

NONREIMBURSABLE SPACE ACT AGREEMENT
BETWEEN
THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
GLENN RESEARCH CENTER
AND
SOUTHWEST RESEARCH INSTITUTE
FOR
GREAT HORNED OWL DEMONSTRATION AND VALIDATION COLLABORATION

ARTICLE 1. AUTHORITY AND PARTIES

In accordance with the National Aeronautics and Space Act (51 U.S.C. § 20113(e)), this Agreement ("Agreement") is entered into by the National Aeronautics and Space Administration Glenn Research Center, located at 21000 Brookpark Road, Cleveland, OH 44135 ("NASA" or "NASA GRC") and Southwest Research Institute, located at 6220 Culebra Road, P.O. Drawer 28510, San Antonio, TX 78228-0510 ("Partner" or "SwRI"). NASA and Partner may be individually referred to as a "Party" and collectively referred to as the "Parties."

ARTICLE 2. PURPOSE

This Agreement shall be for the purpose of NASA GRC and SwRI to validate inputs into Numerical Propulsion System Simulation (NPSS) engine prediction codes used to develop next generation advancement of small turbine engines and critical components for future trends in aero-propulsion under projects like Urban Air Mobility. NASA GRC will provide a small turbine engine designated as the Great Horned Owl ("GHQ") to SwRI for testing.

ARTICLE 3. RESPONSIBILITIES

A. NASA will use reasonable efforts to:

1. Provide SwRI with the demonstrator GHQ small turbine engine.
2. Participate with SwRI in test matrix discussions to ensure complete data gathering.
3. Incorporate data supplied from the testing into the NPSS code to validate and verify reliability to allow for better predictive performance of engine modeling.
4. Conduct a bi-annual data analysis and review telecon with SwRI with an emphasis on inlet and exit temperatures and pressures for all turbomachinery.

B. SwRI will use reasonable efforts to:

1. Provide the required testing facility to run the test matrix of the GHO, which includes instrumentation for gathering performance data of the turbomachinery.
2. Provide NASA GRC with the turbomachinery data gained from the test runs.
3. Consult with NASA GRC for possible changes and additions to further produce required data as needed.

4. Conduct a bi-annual data analysis and review telecom with NASA with an emphasis on inlet and exit temperatures and pressures for all turbomachinery.
5. SwRI will re-direct engine test run matrix to reflect current NASA GRC data requests.
6. SwRI will provide NASA GRC with data between reviews as requested by NASA from current engine test runs.

ARTICLE 4. SCHEDULE AND MILESTONES

The planned major milestones for the activities defined in the "Responsibilities" Article are as follows:

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| 1. NASA and SwRI will conduct a bi-annual data analysis and review telecom with an emphasis on inlet and exit temperatures and pressures for all turbomachinery. | On or about March 31, 2020 |
| 2. Annual yearly review of engine performance and data update. Set new testing matrix as required for upcoming year. | On or about September 30, 2020 |
| 3. NASA and SwRI will conduct a bi-annual data analysis and review telecom with an emphasis on inlet and exit temperatures and pressures for all turbomachinery | On or about March 31, 2021 |
| 4. Annual yearly review of engine performance and data update. Set new testing matrix as required for upcoming year. | On or about September 30, 2021 |
| 5. NASA and SwRI will conduct a bi-annual data analysis and review telecom with an emphasis on inlet and exit temperatures and pressures for all turbomachinery. | On or about March 31, 2022 |
| 6. Conduct final contract review and assessment of overall engine performance and final data update. Discussion of the need for further continuance of the work and benefits to both NASA and SwRI. | On or about September 30, 2022 |

ARTICLE 5. FINANCIAL OBLIGATIONS

There will be no transfer of funds between the Parties under this Agreement and each Party will fund its own participation. All activities under or pursuant to this Agreement are subject to the availability of funds, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, (31 U.S.C. § 1341).

ARTICLE 6. PRIORITY OF USE

Any schedule or milestone in this Agreement is estimated based upon the Parties' current understanding of the projected availability of NASA goods, services, facilities, or equipment. In the event that NASA's projected availability changes, Partner shall be given reasonable notice of that change, so that the schedule and milestones may be adjusted accordingly. The Parties agree that NASA's use of the goods, services, facilities, or equipment shall have priority over the use planned in this Agreement. Should a conflict arise, NASA in its sole discretion shall determine whether to exercise that priority. Likewise, should a conflict arise as between two or more non-

NASA Partners, NASA, in its sole discretion, shall determine the priority as between those Partners. This Agreement does not obligate NASA to seek alternative government property or services under the jurisdiction of NASA at other locations.

