

CUSTOMER CONTRACT REQUIREMENTS
EQE Spectral Response System
CUSTOMER CONTRACT 1514114

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. FAR Clauses The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.203-13 Contractor Code of Business Ethics and Conduct (APR 2010). This clause applies only if this contract is in excess of \$5,000,000 and has a period of performance of more than 120 days.

52.204-10 Reporting Executive Compensation And First-Tier Subcontract Awards (JUL 2010). Delete all paragraphs and replace with the following: "If Seller meets the executive compensation reporting requirements of 52.204-10, Seller shall provide the required executive compensation information by maintaining an active registration in the U.S. government CCR database in accordance with 52.204-7. The required information of 52.204-10 will be made public."

52.211-15 Defense Priority and Allocation Requirements (APR 2008). This clause is applicable if a priority rating is noted in this contract.

52.222-21 Prohibition of Segregated Facilities (FEB 1999).

52.222-26 Equal Opportunity (MAR 2007).

52.222-35 Equal Opportunity for Veterans. (SEP 2010). This clause applies only if this contract is \$100,000 or more.

52.222-36 Affirmative Action For Workers With Disabilities (OCT 2010). This clause applies only if this contract exceeds \$15,000.

52.222-37 Employment Reports on Veterans (SEP 2010). This clause applies if this contract is \$100,000 or more.

52.222-40 Notification of Employee Rights Under the National Labor Relations Act. (DEC 2010).

52.222-50 Combating Trafficking in Persons (FEB 2009). In paragraph (d), the term "Contracting Officer" means Buyer, and in paragraph (e), the term "the Government" means Buyer.

52.222-54 Employment Eligibility Verification (JAN 2009).

This clause applies to all subcontracts that (1) are for (i) commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item, or an item that would be a COTS item, but for minor modifications performed by the COTS provider and are normally provided for that COTS item), or (ii) construction; (2) has a value of more than \$3,000; and (3) includes work performed in the United States.

52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (DEC 2007).

52.223-3 Hazardous Material Identification and Material Safety Data (JAN 1997). This clause applies only if Seller delivers

hazardous material under this contract.

52.223-7 Notice of Radioactive Materials (JAN 1997). This clause applies only if this contract involves (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. "Contracting Officer" shall mean Buyer. In the blank in paragraph (a), insert "60 days."

52.223-11 Ozone Depleting Substances (MAY 2001).

52.223-15 Energy Efficiency In Energy-Consuming Products (DEC 2007).

52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving (AUG 2011).

52.225-1 Buy American Act- Supplies (FEB 2009). This clause applies if the Work contains other than domestic components. The term "Contracting Officer" shall mean Buyer the first time it is used in paragraph (c).

52.225-13 Restriction on Certain Foreign Purchases (JUN 2008).

52.227-19 Commercial Computer Software License (DEC 2007).

52.232-39 Unenforceability of Unauthorized Obligations (JUN 2013).

52.244-6 Subcontracts for Commercial Items (DEC 2010). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this contract.

2. NASA FAR Supplement Clauses NASA Contracts. The following contract clauses are incorporated by reference from the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" means Seller.

1852.225-70 Export Licenses (FEB 2000). Note 1: ALT 1 (Feb 2000) applies.

Note 2: "Contracting Officer" means "Contracting Officer through the JPL Subcontracts Manager."

Note 3: para. (b) replace "insert name of NASA installation" with "JPL"

3. Commercial Items If goods or services being procured under this contract are commercial items and Clause H203 is set forth in the purchase order, the foregoing Government clauses in Sections 1 and 2 above are deleted and the following FAR/DFARS clauses are inserted in lieu thereof:

52.203-13 Contractor Code of Business Ethics and Conduct (APR 2010). This clause applies only if this contract is in excess of \$5,000,000 and has a period of performance of more than 120 days.

52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010). This clause applies if this contract is funded in whole or in part with Recovery Act funds.

