

CHAPTER 5. FUNDED AGREEMENTS

5.1. GENERAL GUIDANCE

A funded SAA permits appropriated funds to be transferred to NASA's partner to accomplish a NASA mission. However, funded SAAs can only be used when the Agency objective cannot be accomplished through the use of a procurement, or reimbursable/nonreimbursable SAA.⁶⁷ In accordance with section 203(c)(5) of the Space Act, "to the maximum extent practicable and consistent with the accomplishment of the purpose of the [Space] Act, such ... other transactions shall be allocated by the Administrator in a manner which will enable small-business concerns to participate equitably and proportionately in conduct of the work of the Administration."

The flexibility of the Space Act provides NASA and its SAA partners the means to formulate a relationship that permits optimal results. Funded SAAs are limited to activities undertaken with U.S. domestic partners and are not available for NASA's international activities. Selection of a funded SAA partner is best served via a competitive process. Before NASA may enter into a funded SAA, a cost estimate of the funding and, as appropriate, the value of any other NASA resources to be committed under the Agreement, must be prepared and reviewed by the NASA CFO (for Headquarters SAAs) or Center CFOs (for Center SAAs) so that the signing official has a basis for determining that the proposed contribution of NASA is fair and reasonable when compared to NASA program risks, corresponding benefits to NASA, and the funding and resources to be contributed by the agreement partner. All funded SAAs are governed by U.S. Federal law. Additionally, all funded SAAs will be provided for review to the Office of General Counsel at Headquarters prior to execution.

5.2. FUNDED AGREEMENT CONTENTS

Funded SAAs do not have a standard format but generally include language that describes the relationship and responsibilities of the parties and the objective of the agreement. Certain subject areas, similar to those in nonreimbursable SAAs, should be addressed in all funded SAAs. For guidance and suggested language to be used with private sector parties, see Chapter 2; for guidance on agreements with U.S. public parties, see Chapter 3. In addition to appropriated funds, SAAs may also include access to or the use of other NASA resources, such as personnel, expertise, services, equipment, information, intellectual property, or facilities.

⁶⁷ *Funded Agreement – Nonprofit Institutions of Higher Education*: These funded SAAs require NASA Program Offices to complete and submit a C.A.S.E. Report of College and University Projects, NASA Form 1356. This form is required for each funded SAA with nonprofit institutions of higher education or to nonprofit institutions that are operationally affiliated or integrated with an educational institution. The completed forms are submitted to the NASA's Office of Human Resources and Education, Education Division. Information on this form is used to produce reports required by the National Science Foundation (NSF), pursuant to a NSF statutory requirement.

5.2.1. FINANCIAL OBLIGATIONS

Funded SAAs should include language detailing NASA’s intended contribution of appropriated funds and any other NASA resource, such as personnel, expertise, services, equipment, information, intellectual property, or facilities.

5.2.1. Financial Obligations (Sample Clause)

5.2.2. ACCOUNTING AND AUDIT

A requirement to include an “Accounting and Audit” paragraph is specific to funded SAAs. Given that NASA is providing funding to the other party, additional safeguards are required to ensure the funds are being used only for the intended purposes described in the funded SAA. Therefore, any funded SAA partner is required to account for project-related expenditures and to use an accounting system operated in accordance with Generally Accepted Accounting Principles (GAAP). Lastly, the NASA Inspector General, or U.S. Comptroller General, or his/her representative, must be given the right of timely and unrestricted access to any records that are pertinent to the use of NASA funds.

5.2.2. Accounting and Audit (Sample Clause)

5.2.3. INTELLECTUAL PROPERTY

Funded SAAs should address the allocation of intellectual property rights. Determining the appropriate allocation of intellectual property rights for funded SAAs is a fact-specific, case-by-case determination. Therefore, NASA patent counsel should be consulted early in the process.

5.3. JOINT SPONSORED RESEARCH AGREEMENT

One example of a funded SAA is a Joint Sponsored Research Agreement (JSRA). A JSRA is a collaborative agreement where NASA may provide resources including funds, services, equipment, information, intellectual property or facilities on a shared or pooled basis for the purpose of advancing mission goals and transferring the resulting technology to the private sector via a non-Government partner or consortia, for example, an SAA for the development and commercialization of NASA dual-use technologies.

