

## **NASA Advisory Implementing Instruction**

### **NAII 1050-2**

**Effective Date:** September 17, 2013

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## **Cooperative Research and Development Agreement (CRADA) Program Information Package**

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**Responsible Office: Office of General Counsel**

*Note:* This Guide is intended to explain NASA agreement practice and provide assistance to those involved in formation and execution of Cooperative Research and Development 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.

This Document Is Uncontrolled When Printed. Go to the NASA Online Directives Information System (NODIS) library for the current version use. See, Current Directives, “Authority to Enter into Cooperative Research and Development Agreements,” Implementing Instruction, NAI 1050-2, available at: <http://nodis3.gsfc.nasa.gov/display>.

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## CHAPTER 1: INTRODUCTION

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This Cooperative Research and Development Agreement (CRADA) Program Information Package (“PIP”) references 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 PIP 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 PIP.

### 1.1. Authority and Policy

**Overview:** In 1986, Congress enacted the Federal Technology Transfer Act (FTTA), which amended the Stevenson-Wydler Act of 1980, to facilitate broader utilization of federal technology, stating that “it is the continuing responsibility of the Federal Government to ensure the full use of the results of the nation’s investment in research and development, and broaden the U.S. technology base by moving new knowledge into the development of new products and processes outside the U.S. Government<sup>1</sup>. To this end the Federal Government shall strive where appropriate to transfer federally owned or originated technology to State and local governments and to the private sector.” (15 U.S.C. § 3710). In addition, Executive Order 12591 “Facilitating Access to Science and Technology” (April 10, 1987) requires NASA, to the extent permitted by law, to encourage and facilitate collaboration among Federal laboratories, State and local governments, universities, and the private sector, particularly small business, in order to assist in

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<sup>1</sup> According to Former Senator E. Hollings, “In 1986 the federal laboratories employed one-sixth of the nation’s scientists and engineers and produced over 28,000 patents yet only approximately five per cent of those patents were ever utilized.” New Technologies on Economic Competitiveness: Hearings before the Subcomm. on Science, Technology and Space, 99<sup>th</sup> Cong., 1<sup>st</sup> Sess. 3 (1985) (statement of Senator Hollings); S. Rep. No. 283 at 6.

the transfer of technology to the marketplace. It amended Executive Order 12618, “Uniform Treatment of Federally Funded Inventions” (December 22, 1987). More recent Presidential policy reiterates assistance of technology transfer outside the Federal government. Presidential Memorandum “Accelerating Technology Transfer and Commercialization of Federal Research in Support of High-Growth Businesses” (October 28, 2011) is directed toward driving innovation that fuels economic growth by committing each executive department and agency that conducts research and development to improve the results from its technology transfer and commercialization activities. In addition, an earlier policy, “Memorandum on Government Patent Policy” (February 18, 1983) asks agencies to apply the same or substantially the same policies for the disposition of any invention made in the performance of a federally-funded research and development contract, grant or cooperative agreement award as applied to small business firms and nonprofit organizations.

Section 3710a of the FTTA specifically addresses the authority for national laboratories, such as NASA to enter into CRADAs:

Each Federal agency may permit the director of any of its Government-operated Federal laboratories, and, to the extent provided in an agency-approved joint work statement or, if permitted by the agency, in an agency-approved annual strategic plan, the director of any of its Government-owned, contractor-operated laboratories—

(1) to enter into cooperative research and development agreements on behalf of such agency... with other Federal agencies; units of State or local government; industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions owned by the Federal agency)....

Together, the FTTA and Executive policy authorize NASA, as a Federal laboratory, to enter into CRADAs for research and development consistent

with NASA's mission to assist in the transfer of technology to the marketplace.

**Definitions:** "Collaborating Party"<sup>2</sup> means a Party to the CRADA and includes other Federal agencies, units of State or local government; industrial organizations (including corporations partnerships, and limited partnership, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions owned by the Federal agency). While another Federal Agency may be a Collaborating Party, CRADAs must include at least one non-federal Collaborating Party.<sup>3</sup>

"Cooperative Research and Development Agreement"<sup>4</sup> (CRADA) means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory; a CRADA does not include a procurement contract or cooperative agreement.

"Laboratory" means a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government.<sup>5</sup>

**Foreign Collaborating Parties:** Regarding CRADAs with non-U.S. entities, although the FTTA provides that under certain circumstances, a Collaborating Party may be a foreign entity, it is NASA policy that activities with, or for the benefit of, foreign entities will normally be conducted through Space Act Agreements (see, NPD 1050.1 and NPD 1360.2) and are therefore, not included in the delegated authority to the Center Directors.

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<sup>2</sup> 15 USC § 3710a(1).

<sup>3</sup> 15 U.S.C. § 3710a(d)(1).

<sup>4</sup> 15 U.S.C. § 3710a(d)(1).

<sup>5</sup> 15 USC § 3710a(d).

“Foreign Entity”<sup>6</sup> means a legal entity that is not established under a state or Federal law of the United States and includes a commercial, noncommercial, or governmental entity of a foreign sovereign. “For the Benefit of a Foreign Entity”<sup>7</sup> means that a foreign entity could have access to and use of any deliverable items (including any data) resulting from a reimbursable agreement by virtue of a contractual or other relationship (including common corporate ownership) with a party having such an agreement with NASA.

**Instrument Selection:** Use of a CRADA is not mandatory. A CRADA should be considered when the primary purpose of the activity is to ensure the full use of the results of NASA’s investment in research and development outside the U.S. Government. NASA CRADAs advance the purpose of the FTTA by providing a Collaborating Party access to NASA goods, services and facilities that are not being fully utilized to accomplish NASA mission needs and which can be made available on a non-interference basis to support the transfer of NASA technology and commercial technology development.

Centers may choose to support the goals of the FTTA through the use of a Space Act Agreement rather than a CRADA. The determination regarding the availability of a CRADA versus Space Act Agreement will be made by the Office of Chief Counsel, in consultation with the NASA designee supporting the activity and the Center Technology Transfer Office, as to which approach most appropriately supports the goals of the proposed activity.

CRADAs are treated as fully reimbursable agreements for the purpose of NASA Office of Chief Financial Officer (CFO) policy. Centers may waive costs under CRADAs consistent with NASA policy on reimbursable agreements, including any requirements for Center OCFO or Agency CFO review. Waivers of costs under CRADAs should only be considered where there is a clear and demonstrated NASA benefit. To the extent practicable, the benefit should be quantifiable so that its value can be reasonably estimated and compared with amount of reimbursement to be waived. CRADAs may not provide funding to a non-Federal CRADA

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<sup>6</sup> NPD 1370.1 “Reimbursable Utilization of NASA Facilities by Foreign Entities and Foreign-Sponsored Research,” Attachment A: Definitions.

<sup>7</sup> NPD 1370.1 “Reimbursable Utilization of NASA Facilities by Foreign Entities and Foreign-Sponsored Research,” Attachment A: Definitions.

Collaborating Party.<sup>8</sup> Appropriated funding may be provided to another Federal Agency to support CRADA activities only in compliance with applicable law and policy.

CRADAs may not be used in lieu of a contract, cooperative agreement or grant. Under the Federal Grant and Cooperative Agreement Act (Chiles Act) 31 U.S.C. § 6303, a contract is required when the principal purpose of the activity is to acquire (by purchase, lease or barter) property or services for the direct benefit of use of the U.S. Government. CRADAs may not be used by an Agency to circumvent the statutory and regulatory requirements of the federal procurement laws.<sup>9</sup>

## **1.2. CRADA Requirements in the FTTA**

1. Inventions -- NASA Inventions and Collaborating Party Inventions  
**NASA INVENTIONS** -- NASA may grant, or agree to grant in advance, to a Collaborating Party patent licenses or assignments, or options thereto, in any invention made in whole or in part by a NASA employee under a CRADA, or, subject to 35 U.S.C. § 209, may grant a license to any pre-existing federally-owned invention directly within the scope of the CRADA on which a patent application has been filed. NASA's rights in inventions of employees of NASA's Related Entities may also be included in such grant or option, as appropriate. Further, under a CRADA, should the license be offered, NASA must provide the Collaborating Party the option for an exclusive license for a pre-negotiated field of use for any such inventions. If there is more than one Collaborating Party, the Collaborating Parties are offered the option to hold licensing rights that collectively encompass the rights that would be held under such an exclusive license by one Collaborating Party. NASA must retain a nonexclusive, nontransferable, irrevocable, paid-up license from the Collaborating Party to practice the invention or have the invention practiced through the world by or on behalf of the Government.<sup>10</sup> In addition, as to inventions made under the CRADA, the Collaborating Party is always granted a non-exclusive, nontransferable, irrevocable, paid-up license to those inventions made by NASA employees, and where NASA has

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<sup>8</sup> 15 USC § 3710a(b)(3)(A).

<sup>9</sup> Chem. Services, Inc., v. U.S. EPA, 12 F.3d 1256 (USCA 3rd Cir., 1993).

<sup>10</sup> 15 U.S.C. § 3710a(b)(1).

such rights, such inventions made by employees of NASA Related Entities.

**COLLABORATING PARTY INVENTIONS** -- In addition, the Collaborating Party must grant NASA a nonexclusive, nontransferable, irrevocable, paid-up license to practice inventions made by the Collaborating Party under the CRADA (and where Collaborating Party has such rights, inventions made by the Collaborating Party's Related Entities) and to have these inventions practiced throughout the world by or on behalf of the Government for Governmental purposes.

2. Protection of Data: NASA must provide appropriate protections<sup>11</sup> against release of trade secrets<sup>12</sup> or commercial or financial information of the Collaborating Party<sup>13</sup> consistent with NPR 1600.1 "NASA Security Program Procedural Requirements, NASA Interim Directive (NID) 1600.55 "Sensitive But Unclassified (SBU) Controlled Information. In addition, NASA may protect data that results from research and development activities under the FTTA<sup>14</sup> up to 5 years if such information would be a trade secret or commercial or financial information that is privileged or confidential if the information had been obtained from a non-Federal party.
3. Preference for Domestic Manufacturing: NASA must give preference to arrangements in which the products embodying inventions made under a CRADA, or products produced through the use of such inventions are manufactured substantially in the U.S.<sup>15</sup>
4. Small Business: NASA must give special consideration to small business firms as defined in 15 U.S.C. § 632 and implementing

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<sup>11</sup> Nondisclosure Agreements (NDAs) are not required because NASA civil servants are bound by the Trade Secrets Act, 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. Indeed, the protections under the Trade Secrets Act are more strict and comprehensive than the conditions generally imposed in NDAs.

<sup>12</sup> NASA's royalty revenues and royalty rates from CRADA subject invention licenses are Trade Secrets and protected from release. Public Citizen Health Research Group v. NIH, 209 F. Supp. 2d 37, (USDC DC 2002).

<sup>13</sup> 15 USC § 3710a(c)(7)(A).

<sup>14</sup> Research and Development under the FTTA could include data created in the course of performing under a CRADA or created in anticipation of a CRADA. *See, Delorme Publishing Company, Inc. v. NOAA of the U.S. Department of Commerce*, 917 F.Supp. 867 (1966).

<sup>15</sup> 15 USC § 3710a(c)(4)(B).

regulations (13 C.F.R. Part 121) of the Small Business Administration.<sup>16</sup>

5. Compliance with Conflicts of Interest and Other Federal Ethics Requirements: Proposed CRADAs must be reviewed by NASA ethics officials within NASA's legal community to ensure compliance with Federal Government ethics requirements, including those in the FTTA.<sup>17</sup> These include, but are not limited to conflict of interest restrictions. CRADAs should be reviewed for potential conflicts of interest with, or impartiality issues generated by engagement with the Collaborating Party; representational restrictions in 18 U.S.C. §§ 203, 205; post-employment issues potentially affecting NASA employees who perform official duties concerning the CRADA; compliance with restrictions on gifts from outside sources; and to address any other potential issues under Federal ethics statutes and regulations. Federal ethics requirements may, for example, restrict present or former NASA employees from negotiating licenses or assignments of titles to inventions on behalf of the CRADA Collaborating Party with Federal agencies (including NASA), or representing the CRADA Collaborating Party before the Federal Government in other respects. For CRADAs to be approved by the NASA Administrator, the Office of the General Counsel (OGC) shall perform the final ethics review following an initial review by the Center Office of Chief Counsel. For CRADAs to be approved by a Center Director, the Chief Counsel's Office shall perform the review, with Headquarters involvement to the degree required by the NASA ethics program standards in NPD 1900.3, "Ethics Program Management."
  
6. Civil Service Hiring Authority to Meet NASA Responsibilities under the CRADA: The FTTA provides authority for NASA to hire personnel for a CRADA if doing so is necessary for fulfillment of the agreement, and funding for civil service labor associated with the CRADA is available from the Collaborating Party. Furthermore, the CRADA authority provides the option for Agencies to make hires that exceed full-time-equivalent (FTE) restrictions of the Agency if this is

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<sup>16</sup> 15 USC § 3710a(c)(4)(A).

<sup>17</sup> 15 USC § 3710a(c)(3)(A).

necessary for fulfilling NASA's requirements under a CRADA.<sup>18</sup> Consistent with this authority, NASA policy requires that Center requests for personnel in excess of existing FTE limits or in conflict with Agency hiring guidance be reviewed by the Mission Support Council (MSC), if recommended and referred by the Associate Administrator (AA), Mission Support Directorate (MSD).<sup>19</sup>

### 1.3. Agreement Formation Process

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

Note: As used in this PIP, the phrase, "concluding a CRADA," refers to concluding the CRADA formation process (initiation, negotiation, review, concurrence, and signature), as opposed to concluding the performance of the CRADA by NASA and the Collaborating Party (e.g., completing their responsibilities and milestones under the CRADA).

**Role of CRADA Manager:** Consistent with NPD 1050.2 § 5.a.(3), the NASA Center Director is responsible for ensuring that a "CRADA Manager" is identified for each CRADA. The primary purpose of the CRADA Manager is to oversee the process required to conclude a CRADA (i.e., initiation, negotiation, review, concurrence, execution by the NASA Signing Official), and storage of the signed version of the CRADA and all documents that are part of the CRADA (including, but not limited to, task orders or modifications to the CRADA as they are developed) in the Space Act Agreements Maker (SAAM) database in accordance with NPD 1050.2 and this PIP.

The CRADA Manager may be the individual responsible for CRADA formation (e.g., preparing a preliminary abstract for review by the Headquarters Mission Support Directorate (MSD), collecting information needed during the CRADA formation process, conducting negotiations, and moving the CRADA through the

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<sup>18</sup> 15 USC § 3710a(b)(3)(B).

<sup>19</sup> Any FTE increases in excess of the MSC authority will be directed by the MSC to the Executive Council (EC).

review and concurrence cycle) or may act in a facilitator/oversight role to ensure CRADAs are concluded in accordance with NPD 1050.2 and this PIP. Center Directors have flexibility to identify one or more individuals as CRADA Manager(s) and to identify individuals to perform the functions identified below in coordination with the CRADA Manager(s). Additionally, personnel in existing roles established at Centers to facilitate CRADA formation may perform the function of, and be identified as, CRADA Managers.

The CRADA 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 CRADA in a satisfactory manner, which requires that mutual substantive and procedural expectations are established for NASA and the potential Collaborating Party including the following:
  - Conducting appropriate due diligence on the proposed Collaborating Party by:
    - (1) reviewing the Government-wide Excluded Parties List System (EPLS) to verify that the proposed Collaborating Party has not been suspended or debarred.<sup>20</sup> 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>.
    - (2) ensuring the proposed CRADA is reviewed by the Office of Chief Counsel or General Counsel, as appropriate, for (a) potential conflicts of interest related to the Collaborating Party and (b) verification of NASA rights in any pre-existing Intellectual Property.
    - (3) determining if the CRADA Collaborating Party is, or is acting for the benefit of, foreign (non-U.S.) entities;<sup>21</sup> and
    - (4) validating the viability of the potential Collaborating Party's proposed business case; or in the case of CRADAs with state or local government entities, the rationale for the CRADA.

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<sup>20</sup> 2 C.F.R. Part 180 "OMB Guidelines to Agencies on Government Debarment and Suspension (Non-procurement)."

<sup>21</sup> NPD 1370.1, "Reimbursable Utilization of NASA Facilities by Foreign Entities and Foreign-Sponsored Research."

- consulting with Office of Chief Counsel, or General Counsel, as appropriate, to determine whether a CRADA or other instrument most appropriately supports the goals of the proposed activity;
  - preparing a package for review by the Mission Support Council through the AA, Mission Support Directorate for requests to hire civil servants to meet NASA's responsibilities under the CRADA when the hiring would result in a Center exceeding existing full-time-equivalent ceilings or conflicting with other hiring guidance, when needed.
  - developing and circulating any abstract information required to support the preliminary abstract review process;
  - completing the information in the Space Act Agreement Maker (SAAM) or otherwise generating a draft CRADA;
  - determining resource availability (goods, services, or facilities);
  - completing an Estimated Price Report identifying the value of the NASA resources to be committed and the funding source for NASA's responsibilities;
  - setting mutually acceptable processing times; and
  - determining when a CRADA has been sufficiently reviewed within NASA that it can be shared with the potential Collaborating Party.
2. Identifying offices or individuals whose concurrence is required for conclusion of the CRADA and establishing a schedule for review by those offices or individuals. To that end, the CRADA Manager must maintain a system for tracking and documenting the review including time required for each phase of the review. SAAM provides an effective tool for tracking and documenting the review of proposed CRADAs.

3. Monitoring the CRADA formation process to ensure NASA meets the pre-established expectations and associated deadlines of the Collaborating Party.
4. Preparing an adequate “review package” for the NASA Signing Official (Center Director or Administrator).
5. Uploading the signed version of the CRADA in SAAM and all documents that are part of the CRADA (including, but not limited to Task Plans, or modifications to the CRADA as they are developed) in SAAM within ten (10) working days of the effective date of the CRADA.
6. Ensuring that the draft CRADA is archived (i.e., removed from the active and in-progress CRADA database) if it is later determined that a proposed CRADA will not be signed, in order to maintain the integrity of SAAM data.

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

Fairness: The CRADA Manager should facilitate a fair and consistent conclusion of all CRADAs. From the perspective of both NASA and its Collaborating Parties, it is important that fairness and consistency guide the initiation and execution of all CRADAs. Federal ethics laws and Standards of Conduct require that NASA employees avoid unjustifiable favoritism, whether actual or perceived, in dealing with potential Collaborating Parties. Since signed CRADAs are generally available for public review, outside entities may judge the fairness of NASA treatment of Collaborating Parties by comparing similar CRADAs.

Competition: Keep in mind that a decision by NASA to compete a CRADA partnering opportunity may be in the Agency’s best interest. Consider a situation where NASA enters into a CRADA with a Collaborating Party and grants an exclusive license to subject inventions in a particular field of use to that Collaborating Party to commercialize the technology, only to learn afterwards that

the Collaborating Party does not have the business structure or capability to fully commercialize the technology. A decision regarding competition should be made prior to any discussions with potential Collaborating Parties to ensure fairness.

