Subject: Authority to Enter into Space Act Agreements (Revalidated 10/30/14)

Responsible Office: Office of the General Counsel

Change History

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<th>Change #</th>
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<tr>
<td>1</td>
<td>10/23/2014</td>
<td>Update with 1400 Compliance, clarify policy paragraph, update authorities and applicable documents, update office title and added Attachment A &amp; B.</td>
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<td>2</td>
<td>11/10/2014</td>
<td>Clarify responsibilities for OIIR in 5.c and for Director of the Partnership Office in 5.d.</td>
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<td>3</td>
<td>09/29/2017</td>
<td>Directive updated with NPR 1400.1 requirements, title correction for the &quot;Director&quot; of the NASA Management Office, clarification of authorities that apply to NASA's international collaborative agreements, and to include the term &quot;partner&quot; to cover NASA's partners in both domestic and international agreements.</td>
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1. POLICY

a. It is NASA's policy to utilize the authorities granted to the Agency in 51 U.S.C. § 20101 et seq. (the "Space Act"), to further the Agency's missions. Using its Space Act authority, NASA has entered into a great number of agreements with diverse groups of people and organizations, both in the private and public sector, in order to meet wide-ranging NASA mission and program requirements and objectives. Agreements entered into pursuant to the "other transactions" authority in 51 U.S.C. § 20113(e), establish a set of legally enforceable promises between NASA and the other party to the Agreement. Similarly, 51 U.S.C. §§ 20102(d)(7) and 20115 also authorizes NASA to engage in legally binding international agreements. These agreements under 51 U.S.C. § 20113(e) constitute Agency commitments of resources (including personnel, funding, services, equipment, expertise, information, or facilities) to accomplish stated objectives of a joint undertaking. A NASA agreement partner can be a U.S. or foreign entity, an educational institution, a Federal, state, or local governmental unit, a foreign government, or an international organization.

b. The Space Act provides authority for Reimbursable, Nonreimbursable, and Funded Agreements. These Agreements, described further in Attachment A, are differentiated by underlying principles, to ensure that each type
of Agreement is effectively utilized and strategically managed.

c. All Agreements entered into under this NPD, in accordance with NASA's Advisory Implementing Instruction 1050-1 (Space Act Agreements Guide), must first comply with the preliminary abstract review process. Such Agreements shall include provisions specifying the following:

(1) Respective responsibilities of NASA and the Agreement Partner, with the standard of performance based on a "reasonable efforts" basis, that are stated with sufficient clarity to support preparation of Estimated Price Reports, sound management planning, and efficient Agreement administration.

(2) Performance milestones.

(3) Clearly defined financial commitments, including a statement that NASA's performance of the Agreement is subject to the availability of appropriated funds and that no provision of the Agreement shall be interpreted to require obligation or payment of funds in violation of Title 31 U.S.C. 1341.

(4) Resource commitments providing that NASA's usage of its facilities, equipment, and personnel shall have priority over the usage planned in the Agreement.

(5) Allocation of liability between NASA and the partner.

(6) Allocation of intellectual property rights implicated by or created under the Agreement.

(7) Termination rights and obligations.

(8) A fixed expiration date for the Agreement based either on a date certain or upon completion of the obligations under the Agreement, whichever occurs first.

d. Written waivers from the recommended approach in the NAII 1050-1 are required under the following circumstances:

(1) Where a non-Federal party demonstrates a financial hardship or legal restriction prohibiting advance payments and is requesting that reimbursable work commence in advance of the receipt of funds by NASA, a waiver shall be approved in accordance with the requirements of NPR 9090.1 before work under the Agreement may proceed.

(2) Where insurance is not required for high-risk activities and the work to be performed is primarily for the benefit partner, a waiver shall be recommended by the project manager or other responsible official, reviewed by the Office of the General Counsel (for Headquarters Agreements) or the Center Chief Counsel (for Center Agreements), and approved by the Signing Official.

