants and Cooperative

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[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—

> (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

Agreements Act of 1977 (commonly referred to as the Chiles 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 and Interagency Liaison Division (ECILD) and refer to Chapters 1 and 3, as appropriate for specific guidance regarding classified interagency agreements.

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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.

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 Space Act Agreements Maker (SAAM) database or, for International Agreements, the System for International and Interagency 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 Headquarters Mission Support Directorate (MSD), 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):

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:

[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 SAAM).

- 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 the Space Act Agreement Maker (SAAM) (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 SAAM 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 SAAM, or SIERA for International Agreements 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.

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

6. For domestic SAAs drafted in SAAM, 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 SAAM 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 MSD Partnership Office is responsible for coordinating the NASA-wide preliminary review of proposed Space Act Agreement activities which have a significant impact on the Agency (*see,* "Qualifying SAAs," *below*). The primary purposes of the abstract review process are to validate that NASA is being a good steward of Government resources, ensure the soundness of the financial approach, and affirm that the proposed partnership is aligned with Agency policy, strategic plan, and mission. Accordingly, Centers and Headquarters offices proposing to initiate certain SAAs must submit abstracts of key information to the MSD Partnership Office through SAAM prior to negotiating or committing to any such agreements.

OIIR is responsible for the NASA-wide preliminary review of proposed classified interagency agreements. For classified interagency activities an abstract is always required. Initiating offices should submit an abstract to OIIR on the appropriate secure system for agency review.
Prior to submission to MSD, or to OIIR for classified activities,[17] 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.

[17] For classified activities, Center reviews must be conducted by appropriately cleared individuals on the appropriate secure systems.

1. Required Content for Abstracts:

Abstracts are typically 2 – 3 pages. Abstracts must include the following information, to the extent applicable, in addition to any other information the initiator considers relevant to facilitate HQ's review:

(a) Overall description of proposed activity/activities, type of SAA proposed, applicable authority, responsible NASA personnel, intended Partner (including beneficiaries of the activity), and indication of whether the intended Partner or other beneficiaries of the activity are foreign entities, and if so, explanation as to how the activity benefits a foreign entity;

(b) Responsibilities of NASA and the Partner;

(c) Financial commitments by NASA and the Agreement Partner (including estimated ranges of the total cost for NASA and the total amount to be reimbursed by the Partner over the entire term of the Agreement);

(d) NASA Resource commitments (goods, services, facilities, and equipment):

- for all SAAs, estimated ranges of the number of NASA civil service full-time equivalents and NASA contractor work-year equivalents to be committed over the entire term of the agreement, and a description of any NASA facilities and key equipment or assets to be committed
- for Nonreimbursable or partially Reimbursable SAAs, an identification of the specific NASA program or other funding source (*e.g.,* Center CMO funds) for the nonreimbursed NASA costs under the SAA
- for Reimbursable SAAs with non-Federal agency Partners, a description of how the NASA resources to be committed are unique or not otherwise reasonably available on the U.S. commercial market from another source

(e) A description of the applicable data rights provisions, if anticipated to vary from the standard SAA sample clauses (this information is especially important for any proposed activities with or "for the benefit of" a foreign entity)[18]

(f) Proposed term (*i.e.,* number of years) of the SAA;

(g) Affected NASA Headquarters Mission Directorate(s), other Headquarters Offices, or other Centers, if any; and

(h) A description of how the proposed activities support NASA missions.

Upon receipt of the abstract, the MSD Partnership Office will coordinate review of the proposed activity to ensure Agency awareness and coordination of SAA activities. This review will be

[18] NPD 1370.1, paragraph 1.d(3).

coordinated with other affected Headquarters organizations including the Mission Directorates, the Office of Chief Technologist, the Office of the General Counsel, the Office of International and Interagency Relations and other applicable Headquarters Offices, as necessary, as well as affected Centers. MSD will provide a consolidated response either—1) indicating that there were no substantive issues raised and that the initiator may proceed with the development of the agreement; or 2) communicating substantive issues raised so that the initiator can provide the necessary additional information through the MSD Partnership Office to facilitate further review and attempt at resolution. In some cases, the resolution process might require escalation to senior Agency management for a decision, depending on the nature of the issue. The MSD Partnership Office will facilitate timely resolution of any issues with a goal of providing a consolidated review response within eight (8) business days.

If after receipt of the affirmative consolidated response from MSD, there are significant changes to the proposed activity, parties, or terms and conditions, the Agreement Manager is responsible for making the MSD Partnership Office aware of any such changes prior to finalizing the Agreement as such changes may necessitate additional coordination with affected offices and perhaps a new review. Similarly, if after an initiating organization determined during the agreement formulation process that an abstract was not required based on application of the abstract submission criteria, and there are significant changes to the proposed activity, parties, or terms and conditions, the Agreement Manager is responsible for making the MSD Partnership Office aware of any such changes prior to finalizing the Agreement as such changes may necessitate an abstract review at that point.

For classified interagency agreements, OIIR will follow a similar abstract review process as outlined above, using the appropriate classified systems and appropriately-cleared individuals from the Headquarters organizations reviewing the proposed activities.

2. Qualifying SAAs:

Preliminary abstract review is required for all proposed SAA activities (including Umbrella Agreements, Annexes, and SAAs concluded under specialized agreement titles) that could have a significant impact on the Agency. In determining which activities may have a significant impact on the Agency, initiating offices should follow the guidelines below. These guidelines are intended to minimize the burden on initiating offices by excluding certain types of activities where the risk from those activities is minimal. In some cases when Headquarters review is not mandatory but the particular facts of the proposed activity suggest benefit from increased coordination through the Headquarters review process managed by the MSD Partnership Office, good judgment, nonetheless, may warrant the submission of an abstract. When in doubt, initiating offices should forward abstracts to the MSD Partnership Office for review. For classified interagency activities, initiating offices should follow the MSD guidelines for abstracts which OIIR will review on secure systems.

3. Guidelines for Submission of Abstracts for HQ Review

(a) SAAs Requiring HQ Review:

- Involve foreign entities either directly as a Partner or indirectly (e.g., the activity is ―for the benefit of‖ a foreign entity, pursuant to NPD 1370.1), except as provided in subparagraph (c) below.

- Involve classified activities with a Federal Government entity directly as a Partner or indirectly as a beneficiary, no exceptions. Initiating offices should submit an abstract to OIIR for Agency coordination through the appropriate classified system.

- Involve Federal Government entities directly as a Partner or indirectly as a beneficiary when: 1) the total estimated value is over $1 million; or 2) is an Umbrella Agreement (as defined Section 1.9 of NAII 1050.1C); or 3) the NASA signatory is an Official-in-Charge (OIC) of a Headquarters Office or a Center Director,[19] except as provided in subparagraph (c) below.

- Involves agreements with current NASA Commercial Crew Program (CCP) and ISS/Commercial Cargo partners AND the proposed scope of work is related to those programs, except as provided in subparagraph (c), below.

(b) SAAs Generally Requiring HQ Review:

- Involve activities that are likely to attract significant external interest.

- Impacts a NASA Mission Directorate's activities, assets, or planning processes.

- Require a large commitment of NASA resources and/or Reimbursable funding.

- Involve unusual waivers (cost or policies).

- Involve unorthodox agreement approaches.

- Involve potentially controversial activities.

(c) SAAs Generally Not Requiring HQ Review:

- Agreements with foreign government and foreign non-commercial entities that are initiated by a Headquarters Mission Directorate in coordination with Headquarters Office of International and Interagency Relations (abstracts are still required for proposed agreements with foreign commercial entities);

- Agreements with domestic Partners for routine, long-standing activities that have been previously vetted with the appropriate Headquarters offices and any affected Centers;

[19] The OIC list is maintained by the Executive Secretariat and available at: http://inside.nasa.gov/content/executive-secretariat.

- Renewals, extensions or minor in-scope amendments of existing SAAs that were previously vetted with the appropriate Headquarters offices and any affected Centers.

- Routine agreements for astronaut appearances, lunar sample loan agreements, and wind tunnel test services for domestic industry or other non-Federal governmental entities;

- SAAs resulting from competitive processes when those processes provide for representation and awareness among affected NASA organizations.

(d) Waiver process for SAAs otherwise requiring review
Initiating Centers of HQ offices may request a waiver for other proposed groups or discrete categories of SAAs based on a consideration of risk to the Agency. Requestors should send waiver requests to the MSD Partnership Office via the SAAM system for consideration, explaining their rationale for why the particular proposed SAA or category presents minimal risk to the Agency. Upon receipt of a waiver request, the MSD Partnership Office will coordinate with other affected NASA organizations in arriving at a decision whether to grant the waiver request, and will communicate the decision and rationale to the requestor.

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 SAAM, for tracking and documenting the dates associated with their review. The SAAM 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 Mission Support Directorate (MSD) 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.[20]

   - 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, EPRs of the value of the NASA resources to be committed under SAAs must be prepared before NASA may enter into SAAs.[21]

   - 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

[20] 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.
[21] EPRs are not required for certain categories of agreements, such as reimbursable travel, consistent with NPR 9090.1.

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.[22]

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."

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 SAAM (or SIERA through the Office of International and Interagency Relations for International Agreements). The Agreement Manager is also responsible for ensuring the integrity of SAAM data by maintaining current information and status on their SAAs within SAAM, 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 SAAM with the executed SAA for recordkeeping purposes. For International Agreements and Interagency Agreements (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.[23]

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."[24] 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

[22] NPD 1050,1 paragraph 1.a.
[23] NPD 1050.1, paragraph 5.g.
[24] NPD 1050.1, paragraph 1.b.

benefits.[25] *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 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 fully or partially reimbursed by the Partner. 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."[26] 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[27] capabilities and services to the maximum

[25] NPD 1050.1, paragraph 1.b.
[26] NPR 9090.1, section 2.4 and Appendix C.
[27] 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

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."[28] NASA's policy related to pricing any use of its facilities can be found in NPR 9090.1. NPD 9080.1 further 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.[29]

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.*, partial reimbursement). 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:

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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."

[28] PPD-4, *National Space Policy* "Commercial Space Guidelines" June 28, 2010.

[29] 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.

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 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).[30]

Reimbursable SAAs, moreover, must be consistent with NASA policy issued by the NASA Associate Administrator in January 2007.[31] 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.[32]

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[30] *See*, NPR 9090.1.
[31] Rex D. Geveden, NASA Associate Administrator Memorandum, *Guidance Regarding Space Act Agreements and Pending Review of NASA Agreement Practices* (January 18, 2007).
[32] NPD 1370.1, paragraph 1(f).

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.[33] 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. 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.[34] For Reimbursable IAAs, a widely-available authority exists in the Economy Act.[35] It authorizes Federal Agencies to enter into mutual agreements to obtain supplies or services by interagency acquisition. All IAAs must include a funding transfer document, called an Order, consistent with guidance provided by the Department of Treasury. Specific guidance regarding 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.[36] 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

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[33] *See*, http://insidenasa.nasa.gov/saa/home/index.html.
[34] 51 U.S.C. § 20113.
[35] 31 U.S.C. § 1535.
[36] NPD1050.1, paragraph (1)(d).

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

Funded SAA are agreements where appropriated funds are transferred to a domestic Partner to accomplish a goal consistent with NASA's mission. Funded SAAs should only be used when Agency objectives cannot be achieved through any other agreement instrument, such as a Federal Acquisition Regulation contract under the Armed Services Procurement Act, a Grant or Cooperative Agreement under the Federal Grants and Cooperative Agreements Act of 1977 (Chiles Act), or a Reimbursable or Nonreimbursable agreement under the Space Act. Prior to using a funded SAA, the Center Director or Mission Directorate Associate Administrator, or Assistant Administrator, as appropriate must determine, in consultation with the Office of the General Counsel or Chief Counsel, as appropriate, and the CFO, that a funded SAA is the appropriate legal instrument for the activity. Additional guidance on Funded SAAs is under development and will be provided at a later time.

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 under an SAA, 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 SAA 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.[37]

Each Annex should be limited to those elements of the SAA 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. It is not appropriate, however, to use Annexes to modify the terms of

[37] 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 SAA and all Annexes are executed by a NASA Signing Official with authority to bind the parties as provided in NPD 1050.1.

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 SAA would be necessary to accommodate that particular task.[38] 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 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. (Partially Reimbursable Umbrella Agreements are treated as Reimbursable SAAs in which NASA has agreed to waive certain costs. (*See* Section 1.5.)

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.

[38] 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 SAA.

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 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 SAAs with domestic nongovernmental entities and in Section 3.3.2 for Nonreimbursable and Reimbursable IAAs with other Federal Agencies.

1.10. SPECIALIZED ACTIVITIES AGREEMENTS

1.10.1. LOAN OF EQUIPMENT: provides a mechanism for NASA to borrow or lend equipment. The loan agreement should identify the collaborative area of interest, include the respective roles and responsibilities of each party, include a list of the items to be provided, specify the duration of the loan, and impose certain obligations commonly found in a loan agreement, including the care and return of loaned hardware. Sometimes, the terms of the loan may be included in an SAA covering a collaboration for which the equipment loan is merely one element of the respective roles and responsibilities of NASA and the Partner (*see* Section 2.2.25).

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.[39] 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.

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

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 is 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 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,[40] it may not be enforceable. For NASA, it is not possible for an individual without appropriate authority to create a legally binding agreement.[41]

[40] *See* Section 1.1 of this Guide.

[41] 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

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 Property.
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.

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 multi-party 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, multi-party 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.[42] 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.[43]

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.

2.2.5.1. Schedule and Milestones (Sample Clause)

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

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.[44]

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 (partial reimbursement) 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 Agreements), or their designee.[45] Before NASA may enter a Reimbursable SAA where NASA is

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[44] *See,* Section 1.4 for additional guidance on Nonreimbursable SAAs.
[45] *See,* NPR 9090.1, Section 2.4 and Annex C for EPR guidance and requirements.

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.[46] However, the SAA should reflect any currently planned milestones.

2.2.7. Priority of Use (Sample Clause)

[46] 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.