**Hiring Process if Proposed Hire Would Exceed Existing Personnel FTE**

**Ceilings or Conflict With Hiring Guidance:** If a Center requests authorization to hire personnel to fulfill NASA’s responsibilities under a CRADA with funding from the Collaborating Party, and the hiring would exceed existing FTE ceilings in any fiscal year, the Center should make the request in writing, and submit it to the AA, Mission Support Directorate (MSD) through the AA, Office of Human Capital Management (OHCM) for review. Similarly, if the Agency or Center is operating under any form of temporary hiring restriction (for example, a hiring freeze in the first quarter of a fiscal year), and the Center wishes to request an exception to that hiring restriction in order to fulfill a CRADA, the Center should make the request in writing and submit it to AA, MSD through the AA, OHCM for review. For any request that is supported by the AA, MSD, MSD will provide the request, along with any additional data needed, to the MSC for consideration, and the MSC will determine whether to approve the request.

In presenting such requests, Centers should apply the following guidance:

- If the MSC authorizes a Center to make additional hires that exceed that Center’s FTE ceiling in order to fulfill a CRADA, those hires shall be filled using term-limited appointments that most closely match the length of the CRADA for which the additional hires are requested
- The request for authorization to exceed FTE ceiling, or conflict with hiring guidance, should be accompanied by a justification for the request that contains the following elements:
  - A description of the CRADA for which exceptions are being requested, the number of FTE (and contractors, if applicable) that are to be funded by the CRADA, and types of civil service skills that are to be assigned to the CRADA work;
  - An explanation of why the CRADA cannot be fulfilled within the Center’s current FTE ceiling or current hiring guidance. Centers should take into account on-board and projected FTE levels against existing FTE ceilings;
  - Specific skills sought for the CRADA and why additional capacity in those skill areas would not be available in the current civil service

population, or through hiring opportunities already available to the Center;

- Why support contractors (Work Year Equivalents or WYE) can't be used to offset the need to increase center ceiling or obtain relief from hiring restrictions, even if the WYE are to backfill FTE in areas of work other than the CRADA;
  - The impact of not receiving FTE additions to the Center's ceiling, or relief from hiring restrictions;
  - Validation that the requested FTE are funded through the CRADA;
- Centers may provide the above data and justification to MSD and OHCM in whatever format they choose.

**The Preliminary Abstract Review Process:** The MSD is responsible for coordinating the NASA-wide preliminary review of proposed CRADA activities. Accordingly, Centers and Headquarters offices proposing to initiate a CRADA, must submit abstracts of key information to MSD through SAAM prior to negotiating or committing to any such agreements. The Preliminary Abstract Review process is a requirement for all proposed CRADAs.

1. Required Content for Abstracts:

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

- (a) Overall description of proposed activity/activities, applicable authority (15 U.S.C. § 3710a), responsible NASA personnel and intended Collaborating Party;
- (b) Responsibilities of NASA and the Collaborating Party;
- (c) Check box indicating whether there is a pending request for hiring of personnel which exceeds FTE ceilings or conflicts with Agency hiring guidance.
- (d) Check box indicating completion of the required conflicts of interest review by OCC or OGC, as appropriate;

(e) Performance or other milestones;

(f) NASA resource commitments (goods, services, and facilities):

- An estimate of the number of NASA civil service full-time equivalents and NASA contractor work-year equivalents to be committed for each year of the activity, description of skill categories, and a description of any NASA facilities and key equipment or assets to be committed;
- Where there is any waiver of cost, Financial commitments by NASA and the Collaborating Party (including the total estimated dollar value of the NASA resources to be committed and the total estimated amount to be provided by the Collaborating Party); and
- A description of how the NASA resources to be committed are not otherwise reasonably available commercially;

(g) Description of the applicable data rights and inventions provisions if anticipated to vary from the standard CRADA sample clauses.

-- Check box to verify that NASA has rights in any pre-existing Intellectual Property as determined by an OCC or OGC Intellectual Property Attorney, as appropriate;

(h) Proposed term (i.e., number of years) of the CRADA;

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

(j) Description of how the proposed activities support NASA missions.

Upon receipt of the abstract, MSD will coordinate the review the proposed activity to ensure Agency awareness and coordination of CRADA activities. This review will be coordinated with other affected Headquarters organizations including the Mission Directorates, the Office of Chief Technologist, the Office of the General Counsel, the Office of Chief Financial Officer, and other applicable Headquarters Offices, 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 CRADA; or
- 2) communicating any substantive issues raised so that the initiator can provide the necessary additional information through MSD 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 will facilitate timely resolution of any issues with a goal of completing its review process 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 CRADA Manager is responsible for making MSD aware of any such changes prior to finalizing the CRADA as such changes may necessitate additional coordination with affected offices and perhaps a new review.

### **CRADA Review and Concurrence**

The CRADA Manager is responsible for facilitating the review and concurrence cycle for all CRADAs within his or her area of responsibility. Thus, a primary responsibility of the CRADA Manager is to ensure timely involvement, review, and approval by required NASA reviewing offices. To this end, the CRADA Manager works to ensure that reviewing offices are aware of agreed-to processing deadlines and comply with them. Those responsible for reviewing CRADAs 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 CRADAs. 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 CRADA 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, and facilities), and key mission support offices (particularly the CFOs, the Office of the Chief Counsel or General Counsel, as appropriate) can often delay development and execution of CRADAs. Consequently, early involvement of these offices in a transaction – in addition to any written concurrence required to conclude a CRADA – is strongly encouraged.

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

1. The Mission Support Directorate (MSD) for (1) preliminary abstract review; and (2) submission of any request to hire civil servants which exceed established FTE ceilings or conflict with hiring guidance, as appropriate.
  
2. The Office of Chief Counsel (for Center CRADAs), or General Counsel (for Headquarters CRADAs):
  - Early coordination is critical to [1] determining whether a CRADA or other instrument most appropriately supports the goals of the proposed activity; [2] developing a legally sufficient CRADA; [3] assessing NASA rights in any background (preexisting) intellectual property and; [4] evaluating potential conflicts of interest, 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 CRADAs with state or local governments, the assessment of the benefits to NASA and the Collaborating Party) is a functional responsibility of the NASA Signing Official.
  
  - In accordance with NPD 1050.2 all CRADAs, including modifications must have legal review prior to execution. The officials authorized in NPD 1050.2 to execute, amend, and terminate CRADAs may establish guidelines for when CRADAs drafts may be provided to a prospective Collaborating Party for initial review (but not execution) prior to legal review.
  
3. Center OCFOs for review of NASA's proposed resource commitments under CRADAs.
  - In accordance with NPD 1050.2 and NPR 9090.1, EPRs are required for the value of the NASA resources to be committed under CRADA. These EPRs must be reviewed by the Center OCFO. EPRs provide the basis for NASA financial management officials to ensure that proposed NASA funding is available. For CRADAs in which the Agency waives costs, the EPR provides the basis for the NASA Signing Official to determine whether the

proposed contribution of the CRADA Collaborating Party is fair and reasonable compared to the NASA resources to be committed, NASA program risks, and corresponding benefits to NASA.

4. The Technical Capabilities and Real Property Management (TCRPM) Division for any CRADA that includes the use of NASA buildings and facilities by the Collaborating Party. Discussions with the Center facilities office, as appropriate, will facilitate TCRPM's review process, as defined in NPR 8800.15, "Real Estate Management Program."
5. The Center Supply and Equipment Management Officer for equipment loaned in support of a CRADA in accordance with NPR 4200.1 "NASA Equipment Management Procedural Requirements."

### **CRADA Recordkeeping**

NASA must maintain a record of all its CRADAs. The CRADA Manager is responsible for ensuring that a signed version of the CRADA and all documents that are part of the CRADA (including, but not limited to task orders or modifications to the CRADA as they are developed) are uploaded in SAAM within ten (10) working days of the effective date of the CRADA. Supporting documents, such as EPRs, waivers, and insurance certificates should be loaded into SAAM with the executed CRADA for recordkeeping purposes. The CRADA Manager is also responsible for ensuring the integrity of SAAM data by maintaining current information and status on their CRADAs within SAAM, and archiving (*i.e.*, removing from the active and in-progress agreements database) unsigned/unexecuted CRADAs. For CRADAs that include another Federal agency, CRADA Managers also must provide a copy of the executed CRADA to the Office of International and Interagency Relations.

### **1.4. Reimbursable Agreement Requirements**

CRADAs are treated as fully reimbursable agreements for the purpose of NASA CFO policy. CRADAs, which require that NASA's costs associated with the undertaking are fully or partially reimbursed by the Collaborating Party, permit the

Collaborating Party to use NASA goods, services, or facilities in a manner that is consistent with NASA's mission requirements. An EPR for the value of the NASA resources to be committed under the CRADA must be prepared and reviewed by the Center CFO (for Center CRADAs) or NASA Director for Headquarters Operations (for Headquarters CRADAs), as appropriate, or their designees consistent with NPR 9090.1, "Reimbursable Agreements."<sup>22</sup> CRADAs may not provide funding to a non-Federal CRADA Collaborating Party.<sup>23</sup> Appropriated funding may be provided to another Federal Agency to support CRADA activities only in compliance with applicable law and policy. 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, or facilities not reasonably available on the U.S. commercial market from another source.

- The second element 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<sup>24</sup> 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."<sup>25</sup> NPD 9080.1 further addresses competition with the private sector:

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<sup>22</sup> NPR 9090.1, section 2.4 and Appendix C.

<sup>23</sup> 15 USC § 3710a(b)(3)(A).

<sup>24</sup> The term "commercial" for purposes of the policy is defined as referring to: space goods, services, or activities provided by private sector enterprises that bear a reasonable portion of the investment risk and responsibility for the activity, operate in accordance with typical market-based incentives for controlling cost and optimizing return on investment, and have the legal capacity to offer these goods or services to existing or potential nongovernmental customers."

<sup>25</sup> *National Space Policy of the United States*, Commercial Space Guidelines (June 28, 2010).

“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.<sup>26</sup>

When NASA performs reimbursable work utilizing NASA facilities, the Collaborating Party is generally charged the full cost of the activity. When NASA will obtain some additional benefit, *e.g.*, rights in background data provided by the Collaborating Party, 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 CRADA (*i.e.*, partial reimbursement). In such cases, the NASA Signing Official is responsible for determining that the Collaborating Party’s contribution provides an adequate quid pro quo when compared to NASA resources to be committed, NASA program risks, and corresponding benefits to NASA. Waivers of costs under CRADAs should only be considered where there is a clear and demonstrated NASA benefit. To the extent practicable, the benefit should be quantifiable so that its value can be reasonably estimated and compared with amount of reimbursement to be waived.

A determination to charge less than full cost should:

- 1) Be accomplished consistent with statute and NASA’s written regulations and policies;
- 2) Articulate the benefit to NASA and other legal authority or policies that support 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 Federal Technology Transfer Act may govern Reimbursable Agreements for specified types of facilities or activities. Such separate statutory authority includes, but is not limited to, the Commercial Space Launch Act (51 U.S.C. §§ 50901-50923), the Commercial Space Competitiveness

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<sup>26</sup> 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.

Act (51 U.S.C. § 50501-50506,)<sup>27</sup> and the National Aeronautics and Space Act (51 U.S.C. §§ 20101 – 20164).

Reimbursable CRADAs, moreover, must be consistent with NASA policy issued by the NASA Associate Administrator in January 2007.<sup>28</sup> This policy recommends that Centers undertake reimbursable work in the best interests of the Agency consistent with stated fundamental principles articulated in the criteria. The criteria require that Reimbursable work meet one or more of the following:

- 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; or
- 3) Sustains a functional area not adequately funded by NASA programs but needed for present or future support of NASA's missions.

Agreement Managers should also be cognizant of 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.<sup>29</sup> More broadly, the structuring of CRADAs often involve fiscal, legal, and policy issues that require substantial involvement of the offices of the Center CFO, or NASA CFO, as appropriate, or Center Office of Chief Counsel, or Office of the General Counsel, as appropriate. Thus, early consultation with these offices is recommended.

## **1.5. PHASED CRADA (and Task Plan)**

The Phased CRADA provides a mechanism for NASA and a Collaborating Party to agree to a series of related or phased research using a single governing instrument that contains all common terms and conditions, and establishes the legal framework for the accompanying Task Plans. Individual tasks are implemented

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<sup>27</sup> See, NPR 9090.1.

<sup>28</sup> Rex D. Geveden, NASA Associate Administrator Memorandum, *Guidance Regarding Space Act Agreements and Pending Review of NASA Agreement Practices* (January 18, 2007).

<sup>29</sup> See, <http://insidenasa.nasa.gov/saa/home/index.html>.

through Task Plans adopting the terms and conditions of the Phased CRADA and adding specific details for each task. Phased CRADAs may have several Task Plans from one Center. Each Center must initiate a separate Phased CRADA and accompanying task plans because the Intellectual Property considerations would not apply across multiple Centers.

Each Task Plan should be limited to those elements of the CRADA 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. Task Plans shall not be used to modify the terms of the Phased CRADA itself. A Phased CRADA should not be used if all anticipated Task Plans cannot be carried out under a single set of terms and conditions. Similarly, a Task Plan should not be added to a Phased CRADA if that Task Plan would require modification to the Phased CRADA. For example, if a Task Plan requires that the data clauses or liability clauses in the Phased CRADA be modified to accommodate the planned task, then a separate CRADA would be necessary to accommodate that particular task. Questions regarding whether a Phased CRADA will support the range of activities contemplated with a particular Collaborating Party should be referred to the Center Office of Chief Counsel or Headquarters Office of General Counsel, as appropriate.

Phased CRADAs and accompanying Task Plans are subject to the following general requirements:

- (1) Each executed Phased CRADA must include at least one concurrently executed Task Plan. This is required to satisfy the requirements of NPD 1050.2, paragraph 1(f)(2)(a) which specifies that all CRADAs must include responsibilities or performance milestones that are stated with sufficient clarity to support preparation of cost estimates, sound management planning, and efficient CRADA administration.
- (2) Each Task Plan under a Phased CRADA is subject to the same reviews and approvals (including the preliminary abstract review) as the initial Phased CRADA.

- (3) Each Phased CRADA and Task Plan must have a designated CRADA Manager who is responsible for the administration of the CRADA and Task Plans as specified in NPD 1050.2 and [Section 1.3.](#) of this PIP.
- 5) Each Task Plan must include an appropriate Estimated Price Report. (See, [Section 1.4.](#))
- 6) Each Phased CRADA and Task Plan must be signed by a responsible Signing Official as identified in NPD 1050.2 as either the Center Director or Administrator.

Phased CRADA and Task Plan Sample Clauses: Each Phased CRADA should include the standard CRADA Sample Clauses provided in Chapter 2 unless a specific Phased CRADA Sample Clause is provided, below.

Specific Phased clauses include:

1. Title (sample clause [A2.1.2.](#));
2. Purpose and Implementation (sample clause [A2.3.2.](#));
3. Responsibilities (sample clause [A2.4.2.](#));
4. Schedule and Milestones (sample clause [A2.5.2.](#));
5. Financial Obligations, if reimbursable (sample clause [A2.6.2.](#));
6. Data Rights (Proprietary Data Exchange Not Expected – substitute paragraph C (sample clause [A2.10.1.2.](#));
7. Data Rights (Proprietary Data Exchange Expected – substitute paragraphs C and H (sample clause [A2.10.1.4.](#));
8. Right to Terminate (sample clause [A2.16.3.](#));
9. Points of Contact (sample clause [A2.18.2.](#));
10. Dispute Resolution (sample clause [A2.19.2.](#)); and
11. Modifications (sample clause [A2.21.2.](#)).

Task Plans should include only the following clauses:

1. Title (sample clause [A2.1.3.](#));
2. Purpose (sample clause [A2.3.3.](#));
3. Responsibilities (sample clause [A2.4.3.](#));
4. Schedule and Milestones (sample clause [A2.5.3.](#));
5. Financial Obligations (sample clause [A2.6.2.](#));

6. Data Rights, Identified Intellectual Property (Proprietary Data Exchange Not Expected (sample clause [A2.10.1.1.3.](#));
7. Data Rights, Identified Intellectual Property (Proprietary Data Exchange Expected (sample clause [A2.10.1.1.5.](#));
8. Term (sample clause [A2.15.2.](#));
9. Right to Terminate (sample clause [A2.16.3.](#));
10. Points of Contact (sample clause [A2.18.3.](#));
12. Modifications (sample clause [A2.21.3.](#));
13. Special Considerations (if applicable); and
14. Signatory Authority (sample clause [A2.26.2.](#)).

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## CHAPTER 2: CRADA CONTENTS

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### **2.1. Title**

CRADAs are given a short title stating the type of CRADA (*Reimbursable*), the parties, and the CRADA's purpose.

[\*2.1.1. Title \(Sample Clause\)\*](#)

[\*2.1.2. Title \(Reimbursable Phased CRADA Sample Clause\)\*](#)

[\*2.1.3. Title \(Task Plan Sample Clause\)\*](#)

### **2.2. AUTHORITY AND PARTIES**

This section recites NASA's authority to enter into the CRADA and identifies the parties by name and address.

[\*2.2.1. Authority and Parties \(Sample Clause\)\*](#)

### **2.3. PURPOSE**

The purpose, often stated in one brief paragraph, succinctly describes why NASA is entering into the CRADA. For all CRADAs, this section should indicate the purpose and general scope of the planned activities, including the Collaborating Party's commercialization plans, the subject of any testing, and objectives to be achieved. In addition, the purpose should describe the benefit to NASA and the Collaborating Party.

[\*2.3.1. Purpose \(Sample Clause\)\*](#)

[\*2.3.2. Purpose and Implementation \(Phased CRADA Sample Clause\)\*](#)

[\*2.3.3. Purpose \(Task Plan Sample Clause\)\*](#)

## **2.4. RESPONSIBILITIES**

This section describes the actions to be performed by each party to the CRADA, including the goods, services, or facilities to be provided by each. Recall that a Collaborating Party must include at least one State or local government unit, industrial organization (including corporations, partnerships, and limited partnerships, and industrial development organizations), public or private foundation, nonprofit organization (including universities), or other person (including licensees of inventions owned by the Federal agency). In addition to a non-Federal party, identified above, another Federal Agency also can be a party to a CRADA. The non-Federal Collaborating Party may provide funding to NASA, however, under the FTTA, NASA may not provide any funding to the non-Federal Collaborating Party. It is in carefully drafting and negotiating the responsibilities section that project and program managers can best use CRADAs 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 Collaborating Party's responsibilities. A CRADA may be undertaken with more than one Collaborating Party. Such multi-party CRADAs raise special issues that require extensive revision to standard text, and, therefore, early legal counseling is essential. For example, where a CRADA allocates responsibilities among several entities, one party's failure to comply with the terms of the CRADA may affect the obligations of the remaining parties. Moreover, multi-party CRADAs risk placing NASA in a position of guaranteeing the performance of another party or becoming involved in obligations running between other parties to the CRADA.