2. APPLICABILITY

a. This NPD applies to NASA Headquarters and NASA Centers, including Component Facilities, and Technical and Service Support Centers.

b. In this directive, all mandatory actions (i.e. requirements) are denoted by statements containing the term "shall." The terms; "may" or "can" denote discretionary privilege or permission, "should" denotes a good practice and is recommended, but not required, "will" denotes expected outcome, and "are/is" denotes descriptive material. .

c. In this directives, all document citations are assumed to be the latest version unless otherwise noted.

3. AUTHORITY

The National Aeronautics and Space Act, 51 U.S.C. § 20101 et seq

4. APPLICABLE DOCUMENTS AND FORMS


d. Grants and Cooperative Agreements, 14 CFR pt. 1260

e. Cooperative Agreements with Commercial Firms, 14 CFR. pt. 1274

5. RESPONSIBILITY

a. The Mission Directorate Associate Administrators, the Officials-in-Charge of Headquarters Offices, the Directors of NASA Centers, and the Director of the NASA Management Office (NMO), within their areas of jurisdiction, are responsible for the negotiation, execution, amendment, and termination of Reimbursable (except International Agreements), Nonreimbursable (except International Agreements), and Funded Agreements, for the selection of Agreement Managers (except International Agreements), for ensuring that the Space Act Agreement Maker (SAAM) is used to initiate and review Agreements to the maximum extent practicable, and for ensuring that SAAM is used to store all Agreements (except International Agreements).

b. The NASA Chief Financial Officer (CFO) and the Center Chief Financial Officers (CFOs) are responsible for developing policies and procedures consistent with the Agency's fiscal systems and Federal regulations to ensure fiscal integrity in the Agency's utilization of Agreements. The Director, Headquarters Operations, (for Headquarters Agreements) or Center CFOs (for Center Agreements) will review all Estimated Price Reports prepared for any Reimbursable Agreement. The NASA CFO (for Headquarters Agreements) or Center CFOs (for Center Agreements) will review all Estimated Price Reports prepared for any Funded Agreement.

c. The Associate Administrator for the Office of International and Interagency Relationship (OIIR) is responsible for the negotiation, conclusion (which may include signature and a separate entry-into-force process), amendment, and termination of International Agreements; for the review of all Agreements with other U.S. Federal Agencies; for the NASA-wide preliminary review of proposed classified interagency agreements; for centralized tracking and coordination of classified interagency agreements; for the selection of Agreement Managers for International Agreements; and for storing all Agreements within his/her jurisdiction.

d. The Director of the Partnership Office in the Mission Support Directorate is responsible for coordinating the preliminary review of proposed unclassified Space Act Agreement activities across NASA through the preliminary abstract review process and for facilitating resolution of any issues or concerns arising from the process.

e. The NASA General Counsel (for Headquarters Agreements) or the Center Chief Counsel (for Center Agreements) is responsible for reviewing all Agreements entered into under this NPD to ensure compliance with applicable statutes, regulations, and policies. The NASA General Counsel provides support to the Assistant Administrator for External Relations who is responsible for the negotiation, execution, amendment, and termination of International Agreements. All Funded Agreements shall be provided for review to the NASA Office of General Counsel at Headquarters prior to execution.

f. As used in this NPD, "Signing Official" means a NASA employee delegated the responsibility to execute Agreements for the Agency. The Officials authorized, in paragraph 5.a and 5.c herein, to execute Agreements may delegate the responsibility, in accordance with paragraph 5.h herein, to one or more Signing Officials. Each Signing Official is responsible for determining that each Agreement within his/her area of jurisdiction has been properly reviewed, consistent with this NPD. For Nonreimbursable Agreements and for Reimbursable Agreements wherein the partner reimburses NASA for less than the full cost of NASA's activities under the Agreement, the Signing Official is responsible for determining that the balance of contributions under the Agreement is fair and reasonable compared to the NASA resources to be committed, NASA program risks, and corresponding benefits to NASA. For Funded Agreements, the Signing Official is responsible for determining that the proposed contribution of NASA is fair and reasonable compared to NASA program risks, corresponding benefits to NASA, and the funding and resources to be contributed by the partner.