2.2.8. NONEXCLUSIVITY

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 should be used to the maximum extent practicable to select the Partner as a means of avoiding the appearance of favoritism. This also provides NASA with the greatest number of choices for making the best selection for the use of the NASA resource. For example, where NASA only has a limited resource or capability, exclusive agreements are warranted, subject to appropriate competition. Where an SAA provides a Partner the opportunity for a direct commercial gain, (*i.e.*, a commercial gain other than a commercial benefit obtained from commercializing a technology developed under the SAA) *e.g.*, publishing and selling an anniversary or commemorative NASA publication, appropriate competition should also be used to select the Partner. The extent of the competition, and the means of announcing the competition and selecting the Partner, will depend on the specific opportunity. Announcement of such opportunities is made generally, at a minimum, on the NASA Acquisition Internet Service (NAIS) *http://prod.nais.nasa.gov/cgi-bin/nais/index.cgi*. Competition may be waived by written justification by the responsible NASA official after consultation with the Office of the General Counsel or Chief Counsel, as appropriate.

Even in cases where a private entity suggests (either formally through an unsolicited proposal or informally) a unique or proprietary concept for exclusive use of a NASA resource, it may still be appropriate to announce generally the availability of the NASA resource for commercial use or gain. This will help level the playing field and provide NASA insight into other possible beneficial uses of the resource. However, NASA must exercise reasonable care not to reveal the unique or proprietary concept in any such announcement. Such situations will require close coordination with the Office of the General Counsel or Chief Counsel, as appropriate.

When exclusivity is 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 or partially Reimbursable SAAs, 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 or partially Reimbursable SAAs, 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").[47] 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 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,

[47] 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.

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.[48] 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

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

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.

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.[49]

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

[49] "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)).

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[50] 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)).[51]

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 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.[52]

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[50] 5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.
[51] Formerly section 303(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. § 2454(b)).
[52] 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.
<u>Handling and Protection of Government Controlled Contractor Generated Data</u>
(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

- 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 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,[53] benefits to NASA or to the public are normally provided through shared data rights or broad dissemination of the results.[54]
- 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):

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.

[53] "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)).

[54] NPD1370.1.

- 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)

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[55] 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[56] (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).[57]

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.

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[55] 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.

[56] 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.

[57] 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.

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.[58]

Data first produced by NASA under the SAA that would qualify as proprietary data if it had been obtained from the Partner,[59] 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 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.[60]

Additionally, recognizing that 51 U.S.C. § 20112(a)(3)[61] 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.[62]

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.

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[58] *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.

[59] 51 U.S.C. § 20131(b) (formerly 303(b) of the National Aeronautics and Space Act of 1958, 42 U.S.C. § 2454(b)).

[60] *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).

[61] Formerly Section 203 of the National Aeronautics and Space Act of 1958 (42 U.S.C. § 2473(a)(3)).

[62] 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.

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:

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 listing of specific background, third party proprietary, and government controlled data that the parties know will be, or may need to be, exchanged under the SAA 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 provision requires such data to be specifically identified. Under Umbrella SAAs, such data would be exchanged under an Annex. An alternate paragraph is provided for Umbrella SAAs allowing the listing of such data in the Annex under which it will be exchanged.[63] 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.

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

[63] *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).

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.

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) List any specific background, third-party proprietary, and controlled government data that will be exchanged under the Annex.

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.[64]

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.

[64] *See supra* Section 1.5.

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.

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[65] 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.[66]

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

[65] "Raw data" refers to unanalyzed data usually of a scientific nature.
[66] 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.

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)

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)[67] 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,[68] 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,

[67] Formerly section 305(a) of the National Aeronautics and Space Act (42 U.S.C. § 2457).
[68] NPD 1350.3.

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.[69] 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.[70] 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.[71]

Under the Space Act[72], when NASA transfers funds or title to inventions[73] 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,[74] 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)

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[69] 15 U.S.C. § 3710 *et seq.*, as amended (P.L. 104-113).
[70] 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.
[71] *See* FAR Part 27 and NASA Far Supp. Part 1827.
[72] 51 U.S.C. § 20135.
[73] 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.
[74] *See* NASA's Patent Waiver Regulations at 14 C.F.R. Part 1245, Subpart 1.

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[75] (*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 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[76] (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

[75] 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.

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

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)

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[77] 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.[78] 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

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

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 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.[79]

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.[80]

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[79] 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.

[80] 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.

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 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."[81] 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.

[81] 51 U.S.C. § 20141 (formerly Section 311 of the National Aeronautics and Space Act of 1958, 42 U.S.C. § 2459(b)).

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)

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.

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

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 PROPERTY

On occasion, government property is loaned to a Partner as part of a larger SAA effort. Sample clause 2.2.25 is used when the terms of the loan are included in an SAA covering a collaboration for which the equipment loan is merely one element of the respective roles and responsibilities of NASA and the Partner. Alternatively, a separate loan agreement may be used (*See* Section 1.10.1).

2.2.25. Loan of Government Property (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.

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), 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[82] 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.

[82] 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 or its Related Entities 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:

[*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]

b. Third Party Proprietary Data:

[*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]

c. Controlled Government Data:

[*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]

d. 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 Data with a restrictive notice and Data identified in this Agreement, Receiving Party shall:

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

b. Safeguard the Data from unauthorized use and disclosure;

c. Allow access to the 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 the 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. 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 Data with a restrictive notice and Data identified in an Annex, Receiving Party shall:
   a. Use, disclose, or reproduce the Data only as necessary under this Agreement;
   b. Safeguard the Data from unauthorized use and disclosure;
   c. Allow access to the 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 the 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:
   [*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]
2. Third Party Proprietary Data:
   [*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]
3. Controlled Government Data:
   [*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]
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 or its Related Entities 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:
      [*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]
   b. Third Party Proprietary Data:
      [*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]
   c. Controlled Government Data:
      [*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]
   d. 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 Data with a restrictive notice and Data identified in this Agreement, Receiving Party shall:

a. Use, disclose, or reproduce the Data only as necessary under this Agreement;
b. Safeguard the Data from unauthorized use and disclosure;
c. Allow access to the 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 the 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. <u>NASA Name and Initials</u>

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.

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 PROPERTY (SAMPLE CLAUSE)

A. In order to further activities set forth in this Agreement, the Parties acknowledge that NASA shall lend the following Government property to Partner:

[*Insert List of Lent Property to include serial numbers or other unique identifiers.*]

B. The property listed above (hereinafter referred to as the "Property") is not being provided to Partner as a substitute for the purchasing of the same type of property by Partner under any contract or grant that Partner has, or may have, with a third party. Furthermore, such Property is not excess to NASA's requirements and its use is anticipated upon its return to NASA.

C. In support of this loan the Partner shall:

1. Install, operate, and maintain the Property at Partner's expense;
2. Furnish all utilities (*e.g.,* water, electricity) and operating materials required for the operation of the Property;
3. Bear all costs associated with the use and enjoyment of the Property under the terms of this Agreement, including but not limited to such costs as packing, crating, shipping, installing, maintaining, licensing, and operating the Property;
4. Transport the Property in accordance with good commercial practice;
5. Acknowledge that the privilege of using and enjoying the said Property exists solely by virtue of this Agreement with NASA, the owner of said Property, and not as of right;
6. Identify, mark, and record all of the Property promptly upon receipt, and maintain such identity so long as it remains in the custody, possession, or control of Partner.
7. Maintain suitable records for each item of Property. At a minimum, such records shall include a description, identification number, unit cost, quantity, dates of receipt, condition upon receipt, and location. Partner shall perform an inventory of the Property one (1) year from the Effective Date of this Agreement, and every year thereafter, if the Agreement is still in effect, and send such inventory report to NASA. The report shall include a statement validating any requirement to continue the loan. Further, Partner shall provide to NASA upon reasonable request, records sufficient to disclose the date of inspections, the deficiencies discovered as a result of inspections, and any maintenance actions performed. This annual report shall be submitted to the following NASA point of contact (POC):

<u>NASA Property Point of Contact</u>:

Name
Title
Email
Telephone
Cell
Fax
Address

8. Report any loss, damage, or destruction of Property to the NASA POC identified above within ten (10) calendar days from the date of the discovery thereof.

[*Note: As appropriate, the following clause can be added to the end of the previous clause.*]

9. Assume responsibility for loss or damage to the Property, reasonable wear and tear excepted, and, with the same limitation for wear and tear, agree to return the Property to NASA in as good a condition as when received. It is understood that Partner is responsible for any damage to the Property while it is in the care, custody, and control of Partner, its employees, contractors, subcontractors, agents, or principal investigators.

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 SAAs with agencies of the Federal Government and with state/local governments, including state and local colleges and universities (public partners).[83] 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 SAAs with other federal agencies, hereinafter Interagency Agreements (IAAs), are similar to those entered into with private parties.

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."[84] They permit NASA to utilize its goods, services, facilities or equipment to meet its obligations under the IAA. It is appropriate to use a Nonreimbursable IAA where NASA and its Partner (which in this case is another Federal department or agency,

[83] 51 U.S.C. § 20113.
[84] NPD 1050.1.

hereinafter "Federal Agency") are performing activities collaboratively for which each is particularly suited and for which the end results are of interest to both parties.

Reimbursable IAAs

As with Reimbursable SAAs with domestic nongovernmental entities, Reimbursable IAAs permit Federal Agencies to use NASA goods, services, facilities, or equipment to advance the other Federal Agency's own interests. NASA's costs associated with the undertaking are reimbursed by the other Federal Agencies. While IAAs must conform to NPD 1050.1, flexibility exists for requiring certain clauses that would operate by law if not included in the IAA because both NASA and the other Federal agency are part of the U.S. Government. Therefore, to the extent that NASA is presented with an IAA drafted by the Requesting Agency and it does not include liability, intellectual property or termination rights, the IAA remains legally sufficient, and although inclusion of these clauses is preferred, it may be routed without these clauses. In addition, Reimbursable IAAs, differ from Reimbursable SAAs in several key ways:

- *Economy Act*: NASA is authorized to enter into IAAs with Federal Agencies under the Space Act, to accept reimbursement for use of its goods, services, facilities, or equipment from another Federal Agency. The Agency transferring the funds must determine that it has authority to transfer funds.[85] A widely-available authority for Federal Agencies (including NASA) exists in the Economy Act.[86] It authorizes Federal Agencies to enter into mutual agreements to obtain supplies or services by interagency acquisition under the following conditions (which are incorporated into a Determination and Finding (D&F) from the non-NASA Federal Agency):

    - (1) amounts are available; (2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government; (3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services [when a contract action is required by the servicing agency]; and (4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise [when a contract action is required by the servicing agency].[87]

  Under the Economy Act, the Federal Agency utilizing an interagency acquisition is referred to as the requesting agency and the Federal Agency supplying the supplies and services is the servicing agency.[88] Therefore, under a Reimbursable IAA, NASA is the "servicing agency" since it is providing services or supplies in exchange for reimbursement. The amount of reimbursement is prescribed by the Economy Act as actual costs (i.e., full costs) versus direct (or incremental costs).

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[85] IAAs should generally cite NASA Space Act authority (51 U.S.C. § 20113(e)) and the authority relied on by the Agency reimbursing NASA.
[86] 31 U.S.C. § 1535.
[87] 31 U.S.C. § 1535(a).
[88] 48 C.F.R. Part 17, FAR 17.501.

- *Required Clauses under NPD 1050.1*: While such IAAs must conform to NPD 1050.1, flexibility exists for requiring certain clauses that would operate by law if not included in the IAA, because both NASA and the other Federal agency are part of the U.S. Government. Therefore, to the extent that NASA is presented with an IAA drafted by the Requesting Agency and it does not include liability, intellectual property or termination rights, the IAA remains legally sufficient, and although inclusion of these clauses is preferred, it may signed without these clauses.

- *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 the Agency competing with the private sector. As discussed in Section 1.5, this requirement is embodied in National Space Policy of the United States of America (June 28, 2010) which directs the Federal Government to "purchase and use commercial 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."[89] However, as discussed above, NASA does not have to consider whether the activities in an IAA would be available from the private sector (or provision of such goods or services would compete with the private sector). This is because the prohibition does not apply to interagency transactions as described in the ordering Agency's Determination and Finding requirements.

- *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 provides the Partner an opportunity for direct commercial gain. This consideration is not applicable to IAAs with Federal Agencies. If a requesting Federal 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)*: In addition to the IAA which includes the main elements of the cooperation and governing legal terms, Reimbursable IAAs must be accompanied by at least one funding document (Order) which allows for the transfer of funds.[90] The Order does not need to be processed at the same time as the IAA, but must be completed prior to the commencement of any activities under the IAA. The IAA and the Order may be combined in one document provided the essential elements of both are contained in the combined document. Under the Economy Act,

[89] PPD-4, *National Space Policy* "Commercial Space Guidelines" June 28, 2010.
[90] "Agreement Between Federal Agencies, Order Requirements and Funding Information (Order) Section."

the Order may be placed on any form or document that is acceptable to both Parties, but at a minimum should include (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.[91] The Department of the Treasury has a recommended Order form[92] for use by all Federal Agencies.[93] It covers transactions under the Economy Act and all other authorities. While IAAs must include at least one Order, an IAA may have several Orders where payments are made incrementally. In addition to the payment information, each Order includes a description of the products or services to be provided and key project or acquisition milestones associated with that specific fund transfer.

Umbrella IAAs

As with Umbrella SAAs with domestic nongovernmental entities, Umbrella IAAs provide a mechanism for NASA and another Federal Agency 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 (other Federal Agencies may use different terms) adopting the terms and conditions of the Umbrella IAA and adding specific details for each task. IAAs require at least one Order document which allows for the transfer of funds and documents the key project or acquisition milestones associated with those funds. Several Orders may be required where additional work within the scope of the IAA is provided in multiple Annexes. It may be possible to incorporate the terms of the Annex in the Order document, depending on the policies of the ordering Federal Agency, thereby eliminating the need for a separate Annex.