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. If the terms of the cooperation are not well understood, it may be helpful to defer entering into any type of CRADA until such cooperation is better understood. In addition, the responsibilities should be stated with sufficient clarity to support

preparation of an Estimated Price Report, sound management planning, and efficient CRADA administration.<sup>30</sup> 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. In addition, the responsibilities section includes an obligation on the part of the Collaborating Party to provide information to NASA about the progress or known outcomes of the CRADA activities at completion of the CRADA and to respond to NASA requests for information as to any long-term benefits that may have accrued from the activity.

For complex activities, use of program implementation plans, or similar documents are generally recommended to specify in greater detail the manner in which the activities under the CRADA are to be implemented. They afford program managers a mechanism for making adjustments as circumstances warrant without having to amend the CRADA itself. The activities specified in technical implementation plans, however, must be within the scope of the responsibilities as set forth in the CRADA. If desirable, they can form part of the CRADA if incorporated by reference in the text. Because they are not formal CRADAs, even in cases where the documents are signed, they are not CRADAs subject to NPD 1050.2. The documents may therefore be signed by the responsible technical manager for each party concurrently with, or subsequent to, the CRADA itself.

#### [2.4.1. Responsibilities \(Sample Clause\)](#)

#### [2.4.2. Responsibilities \(Phased CRADA Sample Clause\)](#)

#### [2.4.3. Responsibilities \(Task Plan Sample Clause\)](#)

## **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 CRADA is executed. It documents the anticipated progress of the CRADA activities. As with responsibilities, performance milestones should be stated with sufficient clarity to support

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<sup>30</sup> NPD 1050.2 "Authority to Enter into Cooperative Research and Development Agreements," Section 1(f)(2)(a).

preparation of cost estimates, sound management planning, and efficient CRADA administration.

*2.5.1. Schedule and Milestones (Sample Clause)*

*2.5.2. Schedule and Milestones (Phased CRADA Sample Clause)*

*2.5.3. Schedule and Milestones (Task Plan Sample Clause)*

## **2.6. FINANCIAL OBLIGATIONS**

CRADAs are treated as fully reimbursable agreements for the purpose of NASA CFO policy. Centers may waive costs under CRADAs consistent with NASA policy on reimbursable agreements, including any requirements for Center CFO or Agency CFO review. Waivers of costs under CRADAs should only be considered where there is a clear and demonstrated NASA benefit. To the extent practicable, the benefit should be quantifiable so that its value can be reasonably estimated and compared with amount of reimbursement to be waived. Centers may not provide funding to a non-Federal Collaborating Party.<sup>31</sup> Appropriated funding may be provided to another Federal Agency to support CRADA activities only in compliance with applicable law and policy.

Before a Reimbursable CRADA is executed, an EPR for the undertaking must be prepared consistent with policy guidance and must be reviewed by the Center CFOs (for Center CRADAs), or NASA Director for Headquarters Operations (for Headquarters CRADAs), or their designee.<sup>32</sup> Before NASA may enter into a CRADA where NASA is reimbursed for less than the full cost of its activities performed under the CRADA, the NASA Signing Official must determine that the proposed contribution of the Collaborating Party is fair and reasonable compared to the NASA resources to be committed, NASA program risks, and corresponding benefits to NASA.

NASA must receive an amount sufficient to fund any Reimbursable activity (either in full or divided by milestone) before it may begin work under a CRADA, unless

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<sup>31</sup> 15 USC § 3710a(b)(3)(A).

<sup>32</sup> See, NPR 9090.1, Section 2.4 and Annex C for EPR guidance and requirements.

a waiver of advance payment is otherwise authorized in NPD 1050.1 and NPR 9090.1.

[2.6.1. Financial Obligations \(Reimbursable CRADA Sample Clause\)](#)

[2.6.2. Financial Obligations \(Reimbursable Phased CRADA Sample Clause\)](#)

[2.6.3. Financial Obligations \(Reimbursable Task Plan Sample Clause\)](#)

## **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 CRADA, 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.<sup>33</sup> However, the CRADA should reflect any currently planned milestones.

[2.7.1. Priority of Use \(Sample Clause\)](#)

## **2.8. NONEXCLUSIVITY**

This clause provides that NASA may enter into similar CRADAs for the same or similar purpose with other private or public entities.

[2.8.1. Nonexclusivity \(Sample Clause\)](#)

## **2.9. LIABILITY AND RISK OF LOSS**

CRADAs must address responsibility for potential damages to persons and property arising from activities under the CRADA. Determinations of the amount of risk NASA or the Collaborating Party should assume will vary according to the nature of the activity. Establishing appropriate risk allocation arrangements requires informed program, technical, and legal judgments.

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

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<sup>33</sup> 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.

- A. “First Party” liability: personal injury or property damage sustained by the parties to the CRADA, 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 CRADA and entities having no contractual relationship with the parties relating to activities under the CRADA.

The general policy for liability/risk of loss in NASA CRADAs is:

- 1) the Collaborating Party 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
- 2) product liability protections, which are required for all CRADAs; and
- 3) insurance, which is recommended for CRADAs covering high-risk. *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 Collaborating Party to obtain insurance.

Unilateral Waiver: Under a unilateral waiver, the Collaborating Party waives claims against NASA for damage to its property or injury to its personnel, regardless of which party may be at fault. To give full effect to a unilateral waiver, “flow down” provisions should be included. These provisions require the Collaborating Party’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 a CRADA activity. Under a unilateral waiver, the Collaborating Party remains liable for damage to NASA caused by the Collaborating Party’s own actions.

### [2.9.1. Liability and Risk of Loss \(Cross-Waiver with Flow Down Sample Clause\)](#)

CRADAs covering missions involving [1] a launch leading to use of the International Space Station (ISS)<sup>34</sup> or [2] science and space exploration activities

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<sup>34</sup> Commercial activities directly utilizing ISS should be managed through the Center for Advancement of Science in Space (CASIS) available at <http://www.iss-casis.org>.

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

[2.9.2. Liability and Risk of Loss \(Cross-Waiver of Liability for CRADAs Involving Activities Related to the ISS Sample Clause\) \(Based on 14 C.F.R. 1266.102\)](#)

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

Product Liability: Third Party claims may include personal injury or property damage arising from a CRADA Collaborating Party’s downstream use or commercialization of NASA deliverables, known as product liability. Since CRADA activities relate to technology transfer and commercialization, the product liability clause is required in all CRADAs. It specifies that the CRADA Collaborating Party is solely responsible for the defense and settlement of any claims related to 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 CRADA.

[2.9.4. Liability and Risk of Loss \(Product Liability Sample Clause\)](#)

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

[2.9.5. Liability and Risk of Loss \(Product Liability Indemnification Sample Clause\)](#)

Insurance: For CRADAs covering high-risk activities, the Collaborating Party 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.

*Insurance for Damage to NASA Property:* Private commercial insurance is used to mitigate risk in CRADAs 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 impacted NASA resources regardless of fault. Policies must be on acceptable terms and obtained at no cost to NASA. Insurance provisions in CRADAs 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.

[2.9.6. Liability and Risk of Loss \(Insurance for Damage to NASA Property Sample Clause\)](#)

*Insurance for Third Party Claims:* Private commercial insurance is used to mitigate risk in CRADAs 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 CRADA (a high-risk activity). A “third party” may include an individual not involved in the CRADA activity, or a NASA or contractor employee involved in the CRADA 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.

[2.9.7. Liability and Risk of Loss \(Insurance Protecting Third Parties Sample Clause\)](#)

NASA may allow a Collaborating Party 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 Collaborating Party 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 Collaborating Party'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 Collaborating Party's compliance with Federal and State laws and regulations.

#### *2.9.8. CRADA Collaborating Party's Self-Insurance for High Risk Activities (Sample Clause)*

For CRADAs 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 Collaborating Party 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 CRADA activities. It may be warranted in circumstances where, for example, the Collaborating Party is performing its obligations at a NASA facility.

#### *2.9.9. Liability and Risk of Loss (Commercial General Liability Insurance)*

## Insurance Considerations

In determining insurance coverage to be required under a CRADA, 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 property 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 Collaborating Party 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 property:* Insurance proceeds for damage to NASA property should not be payable to NASA because of the impact of the Miscellaneous Receipts Rule. The Collaborating Party is the “loss payee” and is contractually responsible for making necessary repairs at NASA’s direction. The CRADA should require that the insurer fund repairs of property damage at the direction of NASA, or alternatively, that the Collaborating Party 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 CRADAs) or the Center Chief Counsel (for Center CRADAs), 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 Collaborating Party, 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.

## 2.10 INTELLECTUAL PROPERTY RIGHTS

Every CRADA will address the allocation and protection of intellectual property rights in the following areas:

- 1) Data rights; and
- 2) Invention and patent rights.

One of the predominant characteristics of the CRADA will be the Collaborating Party's option to enter into an exclusive license for an invention made and patented by NASA under the CRADA, and the option will be set forth in the CRADA under the intellectual property provisions.

Use of Sample Clauses. 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. 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, or if other questions arise, consult the Office of the General Counsel or Chief Counsel, as appropriate.

All CRADAs require Center Patent Counsel concurrence of Intellectual Property obligations before being signed. Additional guidance is available in Appendix B.

### ***2.10.1. Data Rights***

Data rights sample clause 2.10.1 addresses rights in data the parties exchange and develop under the CRADA, and how the parties will handle, use and protect any proprietary data that is exchanged or developed. This clause should appear in all CRADAs, with blanks completed as noted in the guidance below.

#### **Summary**

- Allows the Collaborating Party to keep the data it creates under the CRADA confidential, and also allows the parties to agree to keep data created by NASA under the CRADA from being publicly disclosed for up to five years, though such period is typically one or two years.
- Collaborating Party may assert copyright in its original works of authorship created under the CRADA, but the Collaborating Party is required to grant NASA a license in such copyright-protected material.
- Other matters, such as special treatment of computer software, may be provided as an addition to the sample clause when required based on the nature of the activities to be carried out.

#### **Special Considerations**

Marking of Data by Collaborating Party. Generally, the parties under the CRADA will exchange data between each other without restrictions. If the Collaborating Party believes any data it provides to NASA is proprietary to the Collaborating Party, it must mark such data with a notice, a preferred exemplary form of which is provided in the CRADA.

Use of Marked Data by NASA<sup>35</sup>. If Collaborating Party produces data under the CRADA which it considers proprietary, and marks the data as proprietary prior to providing such data to NASA, NASA will only use the data for U.S. Government purposes.

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<sup>35</sup> For further information, see Appendix B, Annotated Data Rights Sample Clause, Guidance 1.2.

Identifying and Setting Protection Term for NASA-created Data which Collaborating Party Wants to Protect<sup>36</sup>. In general, if NASA produces data under the CRADA that NASA determines would be proprietary to the Collaborating Party had the Collaborating Party produced it, then upon request NASA will mark such data, will protect such data from general public disclosure, and will use such data only for U.S. Government purposes, for a period of up to five years.

The standard provision includes a blank that must be filled in specifying the number of years that protection will remain in place. Such protection may not last for more than five years, and typically is one or two years.

Data Disclosing an Invention. Data which discloses an invention is handled a bit differently. If a party is considering a patent for an invention, then it needs to notify the other party of this fact when data disclosing such invention is delivered to the other party. If notice is given, the receiving party will withhold such data from public disclosure for one year unless otherwise agreed between the parties.

Data Handling<sup>37</sup>. If the parties know at the time they enter into the CRADA that they will be exchanging certain specific data, the CRADA allows for them to identify such data at the outset and provide special rules for how that data will be treated. This data falls into four categories, all of which are defined in the CRADA: Background Data, Third Party Proprietary Data, Controlled Government Data, and NASA Software.

There are blanks in the CRADA that are to be filled in with references to the applicable data. If there is no data expected to be exchanged in one or more of those categories, simply insert “N/A” in the blank.

If the parties identify data during the course of the CRADA that fits in one of these categories, they are free to exchange such data, subject to the terms of the CRADA, without having to amend the CRADA. Note, as stated in the CRADA, that the parties must enter into a separate Software Usage Agreement for any NASA Software before such software is provided to the Collaborating Party.

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<sup>36</sup> For further information, see Appendix B, Annotated Data Rights Sample Clause, Guidance 1.3.

<sup>37</sup> For further information, see Appendix B, Annotated Data Rights Sample Clause, Guidance 1.8.3.

Oral and Visual Information. If Collaborating Party discloses Proprietary Data to NASA orally or visually, NASA is not obligated to keep such data confidential unless, (1) before such oral or visual disclosure is made, the Collaborating Party 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 Collaborating Party reduces the information to a tangible, recorded form that is appropriately marked and provides the marked data to NASA.

Due Diligence for Data Rights. The CRADA permits the parties to use pre-existing data of either or both parties in connection with the work under the CRADA, and the parties have the opportunity to identify any such pre-existing data in the CRADA. Before NASA agrees to provide any such data, Center stakeholders should properly identify the requested data, and confirm that NASA has permission to provide such data to the Collaborating Party.

Phased CRADAs and Task Plans. Certain CRADAs will take the form of a Phased CRADA with multiple Task Plans. For these Phased CRADAs, the blanks which appear in the *Intellectual Property Rights – Data Rights Sample Clause* will be completed in the respective Task Plans.

For each Task Plan the CRADA Manager will need to do the following:

- 1) Specify the length of time that data first developed by NASA under the Task Plan that would qualify as proprietary data if it had been obtained from the Collaborating Party will be protected; and
- 2) List any specific background, third-party proprietary, controlled government data, and/or NASA Software that will be exchanged under the Task Plan.

### ***2.10.2. Invention and Patent Rights***

The invention and patent rights sample clause addresses the Parties' rights in and handling of inventions and patents. This clause should appear in all CRADAs, with blanks completed and proper provisions inserted as noted in the guidance below.

## **Summary**

- Title to inventions made under the CRADA (“Subject Inventions”) remains with the respective inventing party. For Subject Inventions jointly made by the parties, the parties will share an undivided interest in such inventions.
- The party which makes a Subject Invention has the responsibility to file for a patent on the invention; however, if a party declines to file a patent application, then the other party will have the right to request assignment and file a patent application on the invention. For Subject Inventions that are jointly made, the parties will confer and agree on which party will file the application. The filer of the patent application is responsible for paying the fees associated with the filing. Patent maintenance fees will be paid by, and at the option of, the patent owner.
- For any Subject Invention made by the Collaborating Party, NASA will receive a nonexclusive license to practice such invention for or on behalf of the U.S. Government.
- For any Subject Invention made by NASA, the Collaborating Party will receive a nonexclusive license to practice the invention, and will have the option to enter into an exclusive license to practice the invention.
- The Collaborating Party may also enter into a license with NASA for an invention owned by NASA which was not made under the CRADA, but for which a patent application has been filed and which is directly within the scope of the work under the CRADA.

## **Special Considerations**

Contractor Support in Fulfilling NASA’s Obligations Under CRADAs<sup>38</sup>. A predominant feature of CRADAs is the opportunity for the Collaborating Party to obtain an option in advance for an exclusive license on inventions made by NASA under the CRADA. For inventions to be made by NASA civil servants, NASA will control the intellectual property in such inventions. However, if NASA anticipates using contractor support, interns, or other non-civil servants to

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<sup>38</sup> For further information, see Appendix B, Annotated Invention and Patent Rights Sample Clause, Guidance 2.1.

accomplish its obligations under the CRADA, then NASA will have to conduct due diligence to assess the potential rights of such non-civil servant support personnel so that expectations are managed between the parties.

The CRADA Manager should work with Center Patent Counsel to address this issue if use of support service contractors or other non-civil servants is anticipated to support of NASA's CRADA obligations.

NASA must notify the Collaborating Party in advance if NASA intends to use contractors under the CRADA to support NASA's obligations.

Option for Exclusive License<sup>39</sup>. CRADAs allow the Collaborating Party the opportunity to obtain an exclusive license for a pre-negotiated field of use in any Subject Invention made by NASA under the CRADA. The field of use limitation limits the Collaborating Party's use of the invention to a specific type or area of permissible operation. For example, the field of use may authorize the Collaborating Party to manufacture the patented invention but only for agricultural uses (or some other use that is specific to the Collaborating Party's interest). The field of use will be negotiated between the parties and then set forth in the CRADA, or in the Task Plan for Phased CRADAs.

The CRADA Manager should coordinate with NASA program officials and Center Patent Counsel to assure that the field of use negotiated with the Collaborating Party is properly described and entered in the CRADA or Task Plan , as appropriate.

The CRADA obligates both parties to notify the other once an invention is made, and gives the Collaborating Party the option to request an exclusive license (subject to the field of use limitation in the Agreement) to any invention disclosed and patented by NASA. Once the Collaborating Party exercises the option, the parties will negotiate and enter into a separate exclusive license agreement.

Pre-Existing Inventions Directly within Scope of the CRADA<sup>40</sup>. The Collaborating Party may request a license to practice a patented or patent-pending NASA invention made prior to the date of the CRADA if the parties anticipate that

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<sup>39</sup> For further information, see Appendix B, Annotated Invention and Patent Rights Sample Clause, Guidance 2.5.3.

<sup>40</sup> For further information, see Appendix, Intellectual Property Rights – Inventions and Patent Rights Annotated Clause, Guidance 2.5.4.

such invention will be needed for the work under the Agreement. These NASA inventions (which were made and filed-on prior to the date of the CRADA) are known as “Non-Subject Inventions.” The CRADA identifies both NASA Non-Subject Inventions and Collaborating Party Non-Subject Inventions which the parties anticipate will be directly within the scope of the work to be done under the CRADA, and each party is granted a non-exclusive research license to use the other party’s inventions, so identified. For Phased CRADAs, any applicable Non-Subject Inventions must be identified in the Phased CRADA and may not be identified in the Task Plan. No separate license is entered into apart from the research license granted to the inventions identified in the CRADA, therefore, if a party wants to make commercial application of any such identified Non-Subject Invention, the party must first negotiate and enter into a separate commercial license with the owner of the Non-Subject Invention.

The CRADA Manager should coordinate with the responsible program, Center Patent Counsel, and the technology transfer program to determine what Non-Subject Inventions from both parties, if any, are to be identified in the CRADA, and to properly identify them therein.

Due Diligence for Patents and Inventions. Since a Collaborating Party has the opportunity to obtain an exclusive license in an invention created at U.S. Government expense, care should be taken before entering into the exclusive license to perform proper due diligence to assure that the Collaborating Party is able to properly and adequately commercialize the resulting invention. Proper areas of due diligence should include, (i) review of the Collaborating Party’s business history and record of commercializing new technology, (ii) Collaborating Party’s preparation of a commercialization plan for the new technology, and (iii) other relevant areas of inquiry identified by the relevant NASA program leading the CRADA development in coordination with the NASA technology transfer team and other stakeholders. Additionally, if the parties determine that Non-Subject Inventions will be used under the CRADA, reasonable care should be taken to assure that the parties have sufficient authority to provide the rights set out in the Agreement.