ARTICLE 7. NONEXCLUSIVITY

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

ARTICLE 8. LIABILITY AND RISK OF LOSS

A. Each Party hereby waives any claim against the other Party, employees of the other Party, the other Party's Related Entities (including but not limited to contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors or subcontractor at any tier), or employees of the other Party's Related Entities for any injury to, or death of, the waiving Party's employees or the employees of its Related Entities, or for damage to, or loss of, the waiving Party's property or the property of its Related Entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

B. Each Party further agrees to extend this cross-waiver to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or of its Related Entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement. Additionally, each Party shall require that their Related Entities extend this cross-waiver to their Related Entities by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or of its Related Entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement.

ARTICLE 9. INTELLECTUAL PROPERTY RIGHTS - DATA RIGHTS

A. General

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

2. "Data," means recorded information, regardless of form, the media on which it is recorded, or the method of recording.

3. "Proprietary Data," means Data embodying trade secrets developed at private expense or commercial or financial information that is privileged or confidential, and that includes a restrictive notice, unless the Data is:

- a. known or available from other sources without restriction;
- b. known, possessed, or developed independently, and without reference to the Proprietary Data;
- c. made available by the owners to others without restriction; or

d. required by law or court order to be disclosed.

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

5. Notwithstanding any restrictions provided in this Article, the Parties are not restricted in the use, disclosure, or reproduction of Data provided under this Agreement that meets one of the exceptions in 3. above. If a Party believes that any exceptions apply, it shall notify the other Party before any unrestricted use, disclosure, or reproduction of the Data.

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

7. If the Parties exchange Data having a notice that the Receiving Party deems is ambiguous or unauthorized, the Receiving Party shall tell the Providing Party. If the notice indicates a restriction, the Receiving Party shall protect the Data under this Article unless otherwise directed in writing by the Providing Party.

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

9. Disclaimer of Liability: NASA is not restricted in, or liable for, the use, disclosure, or reproduction of Data without a restrictive notice or for Data Partner gives, or is required to give, the U.S. Government without restriction.

B. Data First Produced by Partner Under this Agreement

If Data first produced by Partner or its Related Entities under this Agreement is given to NASA, and the Data is Proprietary Data, and it includes a restrictive notice, NASA will use reasonable efforts to protect it. The Data will be disclosed and used (under suitable protective conditions) only for U.S. Government purposes.

C. Data First Produced by NASA Under this Agreement

If Partner requests that Data first produced by NASA under this Agreement be protected, and NASA determines it would be Proprietary Data if obtained from Partner, NASA will use reasonable efforts to mark it with a restrictive notice and protect it for one (1) year after its development. During this restricted period the Data may be disclosed and used (under suitable protective conditions) for U.S. Government purposes only, and thereafter for any purpose. Partner must not disclose the Data without NASA's written approval during the restricted period. The restrictions placed on NASA do not apply to Data disclosing a NASA-owned invention for which patent protection is being considered.

D. Publication of Results

The National Aeronautics and Space Act (51 U.S.C. § 20112) requires NASA to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof. As such, NASA may publish unclassified and non-Proprietary Data resulting from work performed under this Agreement. The Parties will coordinate publication of results allowing a reasonable time to review and comment.

E. Data Disclosing an Invention

If the Parties exchange Data disclosing an invention for which patent protection is being considered, and the furnishing Party identifies the Data as such when providing it to the Receiving Party, the Receiving Party shall withhold it from public disclosure for one (1) year.

F. Copyright

Data exchanged with a copyright notice and with restrictive notice is presumed to be published. The following royalty-free licenses apply:

1. If indicated on the Data that it was produced outside of this Agreement, it may be reproduced, distributed, and used to prepare derivative works only for carrying out the Receiving Party's responsibilities under this Agreement.
2. Data without the indication of F.1. is presumed to be first produced under this Agreement. Except as otherwise provided in paragraph E. of this Article, and in the Inventions and Patent Rights Article of this Agreement for protection of reported inventions, the Data may be reproduced, distributed, and used to prepare derivative works for any purpose.