3.3.2. AGREEMENT CONTENTS

The following clauses provide the recommended approach for IAAs with Federal Agencies. However, for IAAs, since both NASA and the other Federal agency are part of the U.S. Government, Agreement Managers have more latitude to modify or even exclude some standard clauses that would otherwise be required in a SAA with a commercial partner. In the event that NASA provides the first draft of the IAA for the other Federal agency's review, the preferred practice is to start with the standard IAA clauses prescribed in the Guide. If, during negotiations, the other Federal agency requires removal or modification of a standard IAA clause, the Agreement Manager is free to consider and accept such changes in consultation with the OCC, (or OGC, as appropriate). In the event that the other Federal agency provides the first draft of the IAA, as long as the OCC or OGC reviews the IAA and concludes that the Requesting Agency's draft is legally sufficient, the Agreement Manager is not required to include all the standard NASA IAA clauses, although inclusion of these clauses is preferred, and in some cases,

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[91] FAR 17.503(b).

[92] FMS Form 7600B, "IAA –Order Requirements and Funding Information (Order) Section," is available on the Financial Management Service's Financial Management and Budget Standardization website: http://www.fms.treas.gov/finstandard/forms.html.

[93] Treasury Financial Manual Volume 1 Bulletin No. 2011-04 titled "Intragovernmental Business Rules" (November 8, 2010), Section IV.A., "Interagency Agreement (IAA) – Agreement Between Federal Agencies, Order Requirements and Funding Information (Order) Section."

may avoid confusion in the future where expectations could differ, such as related to the handling of data. Accordingly, IAAs should conform, to the extent practicable, to this specific form and should include the following sections, as appropriate, in the order presented. However, for IAAs, since both NASA and the other Federal agency are part of the U.S. Government, Agreement Managers have more latitude to modify or even exclude some standard clauses that would otherwise be required in a SAA with a commercial partner. In the event that NASA provides the first draft of the IAA for the other Federal agency's review, the preferred practice is to start with the standard IAA clauses prescribed in the Guide. If, during negotiations, the other Federal agency requires removal or modification of a standard IAA clause, the Agreement Manager is free to consider and accept such changes in consultation with the OCC, (or OGC, as appropriate). In the event that the other Federal agency provides the first draft of the IAA, as long as the OCC, or OGC, reviews the IAA and concludes that the Requesting Agency's draft is legally sufficient, the Agreement Manager is not required to include all the standard NASA IAA clauses, although inclusion of these clauses is preferred, and in some cases, may avoid confusion in the future where expectations could differ, such as related to the handling of data. Coordination with the Headquarters Office of International and Interagency Relations is required under NPD 1050.1 which designates the Office of International and Interagency Relations as responsible for the review of all IAAs with other Federal Agencies.[94] 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 (ECILD) and refer to Chapter 1 for specific guidance regarding classified interagency agreements.

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 Property.
19. Signatory Authority.

[94] NPD1050.1I (5)(c). In addition, Agreement Managers are responsible for providing the Office of International and Interagency Relations a copy of the signed IAA.

Nonreimbursable and Reimbursable Umbrella IAAs should include the standard sample clauses provided in Chapter 3 unless a specific Umbrella sample clause is provided, in which case that clause should be used. Specific Umbrella 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 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 Property (if applicable) (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 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. NASA's authority should, at a minimum, include the Space Act.[95] Generally, the other Federal Agencies rely on the Economy Act.[96] 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. An IAA with more than one Federal Agency is possible. Such 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)

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[95] 51 U.S.C. § 20113(e).
[96] 15 U.S.C. § 1535.

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 other Federal Agency.

3.2.6.1. Financial Obligations (Nonreimbursable Agreement Sample Clause)

Reimbursable budget authority needs to be made available in advance of NASA's efforts. Reimbursable budget authority is made available as a result of a signed IAA/funding document (Order). Generally, payment made in advance of initiation of NASA's efforts is not required when the reimbursable customer is another Federal agency. However, there may be some circumstances where such an advance should be provided, as directed by the NASA OCFO for Headquarters IAA or Center CFO for Center IAAs. NASA should not provide services or incur costs beyond the funding provided in the IAA. The funding transfer(s) is effected through an accompanying Order. The Department of the Treasury has a recommended Order for use by all Federal Agencies.[97] It covers transactions under the Economy Act and all other authorities.

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)

[97] FMS Form 7600B, "IAA –Order Requirements and Funding Information (Order) Section," is available on the Financial Management Service's Financial Management and Budget Standardization website: http://www.fms.treas.gov/finstandard/forms.html.

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 use of its own resources.

3.2.7. Priority of Use (Sample Clause)

3.3.2.8. LIABILITY AND RISK OF LOSS

Since Federal Agencies do not sue each other, liability normally is allocated by having each party assume its own risks.[98] 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 under the Act, apply). 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 and IAAs for missions involving a launch for science or space exploration should utilize sample clause 3.2.8.3.

3.2.8.2. Liability and Risk of Loss (Cross-Waiver of Liability for Agreements Involving Activities Related to the ISS Sample Clause)

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.

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[98] 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) List any specific background, third-party proprietary, and controlled government data that will be exchanged under the Annex;
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.

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, 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. Any attempt to use a modification to extend or revive the term of an expired IAA is ineffective.

3.2.11.1. Term of Agreement (Sample Clause)

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 termination costs consistent with the Department of the Treasury's "Intragovernmental Transaction Guide."[99]

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)

[99]The Department of the Treasury, "Intragovernmental Transaction Guide", Treasury Financial Manual, Vol. 1, Chapter 2, Part 4700, Appendix 10.

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 employees.

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."[100]

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 SAA 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 Agreement, consideration should be given to its effect on executed Annexes. Annexes are not considered modifications.

3.2.16.1. Modifications (Sample Clause)

[100]The Department of the Treasury, "Intragovernmental Transaction Guide", Treasury Financial Manual, Vol. 1, Chapter 2, Part 4700, Appendix 10.

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 PROPERTY

This clause outlines the responsibilities that accompany the loan of government property to another Federal Agency as part of the IAA activities.

3.2.18. Loan of Government Property (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

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)

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") in accordance with the National Aeronautics and Space Act (51 U.S.C. § 20113) and the Economy Act, 31 U.S.C. § 1535. [*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 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, ANOTHER FEDERAL AGENCY'S APPROACH MAY DIFFER)

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 SAA*].

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 SAA.*]

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 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. 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:
   [*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None"*]
2. Controlled Government Data:
   [*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None"*]
3. NASA software and related Data will be provided to Partner 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 Data with a restrictive notice and Data identified in this Agreement or an accompanying funding document, Receiving Party shall:

1. Use, disclose, or reproduce the Data only as necessary under this Agreement;
2. Safeguard the Data from unauthorized use and disclosure;
3. Allow access to the 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 the 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:
   [*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]
2. Controlled Government Data:
   [*Identify the Disclosing Party and insert specific listing of data items or, if none, insert "None."*]
3. 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."*]

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.

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 PROPERTY (SAMPLE CLAUSE)

A. In order to further activities set forth in this IAA, NASA or [*other Federal Agency*] (as "Lending Party") will lend the following Government property to the other Party (Receiving Party):

[*Insert List of Lent Property with serial numbers or other unique identifiers. If both Parties are lending property, insert both lists.*]

B. In support of this loan the Receiving Party shall:

1. Install, operate, and maintain the Property at Receiving Party's expense;
2. Furnish all utilities (*e.g.*, water, electricity) and operating materials required for the operation of the Property;

3. Bear all costs associated with the use and enjoyment of the Property under the terms of this Agreement, including but not limited to such costs as packing, crating, shipping, installing, maintaining, licensing, and operating the Property;
4. Transport the Property in accordance with good commercial practice;
5. Identify, mark, and record all of the Property promptly upon receipt, and maintain such identity so long as it remains in the custody, possession, or control of Partner.
6. Maintain suitable records for each item of Property. At a minimum, such records shall show description, identification number, unit cost, quantity, dates of receipt, condition upon receipt, and location.
7. Report any loss, damage, or destruction of Property to Lending Party within ten (10) working days from the date of the discovery thereof.
8. Return the Property to Lending Party upon sixty (60) days notice or expiration or termination of this Agreement, whichever comes first.

[Note: If required, the following clause can be added to the end of the previous clause]

9. Assume responsibility for loss or damage to the Property, reasonable wear and tear excepted. It is understood that Receiving Party is responsible for any damage to the Property.

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

Chapter 4 should be used for most non-reimbursable agreements with foreign entities, which includes agreements with foreign governments, foreign space agencies, other foreign governmental entities, and other types of foreign entities. These agreements are usually styled as Memoranda of Understanding (MOUs), Letter Agreements, or Implementing Arrangements (IAs). Agreements with some foreign entities, including foreign commercial entities, will require predominately Chapter 2 provisions. Guidance as to when Chapter 4 provisions should be used and when agreements should be generally in accordance with the provisions of Chapter 2 is provided in Sections 4.1 and 4.3.

Organizationally, 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 international agreements. The appropriate Program Office is responsible for the technical, scientific, programmatic, and management aspects of the joint activity. Execution of an agreement should be treated as any other important early program milestone by a Program Office. Early consultation with OIIR is critical to ensure appropriate steps are taken to execute an agreement. The Headquarters Office of the General Counsel (OGC) will assist and advise OIIR to ensure all aspects of the cooperation are consistent with the applicable law and legal policy,[101] and will also assist and advise OIIR during the negotiation of the text with the foreign entity.

4.1.1. INTERNATIONAL AGREEMENT FORMATION PROCESS

As noted in Chapter 1, the International Agreement formation process differs from that of non-International SAAs. OIIR will serve in the role of Agreement Manager, but may designate a Center Point of Contact to execute many of the Agreement Manager tasks, including, but not limited to: determining resource availability (personnel, goods, services, facilities, or equipment); identifying the funding source for NASA's responsibilities; and assisting OIIR in determining the proposed benefits to NASA and the foreign entity.

OIIR will advise the Center Point of Contact on whether an abstract is required for the agreement. If an abstract is required, the Center Point of Contact is responsible for the development and circulation of the abstract, and OIIR will not begin developing the International Agreement until it is notified that the abstract is approved through the Headquarters Mission Support Directorate process.

OIIR will outline the timeframe for the execution of the International Agreement as well as the concurrence cycle, both of which will vary depending on the subject of the International

[101] Any agreement with a foreign entity should be executed well in advance of the commencement of significant joint activities. NASA assumes unnecessary legal risk if project activities, such as exchange of detailed technical data or equipment, or use of each other's facilities take place without a legally binding agreement in place to appropriately allocate risk of loss or damage, and impose conditions on treatment and use of technical data.

Agreement and the other Party the International Agreement is with. The International Agreements are drafted by OIIR personnel and do not use the Space Act Agreements Maker. It is important that the Center Point of Contact clearly communicates any deadlines/need dates early in the discussion of the International Agreement in order for OIIR to appropriately construct a timeline. Some International Agreements require additional steps and reviews as discussed later in this Chapter.

OIIR will determine when it is appropriate to share the draft International Agreement with the other Party and will be responsible for communicating the draft International Agreement to the other Party.

4.1.2. AGREEMENTS WITH FOREIGN GOVERNMENTS, FOREIGN SPACE AND OTHER FOREIGN GOVERNMENTAL AGENCIES

In addition to NASA's general "other transactions" under the Space Act, NASA has independent legal authority under the Space Act[102] to conclude executive agreements on behalf of the U.S. to conduct aeronautics and space activities with other governments. (*see* Section 1.1).

Executive agreements are International SAAs that are binding under international law. For executive agreements, NASA's foreign partners are typically government agencies or international organizations because only these entities have legal capacity to enter into binding agreements under international law. Where a foreign agency is authorized to make binding commitments under international law on behalf of its respective government or an international organization has authority to make such binding commitments, NASA will usually execute an International SAA under international law. An International SAA may be in the form of an MOU or a Letter Agreement, as discussed further in Section 4.2 below.

If a foreign governmental entity lacks the legal capacity to execute agreements binding under international law, an exchange of diplomatic notes with the Party's government may be required to conclude the agreement, or the agreement can be signed at the government level (*e.g.* foreign ministries). Additionally, NASA has now concluded "Framework Agreements" with a number of foreign governments (at the State Department – Foreign Ministry level[103]) which include the legal provisions necessary for International SAAs (*see* Section 4.4 below). Pursuant to the Framework Agreements, NASA then enters into IAs with its foreign agency Partners that cover the specific responsibilities and other terms necessary for cooperation.

An International SAA with foreign governmental entities uses Chapter 4 provisions. They are usually under international law.

Alternatively, the International SAA could specify U.S. Federal law as the applicable law for all purposes, including interpretation.[104] An agreement under U.S. Federal law is not an "executive

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[102] 51 U.S.C. §§ 20102(d)(7) and 20115.

[103] NASA also concludes Agency to Agency Framework Agreements.

[104] As referenced above, NASA has independent legal authority under the Space Act to conclude International SAAs under international law and, therefore, prefers that agreements with its foreign Partners be governed by international law rather than U.S. law. In circumstances

agreement" as that term is understood under U.S. law. Otherwise, an International SAA with a foreign government or foreign government agency under U.S. Federal law uses Chapter 4 provisions and is very similar to an executive agreement.

4.1.3. AGREEMENTS WITH FOREIGN COMMERCIAL ENTITIES

Foreign commercial entities 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. A key difference with such agreements is that the Chapter 4 clause regarding Transfer of Technical Goods and Data should be used, rather than Chapter 2 clauses regarding U.S. export control laws and regulations. (Note: agreements for the benefit of foreign entities, for example subsidiaries of foreign corporations, are addressed in Chapter 2.)

International SAAs with foreign commercial entities must specify that U.S. Federal law is the governing law.

4.1.4. AGREEMENTS WITH OTHER TYPES OF FOREIGN ENTITIES

NASA also enters into International SAAs with foreign nongovernmental organizations that are not private companies, including, but not limited to universities and institutes. Depending on the particular circumstances, such an International SAA may be similar to the agreements described in Chapter 2 or Chapter 4. OIIR and OGC will work together to decide which approach is appropriate.

Predominately Chapter 2 provisions should be used if the foreign entity is primarily a for-profit entity, even when affiliated with a university or other non-profit entity.

Factors indicating that predominately Chapter 4 provisions should be used include:

- That the cooperation with a separate foreign entity is a component of cooperation with a foreign space agency or other foreign governmental entity;
- That NASA has a history of cooperation with the foreign entity based agreements using Chapter 4 provisions; or
- That the foreign entity is not primarily a for-profit entity.