Due diligence by appropriate stakeholders should be conducted and managed in accordance with Center processes and policies prior to the CRADA being signed.

Phased CRADAs and Task Plans. Certain CRADAs will take the form of a Phased Agreement with multiple Task Plans. For these Phased CRADAs, the pre-negotiated license Field of Use will be identified in the respective Task Plans.

### ***2.10.3. Exclusive License Agreement***

The Collaborating Party under the CRADA will have the option to acquire an exclusive license for a specified field of use in any invention made in whole or in part by NASA under the CRADA. Such exclusive license will be evidenced by a separate license agreement to be negotiated and entered into by the parties once the option has been exercised by the Collaborating Party. Center processes for licensing inventions should be followed for licensing under CRADAs.

#### **Summary**

- The exclusive license(s) for all invention(s) made in whole or in part by NASA under the CRADA shall apply only to the specific field of use set forth under the CRADA.
- The exclusive license shall be for reasonable consideration payable to NASA, the amount of which, or the rate for which, will be negotiated by the parties in connection with negotiating the exclusive license agreement.
- The exclusive license is subject to the U.S. Government retaining a license in the Subject Invention(s).

#### **Special Considerations**

Due Diligence. Before negotiating the exclusive license, NASA should conduct due diligence to assure that it has all rights necessary to grant the license which Collaborating Party is requesting, and to qualify the license as needed to correctly reflect the rights that NASA has. The Agreement obligates NASA to grant a license in the rights it has, which may mean, depending on the other parties who were involved in the invention, that the Collaborating Party may need to enter into agreements with other parties (e.g., support service contractors) in order to secure all the rights to the invention Collaborating Party wishes to control.

Multiple Collaborating Parties. In the event a particular CRADA involves more than one Collaborating Party, the Collaborating Parties will be offered the option to hold licensing rights that collectively include the rights that would otherwise be held under an exclusive license by one Collaborating Party for any invention made in whole or in part by NASA under that CRADA<sup>41</sup>.

Provisions in Exclusive Licenses. Exclusive licenses with Collaborating Parties will include all provisions required to be included in U.S. Government licenses where the U.S. Government is the licensor.

## **2.11. USE OF NASA NAME AND EMBLEMS**

Every CRADA should address the Collaborating Party's use of the NASA name and emblems because their use is protected by law. The National Aeronautics and 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."<sup>42</sup> 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 Collaborating Parties of the NASA name or initials must be submitted in advance to NASA Office of Communications for review and approval.

Use of NASA emblems/devices (*i.e.*, NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) is governed by 14

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<sup>41</sup> 15 U.S.C. § 3710a(b)(1).

<sup>42</sup> 51 U.S.C. § 20141.

C.F.R. Part 1221 and requires prior review and approval by the NASA Office of Communications. Thus, permission to use any of the NASA emblems/devices should not be granted in a CRADA without the prior written approval of the NASA Office of Communications.

[\*2.11.1. Use of NASA Name and Emblems \(Sample Clause\)\*](#)

## **2.12. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA**

Normally, CRADAs should address how NASA and the Collaborating Party will each 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 CRADA. 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.

[\*2.12.1. Release of General Information to the Public and Media \(Sample Clause\)\*](#)

## **2.2.13. DISCLAIMERS**

### ***2.13.1. Disclaimer Of Warranty***

The Disclaimer of Warranty clause should be used when NASA provides goods or services for use by nongovernmental Collaborating Parties. 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.

[\*2.13.1.1. Disclaimer of Warranty \(Sample Clause\)\*](#)

### ***2.13.2. Disclaimer Of Endorsement***

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

### [2.13.2.1. Disclaimer of Endorsement \(Sample Clause\)](#)

## **2.14. COMPLIANCE WITH LAWS AND REGULATIONS**

This section places the Collaborating Party on notice that it must comply with all laws and regulations and government policies that affect or relate to the performance of the CRADA. 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.

### [2.14.1. Compliance With Laws and Regulations \(Sample Clause\)](#)

## **2.15. TERM OF CRADA**

This section sets forth the duration of the CRADA, which must state a definite term. The “Effective Date,” the date the CRADA 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 specified date, or completion of both parties’ obligations, whichever comes first. This approach allows NASA to close out the CRADA if all related activity is accomplished ahead of schedule, without having to terminate the CRADA.

NASA limits its CRADAs 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 CRADA, or use of an automatic renewal provision is sought, early consultation with the Office of the General Counsel 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 CRADA by executing a modification. Any modification must be executed consistent with the terms in the Article entitled “Modifications” prior to the CRADA expiration date. Use of a modification to extend a CRADA is preferable to any long-term commitment by

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

[2.15.1. Term of CRADA \(Sample Clause\)](#)

[2.15.2. Term \(Task Plan Sample Clause\)](#)

## **2.2.16. RIGHT TO TERMINATE**

This section delineates the conditions under which either party can terminate a CRADA. 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 CRADAs 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.

Sample Clause 2.16.2 addresses CRADAs where the Collaborating Party requires a high degree of certainty regarding the activity. It is to be used, however, only in very rare circumstances, for example, when the Collaborating Party is funding infrastructure improvements to NASA property that must be completed before the Collaborating Party can obtain any benefit from the up-front investment. In such cases the Collaborating Party usually desires assurances that its investment in the infrastructure improvements will not be easily lost by NASA's unilateral termination of the CRADA. The question to be asked in deciding whether to use this "High Certainty" clause is whether the benefit to NASA justifies a significant limitation of its termination rights as found in this clause.

For highly complex activities, CRADAs may also provide for negotiation of a termination agreement as part of the terms of the CRADA to provide for such things as disposition of property used for activities under the CRADA, or to address other outstanding issues.

[2.16.1. Right to Terminate \(Sample Clause\)](#)

[2.16.2. Right to Terminate \(Requiring High Certainty of Support Sample Clause\)](#)

[2.16.3. Right to Terminate \(Phased CRADA Sample Clause\)](#)

[2.16.4. Right to Terminate \(Task Plan Sample Clause\)](#)

**2.17. CONTINUING OBLIGATIONS**

The CRADA should specify the rights and obligations of the Parties that, by their nature, would continue beyond the expiration or termination of the CRADA (*e.g.*, “Financial Obligations,” “Liability and Risk of Loss,” and “Intellectual Property Rights”).

[2.17.1. Continuing Obligations \(Sample Clause\)](#)

**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 CRADA 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.

[2.18.1. Points of Contact \(Sample Clause\)](#)

[2.18.2. Points of Contact \(Phased CRADA Sample Clause\)](#)

[2.18.3. Points of Contact \(Task Plan Sample Clause\)](#)

**2.19. DISPUTE RESOLUTION**

In general, all CRADAs should include a dispute resolution clause. The clause outlines the specific procedures to be followed in the event of a dispute. CRADAs include language stating that all parties agree to consult promptly with each other on all issues involving interpretation, implementation, or performance of the CRADA. Generally, issues are handled at the working level by the individuals identified in the Article entitled “Points of Contact” before being elevated to the signatories, or their designees for resolution. If the parties are unable to reach resolution at this second tier, the NASA official at that level should provide to the Collaborating Party, in writing, a final Agency decision. This final Agency decision becomes part of an administrative record of the dispute.

[2.19.1. Dispute Resolution \(Sample Clause\)](#)

[2.19.2. Dispute Resolution \(Phased CRADA Sample Clause\)](#)

**2.20. INVESTIGATIONS OF MISHAPS AND CLOSE CALLS**

For 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 CRADA. A determination to include such a clause should be closely reviewed in conjunction with the liability determination made under [Section 2.9](#), “Liability and Risk of Loss.” At a minimum, CRADAs involving any launch activities should include the Article entitled “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 CRADA.

[2.20.1. Investigations of Mishaps and Close Calls \(Sample Clause\)](#)

**2.21. MODIFICATIONS**

This section requires that any modification (amendment) to the CRADA be executed in writing and signed by an authorized representative of each party, which for NASA is the Signing Official (Center Director

[2.21.1. Modifications \(Sample Clause\)](#)

[2.21.2. Modifications \(Phased CRADA Sample Clause\)](#)

[2.21.3. Modifications \(Task Plan Sample Clause\)](#)

**2.22. ASSIGNMENT**

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

[2.22.1. Assignment \(Sample Clause\)](#)

## **2.23. APPLICABLE LAW**

As NASA is an agency of the Federal Government, U.S. Federal law governs its domestic activities, and the CRADA 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 Collaborating Party 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.*).

### [2.23.1. Applicable Law \(Sample Clause\)](#)

## **2.24. INDEPENDENT RELATIONSHIP**

This section explains that the parties to the CRADA remain independent entities, and that the rights and obligations of the parties shall be only those expressly set forth in the CRADA. The CRADA is not intended to create a formal business organization or partnership as that term is normally used in the legal context.

### [2.24.1. Independent Relationship \(Sample Clause\)](#)

## **2.25. SPECIAL CONSIDERATIONS**

This section is reserved for additional Center specific requirements. No Sample Clause is provided.

## **2.26. 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.<sup>43</sup> Two original copies should be signed by both parties. During negotiations, care should be taken to identify and confirm that the signatory for the Collaborating Party, generally a senior management official, has authority to bind the parties. However, NASA does not require or recommend that the Collaborating Party's signatory be required to demonstrate the requisite authority through provision of company documents, such as a formal delegation of authority.

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<sup>43</sup>For NASA, the Signing Official will be either the Center Director or the Administrator.

*2.26.1. Signatory Authority (Sample Clause)*

*2.26.2. Signatory Authority (Task Plan Sample Clause)*

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## APPENDIX A: SAMPLE CLAUSES (CRADAS WITH DOMESTIC NONGOVERNMENTAL ENTITIES)

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### A2.1. Title

#### *A2.1.1. Title (Reimbursable CRADA Sample Clause)*

Reimbursable CRADA between the National Aeronautics and Space Administration [*Center Name*] and [*name of Collaborating Party*] for \_\_\_\_\_.  
[*state brief purpose*].

#### *A2.1.2. Title (Reimbursable Phased CRADA Sample Clause)*

Reimbursable Phased CRADA between the National Aeronautics and Space Administration [*Center Name*] and [*name of Collaborating Party*] for \_\_\_\_\_.  
[*state brief purpose*].

#### *A2.1.3. Title (Task Plan Sample Clause)*

Task Plan between the National Aeronautics and Space Administration [*Center Name*] and [*name of Collaborating Party*] under Phased CRADA Number \_\_\_\_\_, Dated \_\_\_\_\_ (Task Plan Number \_\_\_\_\_).

### A2.2. AUTHORITY AND PARTIES (Sample Clause)

In accordance with the Federal Technology Transfer Act (FTTA), 15 U.S.C. § 3710a, this CRADA 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 “Collaborating Party”). NASA and Collaborating Party may be individually referred to as a “Party” and collectively referred to as the “Parties.”

## **A2.3. PURPOSE**

### ***A2.3.1. Purpose (Sample Clause)***

This CRADA shall be for the purpose of \_\_\_\_\_.

### ***A2.3.2. Purpose and Implementation (Phased CRADA Sample Clause)***

This Phased CRADA (hereinafter referred to as the “CRADA” or “Phased CRADA”) shall be for the purpose of \_\_\_\_\_.

The Parties shall execute one (1) Task Plan concurrently with this Phased CRADA. The Parties may execute subsequent Task Plans under this Phased CRADA consistent with the purpose and terms of this Phased CRADA. This Phased CRADA shall govern all Task Plans executed hereunder; no Task Plan shall amend this Phased CRADA. Each Task Plan 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 Phased CRADA takes precedence over any Task Plans. In the event of a conflict between the Phased CRADA and any Task Plans concerning the meaning of its provisions, and the rights, obligations and remedies of the Parties, the Phased CRADA is controlling.

### ***A2.3.3. Purpose (Task Plan Sample Clause)***

This Task Plan shall be for the purpose of \_\_\_\_\_.

## **A2.4. RESPONSIBILITIES**

### ***A2.4.1. Responsibilities (Sample Clause)***

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

- 1.
- 2.
- 3.

Collaborating Party will use reasonable efforts to:

- 1.
- 2.

3.

4. Provide information to NASA about the progress or known outcomes of the CRADA activities at completion of the CRADA and respond to NASA requests for information as to any long-term benefits that may have accrued from the activity.

***A2.4.2. Responsibilities (Phased CRADA Sample Clause)***

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

1. Provide support of projects undertaken in any Task Plan ;
2. Provide internal coordination of approvals for Task Plans;
3. Provide for a single point of contact for Task Plan research and development.

B. Collaborating Party will use reasonable efforts to:

1. Provide support of projects undertaken in any Task Plan ;
2. Provide internal coordination of approvals for Task Plans;
3. Provide for a single point of contact for Task Plan research and development.
4. Provide information to NASA about the progress or known outcomes of the CRADA activities at completion of the CRADA and respond to NASA requests for information as to any long-term benefits that may have accrued from the activity.

***A2.4.3. Responsibilities (Task Plan Sample Clause)***

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

- 1.
- 2.

3.

B. Collaborating Party will use reasonable efforts to:

1.

2.

3.

4. Provide information to NASA about the progress or known outcomes of the CRADA activities at completion of the CRADA and respond to NASA requests for information as to any long-term benefits that may have accrued from the activity.

## **A2.5. Schedule and Milestones**

### ***A2.5.1. Schedule and Milestones (Sample Clause)***

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

### ***A2.5.2. Schedule and Milestones (Phased CRADA 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 CRADA]*. The Parties shall execute one (1) Task Plan concurrently with this Phased CRADA. The initial Task Plan and any subsequent Task Plans will be performed on the schedule and in accordance with the milestones set forth in each respective Task Plan.

### ***A2.5.3. Schedule and Milestones (Task Plan Sample Clause)***

The planned major milestones for the activities for this Task Plan defined in the “Responsibilities” Article are as follows: \_\_\_\_\_.

## A2.6. FINANCIAL OBLIGATIONS

### A2.6.1. Financial Obligations (Sample Clause)

A. Collaborating Party agrees to reimburse NASA an estimated cost of (*\$ total dollars*) for NASA to carry out its responsibilities under this CRADA. In no event will NASA transfer any U.S. Government funds to Collaborating Party under this CRADA. Payment must be made by Collaborating Party in advance of initiation of NASA's efforts. [*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](http://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 Phased CRADA or Task Plan, as appropriate*]; Bldg 1111, C Road; Stennis Space Center, MS 39529. All payments and other communications regarding this CRADA shall reference the Center name, title, date, and number of this CRADA.

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 CRADA will be accomplished for the above estimated amount. Should the effort cost more than the estimate, Collaborating Party will be advised by NASA as soon as possible. Collaborating Party 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 CRADA 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 CRADA, and promptly thereafter return any unspent funds to Collaborating Party.

D. Notwithstanding any other provision of this CRADA, all activities under or pursuant to this CRADA are subject to the availability of funds, and no provision of this CRADA shall be interpreted to require obligation or payment of funds in violation of the Federal Technology Transfer Act (15 U.S.C. § 3710a(b)(3)(A)) or the Anti-Deficiency Act (31 U.S.C. § 1341).

***A2.6.2. Financial Obligations (Reimbursable Phased CRADA Sample Clause)***

A. Collaborating Party agrees to reimburse NASA as set forth in each Task Plan for NASA to carry out its responsibilities under this CRADA. Collaborating Party shall make payment in advance of initiation of NASA's efforts on behalf of the Collaborating Party. 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 Collaborating Party.

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](http://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 Phased CRADA or Task Plan, as appropriate]; Bldg 1111, C Road; Stennis Space Center, MS 39529. All payments and other communications regarding this CRADA shall reference the Center name, title, date, and number of this CRADA .

C. Notwithstanding any other provision of this CRADA all activities under or pursuant to this CRADA are subject to the availability of funds, and no provision of this CRADA shall be interpreted to require obligation or payment of funds in violation of the Federal Technology Transfer Act (15 U.S.C. § 3710a(b)(3)(A)) or the Anti-Deficiency Act, (31 U.S.C. § 1341).

***A2.6.3. Financial Obligations (Reimbursable Task Plan Sample Clause)***

A. Collaborating Party agrees to reimburse NASA an estimated cost of [\$ total dollars] for NASA to carry out its responsibilities under this Task Plan. [For

*incremental payments, insert payment schedule.] Each payment shall be marked with [insert Center and Task Plan 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 Task Plan will be accomplished for the estimated amount. Should the effort cost more than the estimate, Collaborating Party will be advised by NASA as soon as possible. Collaborating Party 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 Task Plan 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 Task Plan, and promptly thereafter, at Collaborating Party's option return any unspent funds to Collaborating Party or apply any such unspent funds to other activities under the Phased CRADA.

#### **A2.7. PRIORITY OF USE (Sample Clause)**

Any schedule or milestone in this CRADA 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, Collaborating Party 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 CRADA. 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 Collaborating Parties, NASA, in its sole discretion, shall determine the priority as between those Collaborating Parties. This CRADA does not obligate NASA to seek alternative government property or services under the jurisdiction of NASA at other locations.

#### **A2.8. NONEXCLUSIVITY (Sample Clause)**

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

## **A2.9. LIABILITY AND RISK OF LOSS**

### **A2.9.1. Liability and Risk of Loss (Unilateral Waiver with Flow Down Sample Clause)**

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

B. Collaborating Party 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 CRADA.

### **A2.9.2. Liability and Risk of Loss (Cross-Waiver of Liability for CRADAs 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 Collaborating 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 Collaborating 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 CRADA, 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 CRADA are not within the definition of "Protected Space Operations," defined above, the following unilateral waiver of claims applies to activities under this CRADA.

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

2. Collaborating Party 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 CRADA.

**A2.9.3. Liability and Risk of Loss – Cross-Waiver (Cross-Waiver of Liability for CRADAs involving a launch vehicle 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 CRADA and ends when all activities done in implementation of this CRADA 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 CRADA are not within the definition of "Protected Space Operations," defined above, the following unilateral waiver of claims applies to activities under this CRADA.

1. Collaborating Party 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, Collaborating Party employees or the employees of Collaborating Party's related entities, or for damage to, or loss of, Collaborating 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.

2. Collaborating Party's 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 CRADA.

#### **A2.9.4. Liability and Risk of Loss (Product Liability Sample Clause)**

With respect to products or processes resulting from a Party's participation in a CRADA, 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 defense and settlement of any claims.

#### **A2.9.5. Liability and Risk of Loss (Product Liability Indemnification Sample Clause)**

In the event the U.S. Government incurs any liability based upon Collaborating Party's, or Collaborating Party's Related Entity's, use or commercialization of products or processes resulting from a Party's participation under this Agreement, Collaborating Party's 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.

#### **A2.9.6. Liability and Risk of Loss (Insurance for Damage to NASA Property Sample Clause)**

A. Collaborating Party shall, at no cost to NASA, maintain throughout the term of the CRADA, insurance to cover the loss of or Damage to U.S. Government property as a result of any activities conducted under this CRADA. 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 CRADA, 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, Collaborating Party 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: Chief Counsel, Center Name and Address

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 Collaborating Party's access to or use of U.S. Government property or U.S. Government services under this CRADA.