52.219-8 Utilization of Small Business Concerns (DEC 2010). Required in solicitations and contracts exceeding the simplified acquisition threshold.

52.222-26 Equal Opportunity (MAR 2007).

52.222-35 Equal Opportunity for Veterans. (SEP 2010). This clause applies only if this contract is \$100,000 or more.

52.222-36 Affirmative Action For Workers With Disabilities (OCT 2010). This clause applies only if this contract exceeds

\$15,000.

52.222-37 Employment Reports on Veterans (SEP 2010). This clause applies if this contract is \$100,000 or more.

52.222-40 Notification of Employee Rights Under the National Labor Relations Act. (DEC 2010).

52.222-50 Combating Trafficking in Persons (FEB 2009). In paragraph (d), the term “Contracting Officer” means Buyer, and in paragraph (e), the term “the Government” means Buyer.

52.222-54 Employment Eligibility Verification (JAN 2009).

This clause applies to all subcontracts that (1) are for (i) commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item, or an item that would be a COTS item, but for minor modifications performed by the COTS provider and are normally provided for that COTS item), or (ii) construction; (2) has a value of more than \$3,000; and (3) includes work performed in the United States.

52.223-18 Encouraging Contractor Policies To Ban Text Messaging While Driving (AUG 2011).

52.232-39 Unenforceability of Unauthorized Obligations (JUN 2013).

52.244-6 Subcontracts for Commercial Items (DEC 2010). Clauses in paragraph (c) (1) are applicable to Seller for commercial items ordered by Buyer from Seller under this contract.

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006). This clause does not apply if this contract is for the acquisition of commercial items unless (i) this contract is a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) items the Seller is reselling or distributing to the Government without adding value (generally, the Seller does not add value to the items when it subcontracts items for f.o.b. destination shipment); or (b) shipped in direct support of U.S. military (1) contingency operations; (2) exercises; or (3) forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

4. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

003 Equal Opportunity .

The Subcontractor and lower-tier subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60- 300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

004 Handling and Protection of Restricted Information .

(a) Definition. “Restricted information,” as used in this clause, means recorded information, regardless of form or the media on which it may be recorded, the use and dissemination of which is restricted, and includes:

- (1) Limited rights data;
- (2) Restricted computer software;
- (3) Information incidental to Subcontract administration, such as financial, administrative, cost or pricing, or management information that embody trade secrets or are commercial or financial and confidential or privileged;
- (4) Information designated by the U.S. Government as Sensitive But Unclassified (SBU);

- (5) Information that is marked JPL/Caltech Proprietary, Proposal Sensitive or Business Discreet;
 - (6) Design information or guidance as may be embodied in or derived from computer-aided engineering, computer-aided design, analysis models, manufacturing models, drawings or translations of any of the foregoing, regardless of whether such information or guidance is marked or unmarked; and
 - (7) Information obtained directly from JPL electronic resources, such as JPL computers, servers, networks, electronic libraries or document repositories, regardless of whether such information is marked or unmarked.

- (b) Restrictions on use and disclosure of restricted information. With regard to any restricted information to which the Seller is given access, by or on behalf of NASA or JPL, in performance of this Subcontract that is either marked with a restrictive legend indicating that use and disclosure of the information is restricted or is specifically identified in this Subcontract or in writing by the JPL Subcontracts Manager as being subject to this clause, the Seller agrees to:
 - (1) Use such restricted information only for the purposes of performing the services specified in this Subcontract;
 - (2) Safeguard the restricted information from unauthorized use and disclosure;
 - (3) Allow access to the restricted information only to those employees and lower-tier Sellers that need it to perform services under this Subcontract;
 - (4) Preclude access and disclosure of the restricted information to persons and entities outside of the Seller's or its lower-tier Seller's organization(s);
 - (5) Inform employees who may require access to the restricted information about obligations to use it only to perform the services specified in this Subcontract and to safeguard it from unauthorized use and disclosure;
 - (6) Require that each employee that has access to restricted information complies with the obligations regarding restricted information included in this clause;
 - (7) Return or dispose of the restricted information, as NASA or JPL may direct, when the restricted information is no longer needed for performance of work under this Subcontract; and
 - (8) Maintain any restrictive markings on sensitive information coming into its possession and on any copies thereof.