These International SAAs with other types of foreign entities must specify that U.S. Federal law is the governing law.

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involving a partner's lack of reciprocal legal capacity to conclude agreements binding under international law; however, U.S. Federal law is chosen to ensure that the agreement can be legally binding. Stated differently, the practice is to select the law of the State of the Party having legal capacity to conclude binding international agreements, rather than the Party lacking such capacity.

4.1.5. FOR ALL TYPES OF AGREEMENTS DISCUSSED ABOVE

For all International SAAs, it is NASA's policy to engage in international cooperative projects that provide technical, scientific, or economic benefits to the U.S. Such projects could include foreign participation in NASA activities, NASA participation in foreign activities, and international collaborative efforts. International cooperative efforts should contribute to NASA's overall program objectives,[105] and U.S. national policies such as maintenance and enhancement of U.S. industrial competitiveness. These agreements should be within the scientific, technical, and budgetary capabilities of each Party. Generally, NASA's cooperative activities with foreign entities are not directed to the joint development of technology, or products or processes that are potentially of near-term commercial value.

International projects involving a commitment of NASA resources are, with a few unique exceptions, embodied in a legally binding International SAA or other legally binding instrument.[106] NASA resources committed to a project could include, for example, time and effort of personnel, support services, use of facilities, equipment, information, and, where appropriate, funding.

The International SAA should describe each Party's individual responsibilities, technically and financially, for each clearly defined 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. A well-defined International SAA will result in each Party retaining intellectual property rights in the technology/hardware it has developed independently of the other Party. In contrast, scientific results are typically shared between the cooperating Parties and in many instances NASA seeks to make them available to the international community. Some of the policy and procedural guidelines to be followed in entering into international cooperative agreements are contained in NPD 1360.2: "Initiation and Development of International Cooperation in Space and Aeronautics Programs."[107]

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[105] NASA FAR Supplement clause 1835.016-70(a), (48 C.F.R. § 1835.016-70) regarding foreign participation under broad agency announcements (BAAs), provides that NASA's policy is 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, when BAA awards are made that involve foreign participation, cooperative research efforts are implemented via international 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. These agreements are International SAAs covered under Chapter 4.

[106] OIIR will determine whether a particular international cooperation is an international project requiring a legally binding International SAA.

[107] *See also* NPD 1050.1, "Authority To Enter Into Space Act Agreements," section 5.c.:

> The Assistant Administrator for External Relations [Associate Administrator for International and Interagency Relations] is responsible for the negotiation, execution (which may include signature and a separate entry-into-force process), amendment, and termination of International Agreements; for the review of all Agreements with other U.S. Federal Agencies; for the selection of Agreement

Regardless of whether international law or U.S. Federal law governs the International SAA, NASA's performance of its responsibilities under any International SAA is always subject to applicable U.S. laws. Similarly, the other Party's performance of its responsibilities under any International SAA is subject to its country's applicable laws.

4.2. INTERNATIONAL NONREIMBURSABLE AGREEMENT – MEMORANDUM OF UNDERSTANDING, LETTER AGREEMENT, AND IMPLEMENTING ARRANGEMENTS

International cooperative agreements can take various forms. MOUs, Letter Agreements, and IAs[108] may be used to document bilateral or multilateral[109] international cooperative activities that both Parties wish to execute. OIIR will determine which format is most appropriate, in consultation with the other Party involved. NASA agreements with foreign commercial and other types of non-governmental foreign entities may be styled either way and, if done largely under Chapter 2, may use the title and format provided for in Chapter 2.

Agreements under international law must also be procedurally consistent with the Case-Zablocki Act, (1 U.S.C. § 112(b)), and its implementing regulations, (22 C.F.R. § 181).[110] Before negotiating and executing an agreement under international law, OIIR will submit the MOU, Letter Agreement, or IA to the State Department Bureau of Oceans and International Environmental and Scientific Affairs, to determine whether the "Circular 175 process," as described in 22 C.F.R. § 181, is a required step prior to the negotiation of the agreement. (*See* State Department Foreign Affairs Manual 11 FAM 700 (Sept. 2006).) Following the State Department's review, and the Circular 175 process, if necessary, NASA is typically given authorization to negotiate and conclude the agreement. Once NASA and the Partner negotiate the agreement, and NASA receives any final approvals required in its State Department authorization to conclude the agreement, the agreement may be signed.

If not immediately effective upon signature, MOUs (or in extremely rare cases) Letter Agreements may enter into force through the exchange of diplomatic notes between the U.S. Government and that of the other country.[111] This occurs either because the other country requires this added step or because, in a previous Circular 175 review, such confirmation has been determined to be necessary to make the agreement legally binding (*i.e.*, it has previously

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Managers for International Agreements; and for storing all Agreements within his/her jurisdiction.

[108] Throughout the following portions of this chapter, the terms "MOU," "Letter Agreement," and "IA," the most common forms of International SAA agreements, are used, although International SAAs may take different forms.

[109] It is strongly preferred that there are only two parties to an agreement. While multiple parties to an agreement are possible, such agreements are complex and require very precise drafting to ensure clear delineation of responsibilities.

[110] The Case-Zablocki Act requires that the State Department report significant international commitments of the U.S. to the foreign relations committees of the U.S. Senate and House of Representatives.

[111] When this is the case, NASA will follow up with the Department of State to ensure that this additional procedural step occurs. Otherwise, the agreement may not technically be in force.

been determined that the MOU or Letter Agreement Partner does not have the authority to enter into an agreement binding under international law).

As discussed in Section 4.1, U.S. Federal law can be used in MOUs and Letter Agreements. If U.S. Federal law governs, the agreement would likely not require formal coordination with the State Department through the Circular 175 procedure.

4.3. INTERNATIONAL REIMBURSABLE AGREEMENT

NASA enters into International Reimbursable SAAs to facilitate use by foreign entities of NASA facilities, goods, and services consistent with U.S. law and policy (Chapter 1.5) on similar terms and conditions to a Reimbursable SAA with a domestic Partner (Chapter 2). Like domestic SAAs, they are concluded under U.S. Federal law.

Section 1.5 provides initial guidance on Reimbursable Agreements and should be reviewed prior to making an initial decision as to whether an International Reimbursable SAA is appropriate in particular circumstances.

NASA may accept reimbursement for use of NASA facilities and for unique services that are developed in-house that are not generally available on the commercial market from any source (*e.g.*, specially tested integrated circuits uniquely designed for interplanetary spacecraft). The proposed activity must be consistent with NASA's mission, and involve goods, services, facilities, or equipment not reasonably available on the U.S. commercial market from another source. NASA may only allow non-Federal entities to use its space-related facilities on a reimbursable basis if the NASA Administrator (or designee) determines that "equivalent commercial services are not available on reasonable terms," 51 U.S.C. 50504. Moreover, NASA should not act as a purchasing agent or broker for a Party's acquisition of reasonably commercially available goods, parts, 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 the International SAA. The broader International SAA could be governed by U.S. Federal or international law. Actual performance of the reimbursable work would be pursuant to a separate agreement, concluded under U.S. Federal law. This ensures that standard reimbursable SAA requirements to which all Partners are subject – for example, intellectual property, liability, financial obligations, and use of services or facilities on a non-interference basis – apply to the reimbursable work.

All costs of a reimbursable activity must be borne by the foreign Party, with advance payment to NASA, and specific instructions should be included specifying payment procedures. In general, International Reimbursable SAAs with foreign entities should be concluded consistent with the guidance and sample clauses for agreements with non-governmental entities in Chapter 2.

Moreover, reimbursable work for foreign entities must be performed consistent with NASA policies set forth in NPD 1370.1. Among other requirements, NPD 1370.1 provides that reimbursable work for a foreign entity must provide a benefit to NASA or the public. In SAAs for (1) safety-related analysis and testing in NASA facilities, or (2) fundamental research related

to NASA's mission,[112] benefits to NASA or the public are normally provided through shared data rights or broad dissemination of the results.[113] For reimbursable work for foreign entities 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 OIIR, on a case-by-case basis. Other International Reimbursable SAAs with foreign entities that 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.

Conversely, NASA may have to purchase goods or services from the foreign Party in order to meet NASA's responsibilities under an International SAA. The proper instrument for making those purchases is via a Federal Acquisition Regulation (FAR) contract.

In such circumstances, it may be appropriate for the International SAA with a foreign entity that authorizes cooperative work between or among NASA and foreign parties involving contributions of goods and services for a mutual goal, to require that NASA contract for work with a foreign entity consistent with NASA's mission. If the foreign entity requires stated payment in the form of monetary compensation, NASA must enter into a contract with the foreign entity. Prior to entering such an arrangement, certain conditions must be satisfied before NASA funds can be provided to a foreign government or governmental entity for the purpose of procuring goods or services from the foreign International SAA Party on a sole source basis to fulfill NASA's obligations. Specifically, the proposed FAR contract must be 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. This condition must be an explicit provision of the International SAA for the FAR contract to be issued. Early advice should be sought from OGC for any planned purchases involving foreign entities.

Alternatively, NASA may carry out its responsibilities in an International SAA through a FAR contract with a foreign entity not based upon the exception for sole source contracts required by an international agreement.

Please note that two statutory provisions[114] direct that NASA report annually to Congress on its contracts and subcontracts for good or services performed overseas and the amount of purchases directly or indirectly obtained by NASA from foreign entities. The contracts discussed above will be part of this report.

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[112] "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(1)(d)(4)).

[113] NPD 1370.1.

[114] 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) and NASA Authorization Act of 2005 § 709, 51 U.S.C § 30704.

4.4. FRAMEWORK AGREEMENTS AND IMPLEMENTING ARRANGEMENTS

As discussed in Section 4.1 above, NASA has concluded "Framework Agreements" at the governmental level and, where a foreign space agency has legal capacity to make binding international commitments, at the agency level as well. These agreements establish legal frameworks for space, 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) governing the specific activities that are set forth in IAs concluded by the agencies under the applicable Framework Agreement. Framework Agreements are useful in facilitating cooperation with international Partners with whom NASA conducts a wide range of space and/or aeronautics activities.

Framework Agreements are in force with Brazil, Canada, France, Norway, Russia, Sweden, and Ukraine. NASA has agency to agency Framework Agreements with the German Aerospace Center (DLR) and the Indian Space Research Organisation (ISRO).

Once a Framework Agreement is signed and enters into force[115], cooperation between NASA and its foreign space agency (or other governmental agency) partner is entered into pursuant to "IAs." Generally, these IAs include the following sections: Purpose of Cooperation, Responsibilities, Management/Points of Contact, Rights in Resulting Data, Relationship to the Framework Agreement, Amendments, and Final Provisions. In certain instances, depending on the terms of the Framework Agreement, additional clauses may be included (*e.g.,* Liability and Risk of Loss and Intellectual Property Rights).

4.5. 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*" (commonly referred to as the Intergovernmental Agreement or "IGA") that established the legal framework for ISS cooperation. At the same time, NASA and its "ISS partners" – the Canadian Space Agency, the European Space Agency, the Government of Japan, and the Russian Space Agency [now the Russian Federal Space Agency ("Roscosmos")] – signed four separate ISS Memoranda of Understanding that further elaborated on the IGA for establishing 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 partners for design, development, operation and utilization of the ISS.

[115] Framework Agreements at the governmental level typically need to be approved by the other government's legislature, which can take several years.

One particular category of agreement unique to the ISS Program warrants special mention: "barter" and "offset" agreements.[116] While international space cooperation typically involves no exchange of funds, the international partners in the ISS Program share certain responsibilities for which the IGA and ISS Memoranda of Understanding authorize the use of unique barter and offset transactions involving in-kind payment for goods and services. 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 utilizes reimbursable agreements to provide ISS Partners additional goods and services related to ISS cooperation. These agreements may in part follow Chapter 2 provisions, but also include ISS program unique provisions. NASA has also developed reimbursable agreements that authorize full or partial reimbursement through payments "in kind."

NASA also concludes international agreements for utilization of the U.S. allocation of ISS laboratory accommodations and resources. These agreements take various forms, including individual cooperative agreements and agreements under the September 2002, *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 "JAXA"] concerning International Space Life Sciences Flight Experiments on the International Space Station*. It is important to note that, 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, utilization agreements may contain terms and conditions additional to those in the IGA and the ISS Memoranda of Understanding (particularly in the areas of data rights and intellectual property).

With the completion of the ISS and increased utilization of the ISS and interest in expanding utilization of the ISS to non-ISS Partner states, NASA will continue to develop appropriate international agreements for such cooperation.

Given that agreements related to the ISS have unique elements, early consultation with OIIR, OGC, and the Johnson Space Center's Office of Chief Counsel is key.

4.6. INTERNATIONAL AGREEMENT CONTENTS

International SAAs should clearly delineate the purpose and scope of an activity. They must be consistent with applicable law and NASA policies. MOUs include some or all of the following clauses, referred to as "Articles" in MOUs, in the order presented. The clauses should be

[116] While the IGA and MOUs do not define the terms, "barter," in the ISS context, typically connotes trades of goods and services among the ISS partners while "offset" refers to in-kind contributions intended to satisfy a financial obligation (responsibility) of a partner: for example, to compensate another partner for launch or communications costs, or to satisfy a partner's responsibility for its share of ISS Common Systems Operations Costs.

numbered and titled. Additional clauses may be added, as appropriate, for specific situations. Every sentence in the MOU should have two spaces between the end punctuation and the first letter of the following sentence.

Note that Letter Agreements include specific introductory and closing language that differs from MOUs. Letter Agreements also include some or all of the following clauses, in the order presented. The clauses are referred to as "sections" in the Letter Agreements, and should be numbered and titled. Additional clauses may be added, as appropriate, for specific situations. Every sentence in the Letter Agreement should have two spaces between the end punctuation and the first letter of the following sentence.