g. Agreement Managers are responsible for collecting information required to establish reasonable expectations of the parties for concluding the Agreement formation process; managing the draft, review, and approval process of the Agreement; and facilitating the meeting of the established expectations. Information required to establish reasonable expectations of the parties includes data necessary to define each party's responsibilities and establish the terms and provisions of the Agreement; identify the necessary NASA resources and funding; determine viability of the business case; and establish mutually agreed-upon processing times for concluding the Agreement formation process. The Agreement Manager must also identify and ensure timely involvement of the appropriate NASA offices in the review and approval process, including the preliminary abstract review process; maintain a system for tracking and documenting the time required for each phase of the review; and prepare an adequate review package for the Signing Official. Each Agreement Manager may act as a facilitator, negotiator, or both. For the Agency's
Agreement Managers must maintain or be able to verify the location of all final, signed copies of Agreements under their jurisdiction. For International Agreements and Agreements with other U.S. Federal agencies, the Agreement Manager shall provide a copy of the executed Agreement to the Associate Administrator for OIIR.

h. The Officials authorized in paragraph 5.a. herein, to execute, amend, and terminate Agreements, may delegate their responsibility as follows: for Nonreimbursable Agreements (except International Agreements) and Reimbursable Agreements (except International Agreements), the authority to execute, amend, and terminate may be delegated to any NASA employee having management responsibility for projects or activities required to support the Agreement objectives. For International Agreements, the Associate Administrator for OIIR may establish with the Mission Directorate Associate Administrators, the Officials-in-Charge of Headquarters Offices, the Center Directors, and the NASA NMO Director those circumstances under which the designees at Headquarters, Centers, may appropriately execute, amend, and terminate International Agreements. For Funded Agreements, the authority to execute, amend, and terminate may be delegated one level below the authorized official. Any such delegation of authority to execute, amend, and terminate Agreements must be in writing and indicate the extent of the delegation. The Mission Directorate Associate Administrators, the Officials-in-Charge of Headquarters Offices, the Associate Administrator for OIIR, the Directors of NASA Centers, and the the NMO Director, within their area of jurisdiction, may delegate responsibility for selecting Agreement Managers to any NASA employee.

i. Nothing in this NPD shall affect the authority of the Assistant Administrator for Procurement concerning grants and cooperative agreements, as set forth in 14 CFR pt. 1260, 14 CFR pt. 1274, and NPR 5800.1.

6. DELEGATION OF AUTHORITY

None.

7. MEASUREMENT/VERIFICATION

None.

8. CANCELLATION

NPD 1050.1I, Authority To Enter into Space Act Agreements, December 23, 2008.

Revalidated with change 1, dated 10/23/2014, Original Signed by:

/s/ Michael D. Griffin
Administrator

ATTACHMENT A: DEFINITIONS

A.1 Reimbursable Agreements are Agreements wherein NASA's costs associated with the undertaking are reimbursed by the partner (in full or in part). NASA undertakes Reimbursable Agreements when it has unique goods, services, and facilities not being fully utilized to accomplish mission needs, which it can make available to others on a noninterference basis, consistent with the Agency's missions. All Reimbursable Agreements are subject to the provisions of NASA's financial management policy. Before a Reimbursable Agreement may be executed, an Estimated Price Report, in accordance with NPR 9090.1, for the undertaking will be prepared and reviewed by the NASA Director, Headquarters Operations, (for Headquarters Agreements) or the Center Chief Financial Officers (CFOs) (for Center Agreements). Before NASA may perform work for which NASA is to be reimbursed by a partner, an amount sufficient to fund the reimbursable work will be received by the Agency, unless the Agreement is with another Federal agency, or as otherwise authorized in paragraph 1.d. (1) of this NPD. Additionally, before NASA may enter into a Reimbursable Agreement wherein NASA is to be reimbursed for less than the full cost of its activities performed under the Agreement, the official responsible for executing the Agreement (herein "Signing Official" in accordance with section 5.f of this NPD) must determine that the proposed contribution of the Agreement Partner is fair and reasonable compared to the NASA resources to be committed, NASA program risks, and corresponding benefits to NASA. All domestic Reimbursable Agreements are governed by U.S. Federal law. International Reimbursable Agreements are governed by U.S. Federal law except in rare circumstances as determined by the Assistant Administrator of OIIR in consultation with the General Counsel.