E. In the event Collaborating Party 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 CRADA, Collaborating Party (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. Collaborating Party's liability for such repair and restoration shall not exceed the agreed insurance policy or other protection method limits.

### **A2.9.7. 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. Collaborating Party 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 CRADA, including launch and associated activities, resulting in Damage to:
    - a. Collaborating Party’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 CRADA, upon obtaining the insurance required under subparagraph B.1., or upon obtaining any modification or amendment thereof, Collaborating Party 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: Chief Counsel, Center Name and Address

3. Collaborating Party 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. Collaborating Party shall provide to NASA certificates of insurance, and associated policies, evidencing the insurance required thereunder within a reasonable time before Collaborating Party begins to use Government property or Government services. Unless Collaborating Party 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. Collaborating Party'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 Collaborating Party's responsibility as established in this Article without the concurrence of Collaborating Party, Collaborating Party shall be released from any liability to the U.S. Government on account of the claim.

### **A2.9.8. Collaborating Party's Self-Insurance for High Risk Activities (Sample Clause)**

A. Collaborating Party 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 Collaborating Party'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 Collaborating Party'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 Collaborating Party'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 Collaborating Party 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 Collaborating Party must demonstrate ability to sustain the potential losses involved. In making the determination, NASA shall consider the following factors:

1. The soundness of the Collaborating Party'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 Collaborating Party'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 CRADA create the risk of catastrophic losses, NASA may, in limited situations, agree to indemnify Collaborating Party to the extent authorized by law.

#### **A2.9.10. Liability and Risk of Loss (Commercial General Liability Insurance)**

A. Insurance Coverage and Amounts.

Collaborating Party shall, at all times during the term of this CRADA and at Collaborating Party's sole cost and expense, obtain and keep in force the insurance coverage and amounts set forth in this section 1. Collaborating Party 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 CRADA. 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 Collaborating Party uses owned, hired or non-owned vehicles, Collaborating Party shall maintain business auto liability insurance with limits not less than \$1,000,000 per accident covering such vehicles. Collaborating Party 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 Collaborating Party for any insurance policy described in this section 1 shall be the sole responsibility of Collaborating Party.

#### 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. Collaborating Party shall deliver certificates of insurance and endorsements, acceptable to NASA, to NASA before the commencement of activities under this CRADA 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 Collaborating Party 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 Collaborating Party or NASA or both of them, and Collaborating Party shall pay to NASA on written demand, as additional reimbursement under this CRADA, 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 Collaborating Party, 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.

6. 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 Collaborating Party's obligation to maintain such insurance.

## **A2.10. INTELLECTUAL PROPERTY RIGHTS (Sample Clause)**

### ***A2.10.1. Intellectual Property Rights – Data Rights***

#### ***A2.10.1.1. Intellectual Property Rights – Data Rights (Sample Clause)***

##### **2.10.1.1. General.**

1. Definitions. The following definitions are applicable to this entire Article **“Intellectual Property Rights – Data Rights, and Invention and Patent Rights.”**

(a) “Cooperative Work” means research, development, engineering, or other tasks performed under this Agreement by NASA or Collaborating Partner working individually or together pursuant to the Responsibilities set forth in Section 2.4.

(b) “Create” in relation to any copyrightable work means when the work is fixed in any tangible medium of expression for the first time, as provided for at 17 U.S.C. §101.

(c) “Data” means recorded information, regardless of form, the media on which it is recorded, or the method of recording.

(d) “Government Purpose” means the right of the Government to use, duplicate, or disclose Data, in whole or in part, and in any manner, and to make and use Inventions, for Government purposes only, and to have or permit others to do so for Government purposes only. Government Purpose includes competitive procurement, but does not include the right to have or permit others to use Data or Inventions for commercial purposes.

(e) “Non-Subject Data” means any Data that are not Subject Data.

(f) “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:

(i) known or available from other sources without restriction;

(ii) known, possessed, or developed independently, and without reference to the Proprietary Data;

(iii) made available by the owners to others without restriction; or

(iv) required by law or court order to be disclosed.

(g) “Related Entity” means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Collaborating Partner, that is assigned, tasked, or contracted to perform activities under this Agreement.

(h) “Subject Data” means that Data first produced in the performance of the Cooperative Work.

2. Data exchanged under this Agreement is exchanged without restriction except as otherwise provided herein.

3. 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 set out in the definition of “Proprietary Data” set forth in this Agreement. If a Party believes that any exceptions apply, it shall notify the other Party before any unrestricted use, disclosure, or reproduction of the Data.

4. The Parties will not exchange preexisting Proprietary Data under this Agreement unless authorized herein or in writing by the owner.

5. 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.

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

7. Disclaimer of Liability. NASA is not restricted in, or liable for, the use, disclosure, or reproduction of Data without a restrictive notice as provided in the definition of “Proprietary Data” or paragraphs 2.10.1.2, 2.10.1.3, and 2.10.1.8 or for Data Collaborating Partner gives, or is required to give, the U.S. Government without restriction.

8. Collaborating Partner may use the following or a similar restrictive notice as provided in the definition of “Proprietary Data” or paragraphs 2.10.1.2, 2.10.1.3, and 2.10.1.8 of this Article.

Proprietary Data Notice

The data herein include Proprietary Data and are restricted under the Data Rights provisions of Cooperative Research and Development Agreement [provide applicable identifying information].

Collaborating 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.”

2.10.1.2. Data First Produced by Collaborating Partner Under this Agreement.

If Data first produced by Collaborating 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.

2.10.1.3. Data First Produced by NASA Under this Agreement.

If Collaborating Partner requests that Data first produced by NASA (solely or jointly with the Collaborating Partner) under this Agreement be protected, and NASA determines it would be Proprietary Data if obtained from Collaborating 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. Collaborating 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.

*[Phased CRADAs – use the following substitute paragraph 2.10.1.3]*

2.10.1.3. Data First Produced by NASA Under this Agreement.

If Collaborating Partner requests that Data first produced by NASA (solely or jointly with the Collaborating Partner) under this Agreement be protected,

and NASA determines it would be Proprietary Data if obtained from Collaborating Partner, NASA will use reasonable efforts to mark it with a restrictive notice and protect it after its development for the period of time specified in the Task Plan 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. Collaborating 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.

#### 2.10.1.4 Copyrights.

1. Data exchanged with a copyright notice and no indication of restriction as provided in the definition of "Proprietary Data" or paragraphs 2.10.1.2, 2.10.1.3, and 2.10.1.8 of this Article (i.e., Data has no restrictive notice) is presumed to be published. The following licenses apply:

(a) For Non-Subject Data, the receiving Party and others acting on its behalf, are granted a royalty-free, nonexclusive, irrevocable license to reproduce, prepare derivative works, distribute, perform, and display only for carrying out the receiving Party's responsibilities under this Agreement.

(b) For Subject Data, except as otherwise provided in paragraph 2.10.6, 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 are granted a royalty-free, nonexclusive, irrevocable license to reproduce, prepare derivative works, distribute, perform, and display such copyrighted works for any purpose.

2. Subject Data Created solely by a Party. Ownership of copyrights for works based on or containing Subject Data and Created by employees of (or for hire by) a sole Party in the course of performance of work under this Agreement are retained by said sole Party. In the case of works Created solely by NASA employee(s), there is no copyright in the United States, however there is copyright in such employee works in countries outside of the United States.

3. Joint works. Ownership of copyrights for joint works (including software) Created by employees of (or for hire by) the Parties in the course of

performance of work under this Agreement are retained jointly by the Parties, without the obligation to account for royalties.

4. Software. The Party creating software in the course of the performance of work under this Agreement will provide the other Party with the source code, object code, and minimum support documentation needed by a competent user to use the software; provided that such software and documentation shall be treated in accordance with any restrictive notices thereon. 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."]*

#### 2.10.1.5. 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.

#### 2.10.1.6. 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).

#### 2.10.1.7. Data Subject to Export Control.

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

#### 2.10.1.8. Handling of Data.

1. NASA or Collaborating 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 Collaborating Partner under a separate Software Usage Agreement (SUA). Collaborating Partner shall use and protect the related Data in accordance with this Article. Unless the SUA authorizes retention, or Collaborating 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) of this subsection, 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.

*[Phased CRADAs – use the following substitute paragraph 8]*

2.10.1.8. Handling of Data.

1. NASA or Collaborating 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) All Background, Third Party Proprietary and Controlled Government Data provided by Disclosing Party shall be identified in the Task Plan under which it will be provided.

(b) NASA software and related Data provided to Collaborating Partner shall be identified in the Task Plan under which it will be used. NASA software and related Data will be provided to Collaborating Partner under a separate Software Usage Agreement (SUA). Collaborating Partner shall use and protect the related Data in accordance with this Article. Unless the SUA authorizes retention, or Collaborating Partner enters into a license under 37 C.F.R. Part 404, the related Data shall be disposed of as NASA directs.

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) of this subsection, 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.

#### 2.10.1.9. Oral and Visual Information.

If Collaborating Partner discloses Proprietary Data orally or visually, NASA will have no duty to restrict, or liability for disclosure or use, unless Collaborating 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 as provided in the definition of "Proprietary Data" or paragraphs 2.10.1.2, 2.10.1.3, and 2.10.1.8 of this Article, and gives it to NASA within ten (10) calendar days after disclosure.

***A2.10.1.2. Intellectual Property Rights – Data Rights – Identified Intellectual Property (Task Plan Sample Clause)***

1. Under paragraph 3 of the *Intellectual Property Rights – Data Rights* Article of the Phased CRADA, Data that is first produced by NASA under this Task Plan will be protected for a period of [*insert a period of up to 5 years, typically 1 or 2 years*].

2. Under paragraph 8 of the *Intellectual Property Rights - Data Rights* Article of the Phased CRADA, 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):

(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) 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.”*]

***A2.10.2. Intellectual Property Rights – Invention and Patent Rights***

***A2.10.2.1. Intellectual Property Rights – Invention and Patent Rights (Sample Clause)***

***2.10.2.1. General.***

1. Definitions. The following definitions are applicable to Article 2.10.2.

(a) “Exclusive License” means the grant by the owner of an invention of the exclusive right to make, use, or sell the invention.

(b) “Invention” means any invention or discovery that is or may be patentable or otherwise protected under Title 35, United States Code, or a novel variety of plant that is or may be patentable under the Plant Variety Protection Act. (15 U.S.C. § 3703(7)).

(c) “Invention Disclosure” means the document identifying and describing an Invention and the Making of such Invention.

(d) “Made” when used in conjunction with any Invention means the conception or first actual reduction to practice of such Invention. (15 U.S.C. § 3703(8)).

(f) “Non-Subject Invention” means any Invention that is not a Subject Invention.

(g) “Patent Application” means an application for patent protection for an Invention with any domestic or foreign patent-issuing authority.

(h) “Related Entity(ies)” means an employee, contractor, subcontractor, grantee, or other entity, at all levels, having a legal relationship with NASA or Collaborating Partner, that is assigned, tasked, or contracted to perform activities under this Agreement.

(i) “Subject Invention” means any Invention Made in the performance of the Cooperative Work.

2. 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.

3. Collaborating Partner shall ensure that its Related Entities know about and are bound by the obligations under this Article.

4. NASA will advise the Collaborating Partner in the event NASA intends to use Related Entities to fulfill some or all of its obligations under the CRADA.

#### 2.10.2. Disclosure of Subject Inventions.

1. Timely Invention Disclosure by Inventors. Each Party shall instruct its Related Entities to submit an Invention Disclosure to that Party within ninety (90) calendar days of making a Subject Invention, unless a different time period is required by circumstances. In the case of a Subject Invention Made jointly by

inventors from both Parties or such Parties' Related Entities, the employee-inventor(s) shall submit an Invention Disclosure to their respective employer.

2. **Obligation to Provide Invention Disclosures to the Other Party.** Each Party shall provide the other Party with a copy of each Invention Disclosure reporting a Subject Invention within sixty (60) calendar days of receiving the Invention Disclosure.

3. **Protection of Reported Subject Inventions.** When Subject Inventions are reported and disclosed between the Parties in accordance with the provisions of this clause, the receiving Party agrees to withhold such reports or disclosures from public access for a reasonable time (presumed to be 1 year unless otherwise mutually agreed or unless such information is restricted for a longer period herein) in order to facilitate the allocation and establishment of the invention and patent rights under these provisions.

4. **Additional Disclosure and Reporting Obligations.** Each Party shall instruct its employees to submit a written disclosure to that Party of (1) solutions to technical problems and (2) unique increases to the general body of knowledge that result from the Cooperative Work but do not qualify as Subject Inventions. Each Party shall provide the other Party with a copy of each such written disclosure within sixty (60) calendar days of receiving the written disclosure from its employee.

#### 2.10.2.3. Ownership of Inventions.

1. **Ownership of Subject Inventions.** Each Party shall be entitled to own the Subject Inventions of its employees. For any Invention Made jointly by employees of the Parties, each Party shall have ownership of the Subject Invention in the form of an undivided interest.

2. **Ownership of Non-Subject Inventions.** Each Party owns its Non-Subject Inventions.

#### 2.10.2.4. Filing of Patent Applications.

1. **Inventions by One Party.**

(a) For Subject Inventions Made solely by employees of one Party, said Party has responsibility for filing Patent Applications on said Subject Inventions subject to the election to file set forth in Section 2.10.2.4.3 below. Each Party shall notify the other Party within 30 calendar days of filing a Patent Application on any such Subject Inventions and shall provide the other Party with copies of the Patent Applications it files on any Subject Invention.

(b) Collaborating Partner agrees to include the following statement in any patent application it files for a Subject Invention Made by its 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.

## 2. Joint Inventions.

(a) In the case of a Subject Invention jointly Made by employees of both Parties, the Parties shall confer and agree as to which Party will file any Patent Application. Each Party shall cooperate with the other Party to obtain inventor signatures on Patent Applications, assignments or other documents required to secure patent protection.

(b) Each Party shall provide the other Party with copies of the Patent Applications it files on any Subject Invention jointly Made by employees of both Parties, along with the power to inspect and make copies of all documents retained in the official Patent Application files by the applicable patent office.

(c) Collaborating Partner agrees to include the following statement in any Patent Application it files for an invention Made jointly between NASA employees (or employees of a NASA Related Entity) and employees of Collaborating Partner:

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 therefor.

3. Election to File. If either Party elects not to file a Patent Application on a Subject Invention, it must advise the other Party within ninety (90) calendar days from the date the Subject Invention is reported or sixty (60) calendar days prior to any statutory bar date related to a Subject Invention, whichever date occurs first. Thereafter, the other Party may elect to file a Patent Application on such Subject Invention and, upon request by the other Party, the non-electing Party shall assign

the Subject Invention to the other Party and shall cooperate with the other Party to obtain inventor signatures on Patent Applications, assignments or other documents required to secure patent protection. In the event neither of the Parties elects to file a Patent Application on a Subject Invention, either or both (if a joint invention) may, after providing written notice to the other Party, release the right to file to the inventor(s), subject to a nonexclusive, nontransferable, irrevocable, paid-up license to practice the Subject Invention or have the Subject Invention practiced on its behalf.

4. Patent Expenses. The expenses associated with the filing of Patent Applications, as specified herein, shall be borne by the Party filing the Patent Application. The fees payable to the U.S. Patent and Trademark Office in order to maintain the patent's enforcement will be payable by the owner of the patent at that Party's option.

5. If either Party determines that it will not continue to prosecute or maintain a patent for a Subject Invention, either in the U.S. or in foreign countries, the filing Party shall so inform the other Party so that the other Party may make the determination whether to continue to prosecute for or maintain patent protection. If the non-filing Party makes the determination to continue to prosecute for or maintain patent protection and so notifies the filing Party, the filing Party shall assign title to the Subject Invention to the non-filing Party and the non-filing Party shall be responsible for all costs associated with such continued filing, prosecution or maintenance.

#### 2.10.2.5. Licenses.

1. Limitation on Assignment of Licenses Granted Under This Agreement. No license of a Subject Invention granted under this Agreement shall be assigned except to the successor in interest of that part of Collaborating Partner's business to which such license pertains.

2. License Reservation. Any license of a Subject Invention granted to Collaborating Partner pursuant to this Agreement will be subject to the reservation of the following rights:

(a) As to Subject Inventions made solely or jointly by NASA employees, NASA reserves the irrevocable, royalty-free right of the Government of the United States to practice the invention or have the invention 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.

(b) As to Subject Inventions made solely or jointly by employees of a NASA Related Entity, NASA reserves the rights as set forth in paragraph (a) above, as well as the revocable, nonexclusive, royalty-free license in the Related Entity as set forth in 14 C.F.R. § 1245.108 or 37 C.F.R. § 401.14 (e), as applicable.

### 3. Subject Inventions.

#### (a) Nonexclusive License to Subject Inventions.

(i) Collaborating Partner grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice Subject Inventions Made by employees of Collaborating Partner and, where Collaborating Partner has such rights, Subject Inventions Made by employees of Collaborating Partner Related Entities, and to have such Subject Inventions practiced throughout the world by or on behalf of the Government for Governmental purposes.

(ii) NASA grants to Collaborating Partner a nonexclusive, nontransferable, irrevocable, paid-up license to practice Subject Inventions Made by employees of NASA and, where NASA has such rights, Subject Inventions Made by employees of NASA Related Entities. Such license shall not permit Collaborating Partner to grant sublicenses.

#### (b) Option for Exclusive License to Subject Inventions.

(i) Option. NASA gives Collaborating Partner the option of acquiring an Exclusive License for the field of use described in paragraph (iii) below in the Government's rights in any Subject Invention Made in whole or in part by a NASA employee or the employee of a NASA Related Entity. In order to exercise this option, Collaborating Partner must notify NASA in writing within ninety (90) calendar days of notification of the filing of a patent application on the Subject Invention by NASA.

(ii) License Execution. Each license for a Subject Invention shall be implemented through a written Exclusive License agreement executed by both Parties. The license shall be for reasonable consideration to be negotiated for each licensed Subject Invention. Collaborating Partner must execute the Exclusive License to the Subject Invention within one hundred twenty (120) calendar days of election to exercise the option, or the Invention may be made available for licensing to the public in accordance with 37 CFR Part 404. Any Exclusive License granted by NASA in a Subject Invention is subject to the statutorily required reservation by the Government of a nonexclusive, irrevocable, paid-up

license to practice the Subject Invention or have that Subject Invention practiced throughout the world by or on behalf of the Government and statutory march-in rights in accordance with 15 U.S.C. 3710a(b)(1).

(iii) Field of Use. [*Describe FIELD OF USE*]

[*Phased CRADAs – use the following substitute paragraph 3(b)*]

(b) Option for Exclusive License to Subject Inventions.