1. Title
2. Table of Contents
3. Preamble/Introductory Language
4. Purpose of Cooperation
5. Definitions
6. Responsibilities
7. Rights in Resulting Data
8. Financial Arrangements
9. Schedule
10. Priority of Use
11. Management/Points of Contact
12. Liability and Risk of Loss -- Cross-Waiver
13. Registration of Space Objects
14. Transfer of Goods and Technical Data
15. Intellectual Property Rights
16. Release of Results and Public Information
17. Exchange of Personnel and Access to Facilities
18. Customs Clearance and Movement of Goods
19. Ownership of Equipment
20. Consultation and Dispute Resolution
21. Investigations of Mishaps and Close Calls
22. Choice of Law
23. Loan of Government Property
24. Amendments
25. Final Provisions
26. Signatories

4.6.1. TITLE

MOUs are given short titles, which state: (1) the type of agreement, (2) the Parties, and (3) the agreement's purpose. Letter Agreements typically do not contain a title section.

4.6.1. TITLE (Sample Clause)

4.6.2. TABLE OF CONTENTS

MOUs contain a table of contents that lists the articles in the MOU. Letter Agreements typically do not contain a table of contents.

4.6.2. TABLE OF CONTENTS (Sample Clause)

4.6.3. PREAMBLE/INTRODUCTORY LANGUAGE

MOUs typically contain introductory language describing the general nature and purpose of the cooperative project. This section: (1) references relevant prior MOUs between the U.S., NASA, and the government or agency of the other country; (2) recalls previous, related collaborations; (3) references any other relevant international agreements, including, in some cases, relevant treaties (*e.g.*, related to outer space or protection of the environment);[117] (4) explains how the proposal for the cooperative project came about (*e.g.*, response to an Announcement of Opportunity (AO), technical discussions, 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 a Purpose of Cooperation clause (*see* section 4.6.4 below).

4.6.3.1. Preamble (Sample Clause)

Letter Agreements begin with introductory language that introduces the Parties and the purpose of the agreement. The introductory language will also reference any other applicable international agreement(s).

4.6.3.2. Letter Agreement Introductory Language (Sample Clause)

[117] Note that, while numerous agreements and prior cooperative activities between the Parties can be included in the Preamble, specific agreements that legally govern the cooperation should be set forth in a subsequent article, likely an "Authority" section because preambles are generally considered non-legally binding.

4.6.4. 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 section should also clearly describe or identify the basis for the mutual interest of both Parties in the project.

There is no "standard" format for this section. The drafter may choose a format based on the nature and scope of the project or similar International SAAs. This section is generally in paragraph format, numbered for clarity when necessary.

This clause may be titled differently, such as "Purpose and Objectives" or "Background" or "Program (or Mission) Description".

In Letter Agreements, program descriptions usually consist of one or two introductory paragraphs.

4.6.4. PURPOSE OF COOPERATION (Sample Clause)

4.6.5. DEFINTIONS

This clause contains the definition of "Related Entities" because it is used in several different clauses of an International SAA. Paragraph (a) defines the term for use in the entire SAA, including the Intellectual Property Rights sample clause (4.6.15 below). Paragraphs (b) and (c) further define the term for the Liability and Risk of Loss -- Cross-Waiver sample clause (4.6.12 below), the objective of which is to establish a cross waiver that is intended to be broadly construed so as to encourage participation in the exploration, exploitation, and use of outer space. Paragraph (c) also further defines the term for the Transfer of Goods and Technical Data sample clause (4.6.14 below) because export controlled goods and technical data may be transferred to Related Entities that include foreign governments and foreign governmental entities.

Definitions appropriate for specific agreements, *e.g.,* technical terms, may also be included here.

4.6.5. DEFINTIONS (Sample Clause)

4.6.6. RESPONSIBILITIES

This clause generally contains a list of responsibilities for each Party, with each Party committing to use "reasonable efforts" to perform those responsibilities.

This section 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 equipment, including spacecraft; launch, tracking and data acquisition; data processing, archiving and distribution; reporting requirements; participation in working groups and meetings; mission operations; supporting ground observations; and post-mission data analysis.
Generally, there should be no joint development of equipment required to conduct the project because each Party should agree to develop and deliver its own equipment according to a stated set of requirements.

The Parties, when necessary, may develop implementation plans at a lower level than an International SAA that more specifically identify each Party's responsibilities and how they will be carried out. If this approach is followed, the International SAA should state the intention to have such an implementation plan(s) and specify approval authority for the lower-level plan (*e.g.*, a jointly chaired control board or individuals designated by title). An "order of preference" provision should also be included in the appropriate clause of the implementation plan stating that the MOU or Letter Agreement is to govern in the event of conflict between the MOU or Letter Agreement and the lower-level implementation plan.

4.6.6. RESPONSIBILITIES (Sample Clause)

4.6.7. RIGHTS IN RESULTING DATA

This clause varies greatly depending on the nature of the cooperation and program an International SAA covers. It is agreement-specific and the drafter needs to work with the Program Office to ensure the proposed language meets its needs.

It addresses the Parties' exchange of and right to use the data (often of a scientific nature) resulting from the activities under the International SAA, as well as the availability of data to others.

In appropriate circumstances, the Parties may agree that the raw scientific data derived from experiments will be reserved to the Principal Investigators (PI) 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 (*e.g.*, spacecraft) data in a form suitable for analysis. In appropriate instances, 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/program under procedures decided by a designated group under the International SAA.

It is also usually agreed that the Parties to the International SAA will have access to, and use of, the raw data and any associated data, but, during the exclusive-use period, such Parties' use will not prejudice the first publication rights of the PIs. The Parties customarily agree that, following the exclusive-use period, the data will be deposited with designated data repositories or data libraries, as appropriate, and, thereafter, will be made available to the scientific community for further scientific use.

Such "reserved use" periods are not usually included in Earth science data agreements or in other agreements where rapid, open and unrestricted data access is desired.

In some instances, particularly in space exploration agreements, data resulting from the activities under an International SAA will not be released publically or will only be released to the public "as appropriate."

This clause may also be titled "Rights in and Distribution of Scientific Data" or something similar.

4.6.7. RIGHTS IN RESULTING DATA (Sample Clause)

4.6.8. FINANCIAL ARRANGEMENTS

Where NASA and a foreign Party are engaged in a cooperative effort, each Party commits to funding its own effort, subject to its respective funding procedures. Therefore, these International SAAs contain a clause specifying that there be no exchange of funds and requiring notification and consultation in the event funding problems are encountered.

4.6.8. FINANCIAL ARRANGEMENTS (Sample Clause)

4.6.9. SCHEDULE

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.

4.6.9. SCHEDULE (Sample Clause)

4.6.10. PRIORITY OF USE

This clause ensures that a Party's usage of its own goods, services, facilities, or equipment will have priority over the usage planned under the International SAA. It provides that in the event of a conflict in scheduling a Party's resources, that Party, at its sole discretion, may determine which usage takes priority.

4.6.10. PRIORITY OF USE (Sample Clause)

4.6.11. MANAGEMENT/POINTS OF CONTACT

This clause generally contains the joint program management mechanisms and interfaces, including Points of Contact, which are highly particular to specific program needs.

To establish clear management interfaces, program-level and, in some cases, project-level points of contact should be specified as appropriate for the cooperative activity and the desired management framework. For example, in larger projects, there may be program and project managers, and program and project scientists, each having distinct management and scientific roles under the International SAA. Points of Contact also are important because they serve as official communications channels regarding activity to be performed by the respective parties. For NASA, the program point of contact should be a NASA employee, either from Headquarters or a Center, as appropriate. At the project-level, points of contact are usually from a Center or the Jet Propulsion Laboratory.

For large endeavors, separate management paragraphs may be required to describe the management interfaces, joint management mechanisms, control and decision authority processes, and review procedures.

It is also important to name Points of Contact because they are often utilized in consultation and dispute resolution procedures (*see* Section 4.6.20 below).

4.6.11. MANAGEMENT/POINTS OF CONTACT (Sample Clause)

4.6.12. LIABILITY AND RISK OF LOSS -- CROSS-WAIVER

Non-reimbursable International SAAs normally include cross-waivers of liability. The fundamental purpose of cross-waivers of liability in NASA agreements is to encourage participation in the exploration, exploitation, and use of outer space. The International Space Station Intergovernmental Agreement, like most Non-reimbursable International SAAs, declares the Parties' intention that cross-waivers of liability be broadly construed to achieve this purpose. A cross-waiver is a system of promises that are made by Parties in which they pledge not to sue

each other for damages caused by the other, except in very limited circumstances. Moreover, each Party pledges that not only will it not sue the other Party but that it will ensure that any entity related to it will not sue the other Party or any entity related to it, except in the same very limited circumstances.

OIIR and OGC will consult on the appropriate clause.

4.6.12.1.1. LIABILITY AND RISK OF LOSS -- (CROSS-WAIVER OF LIABILITY FOR AGREEMENTS INVOLVING AERONAUTICS OR TERRESTRIAL ACTIVITIES SAMPLE CLAUSE)

4.6.12.1.2. LIABILITY AND RISK OF LOSS -- (CROSS-WAIVER OF LIABILITY FOR AGREEMENTS INVOLVING SPACE ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION SAMPLE CLAUSE)

4.6.12.1.3. LIABILITY AND RISK OF LOSS -- (CROSS-WAIVER OF LIABILITY FOR AGREEMENTS FOR ACTIVITIES RELATED TO THE INTERNATIONAL SPACE STATION SAMPLE CLAUSE)

4.6.13. REGISTRATION OF SPACE OBJECTS

This clause is used when the cooperation involves the launch of space objects.

The Convention on the Registration of Objects Launched into Outer Space (Registration Convention)[118] provides for national registration by launching states of space objects and mandates a central registry be maintained by the United Nations.

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, International SAAs involving flight into outer space should identify the registering State. Factors to consider in making this determination include which Party is to provide the launch, which Party will contribute the spacecraft, whether a spacecraft is to remain in orbit, and who is to conduct the majority of the day-to-day operations of the spacecraft. If the International SAA Partner is not a governmental entity, the International SAA should state that the Partner will request that its government register the object.

4.6.14. 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 International SAA. Also, to the extent applicable, the provision is intended to cover the rights and obligations of the Parties with respect to transferred proprietary technical data and export-controlled data and goods.

[118] 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.

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 in order to protect the national security and to further U.S. foreign policy objectives. NASA's Export Control Policy was articulated by the Administrator in October 1995:

> As a U.S. Government Agency on the forefront of technological development and international cooperation in the fields of space, aeronautics, and science, the National Aeronautics and Space Administration will strive to fulfill its mission for cooperative international research and civil space development in harmony with the export control laws and regulations of the United States and the world, including risks posed by the spread of missile technologies and weapons of mass destruction, and in view of the significant criminal, civil, and administrative penalties that may affect the Agency and its employees as a result of a failure to comply with U.S. export control laws and regulations, it is the responsibility of every NASA official and employee to ensure that the export control policies of the United States, including nonproliferation objectives, are fully observed in the pursuit of NASA's international mission.

Overall, 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 International SAA. When appropriate, the type of data to be exchanged without restrictions is specified, *e.g.*, "interface, integration, and safety data (*excluding* detailed design, development, production, manufacturing data and associated software)."

Sample clause 4.6.14 is structured to allow the Parties to exchange data without restrictions, except for possible proprietary or export-controlled data. Additionally, 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 International SAA to the specific purposes of the programs implemented by the International SAA. 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 2190.1 and NPR 2190.1).

4.6.14. TRANSFER OF GOODS AND TECHNICAL DATA (SAMPLE CLAUSE)

In certain cases, transfers of particularly sensitive items, including technologies, warrant more restrictive provisions regarding transfers of technical data and goods between Parties. Such cases may include launch activities, transfers of advanced payloads or other items with heightened export control concerns, or activities which raise special security, foreign policy, or nonproliferation issues. In these cases, it is appropriate to provide the Parties with the ability to review proposed retransfers of items among the receiving Party's related entities (contractors, subcontractors, etc.), if desired. If the USG decides such transfers are warranted, specific language for this provision must be tailored.

4.6.15. INTELLECTUAL PROPERTY RIGHTS

International SAAs 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 are not directed to 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. When NASA has a cooperative International SAA with a foreign government, foreign space agency or other foreign governmental entity, sample clause 4.6.15 should be used. The provisions allow each Party to retain intellectual property rights in the technology/hardware it has developed independently of the other Party. Scientific results of NASA's cooperation with foreign entities; however, are shared among the cooperating Parties and made available to the international community.

Sample clause 4.6.15 reflects NASA's basic approach that has evolved over the years for commonly encountered circumstances. In addition to NASA and the foreign entity, the sample clause affects any "related entity" of an International SAA Party. Sample clause 4.6.15 includes five paragraphs that address allocation of rights in patents and copyrights as described below.

Paragraph 1 recognizes that each Party retains full rights and interest in its own "background" inventions and works, including any patents and copyrights, respectively, therein, *i.e.*, inventions and works created prior to, or independently of, the activities carried out under the International SAA. Paragraph 2 recognizes that inventions or works made under the International SAA exclusively by one Party or its related entity belong to that Party or related entity and also addresses allocation of rights between a Party and its related entity. Paragraph 3 provides that, in the event an invention is made jointly (by both Parties) the Parties will agree to consult on allocating rights, steps to be taken to establish patent protection, and licensing matters. Paragraph 4 provides that, in the event of a jointly authored work, the Parties will agree to consult on maintaining copyright protection throughout the world. Lastly, paragraph 5 recognizes the existence of a royalty-free right for each Party to use any copyrighted work created under the agreement regardless of which Party is the author.

4.6.15. INTELLECTUAL PROPERTY RIGHTS (Sample Clause)

4.6.16. RELEASE OF RESULTS AND PUBLIC INFORMATION

Clause 1 provides that each Party retains the right to release public information regarding its own activities and requires advance coordination with the other party regarding release of information concerning the other Party's activities under the International SAA.

Clause 2 promotes release of results to the scientific community resulting from activities under the Agreement.

Clause 3 recognizes that certain categories of data or information are not to be disclosed without written agreement of the other Party, namely: export controlled or proprietary information; or information relating to a potential patent application.

4.6.16. RELEASE OF RESULTS AND PUBLIC INFORMATION (Sample Clause)

4.6.17. EXCHANGE OF PERSONNEL AND ACCESS TO FACILITIES

This clause anticipates that it may be necessary for a Party to send temporary personnel to the other Party's facility(ies) to carry out activities under the agreement and allows for that possibility. It also addresses appropriate access by one Party to the other Party's facilities, property and/or Information Technology systems or applications.

