

**CUSTOMER CONTRACT REQUIREMENTS**  
**Sustainable Flight Demonstrator (SFD)**  
**CUSTOMER CONTRACT 80AFRC22N0008**

#### CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

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

#### **80AFRC22N0008 Special Provisions .**

##### **COMPLIANCE WITH U.S. LAWS, REGULATIONS, AND POLICIES**

Seller must comply with all applicable U.S. laws, regulations, and policies, including but not limited to safety; security; access; export control; environmental; suspension and debarment laws and regulations; and establishing an Interconnection Security Agreement when applicable.

With respect to export control, Seller shall be required to comply with all U.S. export control laws including Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR). Seller shall be responsible for ensuring that all persons who will perform work on export-controlled goods or services are eligible under export control laws, EAR, and ITAR.

Sellers that intend to rely on Russian suppliers shall comply with the Iran, North Korea, and Syria Nonproliferation Act (P.L. 106-178, amended by P.L. 107-228, P.L. 109-112, P.L. 109-353, P.L. 110-329, P.L. 112-273, P.L. 116-94; 50 U.S.C. 1701 note) (INKSNA), or any other applicable sanctions law (including but not limited to the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, 22 U.S.C. § 5601 et seq.; Countering America's Adversaries Through Sanctions Act, P.L. 115 – 44 (Aug 2, 2017); and the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq), during the Agreement performance. INKSNA prohibits payments to organizations or entities that are now or were in the past under the jurisdiction or control of Roscosmos (the Russian Federal Space Agency), or to any other organization, entity, or element of the Government of Russia for goods or services directly related to human spaceflight, other than for work on the International Space Station. INKSNA currently prohibits NASA from making payments in cash or in kind after December 31, 2025 for work on the ISS to the foregoing listed entities imposes reporting and assessment requirements. NASA has applied the restrictions in this Act to include NASA funding of Russian entities via U.S. entities. Seller shall explain how its Russian supplier is not a prohibited entity under INKSNA or any other applicable sanctions law, or how the Seller will conduct its development effort without providing NASA funds or NASA technical assistance to the prohibited entity during the term of the Agreement.

Additionally, pursuant to The Department of Defense and Full-Year Appropriation Act, Public Law 112-10, Section 1340(a); The Consolidated and Further Continuing Appropriation Act of 2012, Public Law 112-55, Section 539; and future-year appropriations (hereinafter, "the Acts"), NASA is restricted from using appropriated funds to enter into or fund any Agreement of any kind to participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime entity level and at all sub-entity levels, whether the bilateral involvement is funded or to be performed on a no-exchange-of-funds basis. Accordingly, proposals involving bilateral participation, collaboration, or coordination in any way with China or any Chinese-owned company, whether funded or to be performed on a no-exchange-of-funds basis, will be ineligible for award. By submitting a proposal, Sellers are certifying that they are not China or a Chinese-owned company, and that the Seller will not participate, collaborate, or coordinate with China or any Chinese-owned company, at the prime

entity level or at any sub-entity level, whether the bilateral involvement is funded or to be performed on a no- exchange-of-funds basis. "China or Chinese-owned Company" means the People's Republic of China, any company owned by the People's Republic of China, or any company incorporated under the laws of the People's Republic of China. This restriction does not apply to the purchase from Chinese-owned entities of commercial items of supply needed to perform the Agreement.

Section 889 of the National Defense Authorization Act of 2019, "Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment," prohibits, inter alia, the Federal Government, Federal Government contractors, and grant and loan recipients from procuring or using any equipment, system, or service that uses "covered telecommunications equipment or services" (as defined in Section 889(f)(3)) as a substantial or essential component of any system, or as critical technology as part of any system. Due to the nature of the work to be executed under this Agreement, in performing the Agreement, Seller agrees to not acquire or use, in any manner whatsoever or at any tier, "covered telecommunications equipment or services" defined in Section 889(f)(3) as a substantial or essential component of any system, or as critical technology as part of any system."

## **LIABILITY**

A. Seller hereby waives any claims against NASA or one or more of its Related Entities for any injury to, or death of, Seller or one or more of its Related Entities, or for damage to, or loss of, Seller'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. For purposes of this Agreement, "Related Entities" shall mean contractors and subcontractors of a Seller at any tier; grantees, investigators, customers, and users of a Seller at any tier and their contractors or subcontractor at any tier; or, employees of the Seller or any of the foregoing.

B. Seller further agrees to extend this unilateral waiver to its related entities by requiring them, by contract or otherwise, to waive all claims against NASA and its Related Entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement. In the event the U.S. Government incurs any liability based upon Seller's failure to provide for the waiver by Seller's Related Entities set out above, Seller agrees to indemnify and hold the U.S. Government harmless against such liability, including costs and expenses incurred by the U.S. Government in defending against any suit or claim for liability by Seller's Related Entities.

