

**REIMBURSABLE SPACE ACT AGREEMENT  
BETWEEN  
NASA AMES RESEARCH CENTER  
AND  
H211, LLC  
REGARDING AUTONOMOUS EARTH OBSERVATIONS  
IN SUPPORT OF GLOBAL CHANGE RESEARCH**

**1. AUTHORITY AND PARTIES**

This Reimbursable Space Act Agreement ("Agreement") is between H211, LLC, a California limited liability company ("Partner"), with a place of business at 505 Hamilton Avenue, #210, Palo Alto, CA 94301, and the NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Ames Research Center, located at Moffett Field, California 94035-1000 ("NASA" or "NASA ARC"). This Agreement is entered by NASA under the authority of section 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958 as amended, (42 U.S.C. §2473(c)(5) and (6)).

**2. PURPOSE**

2.1 NASA and Partner are concurrently entering into that certain NASA Ames Research Center Enhanced Use Lease (SAA2 - 402054) (the "Lease") with respect to the Premises more particularly described therein and commonly known as the hangar bay of Hangar 211 and ancillary support space. Partner is beneficially owned by the principal executives of an entity (the "Programmatic Partner") with whom NASA ARC has a programmatic, collaborative relationship. NASA and the Programmatic Partner previously entered into that certain Space Act Agreement for Research and Development Collaboration (SAA2 - 402045), bearing an effective date of November 3, 2006, as amended (collectively, the "Programmatic Space Act Agreement"). The Programmatic Space Act Agreement creates a framework for cooperative activities to be developed between NASA and the Programmatic Partner, which may include the sharing of expertise, and/or the use of facilities (including testing, equipment, and related services). Two (2) annexes to the Programmatic Space Act Agreement, setting forth specific collaborations, have already been executed, and a third annex is being finalized. In addition, the Programmatic Partner plans to establish a physical presence at NASA Ames Research Center (the "Center").

2.2 NASA ARC's Earth Sciences Division ("Code SG") has a long history of using aircraft measurements to study Earth atmospheric and terrestrial processes. Areas of study include atmospheric chemistry, global climate change, environmental effects of aviation and ozone depletion. Aircraft measurements have also been used for applications such as wildfires, precision agriculture and invasive species.

2.3 Pursuant to the Lease, Partner will store, support and service Stage III or quieter turbine - powered aircraft that are majority owned or leased by Partner's principal executives. Such aircraft regularly operate at the mid to upper troposphere flight levels, and often in the lower stratosphere. This Agreement, among other things allows NASA's Code SG to place

instruments on these aircraft (with integration of the instruments to occur at the Center) and regularly collect Earth observations (atmospheric and terrestrial) in support of Code SG's research and analysis. The concept would be similar to the very successful European community programs (MOSAIC and IAGOS), which make autonomous observations on commercial airline flights. Such data collections by Code SG would be made autonomously essentially whenever and wherever Partner's aircraft fly. Partner, when mutually convenient and through mutual agreement with Code SG, may fly its aircraft on dedicated flights for Earth observation or related science support activities. Allowing these aircraft to operate from NASA ARC's Moffett Federal Airfield ("MFA") not only supports the broader programmatic relationship between NASA and the Programmatic Partner, but also provides a particular research opportunity to NASA at a greatly reduced cost to NASA.

2.4 This Agreement also shall be for the purpose of allowing Partner to utilize MFA facilities owned and controlled by the Center on a non - exclusive basis.

### 3. RESPONSIBILITIES

3.1. NASA will use reasonable efforts to:

3.1.1 Provide appropriate payloads and guidance on the payload integration, science, data acquisition and other support activities.

3.1.2 Provide to Partner, on the terms and conditions of this Agreement, such equipment, supplies, services or other property as Partner may request from time to time, if any. Without limiting the foregoing, provided that (a) aviation fuel is available through NASA and (b) the Lease has not been terminated or subordinated to an agreement between NASA and a fixed base operator as contemplated in the Lease, then Partner may request aviation fuel from NASA.

3.1.3 Provide the maintenance and operational support as needed for the scientific payloads.

3.2. Partner will use reasonable efforts to:

3.2.1 Reimburse NASA for all equipment, supplies, services or other property used at the Center pursuant to this Agreement, if any, and which are not included in the rent payable by Partner under the Lease.

3.2.2 Accommodate the installation of scientific payloads onto Partner's aircraft. Partner shall be responsible for certification and airworthiness of the scientific payloads as required. Partner will support NASA airworthiness and safety review requirements. Partner will provide reasonable access to its equipment and personnel to support this effort.

