

**CUSTOMER CONTRACT REQUIREMENTS  
(NASA – MSFC- CONSOLIDATED FACILITY) Through Mod. 555  
CUSTOMER CONTRACT NAS8-50000**

**CUSTOMER CONTRACT REQUIREMENTS**

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If this contract is for the procurement of commercial items, as defined in FAR Part 2.101, see Section 3 below.

1. a. 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.

52.203-1 Officials Not to Benefit (APR 1984)

52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1985).

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)) (OCT 1988). Buyer may withhold sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract.

52.204-2 Security Requirements (APR 1984). “Changes clause” means the changes clause of this contract. This clause applies only if access to classified material is required.

52.208-1 Required Sources for Jewel Bearings and Related Items (APR 1984).

52.212-8 Defense Priority and Allocation Requirements (MAY 1986). This clause is applicable if a priority rating is noted in this contract.

52.212-13 Stop-Work Order (AUG 1989), Alt I (APR 1984).

52.215-1 Examination of Records by Comptroller General (APR 1984) This clause applies only if this contract exceeds \$10,000 and entered into by negotiation.

52.215-2 Audit - Negotiation (DEC 1989). This clause applies only if this contract exceeds \$25,000.

52.215-22 Price Reduction For Defective Cost or Pricing Data (JAN 1989). This clause applies only if this contract exceeds \$100,000 and is not otherwise exempt. In subparagraph (3) of paragraph (a), insert “of this contract” after “price or cost.” In Paragraph (c), “Contracting Officer” shall mean “Contracting Officer or Buyer.” In Paragraphs (c)(1), (c)(1)(ii), and (c)(2)(i), “Contracting Officer” shall mean “Contracting Officer or Buyer.” In Subparagraph (c)(2)(i)(A), delete “to the Contracting Officer.” In Subparagraph (c)(2)(ii)(B), “Government” shall mean “Government or Buyer.” In Paragraph (d), “United States” shall mean “United States or Buyer.”

52.215-24 Subcontractor Cost or Pricing Data (OCT 1995). This clause applies only if this contract exceeds \$100,000 and is not otherwise exempt.

52.215-26 Integrity of Unit Prices (APR 1987). This clause applies except for contracts at or below \$25,000; construction or architect-engineer services under FAR Part 36; utility services under Subpart 8.3; services where supplies are not required.

52.215-27 Termination of Defined Benefit Pension Plan (SEP 1989). This clause applies only if this contract exceeds \$100,000.

52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (FEB 1990). This clause applies only if this contract exceeds \$10,000.

52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan (FEB 1990). In paragraph (c), "Contracting Officer" shall mean Buyer. This clause applies only if this contract exceeds \$500,000. and Seller is not a small business concern.

52.219-13 Utilization of Women-Owned Small Businesses (AUG 1986). This clause applies only if this contract exceeds \$25,000.

52.220-3 Utilization of Labor Surplus Area Concerns (APR 1984). This clause applies only if this contract exceeds \$25,000.

52.220-4 Labor Surplus Area Subcontracting Program (APR 1984). This clause applies only if this contract exceeds \$500,000.

52.222-20 Walsh-Healy Public Contracts Act (APR 1984). This clause applies only if this contract exceeds \$10,000.

52.222-21 Prohibition of Segregated Facilities (APR 1984). This clause applies only if this contract exceeds \$10,000.

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (APR 1984).

52.222-28 Equal Opportunity Preaward Clearance of Subcontracts (APR 1984). This clause applies only if this contract exceeds \$1,000,000.

52.222-35 Affirmative Action for Special Disabled and Vietnam Era, and Veterans (APR 1984). This clause applies only if this contract exceeds \$10,000.

52.222-36 Affirmative Action for Handicapped Workers (APR 1984). This clause applies only if this contract exceeds \$ 2,500.

52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988). This clause applies only if this contract exceeds \$10,000.

52.223-2 Clean Air and Water (APR 1984). This clause applies only if this contract exceeds \$100,000.

52.223-3 Hazardous Material Identification and Material Safety Data (DEC 1989). This clause applies only if Seller delivers hazardous material under this contract.

52.225-3 Buy American Act - Supplies (JAN 1989).

52.225-13 Restrictions on Contracting With Sanctioned Persons (MAY 1989).

52.227-1 Authorization and Consent (APR 1984), Alt I (APR 1984).

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984). A copy of each notice sent to the Government will be sent to Buyer. "Contracting Officer" shall mean "Buyer". This clause applies only if this contract exceeds \$25,000.

52.227-10 Filing of Patent Applications –Classified Subject Matter (APR 1984). This clause applies only if this contract will involve access to classified information.

52.227-16 Additional Data Requirements (JUN 1987). This clause applies only if this contract involves experimental, developmental, research, or demonstration work.

52.230-4 Administration of Cost Accounting Standards (SEPT 1987). Add "Buyer and the" before "Contracting Officer in paragraph (e). This clause applies on if this contact exceeds \$100,000.

52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984). This clause applies only if work will be performed on a Government installation. "Contracting Officer" shall mean Buyer.

52.244-5 Competition in Subcontracting (APR 1984)

52.244-6 Subcontracts for Commercial Items and Commercial Components (DEC 2001).

52.245-18 Special Test Equipment (AUG 1988). Change "30 days" to "45 days" in paragraphs (b) and (c). The notice of intent to procure special test equipment required by this clause shall be forwarded to the Buyer.

2. NASA Contracts. If this contract is placed under a National Aeronautics and Space Administration contract, 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. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

18-52.208-81 Restrictions on Printing and Duplicating (AUG 1993).