C. In the event U.S. Government property is damaged as a result of activities conducted under this Agreement for the primary benefit of Seller, except in the case of gross negligence or willful misconduct by NASA, Seller shall be solely responsible for the repair and restoration of such property subject to NASA and/or Buyer direction.

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

- i. Claims between Seller 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 Seller 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 Seller to extend the waiver of liability to its Related Entities, pursuant to paragraph B of this Article; or
- vi. Claims by Seller arising out of or relating to NASA's failure to perform its obligations under this Agreement.

## **LIABILITY - PRODUCT LIABILITY**

With respect to products or processes resulting from a Party's participation in an SAA, each Party that

markets, distributes, or otherwise provides such product, or a product designed or produced by such a process, directly to the public will be solely responsible for the safety of the product or process.

#### **LIABILITY - PRODUCT LIABILITY INDEMNIFICATION**

In the event the U.S. Government and/or Buyer incurs any liability based upon Seller's, or Seller's Related Entity's, use or commercialization of products or processes resulting from a Seller's participation under this Agreement, Seller agrees to indemnify and hold the U.S. Government and/or Buyer harmless against such liability, including costs and expenses incurred by the U.S. Government and/or Buyer in defending against any suit or claim for such liability.

#### **INTELLECTUAL PROPERTY RIGHTS - DATA RIGHTS**

##### A. General

1. "Related Entity" as used in this Data Rights Article, means a contractor, subcontractor, grantee, Seller, or other entity having a legal relationship with NASA or Partner that is assigned, tasked, or contracted with 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 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. "Practical Application," as used in this Data Rights Article, means to:
  - a. manufacture, in the case of a composition or product;
  - b. practice, in the case of a process or method; or
  - c. operate, in case of a machine or system;and, in each case, under conditions establishing the invention, hardware, software, or service is being used, and its benefits are publicly available on reasonable terms, as permitted by law.
  
5. Data exchanged between NASA and Partner or Related Entity under this Agreement will be exchanged without restriction except as otherwise provided herein.
  
6. 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.
  
7. The Parties will not exchange preexisting Proprietary Data under this Agreement unless authorized herein or in writing by the owner.
  
8. 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.

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

10. Disclaimer of Liability: NASA is not restricted in, nor liable for, the use, disclosure, or reproduction of Data without a restrictive notice, or for Data Partner or Related Entity gives, or is required to give, the U.S. Government without restriction.

11. Partner and Related Entity may use the following or a similar restrictive notice:

Proprietary Data Notice

The data herein include Proprietary Data and are restricted under the Data Rights provisions of Space Act Agreement: PAM 37685, 80AFRC22N0008.

Partner and Related Entity should also mark each page containing Proprietary Data with the following or a similar legend: "Proprietary Data – Use And Disclose Only Under the Notice on the Title or Cover Page."

B. Data First Produced by Partner under this Agreement

(1) 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. Partner or Related Entity shall furnish such Data to NASA upon request and NASA may disclose and use such Data (under suitable protective conditions) only for evaluating Partner's performance of its milestones and validating/updating the goals and objectives of SFD.

(2) Upon a successful completion by Partner of all milestones under this Agreement, NASA shall not assert rights in such Data or use such Data for any purpose except that NASA retains the right to: (1) maintain a copy of such Data for archival purposes; (2) use or disclose such archived data within the Government for continued validating and updating of the goals and objectives of SFD; and (3) may use or disclose such archived Data by or on behalf of NASA for Government purposes in the event NASA determines that:

(a) Such action is necessary because Partner, its assignee, or other successor has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of inventions, hardware, software, or service related to such Data;

(b) Such action is necessary because Partner, its assignee, or other successor, having achieved practical application of inventions, hardware, software, or service related to such Data, has failed to maintain practical application;

(c) Such action is necessary because Partner, its assignee, or other successor has discontinued making the benefits of inventions, hardware, software, or service related to such Data available to the public or to the Federal Government;

(d) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Partner, its assignee, or other successor; or

(e) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by Partner, its assignee, or successor.

In the event NASA determines that one of the circumstances listed in subparagraphs (a)-(e) above exists, NASA shall provide written notification to the Partner's Administrative Point of Contact. Upon mailing of such determination, Partner shall have thirty (30) days to respond by providing its objection to the determination as a dispute under the Article entitled "DISPUTE RESOLUTION" of this Agreement. In the event that Partner does not respond in writing to NASA's determination, then such determination shall serve as a final agency decision for all purposes including judicial review.

(3) In the event NASA terminates this Agreement in accordance with "RIGHT TO TERMINATE" Section B, "Termination for Failure to Perform", NASA may in its sole discretion have the right to use, reproduce, prepare derivative works, distribute to the public, perform publicly, display publicly, or disclose Data first produced by Partner and Related Entities in carrying out Partner's and Related Entity's responsibilities under this Agreement by or on behalf of NASA for Government purposes. NASA and Partner will negotiate rights in Data in the event of termination for any other reason.