3.2.3 Integrate selected science payloads and support data collection.

3.3. All operations on NASA property shall be compatible with, and will not unreasonably interfere with, the operations of NASA, other resident federal agencies, or with airfield operations at MFA, as such is determined by NASA.

3.4. In accordance with section 8, Partner assumes liability for risks associated with activities undertaken in this Agreement.

3.5. Partner agrees to comply with all applicable laws, regulations, codes, and NASA regulations, guidelines, directives, procedural requirements and standards (including appropriate Ames Policy Directives and Ames Procedural Requirements ("APR")) (collectively, "Applicable Laws") while at the Center. Specifically with respect to NASA, these regulations, guidelines, directives, procedural requirements and standards include the following documents, as the same may be revised from time to time, copies of which are available from the NASA Ames Aviation Management Office: (i) the Accident/ Incident Response Plan; (ii) the Airfield Operations Manual; (iii) the Flight Operations Manual; and (iv) the Wildlife Management Plan. Other regulations, guidelines, directives, procedural requirements and standards cover, among other things, facility use, land use, safety (Ames Health and Safety Procedural Requirements, APR 1700.1), security, and environmental standards (Ames Environmental Procedural Requirements, APR 8800.3).

3.6. This Agreement shall not be construed as a grant of any possessory, exclusive or permanent interest in any NASA real or personal property, nor as a grant of an estate of any kind, nor as an abandonment of use and occupancy, but shall merely be considered a temporary agreement for the non-exclusive, non-possessory use of NASA land, facilities, and equipment described in this Agreement. Title to NASA's real property shall be and remain solely with NASA. All Partner personal property constructed, installed, erected, or placed by Partner on NASA property shall be removed by Partner upon termination of this Agreement.

#### 4. SCHEDULE AND MILESTONES

The planned major milestones for the activities defined in section 3 are estimated as follows:

September 1, 2007 Code SG and Partner meet to discuss candidate payloads, payload accommodation, operations planning and constraints, payload integration review and certification.

+2 months Based on the above meeting, develop a roadmap with schedule and milestones for payload selection, integration schedule, reviews and mapping of flight opportunities.

+6 - 12 months Develop integration design with instrument layout and engineering analysis; begin installation and flight operations.

The Parties will conduct an annual review and science workshop to assess the progress and performance of the Agreement and to discuss the scientific results of the measurements.

## 5. FINANCIAL OBLIGATIONS

5.1. This Agreement is intended to be the means to transfer funds from Partner to NASA in connection with this Agreement. Reimbursement from Partner to NASA for land, facilities, equipment, supplies, services or other property provided by NASA in support of this Agreement will be set forth annually in a "Support Agreement" in the form attached hereto as Exhibit A and incorporated herein by reference. NASA currently executes annual Support Agreements following the start of each Government fiscal year.

5.2. Cost estimates and reimbursement shall be consistent with law and NASA policy, including the requirement for payment in advance as set forth in the Support Agreement. Costs for facilities and service will be reviewed periodically to ensure that the rates are based on actual cost to NASA.

5.3. All payments defined in this Agreement shall be in accordance with the following:

- (i) Payment shall be in United States dollars.
- (ii) Payment shall be payable to the "NASA Ames Research Center."
- (iii) Payment shall be sent to NASA Ames Research Center, Financial Management Division, Attn. Reimbursable Section, Mail Stop 203-18, Moffett Field, CA 94035. Payment shall reference the number of this Agreement.
- (iv) Payments shall be made quarterly (on October 1, January 1, April 1 and July 1 of each calendar year), in advance. The payment for the period beginning on the Effective Date (as defined below) and ending on the last day of the calendar quarter during which the Effective Date occurs shall be made within five (5) business days after the first Support Agreement is executed by the parties.

5.4. NASA will not provide services or incur costs beyond the available funding amount. 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 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 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 one (1) year after completion of all effort under this Agreement, and promptly thereafter, return any unspent funds to Partner.

5.5. NASA's ability to perform its obligations under this Agreement is subject to the availability of appropriated funds. Nothing in this Agreement commits the United States

Congress to appropriate funds for the purposes stated herein (pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341).

6. PRIORITY OF USE

Any schedule or milestone in this Agreement is estimated based upon the Parties' current understanding of the projected use of the test facilities and equipment by NASA personnel. In the event NASA's projected usage 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 usage of the test facilities, equipment and personnel shall have priority over the usage 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 commercial users, NASA, in its sole discretion, shall determine the priority as between the two users. This Agreement does not obligate NASA to seek alternative government property or services under the jurisdiction of NASA at other locations.

7. NONEXCLUSIVITY

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

8. LIABILITY AND RISK OF LOSS

8.1 In consideration of the use of MFA and the other services provided by NASA under this Agreement, 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's 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.

8.2 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.