(i) Option. NASA gives Collaborating Partner the option of acquiring an Exclusive License in the Government's rights in any Subject Invention Made in whole or in part by a NASA employee or the employee of a NASA Related Entity for the field of use described in the Task Plan under which the applicable Subject Invention was Made. In order to exercise this option, Collaborating Partner must notify NASA in writing within ninety (90) calendar days of notification of the filing of a patent application on the Subject Invention by NASA.

(ii) License Execution. Each license for a Subject Invention shall be implemented through a written Exclusive License agreement executed by both Parties. The license shall be for reasonable consideration to be negotiated for each licensed Subject Invention. Collaborating Partner must execute the Exclusive License to the Subject Invention within one hundred twenty (120) calendar days of election to exercise the option, or the Invention shall be made available for licensing to the public in accordance with 37 CFR Part 404. Any Exclusive License granted by NASA in a Subject Invention is subject to the statutorily required reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have that Subject Invention practiced throughout the world by or on behalf of the Government and statutory march-in rights in accordance with 15 U.S.C. 3710a(b)(1).

(iii) The Field of Use for the license shall be specified in the respective Task Plans.

(c) Cancellation of Exclusive License Option to Subject Inventions. NASA may cancel any option for an Exclusive License to a Subject Invention granted under this Agreement in the event that:

(i) Collaborating Partner fails to make any payment as agreed in this Agreement; or

- (ii) Collaborating Partner fails to perform according to the responsibilities set forth in the Responsibilities Article of this Agreement; or
- (iii) Collaborating Partner materially breaches any other provision of this Agreement and fails to cure such breach with thirty (30) days following notices received from NASA; or
- (iv) Collaborating Partner becomes a foreign owned, controlled, or influenced (FOCI) organization that does not qualify under the requirements of Executive Order 12591, Section 4(a); or
- (v) The Agreement is terminated unilaterally by Collaborating Partner.

#### 4. Non-Subject Inventions.

(a) Licenses to Non-Subject Inventions. Except as expressly provided for herein, this Agreement does not grant any Party a license, express or implied, to any Non-Subject Invention.

(b) Preexisting Non-Subject Inventions Pertinent to the Cooperative Work.

(i) Non-Subject Inventions pertinent to the Cooperative Work that are specifically identified as property of NASA and for which a patent application has been filed prior to the effective date of this Agreement include but are not limited to the following:

*[List Invention Title, inventor name(s), patent number, or NASA NTR number if an Invention disclosure, or Patent Application Serial Number, and date of issue (for patents only); or if none, insert "None" or "Not Applicable".]*

(ii) Non-Subject Inventions pertinent to the Cooperative Work that are specifically identified as property of Collaborating Partner include but are not limited to the following:

*[List Invention Title, inventor name(s), patent number, or attorney's docket number if an Invention disclosure or Patent Application Serial Number, and date of issue (for patents only); or if none, insert "None" or "Not Applicable".]*

(c) Research License. Each Party shall allow the other Party to practice any of its Non-Subject Inventions listed above for the purpose of performing the Cooperative Work. No license, express or implied, for commercial application(s) is granted to either Party in Non-Subject Inventions by performing the Cooperative Work. For commercial application(s) of Non-Subject Inventions, a license must be obtained from the owner.

***A2.10.2.2. Intellectual Property Rights – Invention and Patent Rights – Identified Field of Use (Sample Clause for Task Plans)***

Under paragraph 2.10.2.5.3(b)(iii) of the *Intellectual Property Rights – Invention and Patent Rights* Article of the Phased CRADA, the Field of Use is as follows: [Describe FIELD OF USE].

**A2.11. USE OF NASA NAME AND EMBLEMS (Sample Clause)**

1. NASA Name and Initials

Collaborating Party 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” clause, Collaborating Party must submit any proposed public use of the NASA name or initials (including press releases and all promotional and advertising use) to the NASA Assistant Administrator for the Office of Communication or designee (“NASA Communications”) for review and approval. Approval by NASA Communications shall be based on applicable law and policy governing the use of the NASA name and initials.

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

**A2.12. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA (Sample Clause)**

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

## **A2.2.13. DISCLAIMERS**

### ***A2.13.1. Disclaimer of Warranty (Sample Clause)***

Goods, services, facilities, or equipment provided by NASA under this CRADA 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 CRADA, or as to any products made or developed under or as a result of this CRADA 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 CRADA or such research, information, or resulting products made or developed under or as a result of this CRADA.

### ***A2.13.2. Disclaimer of Endorsement (Sample Clause)***

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

## **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 Collaborating Party 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:

(i) 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 CRADA. In the absence of available license exemptions or exceptions, the Collaborating Party 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.

(ii) The Collaborating Party shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of work under this CRADA 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.

(iii) The Collaborating Party will be responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions or exceptions.

(iv) The Collaborating Party will be responsible for ensuring that the provisions of this Article apply to its Related Entities.

(c) With respect to suspension and debarment requirements:

(i) The Collaborating Party 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.

(ii) The Collaborating Party shall include language and requirements equivalent to those set forth in subparagraph (c)(i), above, in any lower-tier covered transaction entered into under this CRADA.

## **A2.15. TERM OF CRADA**

### ***A2.15.1. Term of CRADA (Sample Clause)***

This CRADA 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 1-5] years from the effective date, whichever comes first.

### ***A2.15.2. Term of CRADA (Task Plan Sample Clause)***

This Task Plan 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 Phased CRADA. The term of this Task Plan shall not exceed the term of the Phased CRADA. The Task Plan automatically expires upon the expiration of the Phased CRADA.

## **A2.2.16. RIGHT TO TERMINATE**

### ***A2.16.1. Right to Terminate (Sample Clause)***

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

### ***A2.16.2. Right to Terminate (CRADA Requiring High Certainty of Support Sample Clause)***

A. NASA’s commitment under this CRADA to make available government property and services required by Collaborating Party 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 Collaborating Party's failure to make payments as set forth in the "Financial Obligations" Article, or (d) upon Collaborating Party's failure to meet its obligations under the CRADA, 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 CRADA. 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 Collaborating Party 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, Collaborating Party 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 CRADA activities.

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

D. Collaborating Party shall have the right to terminate, in whole or in part, this CRADA 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 CRADA 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 Collaborating Party, in accordance with law, to terminate its performance under this CRADA, in whole or in part, for Partner's or NASA's breach of a provision in this CRADA.

***A2.16.3. Right to Terminate (Phased CRADA Sample Clause)***

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

***A2.16.4. Right to Terminate (Task Plan Sample Clause)***

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

**A2.17. CONTINUING OBLIGATIONS (Sample Clause)**

The rights and obligations of the Parties that, by their nature, would continue beyond the expiration or termination of this CRADA, *e.g.*, “Financial Obligations,” “Liability and Risk of Loss,” and “Intellectual Property Rights” shall survive such expiration or termination of this CRADA.

**A2.18. POINTS OF CONTACT**

***A2.18.1. Points of Contact (Sample Clause)***

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

Management Points of Contact:

NASA

Collaborating Party

Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

Technical Points of Contact:    NASA Collaborating Party

Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

***A2.18.2. Points of Contact (Phased CRADA Sample Clause)***

The following personnel are designated as the Points of Contact between the Parties in the performance of this CRADA. Task Plans may designate Points of Contact for purposes of the Task Plan activities.

**Management Points of Contact:**

<u>NASA</u>	<u>Collaborating Party</u>
Name	Name

Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

**Technical Points of Contact:**

<u>NASA</u>	<u>Collaborating Party</u>
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

***A2.18.3. Points of Contact (Task Plan Sample Clause)***

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

**Management Points of Contact:**

<u>NASA</u>	<u>Collaborating Party</u>
Name	Name
Title	Title
Email	Email

Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

**Technical Points of Contact:**

<u>NASA</u>	<u>Collaborating Party</u>
Name	Name
Title	Title
Email	Email
Telephone	Telephone
Cell	Cell
Fax	Fax
Address	Address

**A2.19. DISPUTE RESOLUTION**

*A2.19.1. 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 CRADA shall be referred by the claimant in writing to the appropriate person identified in this CRADA as the “Points of Contact.” The persons identified as the “Points of Contact” for NASA and the Collaborating

Party will consult and attempt to resolve all issues arising from the implementation of this CRADA. If they are unable to come to CRADA on any issue, the dispute will be referred to the signatories to this CRADA, or their designees, for joint resolution. If the Parties remain unable to resolve the dispute, then the NASA official at that level will issue a written decision that will be a 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.

#### ***A2.19.2. Dispute Resolution (Phased CRADA 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 CRADA or Task Plan shall be referred by the claimant in writing to the appropriate person identified in this CRADA for purposes of the activities undertaken in the CRADA, or Task Plan(s) for purposes of the activities undertaken in the Task Plan(s) as the “Points of Contact.” The persons identified as the “Points of Contact” for NASA and the Collaborating Party will consult and attempt to resolve all issues arising from the implementation of this CRADA. If they are unable to come to CRADA on any issue, the dispute will be referred to the signatories to this CRADA, or their designees, for joint resolution. If the Parties remain unable to resolve the dispute, then the NASA official at that level will issue a written decision that will be a 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.

#### **A2.20. 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, Collaborating Party 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*].

## **A2.21. MODIFICATIONS**

### ***A2.21.1. Modifications (Sample Clause)***

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

### ***A2.21.2. Modifications (Phased CRADA Sample Clause)***

Any modification to this Phased CRADA shall be executed, in writing, and signed by an authorized representative of NASA and the Collaborating Party.

Accompanying Task Plans may be modified under the same terms. Modification of a Task Plan does not modify the Phased CRADA.

### ***A2.21.3. Modifications (Task Plan Sample Clause)***

Any modification to this Task Plan shall be executed, in writing, and signed by an authorized representative of NASA and the Collaborating Party. Modification of a Task Plan does not modify the terms of the Phased CRADA.

## **A2.22. ASSIGNMENT (Sample Clause)**

Neither this CRADA nor any interest arising under it will be assigned by the Collaborating Party 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 CRADA.

## **A2.23. APPLICABLE LAW (Sample Clause)**

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

## **A2.24. INDEPENDENT RELATIONSHIP (Sample Clause)**

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

**A2.25. SPECIAL CONSIDERATIONS (No Sample Clause)**

**A2.26. SIGNATORY AUTHORITY**

***A2.26.1. Signatory Authority (Sample Clause)***

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

**Approval:**

NASA [*Center initials*]

**Collaborating Party**

\_\_\_\_\_

\_\_\_\_\_

**Name**

**Name**

\_\_\_\_\_

\_\_\_\_\_

**Title**

**Title**

\_\_\_\_\_

\_\_\_\_\_

**Date**

**Date**

***A2.26.2. Signatory Authority (Task Plan Sample Clause)***

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

**Approval:**

NASA [*Center initials*]

**Collaborating Party**

\_\_\_\_\_

\_\_\_\_\_

**Name**

---

**Title**

---

**Date**

**Name**

---

**Title**

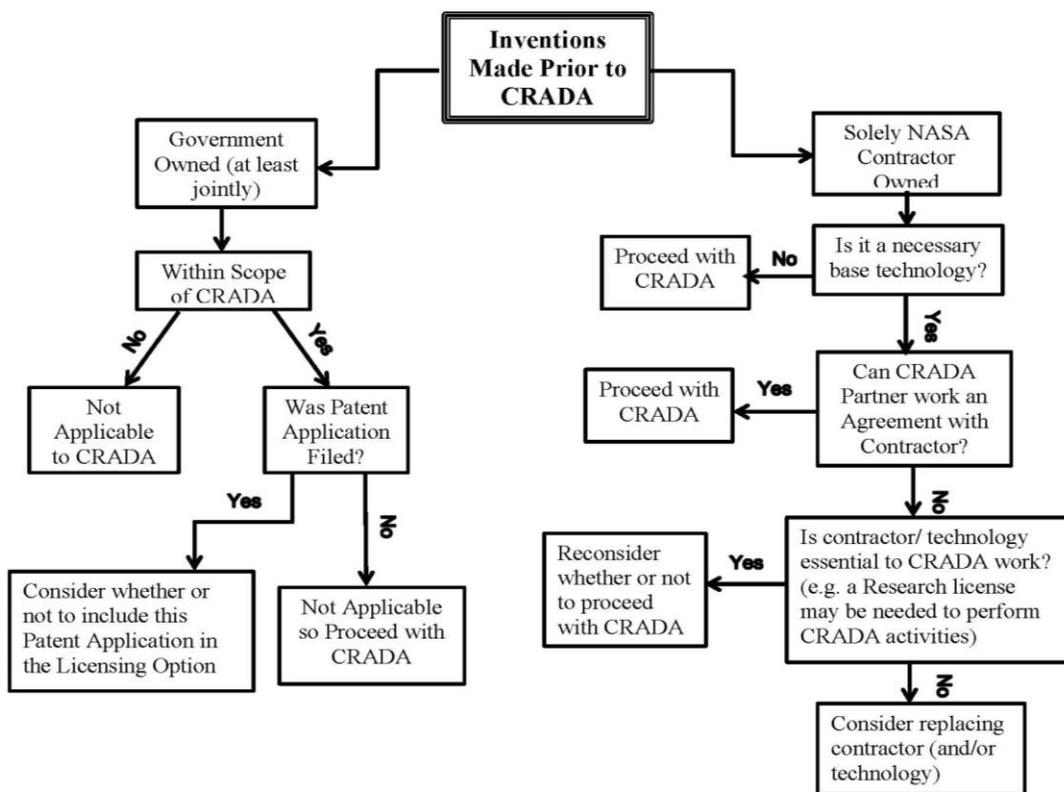
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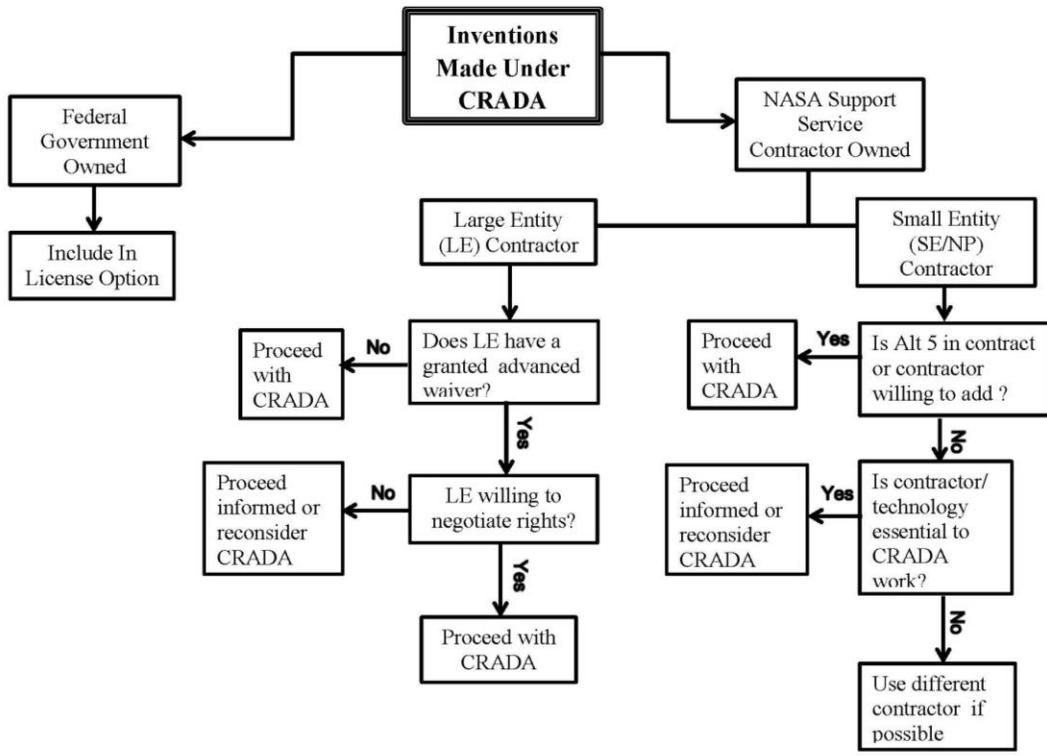
**Date**

# APPENDIX B: INTELLECTUAL PROPERTY RIGHTS GUIDANCE

Defining all of the Intellectual Property (IP) Rights associated with a CRADA can be difficult. Appendix B is provided to further explain IP considerations because understanding IP is pivotal to the successful outcome of a CRADA activity. Both Parties need to understand the IP rights that may be available to them or others before entering into a CRADA.

**B.1. Flow Charts.** The following two flow charts provide guidance on “Inventions Made Prior to the CRADA” and “Inventions Made Under the CRADA.” They illustrate the issues that should be considered and understood prior to entering into a CRADA. CRADA drafters should consult with their Patent Counsel in addressing these considerations given the particular details of any proposed activity.





**B.2. Annotated Guidance.** The Annotated guidance regarding [1] Data Rights and [2] Invention and Patent Rights further explains use of the Sample Clauses provided in Appendix A.

## INTELLECTUAL PROPERTY RIGHTS – DATA RIGHTS

### ANNOTATED DATA RIGHTS SAMPLE CLAUSES

#### 2.10.1.1. Intellectual Property Rights – Data Rights (Sample Clause)

##### 2.10.1.1. General.

1. Definitions. The following definitions are applicable to Articles 2.10.1. and 2.10.2.

(a) “Cooperative Work” means research, development, engineering, or other tasks performed under this Agreement by NASA or Collaborating Partner working individually or together pursuant to the Responsibilities set forth in Section 2.4.

(b) “Create” in relation to any copyrightable work means when the work is fixed in any tangible medium of expression for the first time, as provided for at 17 U.S.C. §101.

(c) “Data” means recorded information, regardless of form, the media on which it is recorded, or the method of recording.

(d) “Government Purpose” means the right of the Government to use, duplicate, or disclose Data, in whole or in part, and in any manner, and to make and use Inventions, for Government purposes only, and to have or permit others to do so for Government purposes only. Government Purpose includes competitive procurement, but does not include the right to have or permit others to use Data or Inventions for commercial purposes.

(e) “Non-Subject Data” means any Data that are not Subject Data.

(f) “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:

(i) known or available from other sources without restriction;

(ii) known, possessed, or developed independently, and without reference to the Proprietary Data;

(iii) made available by the owners to others without restriction; or

(iv) required by law or court order to be disclosed.

(g) “Related Entity” means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Collaborating Partner, that is assigned, tasked, or contracted to perform activities under this Agreement.

(h) “Subject Data” means that Data first produced in the performance of the Cooperative Work.

#### GUIDANCE 1.1.1

Definitions. These definitions are applicable to both the Data Rights section as well as the Invention and Patent Rights section. All definitions should be included in each CRADA.

2. Data exchanged under this Agreement is exchanged without restriction except as otherwise provided herein.

3. 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 set out in the definition of “Proprietary

Data” set forth in this Agreement. If a Party believes that any exceptions apply, it shall notify the other Party before any unrestricted use, disclosure, or reproduction of the Data.

4. The Parties will not exchange preexisting Proprietary Data under this Agreement unless authorized herein or in writing by the owner.

5. 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.