4.6.17. EXCHANGE OF PERSONNEL AND ACCESS TO FACILITIES (Sample Clause)

4.6.18. CUSTOMS CLEARANCE AND MOVEMENT OF GOODS

Where the International SAA requires importation of goods into the United States or the territory of the International SAA Partner, NASA's International SAAs should contain a general obligation to facilitate free customs clearance (*e.g.*, waiver of applicable duties or taxes) for admittance to, and departure from, each Party's respective country for material required for the implementation of the cooperative project. "Duty-Free Entry of Space Articles," (14 C.F.R. Part 1217) describes the procedures for duty-free import of articles into the United States under NASA's international programs. If the costs are not waived, the clause provides that these costs are borne by the Party whose country is levying the duties or taxes.

This clause also anticipates that each Party will facilitate the movement of goods into and out of its territory needed for activities under the International SAA

4.6.18. CUSTOMS CLEARANCE AND MOVEMENT OF GOODS (Sample Clause)

4.6.19. OWNERSHIP OF EQUIPMENT

When the International SAA involves temporary transfer of equipment to another country, a clause states that each Party retains ownership of its equipment, unless otherwise agreed in writing. The Parties normally also agree to return any of the other Party's equipment in its possession at the conclusion of the project, to the extent feasible. Examples of where such return is not possible include situations where the responsibilities call for destructive testing, the item is designed to be destroyed in flight, or the item is to be launched into space. Additional language may be necessary to address circumstances unique to activities under the International SAA.

4.6.19. OWNERSHIP OF EQUIPMENT (Sample Clause)

4.6.20. CONSULATION AND DISPUTE RESOLUTION

All International SAAs should include a dispute resolution clause. International SAAs should first include language stating that both Parties agree to consult promptly with each other on all issues involving interpretation, implementation, or performance of the International SAA. Generally, issues are handled at the working level before being elevated. Any matter that cannot be settled at the initial level is referred to the next higher level official for both Parties. Depending on the complexity and sensitivity of the agreement, if necessary, the dispute may be referred for resolution to the next higher level of officials of both Parties.

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 Office of the Administrator and the OGC. Referring a dispute to "the NASA Administrator or his designee" is acceptable.

In very limited instances NASA may agree to a clause that permits possible 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. Agreement to any such clause is highly unusual and requires specific approval by the OGC.

4.6.20. CONSULATION AND DISPUTE RESOLUTION (Sample Clause)

4.6.21. INVESTIGATIONS OF MISHAPS AND CLOSE CALLS

For international activities where there is the possibility of a serious accident or mission failure occurring, it is advisable to include a mishap and close call investigation clause in the International SAA. A determination to include such a clause, where appropriate would be closely reviewed in conjunction with any liability determination made under Section 4.6.12, "Liability and Risk of Loss -- Cross-Waiver." At a minimum, International SAAs involving activities related to the ISS and International SAAs supporting any launch activities should include Sample Clause 4.5.18, "Investigations of Mishaps and Close Calls."
If applicable, NPR 8621.1, "NASA Procedural Requirements for Mishap Reporting, Investigating and Recordkeeping" should be followed for investigating a NASA mishap.

4.6.22. CHOICE OF LAW

In the absence of specific language, international law applies to International SAAs as a matter of general international law. Therefore, no "choice of law" clause is required.

NASA will not agree to being governed by foreign law, but is willing to apply U.S. Federal law when the International SAA Partner lacks capacity to sign agreements governed by international law. This policy is grounded in the recognition that, while foreign government agencies are often reluctant to conclude international cooperative 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.

REGARDLESS OF THE CHOICE OF LAW, HOWEVER, NASA'S PERFORMANCE OF ITS RESPONSIBILITIES UNDER ANY INTERNATIONAL SAA IS SUBJECT TO APPLICABLE U.S. LAWS.4.6.22 CHOICE OF LAW (SAMPLE CLAUSE)

4.6.23. LOAN OF GOVERNMENT PROPERTY

On occasion, government property is loaned to a Partner as part of a larger International SAA effort. Sample clause 4.6.23 is used when the terms of the loan are included in an International SAA covering a collaboration for which the equipment loan is merely one element of the respective roles and responsibilities of NASA and the Partner.

Note: If both Parties intend to exchange property in the performance of the MOU, the Loan of Government Property article may be altered to be bilateral.

4.6.23 Loan of government property (Sample Clause)

4.6.24. AMENDMENTS

An International SAA usually provides that it may be amended, in writing, at any time by agreement of the Parties. Such an amendment provision would also cover extensions to International SAAs. Amendments (including simple extensions) to an MOU, Letter Agreement, or IA may require State Department Circular 175 review prior to negotiation and conclusion.

4.6.24 AMENDMENTS (Sample Clause)

4.6.25. FINAL PROVISIONS

This Article specifies the duration of the International SAA. Usually the Effective Date (the date the agreement enters into force), is the date of last signature, but in all cases the Effective Date may not occur before both Parties have executed the International SAA. Thus, an MOU generally becomes effective on the date of the last signature.

This Article of International SAAs should also specify which obligations of the Parties (*e.g.,* intellectual property rights, transfer of goods and technical data, and/or liability) survive termination or expiration of the International SAA. The specific clauses should be referenced.

In certain instances, MOUs or Letter Agreements may only become effective upon an exchange of diplomatic notes between the U.S. and the government of the cooperating agency confirming acceptance of its terms and confirming that all necessary legal requirements for entry into force have been fulfilled. (*See Section 4.2 above*.)

International SAAs must always specify a duration for the cooperative project. The duration could be measured by a specific period of time (*e.g.*, 3 years), or a project milestone (*e.g.*, when the satellite ceases operations), or a combination of both (*e.g.*, for 3 years, or until cooperative activities are complete, whichever is earlier). The Associate Administrator for International and Interagency Relations, or his designee, must approve inclusion of an automatic renewal clause or conclusion of an agreement with no termination date.

Either Party to an International SAA should be allowed to terminate the International SAA upon written notice to the other. This notice is generally required to be presented to the other Party in advance of the desired termination date, usually three to six months.

4.6.25.1. Final Provisions – MOU (Sample Clause)

Different language is used in this section for Letter Agreements. It provides for the Letter Agreement to enter into force on the date of the other Party's affirmative reply and also gives the termination date. Together the outbound Letter Agreement and the other Party's affirmative reply constitute the agreement.

For Letter Agreements, the date of the response letter providing unconditional acceptance will determine the Effective Date of the International SAA. Use of the response language provided in Sample Clause 4.6.24.2 ensures that the Effective Date is clear.

4.6.25.2. Final Provisions - Letter Agreement (Sample Clause)

4.6.26. SIGNATORIES

For MOUs, this clause should include a signature block, the date of signature for each signing official, and the place of signature. During negotiations, care should be taken to identify and confirm that the signing officials (usually senior officials) have the authority to bind the Parties. The signing official should be referred to by his/her title – not by individual name (*e.g.*, NASA Administrator, not "Charles Bolden"). In some cases, the signature block will only indicate the governments that the signatories represent and other formatting may differ.

In Letter Agreements, the signing official should be referred to by his/her name and title.

4.6.26. SIGNATORIES (Sample Clause)

4.7. OTHER TYPES OF INTERNATIONAL AGREEMENTS

4.7.1. LOAN OF EQUIPMENT AGREEMENT

A broad cooperative effort may provide an incentive for NASA to lend equipment to a foreign Partner under a separate international Letter Agreement.[119] Such a loan agreement should identify the cooperative area of interest, include a list of the items to be provided, specify duration of the loan, and impose certain obligations, unique to a loan agreement, on the receiving Party. If no other International SAA is in place covering the joint activity for which the equipment is being lent, the loan agreement should include the respective roles and responsibilities of each Party regarding the scope of the contemplated joint project. It should also include responsibility to return the equipment in its original condition, absent normal wear and tear.

4.7.2. REIMBURSABLE TRAVEL AGREEMENT

Some International SAAs may provide for the International SAA Partner to reimburse NASA for travel and subsistence of NASA personnel that may be requested by the Party to provide

[119] Alternatively, provisions regarding the loan of equipment may be covered in the SAA covering the cooperative effort.

assistance during the joint project. *See* NPD 9710.1, "Delegation of Authority to Authorize or Approve Temporary Duty Travel on Official Business and Related Matters." Pursuant to NPD 9710.1, certain officials or their designees are authorized to enter into such reimbursable arrangements when it is determined to be in NASA's best interests. The actual reimbursement procedures to be followed are in NPR 9700.1, "Travel".

These reimbursements must be distinguished from gifts of travel and related expenses from foreign governments, as defined in 5 U.S.C. § 7342.[120] Also, reimbursement of travel and related expenses for attendance at a meeting or similar function must be accepted and reported in accordance with 31 U.S.C. § 1353 and 41 C.F.R. Part 304. "Meeting or similar function" means a conference, seminar, speaking engagement, symposium, training course, or similar event sponsored or cosponsored by a non-Federal source that takes place away from the employee's official duty station.

If the Party agrees to defray the travel and subsistence costs of NASA contractor personnel, then the agreement should make clear that such costs are to be reimbursed directly to the contractor. Similarly, pursuant to NPD 9710.1T, NASA may fund the travel expenses of foreign party personnel for specific official purposes outlined in the NPD. These agreements should be coordinated with OGC.

4.7.3. VISITING RESEARCHER AGREEMENTS

There are, generally, three types of Visiting Researcher Agreements: one for NASA personnel going abroad, one for foreign researchers coming to NASA, under J-1 visas, and one for foreign researchers coming to NASA under other visas. The agreements generally provide the framework for hosting the visitor, including such provisions as liability, safety and security, badging, and resources to be provided (*e.g.*, office space, telephone, and internet access).

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

4.6.1. TITLE (SAMPLE CLAUSE)

Memorandum of Understanding
between the
National Aeronautics and Space Administration of the United States of America
and
[*Party*]
Concerning the
[*state brief purpose*]

4.6.2. TABLE OF CONTENTS (SAMPLE CLAUSE)

[Note: The Table of Contents contains a list of the MOU Articles.]

4.6.3. PREAMBLE/INTRODUCTORY LANGUAGE

4.6.3.1. PREAMBLE (SAMPLE CLAUSE)

[Note: This clause generally contains recitations of relevant prior agreements between the U.S., NASA, and the government or agency of the other country and highlights past cooperation. As such, they are highly specific to the particular activity with a particular country's agency. Refer to section 4.6.3 in the descriptive section for additional guidance.]

4.6.3.2. LETTER AGREEMENT INTRODUCTORY LANGUAGE (SAMPLE CLAUSE)

[Note: Letter Agreements do not contain the Title, Table of Contents, or Preamble sections, but do contain (in place of the Purpose of Cooperation Article) a fairly detailed description of the cooperative activity, preceded by the introductory paragraph below.]

The National Aeronautics and Space Administration (NASA) and the [*Party*] have expressed a mutual interest in pursuing cooperation on [*TBD*]. The purpose of this letter is to establish a cooperative agreement (hereinafter the "Agreement"), between NASA and the [*Party*] (hereinafter referred to individually as "the Party" or jointly as "the Parties"), detailing the cooperation regarding [*TBD*].

4.6.4. PURPOSE OF COOPERATION (SAMPLE CLAUSE)

[Note: This clause generally contains an overview and description of the cooperation; it may be titled differently, such as "Purpose and Objectives" or "Background" or "Program (or Mission) Description". Refer to section 4.6.3 and 4.6.4 in the descriptive section for additional guidance.]

4.6.5. DEFINTIONS (SAMPLE CLAUSE)

1. The term "Related Entity":

   (a) For the purpose of this MOU means:

   (i) A contractor or subcontractor of a Party at any tier;
   (ii) A grantee or any other cooperating entity or investigator of a Party at any tier; or
   (iii) A contractor or subcontractor of a grantee or any other cooperating entity or investigator of a Party at any tier.

   (b) In Article [*TBD*] (Liability and Risk of Loss) of this MOU, it also means:

   (i) A user *or* customer of a Party at any tier; or
   (ii) A contractor or subcontractor, including suppliers of any kind, of a user or customer of a Party at any tier.

   (c) In Article [*TBD*] (Liability and Risk of Loss) and Article [*TBD*] (Transfer of Goods and Technical Data) of this MOU, it may also include another State or an agency or institution of another State, where such State, agency, or institution is an entity described above or is otherwise involved in the activities undertaken pursuant to this MOU.

4.6.6. RESPONSIBILITIES (SAMPLE CLAUSE)

1. NASA will use reasonable efforts to carry out the following responsibilities:
   (a) [*TBD*];
   (b) [*TBD*]; etc.

2. [*Party*] will use reasonable efforts to carry out the following responsibilities:
   (a) [*TBD*];
   (b) [*TBD*]; etc.

4.6.7. RIGHTS IN RESULTING DATA (SAMPLE CLAUSE)

[Note: This clause varies greatly depending on the nature of the cooperation and program the agreement covers. It addresses the Parties' exchange of and right to use data, processed and

unprocessed, and the availability of the data to others. It is agreement-specific and the OIIR person drafting the agreement will work with the Program Office to ensure the proposed language meets its needs. Refer to section 4.6.7 in the descriptive section for additional guidance.]

[Note: There should be no discussion of classified data in this clause.]

4.6.8. FINANCIAL ARRANGEMENTS (SAMPLE CLAUSE)

1. Each Party will bear the costs of discharging its respective obligations under this MOU, including travel and subsistence of personnel and transportation of all equipment and other items for which it is responsible.

2. The Parties' obligations under this MOU are subject to the availability of appropriated funds and each Party's respective funding procedures. Should either Party encounter budgetary problems that may affect the activities to be carried out under this MOU, the Party encountering the problems will notify and consult with the other Party as soon as possible.

4.6.9. SCHEDULE (SAMPLE CLAUSE)

[Note: This clause contains a detailed statement of schedule and milestones and the paragraph below.]

The above schedule and milestones are estimated based upon the Parties' current understanding of the projected availability of their goods, services, facilities, or equipment. In the event that either Party's projected availability changes, the other Party will be given reasonable notice of that change, so that the schedule and milestones may be adjusted accordingly.