8.3 Partner agrees to indemnify, defend and hold harmless NASA and 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) from any and all claims, damage, liability, losses, judgments or costs or expenses (including, without limitation, attorneys' fees) arising from the injury to or death of any person, or for damage to or loss of any property (including intellectual property), caused by Partner, its employees or its related entities, or arising out of the activities of Partner, its employees or its related entities,

whether such claim, damage, liability, loss, judgment, cost or expense is caused by negligence or otherwise, except in the case of willful misconduct.

8.4 Partner assumes responsibility for any and all damage done to property of the United States of America, facilities and equipment resulting from use of such property, facilities and equipment, or the activities under this Agreement, by Partner or its related entities. Partner will be responsible to pay all costs associated with the repair of such damage and/or otherwise return the property and facilities to the condition that existed at the time of the Effective Date of this Agreement, except for the normal wear and tear reasonably to be expected as arising from the type of activity contemplated under this Agreement.

8.5 Pursuant to the terms and conditions of the Lease, Partner shall maintain the insurance coverage set forth in the Lease during the term of this Agreement. The insurance provisions of the Lease shall remain incorporated into this Agreement by reference if the Lease expires or is terminated before the expiration or earlier termination of this Agreement.

## 9. INTELLECTUAL PROPERTY RIGHTS

### 9.1 Data Rights

#### 9.1.1 General.

(a) "Related Entity" as used in this Data Rights clause, means a contractor, subcontractor, grantee or other entity having a legal relationship with NASA or Partner that is assigned, tasked or contracted with to perform specified NASA or Partner activities under this Agreement.

(b) "Data," as used in this Data Rights clause, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(c) "Proprietary Data," as used in this Data Rights clause, means Data embodying trade secrets or comprising commercial or financial information that is privileged or confidential.

(d) The Data rights set forth herein are applicable to employees of Partner and employees of any Related Entity of Partner. Partner shall ensure that its employees and employees of any Related Entity that perform Partner activities under this Agreement are aware of the obligations under this clause and that all such employees are bound to such obligations.

(e) Data exchanged between NASA and Partner under this Agreement will be exchanged without restriction as to its disclosure, use, or duplication except as otherwise provided in this clause.

(f) No preexisting Proprietary Data will be exchanged between the Parties under this Agreement unless specifically authorized in this clause or in writing by the owner of the Proprietary Data.

(g) In the event that Data exchanged between NASA and Partner include a restrictive notice that NASA or Partner deems to be ambiguous or unauthorized, NASA or Partner may notify the other Party of such condition. Notwithstanding such a notification, as long as the restrictive notice provides an indication that a restriction on use or disclosure was intended, the Party receiving such Data will treat the Data pursuant to the requirements of this clause unless otherwise directed in writing by the Party providing such Data.

(h) Notwithstanding any restriction on use, disclosure, or reproduction of Data provided in this clause, the Parties will not be restricted in the use, disclosure, or reproduction of Data provided under this Agreement that:

(1) is publicly available at the time of disclosure or thereafter becomes publicly available without breach of this Agreement;

(2) is known to, in the possession of, or developed by the receiving Party independent of carrying out the receiving Party's responsibilities under this Agreement and independent of any disclosure of, or without reference to, Proprietary Data or otherwise protectable Data hereunder;

(3) is received from a third party having the right to disclose such information without restriction; or

(4) is required to be produced or released by the receiving Party pursuant to a court order or other legal requirement.

(i) If either NASA or Partner believes that any of the events or conditions that remove restriction on the use, disclosure, or reproduction of the Data apply, NASA or Partner will promptly notify the other Party of such belief prior to acting on such belief, and, in any event, will notify the other Party prior to an unrestricted use, disclosure, or reproduction of such Data.

(j) Disclaimer of Liability: Notwithstanding any restriction on use, disclosure, or reproduction of Data provided in this clause, NASA will not be restricted in, nor incur any liability for, the use, disclosure, or reproduction of any Data not identified with a suitable restrictive notice in accordance with sections 9.1.2 and 9.1.8 or of any Data included in Data which Partner has furnished, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(k) Partner may use the following, or a similar, restrictive notice as required by sections 9.1.2 and 9.1.8. In addition to identifying Proprietary Data with such a restrictive notice, Partner should mark each page containing Proprietary Data with the following,

or a similar, legend: "Proprietary Data – use and disclose only in accordance with notice on title or cover page."

#### Proprietary Data Notice

These data herein include *<enter as applicable: "Background Data" or "Data Produced by Partner under a Space Act Agreement">* in accordance with the Data Rights provisions under Space Act Agreement *<provide applicable identifying information>* and embody Proprietary Data. In accordance with the Space Act Agreement, NASA will use reasonable efforts to maintain the data in confidence and limit use, disclosure, and reproduction by NASA and any Related Entity of NASA in accordance with restrictions identified in the Space Act Agreement *<may list specific restrictions listed in the Agreement>*.