### C. Data First Produced by NASA under this Agreement

(1) As to Data first produced by NASA in carrying out NASA responsibilities under this Agreement that would be Proprietary Data if it had been obtained from Partner or Related Entity, such Data will be appropriately marked with a restrictive notice and NASA will use reasonable efforts to maintain it in confidence for five years after its development, with the express understanding that during the aforesaid restricted period such marked Data may be disclosed and used by NASA and any Related Entity of NASA (under suitable protective conditions) only for carrying out NASA's responsibilities under or meeting the goals and objectives of this Agreement, and thereafter for any purpose. Partner and Related Entities will use reasonable efforts not to 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.

(2) Upon a successful completion by Partner of all milestones under this Agreement, NASA shall not assert rights in such Data or use such Data for any purpose during the restricted period except that NASA retains the right to: (1) maintain a copy of such Data for archival purposes; (2) use or disclose such archived data within the Government for continued validating and updating of the goals and objectives of SFD; and (3) may use or disclose such archived Data by or on behalf of NASA for Government purposes in the event NASA determines that:

- (a) Such action is necessary because Partner, its assignee, or other successor has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of inventions, hardware, software, or service related to such Data;
- (b) Such action is necessary because Partner, its assignee, or other successor, having achieved practical application of inventions, hardware, software, or service related to such Data, has failed to maintain practical application;
- (c) Such action is necessary because Partner, its assignee, or other successor has discontinued making the benefits of inventions, hardware, software, or service related to such Data available to the public or to the Federal Government;
- (d) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Partner, its assignee, or other successor; or
- (e) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by Partner, its assignee, or successor.

In the event NASA determines that one of the circumstances listed in subparagraphs (a)-(e) above exists, NASA shall provide written notification to the Partner's Administrative Point of Contact. Upon mailing of such determination, Partner shall have thirty (30) days to respond by providing its objection to the determination as a dispute under the Article entitled "DISPUTE RESOLUTION" of this Agreement. In the event that Partner does not respond in writing to NASA's determination, then such determination shall serve as a final agency decision for all purposes including judicial review.

(3) In the event NASA terminates this Agreement in accordance with "RIGHT TO TERMINATE" Section B, "Termination for Failure to Perform", NASA may in its sole discretion have the right to use, reproduce, prepare derivative works, distribute to the public, perform publicly, display publicly, or disclose Data first produced by NASA in carrying out NASA's responsibilities under this Agreement by or on behalf of NASA for Government purposes during any remaining portion of the restricted period, and thereafter for any purpose. NASA and Partner will negotiate rights in Data in the event of termination for any other reason.

#### 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 a reasonable time (one (1) year unless otherwise agreed or the Data is restricted for a longer period herein).

#### F. Copyright

Data exchanged with a copyright notice and with no 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 "INVENTION AND PATENT RIGHTS" 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 and Related Entity under this Agreement must not be given to foreign persons or transmitted outside the United States without proper U.S. Government authorization.

#### H. Handling of Background, Third Party Proprietary, and Controlled Government Data

1. NASA or Partner (as Disclosing Party) may provide the other Party or its Related Entities (as Receiving Party):
  - a. Proprietary Data developed at Disclosing Party's expense outside of this Agreement (referred to as Background Data);
  - b. Proprietary Data of third parties that Disclosing Party has agreed to protect, or is required to protect under the Trade Secrets Act (18 U.S.C. § 1905) (referred to as Third Party Proprietary Data); and
  - c. U.S. Government Data, including software and related Data, Disclosing Party intends to control (referred to as Controlled Government Data).

2. All Background, Third-Party Proprietary, and Controlled Government Data provided by Disclosing Party to Receiving Party shall be marked by Disclosing Party with a restrictive notice and protected by Receiving Party in accordance with this Article.

3. Disclosing Party provides the following Data to Receiving Party. The lists below may not be comprehensive, are subject to change, and do not supersede any restrictive notice on the Data.

a. Background Data:

The Disclosing Party's Background Data, if any, will be identified in a separate document.

b. Third Party Proprietary Data:

The Disclosing Party's Third-Party Proprietary Data, if any, will be identified in a separate document.

c. Controlled Government Data:

The Disclosing Party's Controlled Government Data, if any, will be identified in a separate document.

d. Notwithstanding H.4., NASA software and related Data will be provided to Partner or Related Entity under a separate Software Usage Agreement (SUA). Partner or Related Entity shall use and protect the related Data in accordance with this Article. Unless the SUA authorizes retention, or Partner or Related Entity enters into a license under 37 C.F.R. Part 404, the related Data shall be disposed of as NASA directs.

4. For such Data identified with a restrictive notice pursuant to H.2., Receiving Party shall:

- a. Use, disclose, or reproduce such Data only as necessary under this Agreement;
- b. Safeguard such Data from unauthorized use and disclosure;
- c. Allow access to such Data only to its employees and any Related Entity requiring access under this Agreement;
- d. Except as otherwise indicated in 4.c., preclude disclosure outside Receiving Party's organization;
- e. Notify its employees with access about their obligations under this Article and ensure their compliance, and notify any Related Entity with access about their obligations under this Article; and

f. Dispose of such Data as Disclosing Party directs.