4.6.10. PRIORITY OF USE (SAMPLE CLAUSE)

The Parties agree that the furnishing Party's usage of its own goods, services, facilities, or equipment will have priority over the usage planned in this MOU. Should a conflict arise, the furnishing Party, in its sole discretion, will determine whether to exercise its priority. Should a schedule conflict arise with other users, the furnishing Party, in its sole discretion, will determine priority as between the users.

4.6.11. MANAGEMENT/POINTS OF CONTACT (SAMPLE CLAUSE)

[Note: This clause generally contains the joint program management mechanisms and interfaces, including Points of Contact, which are highly particular to specific program needs. Refer to section 4.6.11 in the descriptive section for additional guidance. In addition, any significant lower-level boards and significant program-level documentation should be included in this clause.]

If this clause includes Points of Contact or similar officials with individual names, along with titles and contact information, the following will be included:

Any change in a Party's respective contact information will be communicated in writing to the other Party.

4.6.12. LIABILITY AND RISK OF LOSS -- CROSS-WAIVER

4.6.12.1. LIABILITY AND RISK OF LOSS -- CROSS-WAIVER

[Note: One of the following three clauses would be used, depending on: whether the contemplated activity is aeronautics-related or terrestrial; if it is space flight-related, but unrelated to the International Space Station; or if it involves the International Space Station. Refer to section 4.6.12 in the descriptive section for additional guidance.]

4.6.12.1.1. LIABILITY AND RISK OF LOSS -- (CROSS-WAIVER OF LIABILITY FOR AGREEMENTS INVOLVING AERONAUTICS OR TERRESTRIAL ACTIVITIES SAMPLE CLAUSE)

1. 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 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 MOU, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

2. 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 MOU. Additionally, each Party will 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 MOU.

4.6.12.1.2. LIABILITY AND RISK OF LOSS -- (CROSS-WAIVER OF LIABILITY FOR AGREEMENTS INVOLVING SPACE ACTIVITIES UNRELATED TO THE INTERNATIONAL SPACE STATION SAMPLE CLAUSE)

[Note: The definitions below may be included in the Definitions Article 4.6.5 above, but they should not be included in both places.]

1. The Parties agree that 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.

2. For purposes of this Article:

(a) The term "Damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;
(ii) Damage to, loss of, or loss of use of any property;
(iii) Loss of revenue or profits; or
(iv) Other direct, indirect, or consequential damage.

(b) 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.

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

(d) The term "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. Protected Space Operations begins at the signature of this MOU and ends when all activities done in implementation of this MOU are completed. It includes, but is not limited to:

(i) 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
(ii) 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 this MOU.

(e) 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.

3. Cross-waiver of liability:

(a) 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 3(a)(i) through 3(a)(iv) of this Article based on Damage arising out of Protected Space Operations. This cross-waiver will 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 will apply to any claims for Damage, whatever the legal basis for such claims, against:

(i) The other Party;
(ii) A Party to another NASA agreement that includes flight on the same Launch Vehicle;
(iii) A Related Entity of any entity identified in paragraphs 3(a)(i) or 3(a)(ii) of this Article; or
(iv) The employees of any of the entities identified in paragraphs 3(a)(i) through 3(a)(iii) of this Article.

(b) In addition, each Party will extend the cross-waiver of liability, as set forth in paragraph 3(a) of this Article, to its own Related Entities by requiring them, by contract or otherwise, to:
(i) Waive all claims against the entities or persons identified in paragraphs 3(a)(i) through 3(a)(iv) of this Article; and
(ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs 3(a)(i) through 3(a)(iv) of this Article.

(c) 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*, done on March 29, 1972 (hereinafter 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.

(d) Notwithstanding the other provisions of this Article, this cross-waiver of liability will not be applicable to:
(i) Claims between a Party and its own Related Entity or between its own Related Entities;
(ii) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to this MOU 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;
(iii) Claims for Damage caused by willful misconduct;
(iv) Intellectual property claims;
(v) Claims for Damage resulting from a failure of a Party to extend the cross-waiver of liability to its Related Entities, pursuant to paragraph 3(b) of this Article; or

(vi) Claims by a Party arising out of or relating to the other Party's failure to perform its obligations under this MOU.

(e) Nothing in this Article will be construed to create the basis for a claim or suit where none would otherwise exist.

(f) In the event of third-party claims which may arise out of, *inter alia,* the Liability Convention, the Parties will consult promptly on any potential liability, on any apportionment of such liability, and on the defense of such claim.

4.6.12.1.3. LIABILITY AND RISK OF LOSS -- (CROSS-WAIVER OF LIABILITY FOR AGREEMENTS FOR ACTIVITIES RELATED TO THE INTERNATIONAL SPACE STATION SAMPLE CLAUSE)

[Note: The definitions below may be included in the Definitions Article 4.6.5 above, but they should not be included in both places.]

1. 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.

2. For purposes of this Article:

   (a) The term "Damage" means:
   - (i) Bodily injury to, or other impairment of health of, or death of, any person;
   - (ii) Damage to, loss of, or loss of use of any property;
   - (iii) Loss of revenue or profits; or
   - (iv) Other direct, indirect, or consequential damage.

   (b) 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.

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

   (d) 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 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.

(e) 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 MOU, the IGA, MOUs concluded pursuant to the IGA, and implementing arrangements. It includes, but is not limited to:

(i) 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
(ii) 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.

(f) 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.

3. Cross-waiver of liability:

(a) 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 (3)(a)(i) through (3)(a)(iv) of this Article based on Damage arising out of Protected Space Operations. This cross-waiver will 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 will apply to any claims for Damage, whatever the legal basis for such claims, against:
(i) Another Party;
(ii) A Partner State other than the United States of America;
(iii) A Related Entity of any entity identified in paragraph (3)(a)(i) or (3)(a)(ii) of this Article; or
(iv) The employees of any of the entities identified in paragraphs (3)(a)(i) through (3)(a)(iii) of this Article.

(b) In addition, each Party will, by contract or otherwise, extend the cross-waiver of liability, as set forth in paragraph (3)(a) of this Article, to its Related Entities by requiring them, by contract or otherwise, to:
   (i) Waive all claims against the entities or persons identified in paragraph(3)(a)(i) through (3)(a)(iv) of this Article; and
   (ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (3)(a)(i) through (3)(a)(iv) of this Article.

(c) 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.

(d) Notwithstanding the other provisions of this Article, this cross-waiver of liability will not be applicable to:

   (i) Claims between a Party and its own Related Entity or between its own Related Entities;
   (ii) 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;
   (iii) Claims for Damage caused by willful misconduct;
   (iv) Intellectual property claims;
   (v) 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
   (vi) Claims by a Party arising out of or relating to the other Party's failure to perform its obligations under this MOU.

(e) Nothing in this Article will be construed to create the basis for a claim or suit where none would otherwise exist.

4.6.13. REGISTRATION OF SPACE OBJECTS (SAMPLE CLAUSE)

[*Note: This clause is used when the cooperation involves the launch of a space object(s).*] [*[NASA] or [Party]*] will request that its government register [*space object(s) name*] as a space object in accordance with the *Convention on the Registration of Objects Launched into Outer Space*, done on November 12, 1974 (the Registration Convention). [*This clause may include an additional sentence tailored to particular circumstances. OGC should be specifically asked whether such an additional sentence is necessary.*]

4.6.14. TRANSFER OF GOODS AND TECHNICAL DATA (SAMPLE CLAUSE)

The Parties are obligated to transfer only those technical data (including software) and goods necessary to fulfill their respective responsibilities under this MOU, in accordance with the following provisions, notwithstanding any other provisions of this MOU:

1. All activities under this MOU will be carried out in accordance with the Parties' national laws and regulations, including those laws and regulations pertaining to export control.

2. The transfer of technical data for the purpose of discharging the Parties' responsibilities with regard to interface, integration, and safety will normally be made without restriction, except as required by paragraph 1 of this Article.

3. All transfers of goods and proprietary or export-controlled technical data are subject to the following provisions.

   (a) 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 will be specifically identified and such data will be marked.

   (b) The identification for such goods and the marking on such data will indicate that the goods and data will 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, and that such goods and data will not be disclosed or retransferred to any other entity without the prior written permission of the furnishing Party.

   (c) The receiving Party and its Related Entities will abide by the terms of the notice and protect any such goods and data from unauthorized use and disclosure.

   (d) The Parties to this MOU will cause their Related Entities to be bound by the provisions of this Article through contractual mechanisms or equivalent measures.

4. All goods exchanged in the performance of this MOU will be used by the receiving Party or Related Entity exclusively for the purposes of the MOU. Upon completion of the activities under this MOU, the receiving Party or Related Entity will return or otherwise dispose of all goods and marked proprietary or export-controlled technical data provided under this MOU, as directed by the furnishing Party or Related Entity.

4.6.15. INTELLECTUAL PROPERTY RIGHTS (SAMPLE CLAUSE)

1. Nothing in this MOU will 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 Related Entities made prior to the entry into force of, or outside the scope of, this MOU, including any patents (or similar forms of protection in any country) corresponding to such inventions or any copyrights corresponding to such works.

2. Any rights to, or interest in, any invention or work made in the performance of this MOU solely by one Party or any of its Related Entities, including any patents (or similar forms of protection in any country) corresponding to such invention or any copyright corresponding to

such work, will be owned by such Party or Related Entity. Allocation of rights to, or interest in, such invention or work between such Party and its Related Entities will be determined by applicable laws, rules, regulations, and contractual obligations.

3. It is not anticipated that there will be any joint inventions made in the performance of this MOU. Nevertheless, in the event that an invention is jointly made by the Parties in the performance of this MOU, the Parties will, in good faith, consult and agree within 30 calendar days as to:

   (a) 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;

   (b) 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

   (c) 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.

4. For any jointly authored work by the Parties, should the Parties decide to register the copyright in such work, they will, 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).

5. Subject to the provisions of Article [*TBD*] (Transfer of Goods and Technical Data) and Article [*TBD*] (Release of Results and Public Information), each Party will 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 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.

4.6.16. RELEASE OF RESULTS AND PUBLIC INFORMATION (SAMPLE CLAUSE)

1. The Parties retain the right to release public information regarding their own activities under this MOU. The Parties will 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.

2. The Parties will make the results available to the general scientific community, as appropriate and agreed between the Parties, in a timely manner.

3. The Parties acknowledge that the following data or information does not constitute public information and that such data or information will not be included in any publication or presentation by a Party under this Article without the other Party’s prior written permission:

   (a) Data furnished by the other Party in accordance with Article [*TBD*] (Transfer of Goods and Technical Data) which is identified as export-controlled or proprietary; or

(b) Information about an invention of the other Party before an application for a patent (or similar form of protection in any country) corresponding to such invention has been filed covering the same, or a decision not to file has been made.

4.6.17. EXCHANGE OF PERSONNEL AND ACCESS TO FACILITIES (SAMPLE CLAUSE)

1. To facilitate implementation of the activities conducted under this MOU, the Parties may support the exchange of a limited number of personnel [*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.*]

2. 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 application/access.

4.6.18. CUSTOMS CLEARANCE AND MOVEMENT OF GOODS (SAMPLE CLAUSE)

1. In accordance with its laws and regulations, each Party will facilitate free customs clearance and waiver of all applicable customs duties and taxes for goods necessary for the implementation of this MOU. In the event that any customs duties or taxes of any kind are nonetheless levied on such equipment and related goods, such customs duties or taxes will be borne by the Party of the country levying such customs duties or taxes.
2. In accordance with its laws and regulations, each of the Parties will also facilitate the movement of goods into and out of its territory as necessary to comply with this MOU.

4.6.19. OWNERSHIP OF EQUIPMENT (SAMPLE CLAUSE)

Unless otherwise agreed in writing, each Party will retain ownership of all equipment, including the goods, hardware, software, and associated technical data, it provides to the other Party under the terms of this MOU, without prejudice to any individual rights of ownership of the Parties' respective Related Entities. To the extent feasible and recognizing that equipment [*sent into space or*] integrated into the other Party's equipment cannot be returned, each Party agrees to return the other Party's equipment in its possession at the conclusion of activities under this MOU.

4.6.20. CONSULATION AND DISPUTE RESOLUTION (SAMPLE CLAUSE)

The Parties agree to consult promptly with each other on all issues involving interpretation, implementation, or performance of the MOU. Such issues will first be referred to the [*appropriate points of contact (may be another term, such as Program Managers, Project Managers)*] named above for the Parties. If they are unable to come to agreement, then the dispute will be referred to the [*refer to titles of signatories*] or their designated representatives for joint resolution. [*Any dispute which cannot be resolved at this level will be referred to the [titles of more senior official for each side or [Head of Agency for other Party] and the Administrator of*

NASA], or their designees.]**4.6.21.** 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, bearing in mind, in particular, the provisions of Article [*TBD*] (Transfer of Goods and Technical Data). In the case of activities which might result in the death of or serious injury to persons, or substantial loss of or damage to property as a result of activities under this MOU, the Parties agree to establish a process for investigating each such mishap.

4.6.22 CHOICE OF LAW (SAMPLE CLAUSE)

U.S. Federal law governs this MOU 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.

[Note: If the Parties intend the agreement to be binding under international law, there will be no choice of law clause in the MOU/Letter Agreement.]

4.6.23 LOAN OF GOVERNMENT PROPERTY (SAMPLE CLAUSE)

1. In order to further activities set forth in this MOU, the Parties acknowledge that NASA will lend the following Government property to [*Party*]:
   [*Insert List of Lent Property; Or refer to appropriate documentation*]

2. The property listed above (hereinafter referred to as the "Property") is not being provided to [*Party*] as a substitute for the purchasing of the same type of property by [*Party*] under any contract or grant that [*Party*] has, or may have, with a third party. Furthermore, such Property is not excess to NASA's requirements and its use is anticipated upon its return to NASA.