9.1.2 Data First Produced by Partner Under this Agreement. In the event Data first produced by Partner in carrying out Partner responsibilities under this Agreement is furnished to NASA, and Partner considers such Data to be Proprietary Data, and such Data is identified with a suitable restrictive notice, NASA will use reasonable efforts to maintain the Data in confidence and such Data will be disclosed and used by or on behalf of the U.S. Government (under suitable protective conditions) only for U.S. Government purposes.

9.1.3 Data First Produced by NASA Under this Agreement. Except for data disclosing an invention owned by NASA for which patent protection is being considered, in the event Partner requests that Data first produced by NASA (or any Related Entity of NASA) in carrying out NASA's responsibilities under this Agreement be maintained in confidence, and to the extent NASA determines that such Data would be Proprietary Data if it had been obtained from Partner, NASA will mark such Data with a restrictive notice and will maintain such marked Data in confidence for a period of one (1) year after development of the Data, with the express understanding that during the aforesaid restricted period such marked Data may be disclosed and used (under suitable protective conditions) by or on behalf of the U.S. Government for U.S. Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Partner agrees not to disclose such marked Data to any third party without NASA's written approval until the aforesaid restricted period expires.

9.1.4 Publication of Results. Recognizing that section 203 of the National Aeronautics and Space Act of 1958 (42 U.S.C. §2473), as amended, 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 this Agreement, the Parties agree to coordinate proposed publication of results with each other in a manner that allows each Party a reasonable amount of time to review and comment on proposed publications.

9.1.5 Data Disclosing an Invention. In the event Data exchanged between NASA and Partner discloses an invention for which patent protection is being considered, the furnishing Party specifically identifies such Data, and the disclosure and use of such Data is not otherwise limited or restricted herein, the receiving Party agrees to withhold such Data from public disclosure for a reasonable time (presumed to be one (1) year unless mutually agreed



otherwise or unless such information is restricted for a longer period herein) in order for patent protection to be obtained.

9.1.6 Copyright. In the event Data is exchanged with a notice indicating that the Data is copyrighted and there is no indication that such Data is subject to restriction under sections 9.1.2 or 9.1.3 (i.e., Data is not marked with a restrictive notice as required by sections 9.1.2 or 9.1.3), such Data will be presumed to be published and the following royalty-free licenses will apply.

(a) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this Agreement, 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 this Agreement.

(b) If the Data does not contain the indication of (a) above, the Data will be presumed to have been first produced under this Agreement and, except as otherwise provided in section 9.1.5 and in the Inventions and Patent Rights clause of this Agreement for protection of reported inventions, the receiving Party and others acting on its behalf may reproduce, distribute, and prepare derivative works for any purpose.

9.1.7 Data Subject to Export Control. Technical data, whether or not specifically identified or marked, that is subject to the export laws and regulations of the United States and that is provided to Partner under this Agreement will be treated as such, and will not be further provided to any foreign persons or transmitted outside the United States without proper U.S. Government authorization, where required.

#### 9.1.8 Background Data

(a) In the event Partner furnishes NASA with Data developed at private expense (or in the case of state or local government, Data developed at government expense) that existed prior to, or was produced outside of, this Agreement, and such Data embody Proprietary Data, and such Data is so identified with a suitable restrictive notice, NASA will use reasonable efforts to maintain the Data in confidence and such Data will be disclosed and used by NASA and any Related Entity of NASA (under suitable protective conditions) only for carrying out NASA responsibilities under this Agreement. Upon completion of activities under this Agreement, such Data will be disposed of as requested by Partner.

(b) At the time of execution of this Agreement, the Parties agree that the following Background Data embodies Proprietary Data that will be provided to NASA: aircraft position location data stream when combined with associated time and date data stream.

#### 9.2 Invention and Patent Rights

9.2.1 The invention and patent rights set forth herein are applicable to any employees, contractors, subcontractors, or other entities having a legal relationship with Partner that are assigned, tasked, or contracted with to perform specified Partner activities under this

Agreement. Partner agrees to inform such employees, contractors, subcontractors, or other entities of the obligations under this clause and to bind them to such obligations.