#### I. Oral and visual information

If Partner or Related Entity discloses Proprietary Data orally or visually, NASA will have no duty to restrict, or liability for disclosure or use, unless Partner or Related Entity:

1. Orally informs NASA before initial disclosure that the Data is Proprietary Data, and
2. Reduces the Data to tangible form with a restrictive notice and gives it to NASA within ten (10) calendar days after disclosure.

## **INTELLECTUAL PROPERTY RIGHTS - INVENTION AND PATENT RIGHTS**

### A. Definitions

1. "Administrator," means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

2. "Patent Representative" means the NASA Armstrong Flight Research Center Patent Counsel. Correspondence with the Patent Representative under this clause will be sent to:

Patent Counsel

NASA Armstrong Flight Research Center  
P.O. Box 273 (4800:2016)  
Edwards AFB, CA 93523

3. "Invention," means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S.C.

4. "Made," in relation to any invention, means the conception or first actual reduction to practice.

5. "Practical Application," means to:

- a. manufacture, in the case of a composition or product;
- b. practice, in the case of a process or method; or
- c. operate, in case of a machine or system;

and, in each case, under conditions establishing the invention is being used, and its benefits are publicly available on reasonable terms, as permitted by law.

6. "Related Entity" as used in this Invention and Patent Rights Article, means a contractor, subcontractor, grantee, Seller, or other entity having a legal relationship with NASA or Buyer assigned, tasked, or contracted with to perform activities under this Agreement.

7. "Manufactured substantially in the United States" means over fifty percent (50%) of a product's components are manufactured in the United States. This requirement is met if the cost to Seller of the components mined, produced, or manufactured in the United States exceeds fifty percent (50%) percent of the cost of all components (considering only the product and its components). This includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations under Federal Acquisition Regulation 25.103(a) and (b) exist, are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

## B. Allocation of principal rights

### 1. Presumption of NASA title in Partner or Related Entity's inventions

a. Seller inventions under this Agreement are presumed made as specified in subparagraphs (A) or (B) of 51 U.S.C. § 20135(b)(1). The above presumption is conclusive unless Seller's invention disclosure to the Patent Representative via the Buyer includes a written statement with supporting details, demonstrating that the invention was not made as specified above.

b. Regardless of whether title to such an invention is subject to an advance waiver or a petition for individual waiver, Seller may still file the statement in B.1.a. The Administrator (or Administrator's designee) will review the information from Seller and any other related information and will notify Partner of his or her determination.

### 2. NASA Property rights in Partner or Related Entity's inventions

Inventions made under this Agreement where the presumption of paragraph B.1.a. of this Article is conclusive or when a determination exists that it was made under subparagraphs (A)



or (B) of 51 U.S.C. § 20135(b)(1) are the exclusive property of the United States as represented by NASA. The Administrator may waive all or any part of the United States' rights to Buyer or Seller, as provided in paragraph B.3. of this Article.

### 3. Waiver of property rights by NASA

a. NASA Patent Waiver Regulations, 14 C.F.R. Part 1245, Subpart 1, use Presidential Memorandum on Government Patent Policy of February 18, 1983 as guidance in processing petitions for waiver of rights under 51 U.S.C. § 20135(g) for any invention or class of inventions made or that may be made under subparagraphs (A) or (B) of 51 U.S.C. § 20135(b)(1).

b. NASA has determined that to stimulate and support the capability of United States sustainable commercial aircraft technology to the public and the Federal Government, the interest of the United States would be served by waiving to Partner, in accordance with 51 U.S.C. § 20135(g) and the provisions of 14 C.F.R. Part 1245, Subpart 1, rights to any inventions or class of inventions made by Partner in the performance of work under this Agreement. Therefore, as provided in 14 C.F.R. Part 1245, Subpart 1, Partner may petition, prior to execution of the Agreement or within thirty (30) days after execution, for advance waiver of any such inventions Partner may make under this Agreement, and any such properly filed petition will be granted. If no petition is submitted, or if a petition is denied, Partner (or an employee inventor of Partner) may still petition for waiver of rights to an identified subject invention within eight (8) months after disclosure under paragraph E.2. of this Article, or within such longer period if authorized under 14 C.F.R. § 1245.105, and such properly filed petition will be granted. See paragraph J. of this Article for procedures.

### 4. NASA inventions

a. No invention or patent rights in NASA or its Related Entity's inventions are exchanged or granted under this Agreement except as provided herein.

b. Upon request, NASA will use reasonable efforts to grant Partner a negotiated license, under 37 C.F.R. Part 404, to any NASA invention made under this Agreement.

c. Upon request, NASA will use reasonable efforts to grant Partner a negotiated license, under 37 C.F.R. Part 404, to any invention made under this Agreement by employees of a NASA Related Entity, or jointly between NASA and NASA Related Entity employees, where NASA has title.