G. Data Subject to Export Control

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

ARTICLE 10. INTELLECTUAL PROPERTY RIGHTS - INVENTION AND PATENT RIGHTS

- A. "Related Entity" as used in this Invention and Patent Rights Article means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner assigned, tasked, or contracted with to perform activities under this Agreement.
- B. The invention and patent rights herein apply to employees and Related Entities of Partner. Partner shall ensure that its employees and Related Entity employees know about and are bound by the obligations under this Article.
- C. NASA has determined that 51 U.S.C. § 20135(b) does not apply to this Agreement. Therefore, title to inventions made (conceived or first actually reduced to practice)

under this Agreement remain with the respective inventing party(ies). No invention or patent rights are exchanged or granted under this Agreement. NASA and Partner will use reasonable efforts to report inventions made jointly by their employees (including employees of their Related Entities). The Parties will consult and agree on the responsibilities and actions to establish and maintain patent protection for joint invention, and on the terms and conditions of any license or other rights exchanged or granted between them.

ARTICLE 11. USE OF NASA NAME AND NASA EMBLEMS

A. NASA Name and Initials

Partner shall not use "National Aeronautics and Space Administration" or "NASA" in a way that creates the impression that a product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. Except for releases under the "Release of General Information to the Public and Media" Article, Partner must submit any proposed public use of the NASA name or initials (including press releases and all promotional and advertising use) to the NASA Associate Administrator for the Office of Communications or designee ("NASA Communications") for review and approval. Approval by NASA Office of Communications shall be based on applicable law and policy governing the use of the NASA name and initials.

B. NASA Emblems

Use of NASA emblems (i.e., NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) is governed by 14 C.F.R. Part 1221. Partner must submit any proposed use of the emblems to NASA Communications for review and approval.

ARTICLE 12. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA

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

Pursuant to Section 841(d) of the NASA Transition Authorization Act of 2017, Public Law 115-10 (the "NTAA"), NASA is obligated to publicly disclose copies of all agreements conducted pursuant to NASA's 51 U.S.C. §20113(e) authority in a searchable format on the NASA website within 60 days after the agreement is signed by the Parties. The Parties acknowledge that a copy of this Agreement will be disclosed, without redactions, in accordance with the NTAA.

ARTICLE 13. DISCLAIMER OF WARRANTY

Goods, services, facilities, or equipment provided by NASA under this Agreement are provided "as is." NASA makes no express or implied warranty as to the condition of any such goods, services, facilities, or equipment, or as to the condition of any research or information generated under this Agreement, or as to any products made or developed under or as a result of this Agreement including as a result of the use of information generated hereunder, or as to the merchantability or fitness for a particular purpose of such research, information, or resulting

product, or that the goods, services, facilities or equipment provided will accomplish the intended results or are safe for any purpose including the intended purpose, or that any of the above will not interfere with privately-owned rights of others. Neither the government nor its contractors shall be liable for special, consequential or incidental damages attributed to such equipment, facilities, technical information, or services provided under this Agreement or such research, information, or resulting products made or developed under or as a result of this Agreement.

ARTICLE 14. DISCLAIMER OF ENDORSEMENT

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

ARTICLE 15. COMPLIANCE WITH LAWS AND REGULATIONS

A. The Parties shall comply with all applicable laws and regulations including, but not limited to, safety; security; export control; environmental; and suspension and debarment laws and regulations. Access by a Partner to NASA facilities or property, or to a NASA Information Technology (IT) system or application, is contingent upon compliance with NASA security and safety policies and guidelines including, but not limited to, standards on badging, credentials, and facility and IT system/application access.

B. With respect to any export control requirements:

1. The Parties will comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120 through 130, and the Export Administration Regulations (EAR), 15 C.F.R. Parts 730 through 799, in performing work under this Agreement or any Annex to this Agreement. In the absence of available license exemptions or exceptions, the Partner shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data and software, or for the provision of technical assistance.

2. The Partner shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of work under this Agreement or any Annex under this Agreement, including instances where the work is to be performed on-site at NASA and where the foreign person will have access to export-controlled technical data or software.

3. The Partner will be responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions or exceptions.

4. The Partner will be responsible for ensuring that the provisions of this Article apply to its Related Entities.

C. With respect to suspension and debarment requirements:

1. The Partner hereby certifies, to the best of its knowledge and belief, that it has complied, and shall comply, with 2 C.F.R. Part 180, Subpart C, as supplemented by 2 C.F.R. Part 1880, Subpart C.