9.2.2 Based on the purpose and scope of this Agreement, and the responsibilities of the Parties, NASA has made an administrative determination that the provisions of section 305(a) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. §2457(a)), do not apply to this Agreement. Therefore, title to inventions made (conceived or first actually reduced to practice) as a result of activities performed under this Agreement will remain with the respective inventing party(ies). No invention or patent rights are exchanged between or granted by such parties under this Agreement except that NASA and Partner agree to use reasonable efforts to identify and report to each other any invention that is believed to have been made jointly by employees of Partner and employees of NASA (including employees of such NASA contractors, subcontractors, or other entities), and to consult and agree as to the responsibilities and course of action to be taken to establish and maintain patent protection on such invention and on the terms and conditions of any license or other rights to be exchanged or granted by or between NASA and Partner.

## 10. USE OF NASA NAME AND EMBLEMS AND RELEASE OF INFORMATION TO THE PUBLIC

### 10.1. NASA Name and Initials

Partner agrees the words "National Aeronautics and Space Administration" and the letters "NASA" will not be used in connection with a product or service in a manner reasonably calculated to convey any impression that such product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. In addition, with the exception of release of general information in accordance with section 10.3 below, Partner agrees that any proposed public use of the NASA name or initials (including press releases resulting from activities conducted under this Agreement and all promotional and advertising use) shall be submitted by Partner in advance to the NASA Assistant Administrator for Public Affairs or designee ("NASA Public Affairs") for review and approval. Approval by NASA Public Affairs shall be based on applicable law and policy governing the use of the NASA name and initials.

### 10.2. NASA Emblems

Use of NASA emblems/devices (*i.e.*, NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) are governed by 14 C.F.R. Part 1221. Partner agrees that any proposed use of such emblems/devices shall be submitted for review and approval in accordance with such regulations.

### 10.3. Release of General Information to the Public

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

## 11. DISCLAIMERS

### 11.1. Disclaimer of Warranty

Partner accepts the facilities made available at MFA pursuant to this Agreement in their "AS IS" condition, with all faults, without any covenant, representation or warranty of any kind or nature whatsoever, express or implied (including, without limitation, with respect to the suitability of such facilities or any utility systems serving MFA for Partner's purposes), and Partner is relying solely on Partner's own investigation of such facilities. Partner acknowledges that MFA is a Superfund site, known as the former Naval Air Station Moffett Field Superfund Site. Moreover, the western portion of NASA Ames Research Center is underlain by contaminated groundwater from the Middlefield-Ellis-Whisman Superfund Site, which originates south of U.S. Highway 101. Partner hereby acknowledges receipt of the environmental reports listed on Exhibit B attached hereto.

### 11.2. Disclaimer of Endorsement

NASA does not endorse or sponsor any commercial product, service, or activity. NASA's participation in this Agreement or supply of equipment, facilities, technical information, or services 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.

## 12. COMPLIANCE WITH LAWS AND REGULATIONS

### 12.1. Environmental and Safety

12.1.1. Partner has the responsibility to manage its operation in a safe and environmentally responsible manner. NASA reserves the right to conduct oversight to assure effective coordination of safety and environmental issues and adequate protection of NASA employees and the public. Partner and its employees, agents, contractors, permittees, licensees and invitees must comply with all applicable environmental, safety and health regulations including, but not limited to, Occupational Safety & Health Administration (OSHA), Nuclear Regulatory Commission (NRC), National Fire Protection Association (NFPA), California Fire Code (CFC), US Environmental Protection Agency, California Environmental Protection Agency, Santa Clara County Health Department, City of Sunnyvale Industrial Waste Water Ordinance, and Bay Area Air Quality Management District (BAAQMD). Any hazardous materials, substances, wastes, pollutants or other contaminants (including, without limitation, crude oil or any fraction thereof, petroleum products and PCBs) (collectively, "Hazardous Materials") generated by Partner shall be managed by Partner in accordance with Federal, state and local laws and regulations, and shall be properly disposed of as directed by NASA, at Partner's expense. Partner's activities that comply with the terms of this Agreement will be included in NASA's sitewide permits and plans, as applicable, such as the Spill Prevention Control and Countermeasures Plan, the Storm Water Pollution Prevention Plan, the Biennial

Hazardous Waste Report, the above ground storage tank statement, the Sunnyvale Industrial Waste Water permit, the Environmental Resources Document, and the Integrated Natural Resources Management Plan. Coverage in these and other sitewide plans is included in the cost of Institutional Shared Pool (ISP) Services. Partner shall promptly supply information to the NASA Environmental Office (Code QE) that is needed to complete these documents, and comply with the conditions of these permits. Partner, at its sole cost, is responsible for obtaining hazardous materials storage permits and air permits required by Applicable Laws for Partner's use of the facilities made available to Partner pursuant to this Agreement.

12.1.2. Partner agrees to pay all applicable environmental fees, fines, and penalties which may be legally assessed against it by any Federal, state or local agencies, subject to statutory appeal rights, and will be responsible for representing and defending itself before any such agencies in any proceedings in which Partner may become involved to the extent such involvement results from Partner's activities and operations at the Center.