A.2 Nonreimbursable Agreements involve NASA and another party in a mutually beneficial activity that furthers the
Agency's missions, wherein each party bears the cost of its participation, and there is no exchange of funds between them. Since Nonreimbursable Agreements involve the commitment of NASA resources, the respective contributions of each party will be fair and reasonable under the circumstances. Therefore, before NASA may enter into a Nonreimbursable Agreement, an Estimated Price Report of the value of the NASA resources to be committed under the Agreement will be prepared so that the Signing Official has a basis for determining that the proposed contribution of the partner is fair and reasonable compared to the NASA resources to be committed, NASA program risks, and corresponding benefits to NASA. Nonreimbursable Agreements are governed by U.S. Federal law unless concluded under international law with a foreign government or instrumentality, a foreign agency, or an international organization.

A.3 Funded Agreements are Agreements under which appropriated funds are transferred to a domestic partner to accomplish an Agency mission. Funded Agreements may be used only when the Agency's objective cannot be accomplished through the use of a procurement contract, grant, or cooperative agreement. Before NASA may enter into a Funded Agreement, an Estimated Price Report of the funding and the value of any other NASA resources to be committed under the Agreement will be prepared and reviewed by the NASA CFO (for Headquarters Agreements) or the Center CFOs (for Center Agreements) so that the Signing Official has a basis for determining that the proposed contribution of NASA is fair and reasonable compared to NASA program risks, corresponding benefits to NASA, and the funding and resources to be contributed by the partner. All Funded Agreements are subject to U.S. Federal law.

A.4 International Agreements are Nonreimbursable Agreements or Reimbursable Agreements wherein the partner is a foreign entity. "Foreign entity": means a legal entity that is not established under a state or Federal law of the United States and includes a commercial or noncommercial entity or a foreign government or agency. 51 U.S.C. §§ 20102(d)(7) and 20115 authorize NASA's international cooperative programs. The programs are conducted pursuant to agreements that establish a set of legally enforceable promises between NASA and the foreign entity. International Nonreimbursable Agreements are governed by international law, while International Reimbursable Agreements are generally governed by U.S. Federal laws. Regardless of the choice of governing law, however, NASA's performance of its responsibilities under any agreement is subject to applicable U.S. laws. For agreements under international law, 1 U.S.C. 112b provides certain procedural requirements for International Agreements with foreign governments or international organizations, when the International Agreement is significant, as that term is described in the regulations implementing 22 CFR pt. 181. Such procedural requirements include review by other parts of the U.S. Government coordinated through the Department of State. Initiation, execution, and implementation of International Agreements will also comply with the requirements of NPD 1360.2 and NPD 2190.1.

ATTACHMENT B: REFERENCES

B.2 Delegations and Designations, 14 CFR subpt. 1204.5.
B.5 NASA FAR Supplement, Interagency Acquisitions, 48 CFR subpt. 1817.70.
B.6 NPD 1370.1, Reimbursable Utilization of NASA Facilities by Foreign Entities and Foreign-Sponsored Research.
B.7 NPR 5800.1, Grant and Cooperative Agreement Handbook.
B.8 NPD 8800.14, Policy for Real Property Management.

(URL for Graphic)

None.

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