

NONREIMBURSABLE SPACE ACT AGREEMENT
BETWEEN
THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
LYNDON B. JOHNSON SPACE CENTER
AND PARTNER NAME
FOR THE LOAN OF OSIRIS-REX SAMPLES.

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 Lyndon B. Johnson Space Center, located at 2101 NASA Parkway, Houston, Texas 77058 (hereinafter referred to as "NASA" or "NASA JSC") and Partner Name, Partner Address (hereinafter referred to as "Partner") NASA and Partner may be individually referred to as a "Party" and collectively referred to as the "Parties."

ARTICLE 2. PURPOSE

The purpose of this is agreement is to document responsibilities relating to the handling and custody of samples from asteroid Bennu, contamination knowledge samples, spacecraft hardware with possibly adhering asteroid material, and witness plates ("OSIRIS-REx samples") loaned to Partner by NASA JSC. The use of the OSIRIS-REx samples will permit beneficial contact among representatives of JSC and the Partner; will provide opportunities for discovery and dissemination of information to the broader scientific community and to the general public; will promote the maximum utilization of OSIRIS-REx samples by JSC; and will provide opportunities for the dissemination of information concerning the activities of NASA.

ARTICLE 3. RESPONSIBILITIES

NASA will use reasonable efforts to:

1. NASA JSC will provide agreed upon OSIRIS-REx samples to Partner. The mode of transportation for OSIRIS-REx samples allocated directly from the NASA JSC curation facility will be determined by NASA. The OSIRIS-REx samples shall be either hand-carried, at the Partner's expense, by an authorized official of the Partner, or mailed from NASA JSC at NASA JSC's expense to the Partner via registered mail or a shipping service approved by JSC.
2. The OSIRIS-REx samples made subject to this loan agreement shall be identified and assigned to the Partner by the OSIRIS-REx Curator via OSIRIS-REx sample assignment forms signed by the OSIRIS-REx Curator prior to allocation.

3. In the event of termination of this Agreement and/or if further studies of the OSIRIS-REx samples loaned to the Partner are required, NASA JSC will direct Partner to whom, and how the OSIRIS-REx samples in its custody shall be delivered, at Partner's expense.

Partner and its related entities (defined in Article 8) will use reasonable efforts to:

1. Partner agrees to adhere to all the following sample accountability and control measures for all loaned OSIRIS-REx samples listed:

- a. Maintain access control to all OSIRIS-REx samples at all times.
- b. Keep records of all individuals who access the OSIRIS-REx samples. Provide a copy of the record to NASA.
- f. Provide additional information (sample name, number, condition, and location), when requested.
- g. Provide secure storage for all OSIRIS-REx samples that minimizes contamination. Security arrangements for the OSIRIS-REx samples are not considered general information subject to Article 11 below and shall not be disclosed without NASA consent.
- h. Allow inspection of security mechanisms and procedures.
- i. Record and report to NASA any OSIRIS-REx samples consumed or destroyed during the research.
- j. Only perform sample analysis for agreed upon research at agreed upon locations. Any use of the sample for purposes beyond agreed upon research are prohibited without prior approval from NASA JSC.
- k. Be responsible for accurate accounting of all OSIRIS-REx samples by sample name, number and location, and perform an inventory of the OSIRIS-REx samples on an annual basis beginning no later than approximately one year from the effective date of this Agreement. Using the sample inventory form provided by the OSIRIS-REx Sample Curator, submit to the OSIRIS-REx Sample Curator within two months of receipt. This inventory includes any samples consumed or destroyed in the course of the research. This inventory shall be signed by the PI and certified by a representative of the Partner (department chair, dean, security representative, etc.).

2. Partner agrees, at the completion of all agreed upon research, to follow return of sample guidelines.

- a. Provide accurate accounting of all OSIRIS-REx samples by name and number and status.
- b. Complete all appropriate sample transfer paperwork.
- c. Provide any nonproprietary scientific information developed during the course of the agreement.
- d. Complete any forms required documenting any destructive analysis that has been carried out on a thin or thick section.