- (c) Exceptions
 - (1) The obligations and prohibitions of Paragraph (b) do not apply to restricted information which the Seller can demonstrate that the information:
 - (A) Was publicly available at the time of receipt by the Seller or thereafter becomes publicly available without breach of this contract;
 - (B) Was known to, in the possession of, or developed by or for the Seller independently of the restricted information received from the JPL, and such knowledge, possession, or independent development can be shown;
 - (C) Was received by the Seller from a party other than the owner of the restricted information, who has the authority to release the restricted information and did not require the Seller to hold it in confidence; or
 - (D) Is released to or becomes available to a third party on an unrestricted basis from the owner of the restricted

information, someone acting under the owner's control, or with the prior written approval of the owner.

(2) Under a valid order of a court or Government agency, the Seller may release restricted information to which the Seller is given access by or on behalf of NASA or JPL in performance of this contract, provided that the Seller provides prior written notice to the owner of the restricted information of such obligation and the opportunity to oppose such disclosure. The Seller shall provide a copy of the notice to Buyer.

(d) In the event that restricted information provided to the Seller by or on behalf of NASA or JPL includes a restrictive legend that the Seller deems to be ambiguous or unauthorized, the Seller must notify Buyer of such condition. Notwithstanding such a notification, as long as the restrictive legend provides an indication that a restriction on use or disclosure was intended, the Seller will treat the restricted information pursuant to the requirements of this clause unless otherwise directed in writing by Buyer.

(e) Other restrictions on restricted information. This clause is subordinate to all other contract clauses or requirements that specifically address the access, use, handling, protection or disclosure of information. If any restrictions or authorizations in this clause are inconsistent with a requirement of any other clause of this contract, the requirement of the other clause shall take precedence over the requirement of this clause. Third party limited rights data and restricted computer software will be provided under this Subcontract only as authorized by the clause at 52.227-14, Rights in Data—General, Alternates II and III (as modified by 1852.227-14, if applicable). If the Seller believes there is a conflict between this clause and another clause in this contract regarding the access, use, handling, protection or disclosure of restricted information, the Seller must consult with Buyer before taking subsequent actions under the other clause.

(f) Buyer may require the Seller to demonstrate how it is complying with this Handling and Protection of Restricted Information clause.

(g) Remedies. Recognizing that this contract establishes a high standard of accountability and trust, the Seller's breach of any of the conditions of this clause may provide grounds for the Government or JPL or Buyer to pursue such remedies as may be permitted by law, regulation, or this contract. Unauthorized uses or disclosures of sensitive information may result in termination of this contract for default, in addition to any other rights and remedies available by law to the Government, JPL, Buyer, or other provider of sensitive information.

(h) Unless otherwise specifically provided in this contract, no warranty, express or implied, including without limitation any warranty of accuracy, utility, merchantability or of fitness for a particular purpose, is provided hereunder for any of the disclosed sensitive information.

(i) The Seller's obligations under this clause shall survive the expiration or termination of this contract.