3. In support of this loan the [*Party*] will:

   (a) Install, operate, and maintain the Property at [*Party*]'s expense;
   (b) Furnish all utilities (*e.g.,* water, electricity) and operating materials required for the operation of the Property;
   (c) Bear all costs associated with the use of the Property under the terms of this MOU, including but not limited to such costs as packing, crating, shipping, installing, maintaining, licensing, and operating the Property;
   (d) Transport the Property in accordance with good commercial practice;
   (e) Acknowledge that the privilege of using and enjoying the said Property exists solely by virtue of this MOU with NASA, the owner of said Property, and not as of right;
   (f) Identify, mark, and record all of the Property promptly upon receipt, and maintain such identity until it is returned to NASA.
   (g) Maintain suitable records for each item of Property. At a minimum, such records will include a description, identification number, unit cost, quantity, dates of receipt, condition upon receipt, and location. [*Party*] will perform an inventory of the

Property one (1) year from the Effective Date of this MOU, and every year thereafter, if the MOU is still in effect, and send such inventory report to NASA. The report will include a statement validating any requirement to continue the loan. Further, [*Party*] will provide to NASA upon reasonable request, records sufficient to disclose the date of inspections, the deficiencies discovered as a result of inspections, and any maintenance actions performed. This annual report will be submitted to the NASA Point of Contact named in Article [*TBD*] (Management/Points of Contact).

(h) Report any loss, damage, or destruction of Property to the NASA Point of Contact named in Article [*TBD*] (Management/Points of Contact) within ten (10) calendar days from the date of the discovery thereof.

[Note: If both Parties intend to exchange property in the performance of the agreement, the above article may be altered to be bilateral.]

4.6.24 AMENDMENTS (SAMPLE CLAUSE)

This MOU may be amended at any time by written agreement of the Parties.

4.6.25 FINAL PROVISIONS

[Note: One of the following clauses would be used, depending on whether the agreement is an MOU, an MOU that requires diplomatic notes, or a Letter Agreement.]

4.6.25.1. FINAL PROVISIONS – MOU (SAMPLE CLAUSE)

1. This MOU will enter into force upon signature by the Parties.
2. The MOU will remain in force [*until* [*specific date*] [*for TBD years*].
3. Either Party may terminate this MOU 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 will endeavor to minimize any negative impact of such termination on the other Party.
4. Termination or expiration of this MOU will not affect a Party's continuing obligations under Article [*TBD*] (Liability and Risk of Loss), Article [*TBD*] (Transfer of Goods and Technical Data), Article [*TBD*] (Intellectual Property Rights), and Article [*TBD*] (Release of Results and Public Information), unless otherwise agreed by the Parties.

[Alternatives as necessary, with appropriate diplomatic note language.]

[ALT 1]

1. This MOU will enter into force upon signature by the Parties and the conclusion of an exchange of diplomatic notes between the Governments of the Parties incorporating its terms and conditions.
2. This MOU will remain in force until [*specific date*], to permit the completion of the [*Mission, Program*] and data analysis period.
3. This MOU may be amended by written agreement of the Parties, provided that the exchange of notes remains in force.
4. Either Party may terminate this MOU 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 will endeavor to minimize any negative impact of such termination on the other Party.
5. Termination or expiration of this MOU will not affect a Party's continuing obligations under Article [*TBD*] (Liability and Risk of Loss), Article [*TBD*] (Transfer of Goods and Technical Data), Article [*TBD*] (Intellectual Property Rights), and Article [*TBD*] (Release of Results and Public Information), unless otherwise agreed by the Parties.

[ALT 2]

1. This MOU will enter into force upon signature by the Parties, and will remain in force, provided the Exchange of Notes remains in force, until one year after [*data collection from the [Mission, Program]*] ceases or until five (5) years after [*Mission, Program*] science operations commence, or until [*specific date*], whichever comes first.
2. Either Party may terminate this MOU 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 will endeavor to minimize any negative impact of such termination on the other Party.
3. 3. Termination or expiration of this MOU will not affect a Party's continuing obligations under Article [*TBD*] (Liability and Risk of Loss), Article [*TBD*] (Transfer of Goods and Technical Data), Article [*TBD*] (Intellectual Property Rights), and Article [*TBD*] (Release of Results and Public Information), unless otherwise agreed by the Parties.

4.6.25.2. FINAL PROVISIONS - LETTER AGREEMENT (SAMPLE CLAUSE)

1. This Agreement will enter into force upon signature by the Parties.
2. The Agreement will remain in force [*until [specific date] [for TBD years*].
3. Either Party may terminate this MOU at any time by giving the other Party at least 12 months' written notice of its intent to terminate. In the event of termination, the terminating Party will endeavor to minimize any negative impact of such termination on the other Party.
4. Termination or expiration of this Agreement will not affect a Party's continuing obligations under Article [*TBD*] (Liability and Risk of Loss), Article [*TBD*] (Transfer of Goods and Technical Data), Article [*TBD*] (Intellectual Property Rights), and Article [*TBD*] (Release of Results and Public Information), unless otherwise agreed by the Parties.

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 [*other Party*]

that will enter into force for a period of [*TBD*] years on the date of your affirmative reply. This Agreement may be terminated by either Party upon [*TBD*] months written notice.

Note: The other Party must respond with language along the lines of the following:

[*Thank you for your later dated [ ], concerning [cooperation XYZ – parallels language in 4.6.3.2 -- Letter Agreement Introductory Language – above]. [Other Party] agrees with the terms and conditions as outlined in your letter. Consequently, I acknowledge that your letter, together with this affirmative reply, will constitute an agreement between NASA and [other Party]*.]

[Note: If using ALT 1 above, do not include the Amendments article in 4.6.22.]

4.6.26. SIGNATORIES (SAMPLE CLAUSE)

[Alternatives as necessary]

[ALT 1]

Done at [*TBD*] in two originals, in [*the*] English [*and TBD*] language[*s*], both texts being equally authentic, this _____ day of _____, 20[*TBD*].

FOR THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

FOR [*PARTY*]

[ALT2]

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this MOU.

Done at [*TBD*] in two originals, in [*the*] English [*and TBD*] language[*s*], both texts being equally authentic, this _____ day of _____, 20[*TBD*].

FOR THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

FOR [*PARTY*]

[ALT3]

FOR THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

FOR [*PARTY*]

Date
Place

Date
Place

[ALT4]

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this MOU.

FOR THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	FOR [*PARTY*]
Date	Date
Place	Place

APPENDIX A: DESCRIPTION OF APPLICABLE AUTHORITIES

A1. **Anti-Deficiency Act, (31 U.S.C. § 1341)**. Generally speaking, the Anti-Deficiency Act restricts the expenditures, expenses, and liabilities of the government to the specific appropriations for each fiscal year.

A2. **Bayh-Dole Act of 1980 (35 U.S.C. § 200 *et seq.*).** The Bayh-Dole Act provides that Small businesses, universities, and not-for-profit organizations may obtain titles to inventions developed with federal funds. It also permits Government owned and government operated (GOGO) laboratories to grant exclusive patent licenses to commercial organizations. SAAs, which are entered into under NASA's "other transaction" authority, are not Bayh-Dole agreements, and the Bayh-Dole Act does not apply to SAAs.

A3. **Case-Zablocki Act (1 U.S.C. § 112b).** The Case-Zablocki Act requires that the State Department report international agreements to which the U.S. is a party to the foreign relations committees of the U.S. Senate and House of Representatives. The Case-Zablocki Act requires that NASA consult with the State Department prior to concluding any such agreement. (Such an agreement may be with a foreign government, foreign governmental entity, or international organization.) International agreements are intended to be binding under international law.

A4. **Economy Act of 1932 (31 U.S.C. § 1535).** This Act provides authorization for Federal agencies to request and perform interagency reimbursable work. Under the Act, such reimbursable work must be in the best interest of the Government, and the goods and services must be less expensive or more conveniently provided by Federal agencies than by commercial vendors.

A5. **Federal Grants and Cooperative Agreements Act of 1977 (Chiles Act) (31 U.S.C. § 6301, *et seq*.).** The Federal Grants and Cooperative Agreements Act of 1977 defines the conditions under which executive agencies should use grants, contracts, or cooperative agreements. It was passed to provide Congressional guidance on the proper use of contracts, grants, and cooperative agreements after Congress concluded that agencies were confused about the meaning of these terms and, as a result, were not using the proper instruments.

A6. **Freedom of Information Act (5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524).** This act provides for broad release of Federal Agency records to a requestor, unless a specific exemption applies.

A7. **National Aeronautics and Space Act (Space Act) (51 U.S.C. §§ 20101-20164).** 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." 51 U.S.C. § 20113(e). Additionally, the Space Act authorizes NASA "to

use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement, and on a similar basis to cooperate with other public and private agencies and instrumentalities in the use of services, equipment, and facilities." 51 U.S.C. § 20113(f). In addition, the Space Act states: "The Administration, under the foreign policy guidance of the President, may engage in a program of international cooperation in work done pursuant to [the Space Act], and in the peaceful application of the results thereof, pursuant to agreements made by the President with the advice and consent of the Senate." 51 U.S.C. § 20115. Agreements using these authorities are referred to as "Space Act Agreements."

a. **Misuse of Agency Name and Initials (51 U.S.C. § 20141).** This section of 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.".

A8. **Disclosure of confidential information generally (18 U.S.C. § 1905).** Under 18 U.S.C. § 1905, NASA employees are subject to criminal prosecution and removal from office for wrongful disclosure of confidential and/or proprietary data/information. Conviction under this statute can result in fines, imprisonment, or both.

A9. **Delegation of Authority to Take Actions in Real Estate and Related Matters (14 C.F.R. § 1204.501).** This regulation delegates the authority to prescribe agency real estate policies, procedures, and regulations as well as enter into and take other identified actions for NASA to the NASA Associate Administrator for Management Systems and Facilities and the Director, Facilities Engineering Division.

A10. **NASA Seal, NASA Insignia, NASA Logotype, NASA Program Identifiers, NASA Flags, and the Agency's Unified Visual Communications System (14 C.F.R. § 1221.1).** This subpart sets forth the policy governing the use of the NASA Seal, the NASA Insignia, NASA Logotype, NASA Program Identifiers, and the NASA Flags. This subpart also establishes and sets forth the concept and scope of the NASA Unified Visual Communications System and prescribes the policy and guidelines for implementation of the system.

A11. **Patent Waiver Regulations (14 C.F.R. § 1245.1).** This subpart prescribes regulations for the waiver of rights of the Government of the United States to inventions made under NASA contract in conformity with section 20135 of the National Aeronautics and Space Act (51 U.S.C. § 20135).

A12. **Grants and Cooperative Agreements (14 C.F.R. § 1260).** This subpart provides supplemental NASA policies that clarify and amplify government-wide regulations for awarding and administering grants and cooperative agreements with educational and non-profit organizations. It supplements the government-wide regulations set forth in OMB Circular A–110 "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

A13. Cooperative Agreements with Commercial Firms (14 C.F.R. § 1274). This regulation establishes uniform requirements for NASA cooperative agreements awarded to commercial firms.

A14. Coordination, Reporting and Publication of International Agreements (22 C.F.R. § 181). This regulation implements the provisions of the Case-Zablocki Act on the reporting to Congress, coordination with the Secretary of State and publication of international agreements. It provides detailed guidance regarding whether a document constitutes an agreement within the meaning of the Case-Zablocki Act and procedures for consultations with the State Department.

A15. NPD 1360.2, "Initiation and Development of International Cooperation in Space and Aeronautics Programs." This NPD describes NASA policy for the initiation and development of international cooperation in space and aeronautical programs.

A16. NPD 1370.1, "Reimbursable Utilization of NASA Facilities by Foreign Entities and Foreign-Sponsored Research." This NPD provides general policy direction and identifies principles to be considered by NASA officials in: (1) undertaking reimbursable use of NASA facilities by, or for the benefit of, foreign entities; or (2) conducting research on a reimbursable basis in collaboration with, or for the benefit of, foreign entities.

A17. NPD 1382.2, "NASA Assistance to Non-Government, Entertainment-Oriented Motion Picture, Television, Video & Multimedia Productions/Enterprises & Advertising." This NPD identifies the criteria for determining when the Agency may provide unique goods and services to assist entertainment-oriented motion pictures, documentaries, television, or video production. It also sets forth the terms and conditions under which any such assistance will be provided.

A18. NPD 2190.1, "NASA Export Control Program." This NPD sets forth stakeholders' responsibilities for carrying out NASA's policy to ensure that exports and transfers of commodities, technical data, or software to foreign persons and foreign destinations are carried out in accordance with United States export control laws and regulations, and Administration and NASA policy.

A19. NPD 8800.14, "Policy for Real Estate Management." This NPD sets forth NASA's policy to promote the efficient and economical utilization of its real property assets.

A20. NPD 9080.1, "Review, Approval, and Imposition of User Charges." This NPD sets forth how NASA charges recipients when NASA provides a service, good, or resource. Specifically, NPD 9080.1 sets forth when NASA charges full-cost recovery, exceptions to full-cost recovery, how full-cost recovery is determined, and when a user charge must be based on market prices.

A21. NPR 9090.1, "Reimbursable Agreements." This NPR provides the financial management requirements for Reimbursable Agreements, a subset of which are Reimbursable Space Act Agreements.

A22. NPR 5800.1, "Grant and Cooperative Agreement Handbook." This handbook consists of four sections that prescribe policies and procedures relating to the award and administration of NASA grants and cooperative agreements.

A23. NPR 8800.15, "Real Estate Management Program." This NPR provides procedural requirements for NASA personnel tasked with acquiring and managing real estate assets on NASA's behalf; provides NASA property managers with a common set of requirements and uniform, orderly processes for meeting NASA's real property requirements; provides direction on the use of the NASA Real Property Management System (RPMS) electronic database; defines the roles, responsibilities, and relationships among key NASA personnel; and provides a guide to the required coordination among various NASA and other Federal offices in matters concerning real property management.

A24. Memorandum from the Administrator to Officials-in-Charge of Headquarters Offices, Directors, NASA Centers, "Coordination of Classified Interagency Agreements" July 23, 2012. The Memorandum establishes the Office of International and Interagency Relations (OIIR) as the Agency focal point for coordination of all classified interagency agreements.

A25. Human Exploration and Operations Mission Directorate (HEOMD), "**Tenets for Reimbursable Space Act Agreements Supporting the Commercial Crew Program**" June 2012. The Tenets provide guidelines to assist in the development of Reimbursable SAAs covering HEOMD's programs, particularly the Commercial Crew Program.