12.1.3. Partner will be responsible for paying all costs of the restoration or remediation of any release of any Hazardous Materials to the extent such release results from or was caused by Partner or its employees, agents, contractors, permittees, licensees and invitees, and Partner will be responsible for any liability resulting therefrom. NASA acknowledges that, as of the Effective Date, Partner is not responsible for any preexisting conditions on or about the Center involving Hazardous Materials and, except as set forth above in section 8.3 or in this section 12.1.3, Partner does not indemnify, defend or hold NASA harmless for any such preexisting condition.

12.1.4. Partner shall not interfere with or impact any environmental remediation efforts on-going on Center property. Partner will be responsible for paying all costs of any damage to environmental remediation or restoration activities caused by its fault, negligence, or failure to comply with this Agreement.

12.1.5. Where activities undertaken by Partner require preparation of compliance documents pursuant to the National Environmental Policy Act (NEPA) or the National Historic Preservation Act (NHPA), Partner shall supply all necessary information to NASA and any appropriate agency in a timely manner. No such activities shall occur until all applicable NEPA and NHPA requirements have been met.

## 12.2. Protective Services

12.2.1. Partner will comply with all applicable NASA security, law enforcement and fire safety policies and guidelines, and will ensure that its employees, agents, contractors, permittees, licensees and invitees also comply. This includes standards on badging and facility access, fire suppression and response, fire prevention, law enforcement jurisdictions, security, dispatch, and emergency response and preparedness, which are available from NASA's Protective Services office and are set forth in NASA's policy directives and procedural guidelines. Partner shall advise NASA in writing of any changes to its operations or its use of MFA that might impact any security, law enforcement or other Protective Services functions.

12.2.2. Without limiting section 12.2.1, Partner shall appropriately badge United States citizen escorts for foreign national aircrews or others while entering, exiting or on - board MFA. Foreign nationals will not be authorized access to any other NASA facility or any other portion of the Center, except for the cafeteria or other public place. Deviations from escort requirements or parameters, or requests for Protective Services support, must be coordinated in advance with the Protective Services Office. Security incidents related to foreign nationals (such as unauthorized access to NASA facilities, suspicious activity/behavior or failure to provide proper escort) shall be immediately reported by Partner to the Protective Services Office or MFA Emergency Communications Center.

### 12.3. Communication

Partner agrees to comply with all applicable NASA communications policies and guidelines, and will ensure that its employees, agents, contractors, permittees, licensees and invitees also comply. This includes standards for building wiring, underground cabling and ducts, telephones and telephone services, data and video communications, and radio spectrum management.

## 13. TERM OF AGREEMENT

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 four (4) years from the Effective Date, whichever comes first.

## 14. RIGHT TO TERMINATE

14.1. This Agreement shall automatically terminate upon the expiration or earlier termination of the Lease for any reason other than NASA's election to terminate the Lease pursuant to section 2.1(a) thereof in connection with NASA entering into an agreement with a fixed base operator at MFA. In the event of such termination by Partner or resulting from Partner's breach of the Lease, Partner will be obligated to reimburse NASA for all Government costs that have been incurred up to the effective date of the notice of termination and that are incurred as a result of such termination. NASA shall not be liable for any costs, loss of profits, revenue, or other direct, indirect, or consequential damages incurred by Partner, its employees, agents, contractors and invitees as a result of the termination by NASA pursuant to this provision.

14.2. NASA may terminate this Agreement, in whole or in part, and without cost to the Government, if a determination is made by the Assistant Administrator for Institutional and Corporate Management, the Director of the Facilities Engineering and Real Property Division, or the Center Director that the interests of the national space program, the national defense or the public welfare require the termination of this Agreement and written notice of such determination is delivered to Partner at least thirty (30) days before the termination date.

14.3. NASA may terminate this Agreement if Partner fails to perform any of its obligations under this Agreement and such failure continues for (a) with respect to a monetary

obligation, more than three (3) business days after the date such monetary obligation was due, in which event NASA may terminate this Agreement at any time thereafter immediately upon delivery of written notice to Partner, or (b) with respect to all other obligations, more than ten (10) business days after the date on which NASA delivers to Partner written notice of such failure.

#### 15. CONTINUING OBLIGATIONS

The obligations of the Parties set forth in the provisions for "Financial Obligations" (section 5), "Liability and Risk of Loss" (section 8) and "Intellectual Property Rights" (section 9) shall continue to apply after the expiration or termination of this Agreement.