- (A) Was known to, in the possession of, or developed by or for the Seller independently of the restricted information received from Buyer, and such knowledge, possession, or independent development can be shown;
- (B) Was received by the Seller from a party other than the owner of the restricted information, who has the authority to release the restricted information and did not require the Seller to hold it in confidence; or
- (C) Is released to or becomes available to a third party on an unrestricted basis from the owner of the restricted information, someone acting under the owner's control, or with the prior written approval of the owner.
- (2) Under a valid order of a court or Government agency, the Seller may release restricted information to which the Seller is given access by or on behalf of NASA or JPL in performance of this contract, provided that the Seller provides prior written notice to the owner of the restricted information of such obligation and the opportunity to oppose such disclosure. The Seller shall provide a copy of the notice to Buyer.
- (j) In the event that restricted information provided to the Seller by or on behalf of NASA or JPL includes a restrictive legend that the Seller deems to be ambiguous or unauthorized, the Seller must notify Buyer of such condition. Notwithstanding such a notification, as long as the restrictive legend provides an indication that a restriction on use or disclosure was intended, the Seller will treat the restricted information pursuant to the requirements of this clause unless otherwise directed in writing by Buyer or the owner of the restricted information.
- (k) Other restrictions on restricted information. This clause is subordinate to all other contract clauses or requirements that specifically address the access, use, handling, protection or disclosure of information. If any restrictions or authorizations in this clause are inconsistent with a requirement of any other clause of this contract, the requirement of the other clause shall take precedence over the requirement of this clause. Third party limited rights data and restricted computer software will be provided under this Subcontract only as authorized by the clause at 52.227-14, Rights in Data—General, Alternates II and III (as modified by 1852.227-14, if applicable). If the Seller believes there is a conflict between this clause and another clause in this contract regarding the access, use, handling, protection or disclosure of restricted information, the Seller must consult with Buyer before taking subsequent actions under the other clause.
- (l) Buyer may require the Seller to demonstrate how it is complying with this Handling and Protection of Restricted Information clause.
- (m) Remedies. Recognizing that this contract establishes a high standard of accountability and trust, the Seller's breach of any of the conditions of this clause may provide grounds for the Government or JPL or Buyer, to pursue such remedies as may be permitted by law, regulation, or this Subcontract. Unauthorized uses or disclosures of sensitive information may result in termination of this contract for default, in addition to any other rights and remedies available by law to the Government, JPL Buyer, or other provider of sensitive information.
- (n) Unless otherwise specifically provided in this contract, no warranty, express or implied, including without limitation any warranty of accuracy, utility, merchantability or of fitness for a particular purpose, is provided hereunder for any of the disclosed sensitive information.
- (o) The Seller's obligations under this clause shall survive the expiration or termination of this Subcontract.

1. Release of Restricted Information

- (a) Definition. "Restricted information," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded, the use and dissemination of which is restricted, and includes:
- (1) Limited rights data;
 - (2) Restricted computer software;

(3) Information incidental to contract administration, such as financial, administrative, cost or pricing, or management information that embody trade secrets or are commercial or financial and confidential or privileged;

(4) Information designated by the U.S. Government as Sensitive But Unclassified (SBU).

(5) Information that is marked JPL/Caltech Proprietary, Proposal Sensitive or Business Discreet;

(6) Design information or guidance as may be embodied in or derived from computer-aided engineering, computer-aided design, analysis models, manufacturing models, drawings or translations of any of the foregoing, regardless of whether such information or guidance is marked or unmarked; and

(7) Information obtained directly from JPL electronic resources, such as JPL computers, servers, networks, electronic libraries or document repositories, regardless of whether such information is marked or unmarked.

(b) Sellers, as well as their lower-tier subcontractors and their individual employees, may require access to restricted information in the JPL's possession. The Seller agrees that, where needed for the performance of a contract, Buyer may release to the Seller and to any of its lower-tier subcontractors, restricted information delivered during the course of this contract. Additionally, offerors agree that restricted information submitted with their proposals may be provided to JPL service contractors that assist JPL with subcontract closeout. If suitably marked with a legend indicating that use and disclosure of restricted information is restricted or if the information falls under Paragraph 2.(a)(6) or Paragraph 2.(a)(7), such restricted information will be subject to the enumerated protections mandated by this clause. The Seller's limited rights data and restricted computer software will be provided to other JPL contractors or their lower-tier subcontractors only as authorized by the clause at 52.227-14, Rights in Data-General, Alternates II and III (as modified by 1852.227-14, if applicable).