## C. Minimum rights reserved by the Government

1. For Related Entity inventions subject to a NASA waiver of rights under 14 C.F.R. Part 1245, Subpart 1, the Government reserves:

a. an irrevocable, royalty-free license to practice the invention throughout the world by or on behalf of the United States or any foreign government under any treaty or agreement with the United States; and

b. other rights as stated in 14 C.F.R. § 1245.107.

2. Nothing in this paragraph grants to the Government any rights in inventions not made under this Agreement.

3. Upon a successful completion by Partner of all milestones under this Agreement, NASA will refrain from exercising its Government Purpose License reserved in paragraph C.I.a. above for a period of five years following the expiration of this Agreement.

4. Nothing contained in this paragraph shall be considered to grant to the Government any

rights with respect to any invention other than an invention made under this Agreement.

#### D. Minimum rights to Related Entity

1. Related Entity is granted a revocable, nonexclusive, royalty-free license in each patent application or patent in any country on an invention made by Related Entity under this Agreement where the Government has title, unless Related Entity fails to disclose the invention within the time limits in paragraph E.2. of this Article. Related Entity's license extends to its domestic subsidiaries and affiliates within its corporate structure. It includes the right to grant sublicenses of the same scope if Related Entity was legally obligated to do so at the time of this Agreement. The license is transferable only with approval of the Administrator except to a successor of that part of Related Entity's business to which the invention pertains.

2. Related Entity's domestic license may be revoked or modified by the Administrator but only if necessary, to achieve expeditious practical application of the invention where a third party applies for an exclusive license under 37 C.F.R. Part 404. The license will not be revoked in any field of use or geographic area where Related Entity has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. A license in any foreign country may be revoked or modified at the discretion of the Administrator if Related Entity, its licensees, or its domestic subsidiaries or affiliates fail to achieve practical application in that country.

3. Before revocation or modification, Related Entity will receive written notice of the Administrator's intentions. Related Entity has thirty (30) days (or such other time as authorized by the Administrator) to show cause why the license should not be revoked or modified. Related Entity may appeal under 14 C.F.R. § 1245.112.

#### E. Invention disclosures and reports

1. Related Entity shall establish procedures assuring that inventions made under this Agreement are internally reported within six (6) months of conception or first actual reduction to practice, whichever occurs first. These procedures shall include the maintenance of laboratory notebooks or equivalent records, other records reasonably necessary to document the conception or the first actual reduction to practice of inventions, and records showing that the procedures were followed. Upon request, Related Entity shall give the Patent Representative a description of such procedures for evaluation.

2. Related Entity shall disclose an invention to the Patent Representative within two (2) months after the inventor discloses it in writing internally or, if earlier, within six (6) months after Related Entity becomes aware of the invention. In any event, disclosure must be before any sale, or public use, or publication known to Related Entity. Related Entity shall use the NASA New Technology Reporting system at <http://ntr.ndc.nasa.gov/>. Invention disclosures shall identify this Agreement and be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, or sale, or public use of the invention, and whether a manuscript describing the invention was submitted or accepted for publication. After disclosure, Related Entity shall promptly notify NASA of the acceptance for publication of any manuscript describing an invention, or of any sale or public use planned by Related Entity.

3. Related Entity shall give NASA Patent Representative:

- a. Interim reports every twelve (12) months (or longer period if specified by Patent Representative) from the date of this Agreement, listing inventions made under this Agreement during that period, and certifying that all inventions were disclosed (or there were no such inventions) and that the procedures of paragraph E.1. of this Article were followed.
- b. A final report, within three (3) months after completion of this Agreement, listing all

inventions made or certifying there were none, and listing all subcontracts or other agreements with a Related Entity containing a Patent and Invention Rights Article (as required under paragraph G of this Article) or certifying there were none.

c. Interim and final reports shall be submitted at <http://ntr.ndc.nasa.gov/>.

4. Related Entity shall provide available additional technical and other information to the NASA Patent Representative for the preparation and prosecution of a patent application on any invention made under this Agreement where the Government retains title. Related Entity shall execute all papers necessary to file patent applications and establish the Government's rights.

5. Protection of reported inventions. NASA will withhold disclosures under this Article from public access for a reasonable time (1 year unless otherwise agreed or unless restricted longer herein) to facilitate establishment of patent rights.

6. The contact information for the NASA Patent Representatives is provided at [http://prod.nais.nasa.gov/portals/pl/new\\_tech\\_pocs.html](http://prod.nais.nasa.gov/portals/pl/new_tech_pocs.html).

#### F. Examination of records relating to inventions

1. The Patent Representative or designee may examine any books (including laboratory notebooks), records, and documents of Related Entity relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this Agreement to determine whether:

- a. Any inventions were made under this Agreement;
- b. Related Entity established the procedures in paragraph E.1. of this Article; and
- c. Related Entity and its inventors complied with the procedures.

2. If the Patent Representative learns of an unreported Related Entity invention he or she believes was made under this Agreement, he or she may require disclosure to determine ownership rights.