#### 16. DISPUTE RESOLUTION

If either Party believes that a dispute exists under this Agreement, then such Party may elect to declare a dispute by delivering notice of such dispute ("Dispute Notice") to the other Party, such notice shall describe the nature of the dispute in reasonable detail and shall invoke the procedure for dispute resolution set forth in this section 16. If a dispute is so declared, the respective Technical POC shall meet and communicate (in person, by telephone, electronically or otherwise) as frequently as reasonably possible in a good faith effort to resolve the dispute. If they are unable to agree on any issue within a reasonable time (but in no event more than thirty (30) days) after either Party delivers to the other Party a Dispute Notice, then the dispute will be referred to the Technical POCs' respective immediate supervisors for joint resolution. If the Parties are still unable to resolve the issue within ten (10) business days after the issue has been referred to such supervisors for resolution, then the Center Director (or his or her designee) will issue a written decision, which shall be a final Agency decision for all purposes, including the exhaustion of administrative remedies. Nothing in this section limits or prevents either Party from pursuing any other right or remedy available by law after exhaustion of administrative remedies.

#### 17. MISHAP INVESTIGATION

In the case of a mishap or mission failure, Partner agrees to cooperate with NASA and abide by NASA mishap reporting and investigation standards. The parties agree to provide assistance to each other in the conduct of any investigation. In the case of activities that might result in death or serious injury to persons, or substantial loss or damage to property, as a result of activities under this Agreement, the parties agree to establish a process for investigation of any mishap arising from these activities as part of their program/project implementation agreements.

[Remainder of page intentionally blank]

## 18. MANAGEMENT POINTS OF CONTACT

The following personnel are designated as the principal points of contact between the Parties in the performance of this Agreement

### NASA Technical POC

Name: Geary Tiffany  
Title: Chief, Aviation Management Office  
Address: NASA Ames Research Center  
Mail Stop 158 - 1  
Moffett Field, CA 94035 - 1000  
E-mail: [geary.c.tiffany@nasa.gov](mailto:geary.c.tiffany@nasa.gov)  
Tel. No. 650/604-0685  
Fax No. 650/604-3144

### Partner Technical POC

Name: Ken Ambrose  
Title: Vice President  
Address: H211, LLC  
505 Hamilton Avenue, #210  
Palo Alto, CA 94301  
E-Mail: B-6 [@gmail.com](mailto:@gmail.com)  
Tel. No. 925/254-8800  
Fax No. 925/254-8860

### NASA Administrative POC

Name: Patti Bergin  
Title: Administration Specialist  
Address: NASA Ames Research Center  
Mail Stop 158 - 1  
Moffett Field, CA 94035 - 1000  
E-mail: [patricia.j.bergin@nasa.gov](mailto:patricia.j.bergin@nasa.gov)  
Tel. No. 650/604-6314  
Fax No. 650/604-3144

### Partner Administrative POC

Name: Ken Ambrose  
Title: Vice President  
Address: H211, LLC  
505 Hamilton Avenue, #210  
Palo Alto, CA 94301  
E-Mail: B-6 [@gmail.com](mailto:@gmail.com)  
Tel. No. 925-254-8800  
Fax No. 925-254-8860

## 19. MODIFICATIONS

Any modification to this Agreement shall be executed, in writing, and signed by an authorized representative of NASA and Partner. Any modification that creates an additional commitment of NASA resources must be signed by the original NASA signatory authority, or successor, or a higher level NASA official possessing original or delegated authority to make such a commitment.

## 20. ASSIGNMENT

Neither this Agreement nor any interest arising under it shall be assigned, subleased, or transferred in any way, nor shall Partner delegate any obligation or duty under this Agreement without the consent of the official authorized to bind NASA. Without limiting the foregoing, Partner agrees that it shall not retain any contractor or subcontractor to perform any of Partner's rights or obligations under this Agreement without the prior written consent of NASA, which may be given or withheld in NASA's sole and absolute discretion.

21. APPLICABLE LAW

United States 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.

22. INDEPENDENT RELATIONSHIP

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

23. SIGNATORY AUTHORITY

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative on the date indicated below.