2. The Partner shall include language and requirements equivalent to those set forth in subparagraph C.1., above, in any lower-tier covered transaction entered into under this Agreement.

ARTICLE 16. TERM OF AGREEMENT

This Agreement becomes effective upon the date of the last signature below ("Effective Date") and shall remain in effect until the completion of all obligations of both Parties hereto (except those obligations of a continuing nature as contemplated in Article 18 of this Agreement), or three (3) years from the Effective Date, whichever comes first.

ARTICLE 17. RIGHT TO TERMINATE

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

ARTICLE 18. CONTINUING OBLIGATIONS

The rights and obligations of the Parties that, by their nature, would continue beyond the expiration or termination of this Agreement, e.g., "Liability and Risk of Loss" and "Intellectual Property Rights"-related clauses shall survive such expiration or termination of this Agreement.

ARTICLE 19. POINTS OF CONTACT

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

Management Points of Contact

NASA

Kenneth L Fisher
AST, Propulsion Systems & Technologies
Mail Stop: 5-11
21000 Brookpark Road
Cleveland, OH 44135
Phone: 216.433.5655
Fax: 216.433.5802
klfisher@nasa.gov

SOUTHWEST RESEARCH INSTITUTE

Grant Musgrove
Manager, R&D
6220 Culebra Road
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San Antonio, TX 78228-0510
Phone: 210.522.6517
Fax: 210.522.4506
grant.musgrove@swri.org

Technical Points of Contact

NASA

Thomas Lavelle
Aerospace Engineer
Mail Suite: 5-11
21000 Brookpark Road
Cleveland, OH 44135
Phone: 216.977.7042
Fax: 216.433.5802
thomas.m.lavelle@nasa.gov

SOUTHWEST RESEARCH INSTITUTE

Seth Cunningham
Research Engineer
Mail Suite: Machinery Department
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P.O. Drawer 28510
San Antonio, TX 78228-0510
Phone: 210.522.5577
Fax: 210.522.4506
seth.cunningham@swri.org

ARTICLE 20. DISPUTE RESOLUTION

Except as otherwise provided in the Article entitled "Priority of Use," the Article entitled "Intellectual Property Rights - Invention and Patent Rights" (for those activities governed by 37 C.F.R. Part 404), and those situations where a pre-existing statutory or regulatory system exists (e.g., under the Freedom of Information Act, 5 U.S.C. § 552), all disputes concerning questions of fact or law arising under this Agreement shall be referred by the claimant in writing to the appropriate person identified in this Agreement as the "Points of Contact." The persons identified as the "Points of Contact" for NASA and the Partner will consult and attempt to resolve all issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, the dispute will be referred to the signatories to this Agreement, or their designees, for joint resolution. If the Parties remain unable to resolve the dispute, then the NASA signatory or that person's designee, as applicable, will issue a written decision that will be the final agency decision for the purpose of judicial review. Nothing in this Article limits or prevents either Party from pursuing any other right or remedy available by law upon the issuance of the final agency decision.

ARTICLE 21. MODIFICATIONS

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

ARTICLE 22. ASSIGNMENT

Neither this Agreement nor any interest arising under it will be assigned by the Partner or NASA without the express written consent of the officials executing, or successors, or higher-level officials possessing original or delegated authority to execute this Agreement.

ARTICLE 23. APPLICABLE LAW

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

obligations and remedies of the Parties.

ARTICLE 24. INDEPENDENT RELATIONSHIP

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

ARTICLE 25. LOAN OF GOVERNMENT PROPERTY

The Parties shall enter into a NASA Form 893, Loan of NASA Equipment, for NASA equipment loaned to Partner, if applicable.

ARTICLE 26. SIGNATORY AUTHORITY

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

NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION
GLENN RESEARCH CENTER

SOUTHWEST RESEARCH INSTITUTE

MARLA

Digitally signed by MARLA
PEREZ-DAVIS

BY: PEREZ-DAVIS

Date: 2020.05.13 18:07:17

Marla E. Pérez-Davis, Ph.D.
Center Director

BY: W. Troy Nagy

W. Troy Nagy
Director of Contracts

DATE: 5/13/20

DATE: 03/19/20