(c) Unless the JPL Subcontracts Manager decides that reasonable grounds exist to challenge the markings, NASA, JPL, Seller and lower-tier subcontractors, shall comply with all of the safeguards contained in Paragraph 2.(d) and Paragraph 1. of this clause.

(d) To receive access to restricted information needed to assist NASA and JPL in accomplishing NASA mission activities and management and administrative functions, the Seller and lower-tier subcontractors must be operating under a contract that contains this clause, which obligates the Seller or lower-tier subcontractors, with respect to restricted information marked with a legend indicating that use and disclosure of the information is restricted, to do the following:

(1) Use such restricted information only for the purpose of performing the services specified in its Subcontract;

(2) Safeguard such restricted information from unauthorized use and disclosure;

(3) Allow access to such restricted information only to those employees and Sellers that need it to perform services under the Subcontract;

(4) Preclude access and disclosure of such restricted information to persons and entities outside of the Seller's or its lower-tier subcontractor's organization(s);

(5) Inform employees who may require access to such restricted information about obligations to use it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure;

(6) Require that each employee that has access to restricted information complies with the obligations regarding restricted information included in this clause; and

(7) Return or dispose of such restricted information, as Buyer may direct, when the restricted information is no longer needed for performance of work under the Subcontract.

(8) Maintain any restrictive markings on sensitive information coming into its possession and on any copies thereof.

(e) Exceptions. The obligations and prohibitions of Paragraph (e) of this clause do not apply to restricted information which the receiving party can demonstrate to Buyer-

(1) Was publicly available at the time of receipt by the receiving Seller or thereafter becomes publicly available without breach of this contract;

(2) Was known to, in the possession of, or developed by or for the receiving party independently of the restricted information received from the Government or JPL, and such knowledge, possession, or independent development can be shown;

(3) Was received by the receiving party from a party other than the owner of the restricted information, who has the authority to release the restricted information and did not require the receiving party to hold it in confidence;

(4) Is released to or becomes available to a third party on an unrestricted basis from the owner of the restricted information, someone acting under the owner's control, or with the prior written approval of the owner; or

(5) Is required to be released under a valid order of a court or Government agency, provided that the Seller provides prior written notice to the owner of the restricted information of such obligation and the opportunity to oppose such disclosure.

(f) Seller personnel requiring privileged access or limited privileged access to JPL or NASA information technology systems that contain restricted information and that are the primary responsibility of another party are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for adverse impact to JPL or NASA missions. Buyer may allow the Seller to conduct its own screening, provided the Seller employs substantially equivalent screening procedures.

(g) This clause does not affect JPL's rights or NASA's responsibilities under the Freedom of Information Act.

2. Lower-tier Subcontracts

The Seller shall insert, or require the insertion of Paragraphs 1. and 2. of this clause, including this Paragraph 3., suitably modified to reflect the relationship of the parties, in all lower-tier subcontracts (regardless of tier).

