

NONREIMBURSABLE SPACE ACT AGREEMENT
GSFC-21-34092
BETWEEN
THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
GODDARD SPACE FLIGHT CENTER
WALLOPS FLIGHT FACILITY
AND THE REGENTS OF THE UNIVERSITY OF COLORADO
FOR USE OF THE WALLOPS GEOPHYSICAL OBSERVATORY (WGO) FOR THE
COLLECTION OF SCIENTIFIC DATA FROM THE IONOSPHERIC RADAR.

ARTICLE 1. AUTHORITY AND PARTIES

In accordance with the National Aeronautics and Space Act (51 U.S.C. § 20113(e)), this Agreement is entered into by the National Aeronautics and Space Administration Goddard Space Flight Center Wallops Flight Facility, located at Wallops Island, VA 23337 (hereinafter referred to as "NASA GSFC," "GSFC," "NASA WFF," "WFF," or "NASA") and THE REGENTS OF THE UNIVERSITY OF COLORADO, acting on behalf of the Cooperative Institute for Research in Environmental Sciences (CIRES) at the University of Colorado (UC) Boulder, a public institution of higher education created under the Constitution and law of the State of Colorado, located at 3100 Marine Street, 572 UCB, Boulder, CO 80303-1058 (hereinafter referred to as "Partner" or "CIRES"). NASA and Partner may be individually referred to as a "Party" and collectively referred to as the "Parties."

ARTICLE 2. PURPOSE

The Wallops Geophysical Observatory (WGO) is a collection of scientific instruments and devices belonging to several agencies and universities. This ground-based instrumentation suite provides ground truth measurements for aircraft, sounding rockets, and satellite measurements. Other science customers use the WGO to conduct measurements from ground-based scientific research instrumentation. The NASA science community uses the science data derived from the Vertical Incidence Pulsed Ionospheric Radar (VIPIR) instruments to determine if the science conditions in the upper atmosphere are favorable for launch and to assist in interpreting the observations gathered on the sounding rocket. Additionally, long-term, synoptic geophysical measurements gathered at Wallops are essential for planning future rocket missions as well as for advancing fundamental understanding of the Geospace environment. Other agencies such as NRL and AFRL, use the VIPIR science data to monitor the acoustic waves propagated through the ionosphere as a result of the Antares and other ELV launches.

ARTICLE 3. RESPONSIBILITIES

A. NASA WFF will use reasonable efforts to:

1. Provide a NASA Point of Contact.
2. Provide a location for the scientific instrument(s) and any connection to NASA Center Network Environment (CNE).
3. Provide CNE network administration in accordance with NASA IT security requirements.

4. Provide Code 610W system administrators to perform necessary Operating System and IT Security patches on UC Boulder CIRES Computer assets.
5. Provide Code 610W system administrator to perform a reboot of a frozen computer or replace a hard disk with a pre-configured replacement hard disk as its schedule permits.
6. Provide secure physical location for equipment Vertical Incidence Pulsed Ionospheric Radar (VIPIR).
7. Provide environmental services (i.e., grass cutting, building maintenance, power, etc.) for equipment.
8. Provide secure network connection from computers at WFF to the owner at its location.
9. Work with Goddard CISO (Chief Information Security Officer) and partner to create an approved Interconnection Security Agreement (ISA) between NASA and UC Boulder prior to establishment of connections, in accordance with the Federal Information Security Modernization Act (FISMA) of 2014 and NASA Procedural Requirements.