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

7. Disclaimer of Liability. NASA is not restricted in, or liable for, the use, disclosure, or reproduction of Data without a restrictive notice as provided in the definition of “Proprietary Data” or paragraphs 2.10.1.2, 2.10.1.3, and 2.10.1.8 or for Data Collaborating Partner gives, or is required to give, the U.S. Government without restriction.

8. Collaborating Partner may use the following or a similar restrictive notice as provided in the definition of “Proprietary Data” or paragraphs 2.10.1.2, 2.10.1.3, and 2.10.1.8 of this Article.

Proprietary Data Notice

The data herein include Proprietary Data and are restricted under the Data Rights provisions of Cooperative Research and Development Agreement [provide applicable identifying information].

Collaborating 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.”

## GUIDANCE 1.1.8

Marking of Data by Collaborating Partner. Generally, the parties under the CRADA will exchange data between each other without restrictions. If the Collaborating Partner believes any data it provides to NASA is proprietary to the Collaborating Partner, it must mark such data with a notice, a form of which is set forth in the CRADA in Section 2.10.1.1.8.

### 2.10.1.2. Data First Produced by Collaborating Partner Under this Agreement.

If Data first produced by Collaborating 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.

## GUIDANCE 1.2

Data First Produced by Collaborating Partner. To the extent data first produced by the Collaborating Partner under the CRADA that the Collaborating Partner considers to be proprietary is furnished to NASA, the clause sets out the permitted use of such proprietary data. Part of the quid pro quo consideration received from the Collaborating Partner includes the right of the U.S. Government to disclose such data by or on behalf of the U.S. Government.

### 2.10.1.3. Data First Produced by NASA Under this Agreement.

If Collaborating Partner requests that Data first produced by NASA (solely or jointly with the Collaborating Partner) under this Agreement be protected, and NASA determines it would be Proprietary Data if obtained from Collaborating 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. Collaborating 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.

### GUIDANCE 1.3

NASA-created Data which Collaborating Partner Wants to Protect. In accordance with 15 U.S.C. § 3710a(c)(7)(B), data produced by NASA (solely or jointly with the Collaborating Partner) under a CRADA 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 Collaborating Partner, may be protected from disclosure for up to five (5) years. The length of the period included in the CRADA is in NASA's reasonable discretion. In similar circumstances (e.g., in connection with Space Act Agreements), NASA typically designates the restriction period to be 1 or 2 years. NASA project personnel involved in the CRADA 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 or on behalf of the U.S. Government. 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.

For Phased Agreements, there is an alternate paragraph 3 which should replace the basic paragraph. The alternate paragraph simply notes that the period of protection will be set forth in the Task Plan under which the data is developed.

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.<sup>44</sup>

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<sup>44</sup> 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.

#### 2.10.1.4 Copyrights.

1. Data exchanged with a copyright notice and no indication of restriction as provided in the definition of “Proprietary Data” or paragraphs 2.10.1.2, 2.10.1.3, and 2.10.1.8 of this Article (i.e., Data has no restrictive notice) is presumed to be published. The following licenses apply:

(a) For Non-Subject Data, the receiving Party and others acting on its behalf, are granted a royalty-free, nonexclusive, irrevocable license to reproduce, prepare derivative works, distribute, perform, and display only for carrying out the receiving Party’s responsibilities under this Agreement.

(b) For Subject Data, except as otherwise provided in paragraph 2.10.6, 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 are granted a royalty-free, nonexclusive, irrevocable license to reproduce, prepare derivative works, distribute, perform, and display such copyrighted works for any purpose.

2. Subject Data Created solely by a Party. Ownership of copyrights for works based on or containing Subject Data and Created by employees of (or for hire by) a sole Party in the course of performance of work under this Agreement are retained by said sole Party. In the case of works Created solely by NASA employee(s), there is no copyright in the United States, however there is copyright in such employee works in countries outside of the United States.

3. Joint works. Ownership of copyrights for joint works (including software) Created by employees of (or for hire by) the Parties in the course of

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#### Handling and Protection of Government Controlled Contractor Generated Data

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

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

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

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

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

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

performance of work under this Agreement are retained jointly by the Parties, without the obligation to account for royalties.

#### GUIDANCE 1.4

Copyright. The clause also recognizes the right of the Collaborating Partner to assert copyright in works produced both outside of and under the CRADA. However, with respect to works produced outside of the CRADA, 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 CRADA. With respect to works produced under the CRADA, the receiving party and others acting on its behalf may reproduce, distribute, and prepare derivative works for any purpose. The clause also addresses data disclosing an invention and data subject to export control.

4. Software. The Party Creating software in the course of the performance of work under this Agreement will provide the other Party with the source code, object code, and minimum support documentation needed by a competent user to use the software; provided that such software and documentation shall be treated in accordance with any restrictive notices thereon. For any software created by NASA under the CRADA, any such release to the Collaborating Partner will need to be subject to a NASA Software Usage Agreement, and released and protected in accordance with NASA policies.

#### GUIDANCE 1.4.4

Software. NASA Policy NPR 2210.1 should be followed when addressing release of computer software under a CRADA.

#### 2.10.1.5. 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.

#### GUIDANCE 1.5

Recognizing that 51 U.S.C. § 20112(a)(3) requires NASA to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, the clause addresses the rights of the parties related to their respective ability to publish the results obtained from the CRADA. 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.

#### 2.10.1.6. 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).

#### 2.10.1.7. Data Subject to Export Control.

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

#### 2.10.1.8. Handling of Data.

1. NASA or Collaborating 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 Collaborating Partner under a separate Software Usage Agreement (SUA). Collaborating Partner shall use and protect the related Data in accordance with this Article. Unless the SUA authorizes retention, or Collaborating 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."]*

#### GUIDANCE 1.8.3

Data Handling. The 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 CRADA and addresses permissible use of all such data. The 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 CRADA, this provision requires such data to be specifically identified. The data handling provisions in the clause require that for data to be protected it must be marked with a restrictive notice. Even if specific

background, proprietary or controlled government data cannot be identified before the CRADA begins, such data will be protected under the clause if marked with a restrictive notice.

For Phased Agreements, there is an alternate paragraph 8 which should replace the basic paragraph. The alternate paragraph simply notes that the identification of the Background Data, Third Party Proprietary Data, Government Controlled Data, and NASA Software will be set forth in the Task Plan under which such material will be used.

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) of this subsection, 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.

#### 2.10.1.9. Oral and Visual Information.

If Collaborating Partner discloses Proprietary Data orally or visually, NASA will have no duty to restrict, or liability for disclosure or use, unless Collaborating 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 as provided in the definition of "Proprietary Data" or paragraphs 2.10.1.2, 2.10.1.3, and 2.10.1.8 of this Article, and gives it to NASA within ten (10) calendar days after disclosure.

# INVENTION AND PATENT RIGHTS

## ANNOTATED INVENTION AND PATENT RIGHTS SAMPLE CLAUSES

### *2.10.2.1. Intellectual Property Rights – Invention and Patent Rights (Sample Clause)*

#### 2.10.2.1. General.

1. Definitions. The following definitions are applicable to Article 2.10.2.

(a) “Exclusive License” means the grant by the owner of an invention of the exclusive right to make, use, or sell the invention.

(b) “Invention” means any invention or discovery that is or may be patentable or otherwise protected under Title 35, United States Code, or a novel variety of plant that is or may be patentable under the Plant Variety Protection Act. (15 U.S.C. § 3703(9)).

(c) “Invention Disclosure” means the document identifying and describing an Invention and the Making of such Invention.

(d) “Made” when used in conjunction with any Invention means the conception or first actual reduction to practice of such Invention. (15 U.S.C. § 3703(10)).

(f) “Non-Subject Invention” means any Invention that is not a Subject Invention.

(g) “Patent Application” means an application for patent protection for an Invention with any domestic or foreign patent-issuing authority.

(h) “Related Entity(ies)” means an employee, contractor, subcontractor, grantee, or other entity, at all levels, having a legal relationship with NASA or Collaborating Partner, that is assigned, tasked, or contracted to perform activities under this Agreement.

(i) “Subject Invention” means any Invention Made in the performance of the Cooperative Work.

2. 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.

3. Collaborating Partner shall ensure that its Related Entities know about and are bound by the obligations under this Article.

4. NASA will advise the Collaborating Partner in the event NASA intends to use Related Entities to fulfill some or all of its obligations under the CRADA.

#### GUIDANCE 2.4

Use of Government Contractors to Perform Government Tasks under a CRADA. NASA regularly uses contractors to meet NASA mission requirements. Under applicable FAR and NASA FAR Supplement patent rights clauses, contractors may retain certain rights to inventions made in the performance of work under their contract. These rights may vary depending on the size and classification of the contractor in question, e.g., whether a large entity, small entity, university or nonprofit.

When a federal laboratory enters into a CRADA with a Collaborating Partner, the Collaborating Partner is generally given a license to inventions made by the Government under the CRADA. If the Government uses contractors to perform Government tasks under the CRADA and the contractor, in whole or in part, makes an invention, rights to such inventions should be appropriately determined between the contractor, the Government, and the CRADA Collaborating Partner.

Therefore, it is appropriate to inform a Collaborating Partner of NASA's intent to use contractors under a CRADA prior to entering into the CRADA. Such contractors may, for example, be a commercial competitor of the Collaborating Partner, and the Collaborating Partner may wish to take appropriate precautionary measures or may prefer not to enter into the CRADA.

When a contractor is a large business firm performing NASA's tasks under a CRADA, an invention made by the large business firm is typically owned by NASA under Section 20135(b) of the Space Act and NASA FAR Supplement 1852.227-70. In this scenario, the invention is a Government-owned invention, and the CRADA Collaborating Partner acquires rights to the invention as prescribed by the terms of the CRADA. The large business

firm retains a revocable, nonexclusive, royalty-free license in the invention under NASA Far Supplement 1852.227-70(d). However, NASA may waive rights to an invention made by a large business contractor under NASA FAR Supplement 1852.227-70(b)(3). If such waiver is granted (e.g., if an advance waiver was granted prior to the CRADA work being performed and the contractor elects rights in the invention at issue), patent counsel would need to determine the allocation of rights to inventions made by such large business contractors under a CRADA. However, if possible, when a contractor makes an invention while performing NASA's tasks under a CRADA, prior to recommending/granting any waiver request, NASA should consider whether exceptional circumstances exist such that denial of the request would be justified under the NASA Patent Waiver Regulations (see. 14 CFR 1245.104).

When a contractor is a small business firm performing NASA's tasks under a CRADA, it is recommended to include language in the contracts of small business contractors that allocate invention rights as prescribed in FAR 27.303(b)(7). This prescription requires the use of the FAR 52.227-11, Alternate V clause "CRADA licensing". Alternate V requires contractors to negotiate an agreement with a CRADA Collaborating Partner for the allocation of rights to any subject invention the contractor makes, solely or jointly, under the CRADA. In the absence of such an agreement, the contractor agrees to grant to the Collaborating Partner an option for a license to the subject invention of the same scope and terms set forth in the CRADA for invention made by the Government. If such Alternate V clause is not included in the small business contractor's contract prior to the development of the subject invention, patent counsel would need to determine the allocation of rights to such inventions under the CRADA.

When forming new small business support contracts for contractors NASA may wish to use to support a CRADA, the Alternate V clause should be included in the FAR 52.227-11 patent rights clause. For existing small business support contracts that currently do not include the Alternate V clause, the contract should be modified to include the clause if CRADA work is anticipated. Existing small business contractors whose contracts are modified with the Alternate V clause will be able to participate in collaborative research and development with NASA and Collaborating Parties. Where a small business support contract does not include the

Alternate V clause and the contractor will not agree to a modification, then, unless the contractor voluntarily works out an agreement with the Collaborating Partner as to rights in any subject invention the contractor make, NASA may need to “wall-off” employees of the contractor from all other personnel involved in CRADA activities. In this situation, NASA may use civil service personnel to work under the CRADA, use a different contractor whose contract contains the Alternate V clause, and/or may exercise its authority to hire personnel to carry out NASA’s tasks under the CRADA, in accordance with 15 U.S.C. § 3710a (b)(3) and CRADA NPD 1050.2.

#### 2.10.2. Disclosure of Subject Inventions.

1. **Timely Invention Disclosure by Inventors.** Each Party shall instruct its Related Entities to submit an Invention Disclosure to that Party within ninety (90) calendar days of making a Subject Invention, unless a different time period is required by circumstances. In the case of a Subject Invention Made jointly by inventors from both Parties or such Parties’ Related Entities, the employee-inventor(s) shall submit an Invention Disclosure to their respective employer.

2. **Obligation to Provide Invention Disclosures to the Other Party.** Each Party shall provide the other Party with a copy of each Invention Disclosure reporting a Subject Invention within sixty (60) calendar days of receiving the Invention Disclosure.

3. **Protection of Reported Subject Inventions.** When Subject Inventions are reported and disclosed between the Parties in accordance with the provisions of this clause, the receiving Party agrees to withhold such reports or disclosures from public access for a reasonable time (presumed to be 1 year unless otherwise mutually agreed or unless such information is restricted for a longer period herein) in order to facilitate the allocation and establishment of the invention and patent rights under these provisions.

4. **Additional Disclosure and Reporting Obligations.** Each Party shall instruct its employees to submit a written disclosure to that Party of (1) solutions to technical problems and (2) unique increases to the general body of knowledge that result from the Cooperative Work but do not qualify as Subject Inventions. Each Party shall provide the other Party with a copy of each such written disclosure

within sixty (60) calendar days of receiving the written disclosure from its employee.

#### 2.10.2.3. Ownership of Inventions.

1. Ownership of Subject Inventions. Each Party shall be entitled to own the Subject Inventions of its employees. For any Invention Made jointly by employees of the Parties, each Party shall have ownership of the Subject Invention in the form of an undivided interest.

2. Ownership of Non-Subject Inventions. Each Party owns its Non-Subject Inventions.

#### 2.10.2.4. Filing of Patent Applications.

##### 1. Inventions by One Party.

(a) For Subject Inventions Made solely by employees of one Party, said Party has responsibility for filing Patent Applications on said Subject Inventions subject to the election to file set forth in Section 2.10.2.4.3 below. Each Party shall notify the other Party within 30 calendar days of filing a Patent Application on any such Subject Inventions and shall provide the other Party with copies of the Patent Applications it files on any Subject Invention.

(b) Collaborating Partner agrees to include the following statement in any patent application it files for a Subject Invention Made by its 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.

##### 2. Joint Inventions.

(a) In the case of a Subject Invention jointly Made by employees of both Parties, the Parties shall confer and agree as to which Party will file any Patent Application. Each Party shall cooperate with the other Party to obtain inventor signatures on Patent Applications, assignments or other documents required to secure patent protection.

(b) Each Party shall provide the other Party with copies of the Patent Applications it files on any Subject Invention jointly Made by employees of both

Parties, along with the power to inspect and make copies of all documents retained in the official Patent Application files by the applicable patent office.

(c) Collaborating Partner agrees to include the following statement in any Patent Application it files for an invention Made jointly between NASA employees (or employees of a NASA Related Entity) and employees of Collaborating Partner:

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 therefor.

3. Election to File. If either Party elects not to file a Patent Application on a Subject Invention, it must advise the other Party within ninety (90) calendar days from the date the Subject Invention is reported or sixty (60) calendar days prior to any statutory bar date related to a Subject Invention, whichever date occurs first. Thereafter, the other Party may elect to file a Patent Application on such Subject Invention and, upon request by the other Party, the non-electing Party shall assign the Subject Invention to the other Party and shall cooperate with the other Party to obtain inventor signatures on Patent Applications, assignments or other documents required to secure patent protection. In the event neither of the Parties elects to file a Patent Application on a Subject Invention, either or both (if a joint invention) may, after providing written notice to the other Party, release the right to file to the inventor(s), subject to a nonexclusive, nontransferable, irrevocable, paid-up license to practice the Subject Invention or have the Subject Invention practiced on its behalf.

4. Patent Expenses. The expenses associated with the filing of Patent Applications, as specified herein, shall be borne by the Party filing the Patent Application. The fees payable to the U.S. Patent and Trademark Office in order to maintain the patent's enforcement will be payable by the owner of the patent at that Party's option.

5. If either Party determines that it will not continue to prosecute or maintain a patent for a Subject Invention, either in the U.S. or in foreign countries, the filing Party shall so inform the other Party so that the other Party may make the determination whether to continue to prosecute for or maintain patent protection. If the non-filing Party makes the determination to continue to prosecute for or maintain patent protection and so notifies the filing Party, the filing Party shall

assign title to the Subject Invention to the non-filing Party and the non-filing Party shall be responsible for all costs associated with such continued filing, prosecution or maintenance.

#### 2.10.2.5. Licenses.

1. Limitation on Assignment of Licenses Granted Under This Agreement. No license of a Subject Invention granted under this Agreement shall be assigned except to the successor in interest of that part of Collaborating Partner's business to which such license pertains.

2. License Reservation. Any license of a Subject Invention granted to Collaborating Partner pursuant to this Agreement will be subject to the reservation of the following rights:

(a) As to Subject Inventions made solely or jointly by NASA employees, NASA reserves the irrevocable, royalty-free right of the Government of the United States to practice the invention or have the invention 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.

(b) As to Subject Inventions made solely or jointly by employees of a NASA Related Entity, NASA reserves the rights as set forth in paragraph (a) above, as well as the revocable, nonexclusive, royalty-free license in the Related Entity as set forth in 14 C.F.R. § 1245.108 or 37 C.F.R. § 401.14 (e), as applicable.

#### 3. Subject Inventions.

##### (a) Nonexclusive License to Subject Inventions.

(i) Collaborating Partner grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice Subject Inventions Made by employees of Collaborating Partner and, where Collaborating Partner has such rights, Subject Inventions Made by employees of Collaborating Partner Related Entities, and to have such Subject Inventions practiced throughout the world by or on behalf of the Government for Governmental purposes.

(ii) NASA grants to Collaborating Partner a nonexclusive, nontransferable, irrevocable, paid-up license to practice Subject Inventions Made by employees of NASA and, where NASA has such rights, Subject Inventions Made by employees of NASA Related Entities. Such license shall not permit Collaborating Partner to grant sublicenses.

(b) Option for Exclusive License to Subject Inventions.

(i) Option. NASA gives Collaborating Partner the option of acquiring an Exclusive License for the field of use described in paragraph (iii) below in the Government's rights in any Subject Invention Made in whole or in part by a NASA employee or the employee of a NASA Related Entity. In order to exercise this option, Collaborating Partner must notify NASA in writing within ninety (90) calendar days of the filing of a patent application on the Subject Invention by NASA.

(ii) License Execution. Each license for a Subject Invention shall be implemented through a written Exclusive License agreement executed by both Parties. The license shall be for reasonable consideration to be negotiated for each licensed Subject Invention. Collaborating Partner must execute the Exclusive License to the Subject Invention within ninety (90) calendar days of election to exercise the option, or the Invention shall be made available for licensing to the public in accordance with 37 CFR Part 404. Any Exclusive License granted by NASA in a Subject Invention is subject to the statutorily required reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the Subject Invention or have that Subject Invention practiced throughout the world by or on behalf of the Government and statutory march-in rights in accordance with 15 U.S.C. 3710a(b)(1).