- (1) Information designated by the U.S. Government as Sensitive But Unclassified (SBU).
 - (2) Information that is marked JPL/Caltech Proprietary, Proposal Sensitive or Business Discreet;
 - (3) Design information or guidance as may be embodied in or derived from computer-aided engineering, computer-aided design, analysis models, manufacturing models, drawings or translations of any of the foregoing, regardless of whether such information or guidance is marked or unmarked; and
 - (4) Information obtained directly from JPL electronic resources, such as JPL computers, servers, networks, electronic libraries or document repositories, regardless of whether such information is marked or unmarked.
- (h) Sellers, as well as their lower-tier subcontractors and their individual employees, may require access to restricted information in the JPL's possession. The Seller agrees that, where needed for the performance of a subcontract, JPL may release to the Seller and to any of its lower-tier Sellers, restricted information delivered during the course of this Subcontract. Additionally, offerors agree that restricted information submitted with their proposals may be provided to JPL service Sellers that assist JPL with subcontract closeout. If suitably marked with a legend indicating that use and disclosure of restricted information is restricted or if the information falls under Paragraph 2.(a)(6) or Paragraph 2.(a)(7), such restricted information will be subject to the enumerated protections mandated by this clause. The Seller's limited rights data and restricted computer software will be provided to other JPL Sellers or their lower-tier Sellers only as authorized by the clause at 52.227-14, Rights in Data-General, Alternates II and III (as modified by 1852.227-14, if applicable).
- (i) Unless the JPL Subcontracts Manager decides that reasonable grounds exist to challenge the markings, NASA, JPL, and its Sellers and lower-tier Sellers, shall comply with all of the safeguards contained in Paragraph 2.(d) and Paragraph 1. of this clause.
- (j) To receive access to restricted information needed to assist NASA and JPL in accomplishing NASA mission activities and management and administrative functions, the Seller and lower-tier Sellers must be operating under a subcontract that contains this clause, which obligates the Seller or lower-tier Seller, with respect to restricted information marked with a legend indicating that use and disclosure of the information is restricted, to do the following:
- (1) Use such restricted information only for the purpose of performing the services specified in its Subcontract;
 - (2) Safeguard such restricted information from unauthorized use and disclosure;
 - (3) Allow access to such restricted information only to those employees and Sellers that need it to perform services under the Subcontract;
 - (4) Preclude access and disclosure of such restricted information to persons and entities outside of the Seller's or its lower-tier Seller's organization(s);
 - (5) Inform employees who may require access to such restricted information about obligations to use it only to perform the services specified in its Subcontract and to safeguard it from unauthorized use and disclosure;
 - (6) Require that each employee that has access to restricted information complies with the obligations regarding restricted information included in this clause; and
 - (7) Return or dispose of such restricted information, as NASA or JPL may direct, when the restricted information is no longer needed for performance of work under the Subcontract.
 - (8) Maintain any restrictive markings on sensitive information coming into its possession and on any copies thereof.
- (k) Exceptions. The obligations and prohibitions of Paragraph (e) of this clause do not apply to restricted information

which the receiving Seller can demonstrate to the JPL Subcontracts Manager -

- (1) Was publicly available at the time of receipt by the receiving Seller or thereafter becomes publicly available without breach of this Subcontract;
- (2) Was known to, in the possession of, or developed by or for the receiving Seller independently of the restricted information received from the Government or JPL, and such knowledge, possession, or independent development can be shown;

(3) Was received by the receiving Seller from a party other than the owner of the restricted information, who has the authority to release the restricted information and did not require the receiving Seller to hold it in confidence;

(4) Is released to or becomes available to a third party on an unrestricted basis from the owner of the restricted information, someone acting under the owner's control, or with the prior written approval of the owner; or

(5) Is required to be released under a valid order of a court or Government agency, provided that the Seller provides prior written notice to the owner of the restricted information of such obligation and the opportunity to oppose such disclosure.

(l) Seller personnel requiring privileged access or limited privileged access to JPL or NASA information technology systems that contain restricted information and that are the primary responsibility of another Seller are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for adverse impact to JPL or NASA missions. The JPL Subcontracts Manager may allow the Seller to conduct its own screening, provided the Seller employs substantially equivalent screening procedures.

(m) This clause does not affect JPL's rights or NASA's responsibilities under the Freedom of Information Act.

3. Lower-tier Subcontracts

The Seller shall insert, or require the insertion of Paragraphs 1. and 2. of this clause, including this Paragraph 3., suitably modified to reflect the relationship of the parties, in all lower-tier subcontracts (regardless of tier).

005 Insurance and Indemnification .

(a) This clause is applicable if:

(1) The performance of this contract includes activities which could endanger non-Seller personnel and such activities are performed at a location which is not secured by appropriate Seller-controlled access restrictions; or

(2) This contract requires work on a Government installation or premises under the control of JPL.