B. Partner will use reasonable efforts to:

1. Provide a UC Boulder Point of Contact.
2. Provide data obtained from UC Boulder's Vertical Incidence Pulsed Ionospheric Radar ("VIPIR") instruments to NASA.
3. Provide all computer hardware, software, and network hardware required for connection to the CNE network. This will include replacement of the hardware in the event of a hardware failure.
4. Operate and configure UC Boulder VIPIR consistent with the WGO computer assets.
5. Conduct data logging, data backups, and system backups weekly.
6. Provide hardware, software, and systems for the operation of the VIPIR equipment.
7. Provide all installation and maintenance on the VIPIR equipment.
8. Submit a support request to NASA POC 30 days in advance of any onsite visits to facilitate badging requirements and any support required for onsite maintenance.
9. Before making any system changes, coordinate with NASA Code 610W system administrator.
10. Comply with all NASA Policy Directives (NPDs), NASA Procedural Requirements (NPRs), NASA Interim Directives (NIDs), NASA Interim Technical Requirements (NITRs), Information Technology Security (ITS-HBKS), Standards, Memoranda.
11. Comply with current NASA IT Security Policies and Requirements.
12. Comply with IT Security Certification and Accreditation (C&A) as required.
13. Comply with NASA WFF Spectrum Management requirements and coordinate with WFF Spectrum Manager. Operations must not interfere with WFF activities.
14. Document all data connections or interconnection of information systems required under this agreement using an approved Interconnection Security Agreement between NASA and UC Boulder prior to establishment of connections, in accordance with the Federal Information Security Modernization Act (FISMA) of 2014 and NASA Procedural Requirements.

ARTICLE 4. SCHEDULE AND MILESTONES

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

UC Boulder CIRES will request facility access.	30 days prior to access
UC Boulder CIRES will comply with IT Security Certification and Accreditation	Every three years or whenever a major change occurs
NASA will provide institutional services listed in the responsibilities, as required. If the costs exceed the appropriated funding budgeted for the Fiscal Year, NASA will perform services as funds become available.	As required

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. NASA will promptly notify the Partner if NASA chooses to exercise that priority during the term of the Agreement. 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. Partner hereby waives any claims against NASA, its employees, its related entities, (including, but not limited to, contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors and subcontractors, at any tier) and employees of NASA's related entities for any injury to, or death of, Partner employees or the employees of Partner's related entities, or for damage to, or loss of, Partner's property or the property of its related entities arising from or related to activities conducted under this Agreement, whether such injury,

death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

B. Partner further agrees to extend this unilateral waiver to its related entities by requiring them, by contract or otherwise, to waive all claims against NASA, its related entities, and employees of NASA and employees of NASA's related entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement.

ARTICLE 9. INTELLECTUAL PROPERTY RIGHTS - DATA RIGHTS

Information and data exchanged under this Agreement is exchanged without restrictions unless required by national security regulations (e.g., classified information) or as otherwise provided in this Agreement or agreed to by the Parties for specifically identified information or data (e.g., information or data specifically marked with a restrictive notice).

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. The Parties shall not use "National Aeronautics and Space Administration", "NASA", or the name or acronym of the other Party in a way that creates the impression that a product or service has the authorization, support, sponsorship, or endorsement of the other Party, which does not, in fact, exist. Except for releases under the "Release of General Information to the Public and Media" Article, the Publishing Party must submit any proposed public use of the other Party's 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") or the Partner Administrative Contact (as appropriate) 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 the Parties under this Agreement are provided “as is.” The Parties make 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 Parties nor their respective 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, or five 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.

Agreement Points of Contact

NASA Wallops Flight Facility
Amy Strong
Agreement Manager
Wallops Island, VA 23337
Phone: 757-824-1998
Amy.K.Strong@nasa.gov

THE REGENTS OF THE UNIVERSITY OF
COLORADO
Nick Vita
Senior Contract Officer
Office of Contracts and Grants
3100 Marine Street
572 UCB
Boulder, CO 80303-1058
Phone: 303-492-2692
ocg@colorado.edu
Cc: nicholas.vita@colorado.edu

Technical Points of Contact

NASA Wallops Flight Facility
Harold White
Project Manager
Mail Suite: 840
Wallops Island, VA 23337
Phone: 757-824-1899
Harold.White@nasa.gov

THE REGENTS OF THE UNIVERSITY OF
COLORADO
Terry Bullett
Project Manager
Mail Suite: 216 UCB
3100 Marine Street
572 UCB
Boulder, CO 80303-1058
Phone: 303-497-4788
Terry.Bullett@colorado.edu

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.

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
WALLOPS FLIGHT FACILITY

THE REGENTS OF THE UNIVERSITY OF
COLORADO

David L. Pierce
Director of Wallops Flight Facility

Nick Vita
Senior Contract Officer
Office of Contracts and Grants