- e. Return any remaining OSIRIS-REx samples to NASA JSC according to directions provided by NASA JSC at partners expense.
3. Subject to Article 17, Right to Terminate, Partner will maintain custody of loaned OSIRIS-REx samples while waiting for NASA JSC’s instructions regarding shipment.
 4. Partner will immediately report the loss or damage of loaned OSIRIS-REx samples to the NASA JSC Management POC identified in Article 19.

ARTICLE 4. SCHEDULE AND MILESTONES

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

- | | |
|---|---|
| 1. NASA JSC will make available agreed upon OSIRIS-REx samples for loaning. | Within 6 months of an approved sample loan request. |
| 2. Partner will provide NASA with the list of authorized employees/researchers /students that will have access to the OSIRIS-REx samples. | Within 2 weeks of executing this agreement. |
| 3. Partner will provide an information package detailing the security protocols for all samples and storage facilities. Further, Partner will provide a list of authorized employees or related entities that have access to the loaned OSIRIS-REx samples. | No later than 2 weeks prior to sample allocation. |
| 4. Partner will provide a summary of all sample locations and condition. | Within 5 days after receiving a request from NASA |
| 5. Partner will allow on-site inspections of all OSIRIS-REx security mechanisms and records. | Within 1 day of receiving notice. |
| 6. Partner will provide documentation of all sample study results and statuses. | No later than 14 days before the conclusion of the agreement. |
| 6. Partner will provide any nonproprietary scientific information developed during the agreement. | No later than 7 days before the conclusion of the agreement. |

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

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 (including, but not limited to, employees, contractors and subcontractors at any tier, grantees, investigators, researchers, customers, users, and their contractors and subcontractors, at any tier), or for the 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 (including, but not limited to, employees, contractors and subcontractors at any tier, grantees, investigators, researchers, customers, users, and their contractors and subcontractors, at any tier) 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.

C. Partner shall be responsible for any loss or damage to the OSIRIS-REx samples. Partner recognizes that the United States Government may take any action available under US law against the Partner with respect to such loss or damage.

Loss or damage to the OSIRIS-REx samples caused by failure to follow proper safeguarding standards as set forth in this Loan Agreement, or by any willful act or omission, lack of good faith, or negligence of the Partner may result in the recall of all OSIRIS-REx samples in the Partner's possession and will be considered in selecting future recipients, both mission team members and Institutions, for future astromaterial sample loans.

D. Notwithstanding the other provisions of this Article, the waivers of liability set forth in this section shall not be applicable to:

- i. Claims between a Party and its own Related Entity or between its own Related Entities;
- ii. Claims made by a natural person, his/her estate, survivors, or anyone claiming by or through him/her (except when such person or entity is a Party to this Agreement or is otherwise bound by the terms of this waiver) for bodily injury to, or other impairment of health of, or death of, such person;
- iii. Claims for damage caused by willful misconduct;
- iv. Intellectual property claims;
- v. Claims for damage resulting from a failure of a Party to extend the waiver of liability to its Related Entities, pursuant to paragraph B of this Article; or
- vi. Claims by a Party arising out of or relating to another Party's failure to perform its obligations 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. 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 12. 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 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, including use of Interconnection Security Agreements (ISAs), when applicable.

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.

D. With respect to the requirements in Section 889 of the National Defense Authorization Act (NDAA) for Fiscal Year 2019, Public Law 115-232:

1. In performing this Agreement, Partner will not use, integrate with a NASA system, or procure with NASA funds (if applicable), "covered telecommunications equipment or services" (as defined in Section 889(f)(3) of the NDAA).

2. The Partner will ensure that the provisions of this Article apply to its Related Entities.

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.

Points of Contact

NASA Lyndon B. Johnson Space Center

Francis McCubbin

Astromaterials Curator

2101 NASA Parkway

Houston, Texas 77058

Phone: 281.483.5126

francis.m.mccubbin@nasa.gov

Partner Name

Partner Title

Physical Address

Phone

Email

Phone

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 Partner Name
SPACE ADMINISTRATION
LYNDON B. JOHNSON SPACE
CENTER

BY: _____
Burt Laws
Director of Exploration Architecture,
Integration, and Science Directorate

BY: _____
TBD

DATE: _____

DATE: _____