Cash or in-kind contributions by the industry partner will be required and must be in reasonable (equitable) proportion to the funds committed by NASA. Consideration may be given to the objective of the funded SAA and the monetary/nonmonetary commitment. Further, one of the following three objectives must also be met: (1) the SAA must enhance U.S. industry’s competitive position in the global marketplace; (2) the SAA must convert aerospace or defense technology to commercial application; or (3) the SAA must enhance NASA’s investment in technology development, reducing its cost through the combined effort. JSRAs may be useful in a dual-use research project involving an

industry-led consortium. This type of SAA involves a research and development (R&D) collaboration between NASA and the private sector over technologies (*e.g.* product or process) relevant to NASA's mission and sought by the private sector for commercial applications. By working together, NASA and the private sector party accelerate the development of technologies while sharing costs. Intellectual property rights are shared in a manner that fosters the commercialization of the resulting technology.

NASA's role is to stimulate U.S. technology growth in areas that are likely to have a significant impact on U.S. technology leadership or global competitiveness, consistent with NASA's mission. While NASA would be involved in determining broad project goals, industry is required to set specific R&D objectives and develop R&D task plans. In addition, U.S. industry participants develop Articles of Collaboration (or other mechanisms for establishing multiparty relationships) that delineate management structure, technical and financial responsibilities, and intellectual property rights and which are signed by all private sector parties to the JSRA. However, the JSRA can be signed by a representative of the total membership.

5.4. ECONOMY ACT ACQUISITIONS

Where NASA needs supplies or services from a U.S. Federal Government entity, or supplies or services are required of NASA by a U.S. Federal Government entity, authority for such "interagency acquisitions" is found in both the Space Act and the Economy Act [31 U.S.C. § 1535]. While a U.S. Federal Government entity may utilize the Economy Act authority for its acquisitions, NASA policy requires that "the Space Act shall be cited as authority for all NASA interagency acquisitions except that the Inspector General Act shall be cited as the authority for interagency acquisitions for the NASA Office of Inspector General." [48 CFR Part 1817, NFS Subpart 1817.70 – Interagency Acquisitions].

The U.S. Federal Government entity utilizing an interagency acquisition is referred to as the requesting agency and the agency supplying the supplies or services is referred to as the servicing agency. [48 CFR Part 17, FAR 17.501.] The transfer of funding must be on a full cost recovery basis and effectuated through an interagency fund transfer instrument, a requirement of both the Economy Act and interagency acquisition under the Space Act. Moreover, all interagency fund transfer instruments, whether being authorized by the Economy Act or the Space Act, must be supported by a Determination and Finding (D&F) [48 CFR Part 17, FAR 17.503 on interagency acquisitions pursuant to the Economy Act; 48 CFR Part 1817, NFS 1817.7002 on interagency acquisitions pursuant to the Space Act.]

The D&F required to support an interagency acquisition must document the following: (1) it is in the best interests of the Government; and (2) the supplies or services cannot be obtained as conveniently or economically from a private source. In addition, if the interagency acquisition requires contracting action by the servicing agency, the D&F also needs to document one of the following: (1) the acquisition will appropriately be made under an existing contract of the servicing agency; (2) the servicing agency has

capabilities or expertise which are not available within the requesting agency; or (3) the servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

In addition, where the interagency acquisition is with the Department of Defense or one of its entities, NASA Form 523 is required to be completed by NASA personnel. Agency procurement officials and procurement counsel can provide guidance for interagency acquisition activities.

APPENDIX 5. SAMPLE CLAUSES – FUNDED AGREEMENTS

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5.2.1. Financial Obligations Sample Clause.

It is NASA's intent to provide cash and in-kind resources to Partner during the term of this Agreement as indicated below. [Indicate resources by fiscal year]. The actual commitments may vary from the projected amounts shown. Funding in the amount of \$\$ is available beginning on [date]. Subsequent NASA funding and resources will be provided in accordance with annual progress and subject to the availability of appropriated funds. Of the budget amounts shown above, NASA resources will only be obligated as required in the Annual Plan and as funds become available. Under no circumstances shall any party undertake any action which could be construed to imply an increased commitment on the part of NASA.

5.2.2. Accounting and Audit Sample Clause.

Partner agrees to account for all project-related expenditures that include NASA funding and are undertaken as part of this Agreement. An accounting system must be established for the Agreement that is maintained in accordance with Generally Accepted Accounting Principles (GAAP). NASA's Inspector General, the U.S. Comptroller General, or their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the expenditures, in order to make audits, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interviews and discussion related to such documents. The rights of access in this paragraph are not limited to any required retention period, but shall last as long as records are retained.