3. Examinations under this paragraph are subject to appropriate conditions to protect the confidentiality of information.

#### G. Subcontracts or Other Agreements

1. a. Unless otherwise directed by Patent Representative or Buyer, Partner and/or Related Entity shall include this Invention and Patent Rights Article (modified to identify the parties) in any subcontract or other agreement with a Related Entity (regardless of tier) for the performance of experimental, developmental, or research work.

b. For subcontracts or other agreements at any tier, NASA, the Related Entity, and Partner agree that the mutual obligations created herein constitute privity of contract between the Related Entity and NASA with respect to matters covered by this Article.

2. If a prospective Related Entity refuses to accept this Article, Partner or Related Entity, as appropriate:

- a. shall promptly notify Patent Representative via the Buyer in writing of the prospective Related Entity's reasons for refusal and other information supporting disposition of the matter; and

b. shall not proceed without Patent Representative's written authorization.

3. Related Entity shall promptly notify Patent Representative via the Buyer in writing of any subcontract or other agreement with a Related Entity (at any tier) containing an Invention and Patent Rights Article. The notice shall identify:

- a. the Related Entity;
- b. the applicable Invention and Patent Rights Article;
- c. the work to be performed; and
- d. the dates of award and estimated completion.

Upon request, Partner or Related Entity shall give a copy of the subcontract or other agreement to Patent Representative.

4. In any subcontract or other agreement with Partner or Related Entity, a Related Entity retains the same rights provided Related Entity in this Article. Related Entity shall not require any Related Entity to assign its rights in inventions made under this Agreement to Partner or Related Entity as consideration for awarding a subcontract or other agreement.

5. Notwithstanding paragraph G.4., in recognition of Partner's substantial contribution of funds, facilities or equipment under this Agreement, Partner may, subject to the NASA's rights in this Article:

- a. acquire by negotiation rights to inventions made under this Agreement by a Related Entity that Partner deems necessary to obtaining and maintaining private support; and
- b. if unable to reach agreement under paragraph G.5.a. of this Article, request from Patent Representative that NASA provide Partner such rights as an additional reservation in any waiver NASA grants the Related Entity under NASA Patent Waiver Regulations, 14 C.F.R. Part 1245, Subpart 1. Partner should advise the Related Entity that unless it requests a waiver, NASA acquires title to all inventions made under this Agreement. If a waiver is not requested, or is not granted, Partner may then request a license from NASA under 37 C.F.R. Part 404. A Related Entity requesting waiver must follow the procedures in paragraph J. of this Article.

#### H. Preference for United States manufacture

Products embodying inventions made under this Agreement or produced using the inventions shall be manufactured substantially in the United States. Patent Representative via the Buyer may waive this requirement if domestic manufacture is not commercially feasible.

#### I. March-in rights

For inventions made under this Agreement where Related Entity has acquired title, NASA has the right under 37 C.F.R. § 401.6, to require Related Entity, or an assignee or exclusive licensee of the invention, to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to responsible applicant(s), upon reasonable terms. If Related Entity, assignee or exclusive licensee refuses, NASA may grant the license itself, if necessary:

1. because Related Entity, assignee, or exclusive licensee has not, or is not expected within a reasonable time, to achieve practical application in the field of use;
2. to alleviate health or safety needs not being reasonably satisfied by Related Entity, assignee, or exclusive licensee;
3. to meet requirements for public use specified by Federal regulations being not reasonably satisfied by Related Entity, assignee, or exclusive licensee; or
4. because the requirement in paragraph H of this Article was not waived, and Related Entity, assignee, or exclusive licensee of the invention in the United States is in breach of the requirement.

#### J. Requests for Waiver of Rights

1. Under NASA Patent Waiver Regulations, 14 C.F.R. Part 1245, Subpart 1, an advance waiver may be requested prior to execution of this Agreement, or within thirty (30) days afterwards. Waiver of an identified invention made and reported under this Agreement may still be requested, even if a request for an advance waiver was not made or was not granted.
  
2. Each request for waiver is by petition to the Administrator and shall include:
  - a. an identification of the petitioner, its place of business and address;
  - b. if petitioner is represented by counsel, the name, address, and telephone number of counsel;
  - c. the signature of the petitioner or authorized representative; and
  - d. the date of signature.
  
3. No specific form is required, but the petition should also contain:
  - a. a statement that waiver of rights is requested under the NASA Patent Waiver Regulations;
  - b. a clear indication of whether the petition is an advance waiver or a waiver of an individual identified invention;
  - c. whether foreign rights are also requested and for which countries;
  - d. a citation of the specific section(s) of the regulations under which are requested;
  - e. whether the petitioner is an entity of or under the control of a foreign government; and
  - f. the name, address, and telephone number of the petitioner's point-of-contact.
  