NASA:

Partner:

NATIONAL AERONAUTICS AND SPACE  
ADMINISTRATION, an Agency of the United  
States of America

H211, LLC, a California limited liability  
company

for  
By: 

Lewis S. Braxton III  
Director of Center Operations  
Ames Research Center

By: 

Ken Ambrose  
Vice President

Dated: 8-13, 2007

Dated: 7.31, 2007



EXHIBIT A

<b>SUPPORT AGREEMENT</b>			
<b>1. AGREEMENT NUMBER</b> <i>(Provided by Supplier)</i> SAA2-402123		<b>2. SUPERSEDED AGREEMENT NO.</b>	<b>3. EFFECTIVE DATE</b> 1 August 2007
			<b>4. EXPIRATION DATE</b> <i>(May be "Indefinite")</i> 30 September 2007
<b>5. SUPPLYING ACTIVITY</b>		<b>6. RECEIVING ACTIVITY</b>	
a. NAME AND ADDRESS National Aeronautics and Space Administration Ames Research Center Moffett Field, CA 94035-1000		a. NAME AND ADDRESS H211, LLC 505 Hamilton Ave. #210 Palo Alto, CA 94301 Attn: Mr. Ken Ambrose	
b. MAJOR COMMAND NASA HQ, Aerospace Tech Enterprise, Wash. D.C.		b. MAJOR COMMAND H211, LLC	
<b>7. SUPPORT PROVIDED BY SUPPLIER</b>			
a. SUPPORT <i>(Specify what, when, where, and how much)</i> <b>PURPOSE:</b> for the provision of:  Monthly fuel will be based on actual consumption and actual cost. Current estimate is 20,000 gallons per month and current cost is \$2.43 per gallon plus \$0.219 excise tax (Fuel cost is subject to change)		b. BASIS FOR REIMBURSEMENT  20,000 @\$2.649 per gal  Estimated fuel  Two Month Grand Total  Estimate Only, Advance Payment required.	c. ESTIMATED REIMBURSEMENT  \$52,980.00  20,000 gal per month  \$105,960.00
ADDITIONAL SUPPORT REQUIREMENTS ATTACHED: <input type="checkbox"/> Yes <input type="checkbox"/> No			
<b>8. SUPPLYING COMPONENT</b>		<b>9. RECEIVING COMPONENT</b>	
a. CONTROLLER SIGNATURE	b. DATE SIGNED	a. CONTROLLER SIGNATURE	b. DATE SIGNED
<b>c. APPROVING AUTHORITY</b>		<b>c. APPROVING AUTHORITY</b>	
(1) Typed Name Paul Agnew, Chief Financial Officer		(1) Typed Name Ken Ambrose, Vice President	
(2) Organization NASA Ames Research Center	(3) Telephone Number (650) 604-1301	(2) Organization H211, LLC	(3) Telephone Number 925/254-8800
(4) Signature	(5) Date Signed	(4) Signature	(5) Date Signed
<b>10. TERMINATION <i>(Complete only when agreement is terminated prior to scheduled expiration date.)</i></b>			
a. APPROVING AUTHORITY SIGNATURE		b. DATE SIGNED	
a. APPROVING AUTHORITY SIGNATURE		b. DATE SIGNED	

**11. GENERAL PROVISIONS** (Complete blank spaces and add additional general provisions as appropriate e.g., exceptions to printed provisions, additional parties to this agreement, billing and reimbursement instructions.)

- a. The receiving components will provide the supplying component projections of requested support. (Significant changes in the receiving component's support requirements should be submitted to the supplying component in a manner that will permit timely mobilization of resources requirements.)
- b. It is the responsibility of the supplying component to bring any required or requested change in support to the attention of Ken Ambrose prior to changing or cancelling support.
- c. The component providing reimbursable support in this agreement will submit statements of costs to 505 Hamilton Ave #210, Palo Alto, CA 94301
- d. All rates expressing the unit cost of services provided in this agreement are based on current rates which may be subject to change for uncontrollable reasons, such as legislation, OOD directives, and commercial utility rate increases. The receiver will be notified immediately of such rate changes that must be passed through to the support receivers.
- e. This agreement may be cancelled at any time by mutual consent of the parties concerned. This agreement may also be cancelled by either party upon giving at least 180 days written notice to the other party.
- f. In case of mobilization or other emergency, this agreement will remain in force only within supplier's capabilities.

ADDITIONAL SUPPORT REQUIREMENTS ATTACHED:  Yes  No

**12. SPECIFIC PROVISIONS** (As appropriate e.g., location and size of occupied facilities, unique supplier and receiver responsibilities, conditions, requirements, quality standards, and criteria for measurement; reimbursement of unique requirements)

ADDITIONAL SUPPORT REQUIREMENTS ATTACHED:  Yes  No

13. ADDITIONAL PROVISIONS (Use this space to continue general and/or specific provisions as needed)

EXHIBIT B

Environmental Reports

Asbestos/Lead/Visible Mold Investigations for Building 211  
Contaminated Groundwater Plume Maps  
Soil and Groundwater Reports for AOIs 3 and 12  
Final Interim Report on Phase 2 Follow-up Sampling and Analysis for Building N210 and  
Baseline Sampling for Buildings N211, N239A, and N259  
National Environmental Policy Act (NEPA) Checklist  
NEPA Record of Environmental Consideration