(b) Insurance. Seller shall, at its own expense, provide and maintain during the entire performance period of this contract at least the following kinds and minimum amounts of insurance with JPL named as an additional insured in all of its policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.

(1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when contract operations are so commingled with the Seller's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$2,000,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Seller in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Seller is qualified pursuant to statutory authority to do so.

(2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$2,000,000 for all deaths, injuries, and property damage arising from any accident or occurrence.

(c) Insurance Certificates and Endorsements. Before commencing work under this contract, Seller shall furnish (i) certificates of insurance for the coverages specified in paragraph (b) above, and (ii) an additional insured endorsement naming JPL as an additional insured to the contract for the coverage specified in paragraph (b)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this contract is to be performed prescribe, or (ii) until 30 days after the insurer or Seller gives written notice to Buyer, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this contract, and (ii) be primary and non-contributing to any insurance procured by

JPL. Seller agrees to permit JPL to examine its original policies, should JPL so request. Should the Seller at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, Buyer shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Seller.

- (d) Indemnification. Seller agrees that it will be responsible to the Government and JPL and Buyer for, and will indemnify, immediately defend and hold harmless the Government and JPL, its trustees, officers, and employees, and Buyer from any loss, cost, damage, expense or liability, including attorney's fees, or any suit therefore, by reason of actual or alleged claims of any kind, including, but not limited to property damage or personal injury of whatever kind or character, arising out of or in connection with the performance of work hereunder by Seller or any of its lower-tier subcontractors, however caused, including any resulting from any alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only a duty to indemnify to

the extent such loss, cost, damage, expense or liability is attributable to the sole negligence or willful misconduct of the Government or of JPL, its trustees, agents, officers or employees or Buyer.

(e) Lower-tier subcontracts.

(1) Seller shall insert the substance of this clause, including this paragraph (e), in any and all lower-tier subcontracts under this contract if:

(A) The performance of the lower-tier subcontract includes activities which could endanger non-lower-tier Seller personnel and such activities are performed at a location which is not secured by appropriate lower-tier Seller-controlled access restrictions; or

(B) This lower-tier subcontract requires work on a Government installation or premises under the control of JPL.

(2) At least five days before entry of each such lower-tier subcontractor's personnel on the Government installation or JPL-controlled premises, Seller shall furnish (or ensure that there has been furnished) to Buyer a current certificate of insurance meeting the requirements of paragraph (c) above, for each such lower-tier subcontractor.

(f) This clause shall be interpreted pursuant to California law.

NEW MATERIAL

(a) Definitions

(1) "Material," as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.

(2) "New," as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

(3) "Other than new", as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) Unless this Subcontract specifies otherwise, the Subcontractor represents that the supplies, are new and are not of such age or so deteriorated as to impair their usefulness or safety.

(c) If the Subcontractor believes that furnishing other than new material will be in Customer's interest, the Subcontractor shall so notify the Buyer in writing and request authority to use such material. The Subcontractor's notice shall include the reasons for the request along with a proposal for any consideration due Buyer if Buyer authorizes the use of other than new material.

DATA REMOVAL FROM COMPUTERS AND ELECTRONIC DEVICES

The Seller shall archive all data required to be retained pursuant to the terms of this Contract. The Seller shall completely sanitize (e.g., overwrite, degauss or destroy) all media containing data in all computers and other electronic devices and permanently delete all non-transferable licensed software before such computers or other electronic devices leave the control of Seller by transfer or disposal. All data, including computer software, provided by JPL, derived from JPL data, or owned by the Government or JPL pursuant to this Contract shall be permanently deleted from Seller controlled computers or electronic devices before leaving the control of Seller. Seller shall submit to Buyer a written certification that the above sanitization requirements have been satisfied and the date of such action.