4. Submit petitions for waiver to the Patent Representative for forwarding to the Inventions and Contributions Board. If the Board makes findings to support the waiver, it recommends to the Administrator that the waiver be granted. The Board also informs Patent Representative if there is insufficient time or information to process a petition for an advance waiver without unduly delaying the execution of the Agreement. Patent Representative will notify petitioner of this information. Once a petition is acted upon, the Board notifies petitioner. If waiver is granted, any conditions, reservations, and obligations are included in the Instrument of Waiver. Petitioner may request reconsideration of Board recommendations adverse to its request.

#### **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.

#### **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 the Seller 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. In the absence of available license exemptions or exceptions, the Seller 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 Seller shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of work 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 Seller will be responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions or exceptions.
4. The Seller 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 Seller 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 Seller 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. Seller shall annually certify the following to the NASA Administrative Contact to this Agreement:

1. Neither Seller nor any of its subcontractors nor partners are presently debarred, suspended, proposed for debarment, or otherwise declared ineligible for award of funding by any Federal agency;
2. Neither Seller nor any of its subcontractors nor partners have been convicted or had a civil judgment rendered against them within the last three (3) years for fraud in obtaining, attempting to obtain, or performing a Government contract;
3. Seller and any of its team members, subcontractors, or partners receiving \$100,000 or more in NASA funding for work performed under this Agreement must have not used any appropriated funds for lobbying purposes prohibited by 31 U.S.C. § 1352; and
4. The Seller is an entity organized under the laws of the United States, which is:
  - A. More than 50 percent owned and controlled by United States nationals; or
  - B. A subsidiary of a foreign company and such subsidiary has in the past evidenced a substantial commitment to the United States market through –
    - a. Investments in the United States in long-term research, development, and

manufacturing (including the manufacture of major components and subassemblies); and

b. Significant contributions to employment in the United States.

E. NASA conducts research with foreign entities only on a cooperative, no-exchange-of funds basis. Although foreign individuals employed by the Seller in support of this FSAA may receive NASA funds, NASA funding may not support research efforts, including travel, by non-U.S. organizations, including sub-Partners or subcontractors, at any level. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by the Seller is permitted.

F. Pursuant to The Department of Defense and Full-Year Appropriation Act, Public Law 112-10, Section 1340(a); The Consolidated and Further Continuing Appropriation Act of 2012, Public Law 112-55, Section 539; and future-year appropriations (hereinafter, "the Acts"), NASA is restricted from using funds appropriated in the Acts to enter into or fund any agreement of any kind to participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement. Seller hereby certifies that it is not China or a Chinese-owned company, and that the Seller will not participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

(a) Definition: "China or Chinese-owned Company" means the People's Republic of China, any company owned by the People's Republic of China, or any company incorporated under the laws of the People's Republic of China.

(b) The restrictions in the Acts do not apply to commercial items of supply needed to perform this agreement. However, Seller shall disclose to NASA via Buyer if it anticipates making any award, including those for the procurement of commercial items, to China or a Chinese-owned entity.

(c) Subawards – The Seller shall include the substance of this provision in all subawards made hereunder.

In addition to the above certification, Seller shall immediately disclose to the NASA Administrative Contact, via the Buyer, for any individual involved in this NASA-funded activity, any current or pending professional and educational affiliations or commitments to China or a Chinese-owned company, including Chinese universities.

G. Regarding INKSNA requirements, Seller shall disclose to NASA via Buyer if it intends to rely upon Russian entities for its demonstration. Seller shall not subcontract to Russian entities without first receiving written approval from NASA via the Buyer.

(a) Definitions: In this provision:

(1) The term "Russian entities" means:

(A) Russian persons, or

(B) Entities created under Russian law or owned, in whole or in part, by Russian persons or companies including, but not limited to, the following:

(i) The Russian Federal Space Agency (Roscosmos),

(ii) Any organization or entity under the jurisdiction or control of Roscosmos, or

(iii) Any other organization, entity or element of the Government of the Russian Federation.

(2) The term "extraordinary payments" means payments in cash or in kind made or to

be made by the United States Government prior to December 31, 2025, for work to be performed or services to be rendered prior to that date necessary to meet United States obligations under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, or contract related thereto.

(b) This clause implements the reporting requirement in section 6(i) of the Iran, North Korea, and Syria Nonproliferation Act. The provisions of this clause are without prejudice to the question of whether the Seller or its subcontractor(s) are making extraordinary payments under section 6(a) or fall within the exceptions in section 7(1)(B) of the Act. NASA has applied the restrictions in the Act to include funding of Russian entities via U.S. Contractors (Awardees).

(c) (1) The Seller shall not subcontract with Russian entities without first receiving written approval from the NASA Administrative Contact provided via the Buyer. In order to obtain this written approval to subcontract with any Russian entity as defined in paragraphs (a), the Partner shall provide the NASA Administrative Contact via the Buyer with the following information related to each planned new subcontract and any change to an existing subcontract with entities that fit the description in paragraph (a):

(A) A detailed description of the subcontracting entity, including its name, address, and a point of contact, as well as a detailed description of the proposed subcontract including the specific purpose of payments that will be made under the subcontract.