(iii) Field of Use. [*Describe FIELD OF USE*]

GUIDANCE 2.5.3

Exclusive License. As set forth in 15 U.S.C. § 3710a, under a CRADA, NASA may grant, or agree to grant in advance, to a Collaborating Partner patent licenses or assignments, or options thereto, in any invention made in whole or in part by a NASA employee under a CRADA for reasonable compensation when appropriate. Further, under a CRADA, NASA must ensure that a Collaborating Partner has the option to choose an exclusive license for a pre-negotiated field of use for any such invention. NASA must retain a nonexclusive, nontransferable, irrevocable, paid-up license from the Collaborating Partner to practice the invention or have the invention practiced through the world by or on behalf of the Government.

As a general rule, NASA will implement the above as follows in NASA CRADAs. In all CRADAs, for inventions to be developed under the CRADA, an option to negotiate an exclusive license in one or more

specified field(s) of use should be inserted into the CRADA. Such option is not interpreted as an absolute right to such a license; but, rather, as the right to negotiate for such a license in good faith. Any such license should be negotiated and executed pursuant to the requirements of 35 U.S.C. § 209 (please note that section (e) of this part specifically removes the publication requirements for exclusive licenses granted to a CRADA Collaborating Partner for inventions made under the CRADA).

(c) Cancellation of Exclusive License Option to Subject Inventions. NASA may cancel any option for an Exclusive License to a Subject Invention granted under this Agreement in the event that:

- (i) Collaborating Partner fails to make any payment as agreed in this Agreement; or
- (ii) Collaborating Partner fails to perform according to the responsibilities set forth in the Responsibilities Article of this Agreement; or
- (iii) Collaborating Partner materially breaches any other provision of this Agreement and fails to cure such breach with thirty (30) days following notices received from NASA; or
- (iv) Collaborating Partner becomes a foreign owned, controlled, or influenced (FOCI) organization that does not qualify under the requirements of Executive Order 12591, Section 4(a); or
- (v) The Agreement is terminated unilaterally by Collaborating Partner.

#### GUIDANCE 2.5.3(c)

Foreign Ownership, Control or Influence. Executive Order 12591, Section 4(a) provides that Federal Agencies entering into CRADAs with foreign persons or organizations directly or indirectly controlled by a foregoing company or government should give consideration to how such foreign governments treat U.S. interests. Accordingly, the clauses in this section provide NASA the right to terminate any license with a Collaborating Partner which falls under foreign ownership, control or influence.

#### 4. Non-Subject Inventions.

(a) Licenses to Non-Subject Inventions. Except as expressly provided for herein, this Agreement does not grant any Party a license, express or implied, to any Non-Subject Invention.

(b) Preexisting Non-Subject Inventions Pertinent to the Cooperative Work.

(i) Non-Subject Inventions pertinent to the Cooperative Work that are specifically identified as property of NASA and for which a patent application has been filed prior to the effective date of this Agreement include the following:

*[List Invention Title, inventor name(s), patent number, or NASA NTR number if an Invention disclosure, or Patent Application Serial Number, and date of issue (for patents only); or if none, insert “None” or “Not Applicable”.]*

(ii) Non-Subject Inventions pertinent to the Cooperative Work that are specifically identified as property of Collaborating Partner include the following:

*[List Invention Title, inventor name(s), patent number, or attorney’s docket number if an Invention disclosure or Patent Application Serial Number, and date of issue (for patents only); or if none, insert “None” or “Not Applicable”.]*

(c) Research License. Each Party shall allow the other Party to practice any of its Non-Subject Inventions listed above for the purpose of performing the Cooperative Work. No license, express or implied, for commercial application(s) is granted to either Party in Non-Subject Inventions by performing the Cooperative Work. For commercial application(s) of Non-Subject Inventions, a license must be obtained from the owner.

#### GUIDANCE 2.5.4

Pre-Existing Inventions. 15 U.S.C. § 3710a(b)(1) also permits the Government to grant to the Collaborating Partner a license, subject to 35 U.S.C. § 209, to an available invention (i.e., one for which exclusive rights have not already been granted) (i) that is federally owned, (ii) for which a patent application was filed before the signing of the CRADA, and (iii) that is directly within the scope of the work to be performed under the CRADA, for reasonable compensation when appropriate. Further, the CRADA includes a provision that allows for the Parties to identify such non-subject NASA inventions and non-subject Collaborating Partner inventions and grants the Parties, respectively, research licenses in such identified, non-subject inventions for the purpose of performing work under the CRADA. The clause goes on to note that any commercial use of such non-subject inventions would require a further license from the owner of such non-subject invention.

Since the law limits these inventions, inter alia, to those for which a patent application was filed before the signing of the CRADA, for Phased Agreements such pre-existing inventions to be used under the CRADA, if any, must be identified in the Phased Agreement and not in the Task Plans.

Any divergence from this general implementation scheme (such as assigning patent rights or deviating from the 35 U.S.C. § 209 requirements) should be discussed with the Agency Counsel for Intellectual Property or his or her designee prior to implementation.

## **APPENDIX C: AUTHORITY AND APPLICABLE DOCUMENTS**

### **AUTHORITY**

Federal Technology Transfer Act of 1986, 15 U.S.C. § 3710a.

### **APPLICABLE DOCUMENTS**

- a. Freedom of Information Act, 5 U.S.C. § 552 provides public access to Federal agency records, including records containing scientific and technical information created with Federal funding.
- b. Small Business Concern, 15 USC § 632 specifies definitions and standards by which a business may be determined a small business.
- c. Stevenson-Wydler Technology Innovation Act of 1980, 15 U.S.C. § 3710 established Offices of Research and Technology Applications (ORTAs) at Federal Laboratories to stimulate improved utilization of federally funded technology developments, including inventions, software, and training technologies, by State and local governments and the private sector.
- d. Compensation to Members of Congress, Officers, and Others in Matters Affecting the Government, 18 U.S.C. § 203 prohibits, other than provided by law for the proper discharge of official duties, either directly or indirectly, demanding, seeking, receiving, accepting or agreeing to receive or accept any compensation for any representational services.
- e. Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government, 18 U.S.C. § 205 prohibits a government employee from acting as an agent or attorney for prosecuting any claim against the U.S.
- f. Bribery, Graft, and Conflicts of Interest, 18 U.S.C. §§ 201-27 prohibits employees from trying to influence any public official or any official act through bribery or graft, and places restrictions on representation by former employees to NASA officials in an attempt to influence any public official or any official act.

- g. Trade Secrets Act, Disclosure of Confidential Information Generally, 18 U.S.C. § 1905 prohibits Federal employees from the wrongful disclosure of confidential or proprietary data or information and subjects them to criminal prosecution and removal from office for any such wrongdoing.
- h. Removal of Civil Actions, 28 U.S.C. § 1441 et seq. provides that any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant(s), to the district court of the United States for the district.
- i. Anti-Deficiency Act, Title 31 U.S.C. § 1341 forbids NASA from incurring obligations or making expenditures in excess of appropriated amounts.
- j. The Chiles Act, 31 U.S.C. §§ 6303 - 6305 requires NASA to use a procurement contract when the principal purpose is to acquire (by purchase, lease or barter) property or services for the direct benefit or use of the U.S. Government, and to use a cooperative agreement or grant when 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.
- k. Bayh-Dole Act of 1980, 35 U.S.C. §§ 200-212 gives small businesses and nonprofit contractors the right to elect title to inventions made under funding agreements with the Government and provides provisions relating to licensing of inventions.
- l. Unitary Wind Tunnel Act, Joint Development of Unitary Plan for Construction of Facilities; Construction of Educational Institutions, 50 U.S.C. § 511 et seq. requires NASA to make available its Unitary Wind Tunnels primarily to industry for testing experimental models in connection with the development of aircraft and missiles and provides accompanying guidance.
- m. The National Aeronautics and Space Act, 51 U.S.C. §§ 20101 – 20164 governs NASA's activities related to space and aeronautics.
- n. The National Aeronautics and Space Act, 51 U.S.C. § 20113(e) authorizes NASA to enter into and perform 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

- o. The National Aeronautics and Space Act, 51 U.S.C. § 20141, “Misuse of Agency Name and Initials” forbids the use of the words or letters of NASA by a firm or business in a manner reasonably calculated to convey the impression that such firm or business has some connection with, endorsement of, or authorization from NASA which does not, in fact, exist; or to knowingly use the name or letters in connection with a product or service being offered or made available to the public 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.
- p. Commercial Space Competitiveness Act, 51 USC §§ 50901 – 50923 established mechanisms to encourage the growth and development of commercial space activities in the United States.
- q. Commercial Space Launch Activities, 51 USC §§ 50901 – 50923 established a regulatory oversight function within the Department of Transportation (delegated to the Federal Aviation Administration) to ensure protection of the public, property, and the national security and foreign policy interests of the United States during commercial launch or reentry activities, and to encourage, facilitate, and promote U.S. commercial space transportation.
- r. Executive Order 12591, dated April 10, 1987, “Facilitating Access to Science and Technology,” requires Federal Laboratories such as NASA to encourage and facilitate collaboration among Federal laboratories, State and local governments, universities, and the private sector, particularly small businesses, in order to assist in the transfer of technology to the marketplace.
- s. Executive Order 12618, dated December 22, 1987, “Uniform Treatment of Federally Funded Inventions,” directs Federal agencies to follow uniform policies in administering patents and licenses conceived, or first reduced to practice during the course of federally funded research.

- t. Exec. Order No. 13490, dated January 26, 2009, “Ethics Commitments by Executive Branch Personnel” requires political appointees appointed on or after January 20, 2009 to sign and be contractually committed to an ethics pledge including a lobbyist gift ban, revolving door ban, and employment qualification commitment.
- u. Convention on International Liability for Damage Caused by Space Objects (the "Liability Convention") adopted by the General Assembly (resolution 2777 (XXVI), and entered into force on September 1, 1972. The Convention provides that a launching State shall be absolutely liable to pay compensation for damage caused by its space objects on the surface of the Earth or to aircraft, and liable for damage due to its faults in space, and also establishes procedures for the settlement of damage claims.
- v. International Space Station (ISS) Intergovernmental Agreement (IGA), signed January 29, 1998, “*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*” is an international treaty signed by the fifteen governments to establish a framework for the detailed design, development, operation, and utilisation of a permanently inhabited civil Space Station for peaceful purposes.
- w. The National Space Policy of the United States (June 28, 2010) establishes National goals in space and responsibilities for implementation among Federal Agencies.
- x. Presidential Memorandum on Government Patent Policy, dated February 18, 1983, encourages Federal agencies to provide large entities the right to elect title to inventions made under funding agreements with the Government consistent with equivalent rights provided to small businesses and nonprofit contractors under the Bayh-Dole Act of 1980, 35 U.S.C. §§ 200-212.
- y. Presidential Memorandum on Accelerating Technology Transfer and Commercialization of Federal Research in Support of High-Growth Businesses, dated October 28, 2011, directs NASA and other agencies to establish 5-year performance goals to increase the number and pace of

effective technology transfer and commercialization activities in partnership with non-federal entities, streamline the Federal Government's technology transfer and commercialization process and facilitate commercialization through local and regional Collaborating Partnerships.

- z. 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)" provides Office of Management and Budget (OMB) guidance for Federal agencies on the government-wide debarment and suspension system for non-procurement programs and activities. Subpart C specifically addresses Participant responsibilities regarding transactions that involve doing business with other persons.
- aa. 2 C.F.R. Part 1880, "Non-procurement Suspension and Debarment" establishes NASA policies and procedures for non-procurement suspension and debarment, adopting OMB guidelines in 2 C.F.R. Part 180. Subpart C, "Responsibilities of Participants Regarding Transactions" addresses methods that must be used to pass debarment and suspension requirements down to participants at lower tiers when doing NASA business with them.
- bb. 13 C.F.R. Part 121.101, "What are SBA Size Standards" defines the standards which determine whether a business entity is small and thus eligible for Government programs and preferences reserves for small business concerns.
- cc. 14 C.F.R. Part 1204.501, "Delegation of Authority to Take Actions in Real Estate and Related Matters" delegates to the Associate Administrator for Management Systems and Facilities and the Director, Facilities Engineering Division authority to acquire, use, and determine entitlement to interests in real property.
- dd. 14 C.F.R. Part 1221.1, "NASA Seal, NASA Insignia, NASA Logotype, NASA Program Identifiers, NASA Flags, and the Agency's Unified Visual Communications System" requires that the NASA Seal, Insignia, Logotype, Program Identifiers and Flags be used exclusively to represent NASA, its programs, projects, functions, activities or other elements.

- ee. 14 C.F.R. Part 1245.1, “Patent Waiver Regulations” describes the conditions under which NASA may waive rights of the Government to inventions made under a NASA contract (defined as any actual or proposed contract, agreement, understanding, or other arrangement with NASA) consistent with the stated goals of providing incentives to foster inventiveness and encourage the reporting of inventions made under NASA contracts; to provide for the widest practicable dissemination of new technology resulting from NASA programs, and to promote early utilization, expeditious development, and continued availability of new technology for commercial purposes and public benefit.
- ff. 14 CFR Part 1266.102 & 1266.104, “Cross-Waiver of Liability” provides cross-waivers of liability that must be included in NASA agreements for activities related to the International Space Station (ISS) and for NASA’s science or space exploration activities unrelated to the ISS that involve a launch.
- gg. 15 C.F.R. Parts 730-799, “Export Administration Regulations (EAR)” are issued by the United States Department of Commerce, Bureau of Industry and Security (BIS) to regulate certain exports, reexports, and activities for dual-use commodities, software, and technology, as well as implement anti-boycott law provisions.
- hh. 22 C.F.R. Parts 120-130, “International Traffic in Arms Regulations (ITAR)” are issued by the Department of State to control the export and import of defense articles or furnishing of defense services.
- ii. 22 C.F.R. Part 181, “Initiation and Development of International Cooperation in Space and Aeronautics Programs” provides implementation requirements under the Case-Zablocki Act including reports to Congress, coordination with the State Department and publication of international agreements.
- jj. NPD 1050.1, “Authority to Enter into Space Act Agreements” provides policies and responsibilities for entering into Space Act Agreements with a wide variety of potential Partners.

- kk.NPD 1050.2, “Authority to Enter into Cooperative Research and Development Agreements” provides policies and responsibilities for entering into Cooperative Research and Development Agreements (CRADAs) with Collaborating Parties.
- ll. NPD 1360.2, “Initiation and Development of International Cooperation in Space and Aeronautics Programs” places primary responsibility with the Office of International and Interagency Relations to develop proposals for international cooperation and ensure that all international cooperation is consistent with relevant law, policy, and the notification requirements of the Office of Management and Budget.
- mm. NPD 1370.1, “Reimbursable Utilization of NASA Facilities by Foreign Entities and Foreign-Sponsored Research” provides requirements for reimbursable use of NASA facilities when the activity benefits a foreign entity, to include a scientific, technical, economic or foreign policy benefit to the U.S. and NASA.
- nn.NPD 1900.3, Ethics Program Management establishes NASA requirements and procedures to implement the Agency Ethics Program, as set forth in NPD 1900.9, Ethics Program Management, and to ensure that NASA complies with Federal and Agency ethics laws, regulations, Executive orders, and directives. It addresses the degree of Headquarters oversight of the Ethics Program and the processes for handling ethics matters consistently, conducting program reviews, and developing policy.
- oo.NPD 2090.6, “Authority to Enter into License Agreements and Implementation of Licensing Authority” provides responsibilities and guidance for implementing NASA’s authority to grant exclusive, partially exclusive, or nonexclusive licenses on Federally-owned inventions to promote the transfer and commercial utilization of inventions arising from NASA-supported research or development.
- pp.NPD 2190.1, “NASA Export Program” provides requirements to ensure that exports and transfers of commodities, technical data, or software to foreign persons and foreign designations are carried out in accordance with U.S. export control laws and regulations and policy.

- qq. NPD 4300.1, “NASA Personal Property Disposal Policy” provides requirements for NASA disposition of personal property that is no longer needed for its original purposes or is surplus to NASA’s needs. Agency goals are to maximize reutilization and minimize cost while maximizing sales proceeds.
- rr. NPD 9080.1, “Review, Approval, and Imposition of User Charges” provides NASA policy not to compete with commercial entities in providing services or goods, property or resources, including sales or leases, to entities outside the Federal Government. It also addresses recovery of the full-cost to the Federal Government for providing such services, goods, or resources.
- ss. NPR 1600.1, “NASA Security Program Procedural Requirements” prescribes NASA Security Program procedural requirements to assist NASA Centers in executing the NASA security program to protect people, property, and information. NASA Interim Directive (NID) 1600.55 “Sensitive But Unclassified (SBU) Controlled Information” embodied in NPR 1600.1, specifically addresses “Sensitive But Unclassified (SBU) Controlled Information providing guidance and requirements for identifying and safeguarding SBU information.
- tt. NPR 2090.6 “Authority to Enter into License Agreements and Implementation of Licensing Authority” delegates to Center Directors responsibility for executing, modifying and terminating license agreements related to NASA-developed or NASA-funded technology to which NASA has title.
- uu. NPR 2190.1 “NASA Export Control Program” establishes responsibilities for ensuring that exports and transfers of commodities, technical data, or software to foreign persons and foreign destinations are carried out in accordance with U.S. export control laws and regulations, and Administration and NASA policy.
- vv. NPR 2210.1 “Release of NASA Software” establishes procedures and responsibilities for the reporting, review, assessment, and release of software created by or for NASA.

- ww. NPR 4300.1 “NASA Personal Property Procedural Requirements” provides procedural guidance for the utilization and disposal management of NASA-owned excess, surplus, and obsolete exchange or sale property.
- xx. NPR 7500.1 “NASA Technology Commercialization Process” provides guidance for implementing the processes, requirements, and responsibilities related to NASA’s policy on technology commercialization.
- yy. NPR 8621.1 “Mishaps and Close Calls” provides requirements for reporting, investigating, and documenting mishaps, close calls, and previously unidentified serious workplace hazards to prevent any recurrence of similar accidents.
- zz. NPR 8800.15, “Real Estate Management Program” provides procedural requirements for NASA personnel who acquire and manage real estate assets on behalf of NASA.
- aaa. NPR 9090.1, “Reimbursable Agreements” provides financial management requirements for reimbursable agreements.
- bbb. NAI 1050-1, NASA Advisory Implementing Instruction, “The Space Act Agreements Guide” implements NPD 1050.1 and further establishes NASA policies for entering into Space Act Agreements with a wide variety of potential Partners.
- ccc. Letter from Associate Administrator to Officials-in-Charge of Headquarters Offices and Directors, NASA Centers, dated January 18, 2007, “Guidance Regarding Space Act Agreements and Pending Review of NASA Agreement Practices” sets forth requirements for agreements in which Centers undertake reimbursable work for non-NASA entities.