(B) The Seller shall provide certification that the subcontracting entity is not, at the date of the subcontract approval request, on any of the lists of proscribed denied parties, specially designated nationals and entities of concern found at:

BIS's Listing of Entities of Concern

(see <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list>)

BIS's List of Denied Parties

(see <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list>)

OFAC's List of Specially Designated Nationals

(see <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>)

List of Unverified Persons in Foreign Countries (see <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/unverified-list>)

State Department's List of Parties Statutorily Debarred for Arms Export Control Act Convictions (see [https://www.pmddtc.state.gov/ddtc\\_public?id=ddtc\\_kb\\_article\\_page&sys\\_id=7188dac6db3cd30044f9ff621f961914](https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=7188dac6db3cd30044f9ff621f961914))

State Department's Lists of Proliferating Entities (see <http://www.state.gov/t/isn/c15231.htm>)



(2) Unless relief is granted by the NASA Administrative Contact, the information necessary to obtain approval to subcontract shall be provided to the NASA Administrative Contact via the buyer 30 business days prior to executing any planned subcontract with entities defined in paragraph (a).

(d) After receiving approval to subcontract, the Seller shall provide the NASA Administrative Contact via the Buyer with a report every six months that documents the individual payments made to an entity in paragraph (a). The reports are due on July 15th and January 15th. The July 15th report shall document all of the individual payments made from the previous January through June. The January 15th report shall document all of the individual payments made from the previous July through December. The content of the report shall provide the following information for each time a payment is made to an entity in paragraph (a):

- (1) The name of the entity
- (2) The subcontract number
- (3) The amount of the payment
- (4) The date of the payment

(e) The NASA Administrative Contact and/or the Buyer may direct the Seller to provide additional information for any other prospective or existing subcontract at any tier. The NASA Administrative Contact and/or the Buyer may direct the Seller to terminate for the convenience of the Government any subcontract at any tier with an entity described in paragraph (a), subject to an equitable adjustment.

(f) On or after December 31, 2025, the Seller shall be responsible to make payments to entities defined in paragraph (a) of this provision. Any subcontract with entities defined in paragraph (a), therefore, shall be completed in sufficient time to permit the U.S. Government to make extraordinary payments on subcontracts with Russian entities on or before December 31, 2025.

(g) The Seller shall include the substance of this clause in all its subcontracts and shall require such inclusion in all other subcontracts of any tier. The Seller shall be responsible to obtain written approval from the NASA Administrative Contact to enter into any tier subcontract that involves entities defined in paragraph (a).

H. 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, Seller will not use, integrate with a NASA system, or procure with NASA funds "covered telecommunications equipment or services" (as defined in Section 889(f)(3) of the NDAA).
2. The Seller will ensure that the provisions of this Article apply to its Related Entities.

## **RIGHT TO TERMINATE**

### Unilateral Termination by NASA:

(1) NASA may unilaterally terminate this Agreement upon written notice as follows. NASA's obligations under this Agreement may be terminated, in whole or in part, (a) upon a declaration of war by the Congress of the United States; or (b) upon a declaration of a national emergency by the President of the United States; or (c) upon a NASA determination, in writing, that NASA is required to terminate for reasons beyond its control. For purposes of this Article, reasons beyond NASA's control include, but are not limited to, acts of God or of the public enemy, acts of the U.S. Government other than NASA, in either its sovereign or contractual capacity (to include failure of Congress to appropriate sufficient funding), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually

severe weather.

(2) Upon receipt of written notification that the Government is unilaterally terminating this Agreement, Seller shall immediately stop work under this Agreement and shall immediately cause any and all of its partners and suppliers to cease work, except to the extent that the Seller wishes to pursue these demonstrations exclusively using its own funding.

#### Limitation on Damages.

In the event of any termination by NASA, neither NASA nor the Buyer shall be liable for any loss of profits, revenue, or any indirect or consequential damages incurred by Seller, its contractors, subcontractors, or customers as a result of any termination of this Agreement/contract. However, in no instance shall NASA's liability for termination exceed the total amount due under the next milestone that has not yet been completed under this prime contract/agreement.

#### **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.

#### **INVESTIGATIONS OF MISHAPS AND CLOSE CALLS**

In the case of a close call, mishap or mission failure, the Seller agrees to provide assistance to each Buyer and/or NASA in the conduct of any investigation. For all NASA mishaps or close calls, Seller agrees to comply with NPR 8621.1, "NASA Procedural Requirements for Mishap and Close Call Reporting, Investigating, and Recordkeeping".

#### **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.

#### **Comptroller General Access to Records:**

For subcontracts or other arrangements in excess of \$5,000,000.00 related to the execution of the milestone events in the Buyer's prime Agreement.

The Comptroller General, at its discretion and pursuant to applicable regulations and policies, shall have access to and the right to examine records of any Party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain to and involve transactions relating to the Agreement for a period of three (3) years after the Government makes the final milestone payment under this Agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law.