18-52.212-70 Notice of Delay (DEC 1988).

18-52.219-74 Use of Rural Area Small Businesses (SEP 1990). This clause applies only if this contract offers subcontracting possibilities.

18-52.219-75 Small Business and Small Disadvantaged Business Subcontracting Reporting (SEP 1992).

18-52.223-70 Safety and Health (DEC 1988).

18-52.227-70 New Technology (APR 1988). This clause only applies if this Contact is for experimental, developmental, or research work and Seller is other than a small business firm or nonprofit organization.

18-52.228-72 Interparty Waiver of Liability During STS Operations (DEC 1988).

18-52.244-70 Geographic Participation in the Aerospace Program (APR 1985). This clause applies only if this contract is for \$100,000 or more.

18-52.245-70 Acquisition of Centrally Reportable Equipment (MAR 1989) [excluding paragraph (b)(3)]. "Contracting Officer" shall mean Buyer. If the equipment is to be acquired as Special Test Equipment (STE), Seller shall submit the applicable request 75 days in advance of the date Seller intends to acquire the equipment. No later than 30 September of each year, Seller will provide Buyer a list of all property acquired under this clause. The list will include at a minimum: (1) part number; (2) serial number; (3) modification number, if any; (4) nomenclature; (5) acquisition cost; (6) acquisition date; and (7) the date of the prior year's list.

18-52.246-73 Manned Space Flight Item (OCT 1988).

3. If goods or services being procured under this contract are for 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:

52.219-8 Utilization of Small Business Concerns (OCT 2000). Include in all subcontracts that offer further subcontracting opportunities. If a subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), Seller and any lower tier subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Dec 2001). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Handicapped Workers (JUN 1998). This clause applies only if this contract exceeds \$10,000.

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003). This clause only applies if this contract is (i) a contract or agreement for ocean transportation services; or a construction contract; or (ii) the supplies being transported are (a) Items the Contractor is reselling or distributing to the Government without adding value (generally, the Contractor 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.

252.225-7014, Preference for Domestic Specialty Metals (MAR 1998), Alternate I (MAR 1998).

252.247-7023 Transportation of Supplies by Sea (MAR 2000). This clause applies only if this contract exceeds \$100,000 and are a type of supplies described in paragraph (b)(2) of this clause. In paragraph (c), "45 days" is changed to "60 days". In paragraph (g) "Government" means Buyer.

252.247-7024 Notification of Transportation of Supplies by Sea (MAR 2000). "Contracting Officer" and, in the first sentence of paragraph (a), "Contractor" mean Buyer. This clause applies only if the supplies being transported are noncommercial items or commercial items that (i) Seller is reselling or distributing to the Government without adding value (generally, Seller does not add value to items that it contracts for f.o.b. destination shipment); (ii) are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or (iii) are commissary or exchange cargoes transported outside the Defense Transportation System in accordance with 10 U.S.C. 2643.

#### 4. Cost Accounting Standards

(1) (Applicable if this contract incorporates clause H001). The version of FAR 52.230-3, Cost Accounting Standards, incorporated by clause H001 is the version dated SEP 1987.

(2) (Applicable if this contract incorporates clause H002). The version of FAR 52.230-5, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause H002 is the version dated SEP 1987.

(3) (Applicable if this contract incorporates clause H003). The version of FAR 52.230-6, Consistency in Cost Accounting Practices, incorporated by clause H003 is the version dated SEP 1987.

#### 5. The following prime contract special provisions and full text clauses apply to this purchase order:

##### A. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

Seller shall provide immediate notice to Buyer in the event of being suspended, debarred or declared ineligible by any Department or other Federal Agency, or upon receipt of a notice of proposed debarment from any Department or other Federal Agency, during the performance of this Contract.

B. NFS 18-52.210-75 PACKAGING AND MARKING (SEP 1990), Alt I (SEP 1990) (PC: D.1)

1. The Contractor shall preserve, pack, and mark for shipment all items deliverable under this contract in accordance with good commercial practices and adequate to ensure both acceptance by common carrier and safe transportation at the most economical rate(s).
2. The Contractor's markings on shipping containers shall be clearly legible from a distance of 36 inches. The Contractor may mark by stencil, rubber stamp, or lacquer over a coated gummed label.
3. The Contractor shall place identical requirements on all subcontracts.

C. PLACE OF FINAL INSPECTION AND ACCEPTANCE (PC: E-1)

1. The place of final inspection and acceptance for the deliverable hardware/software called for under this contract shall be the Contractor's plant.
2. The place of final inspection and acceptance for integration, assembly, ;and other services performed at locations other than the Contractor's plant(s) shall be at the place of performance of the integration, assembly or other services.

D. NFS 18-52.246-72 MATERIAL INSPECTION AND RECEIVING REPORT (JUN 1995). (PC: E.2)

1. At the time of each delivery to the Government (if the Contractor should make a delivery directly to the Government) under this contract, the Contractor shall furnish a Material Inspection and Receiving Report (DD Form 250 series). The Contractor shall distribute the DD Form 250 series as follows:

<u>Distribution To:</u>	<u>No. Copies</u>
Boeing Buyer	One
Government Contracting Officer	One
Government Transportation Officer	One
Government Contracting Officer's Technical Representative	Two
Consignee	One
Attached to shipment (On Box #1)	Four

2. The Contractor shall prepare the DD Form 250 in accordance with NASA FAR Supplement 18-46.672-1. The Contractor shall enclose the copies of the DD Form 250 in the package or seal them in a waterproof envelope which shall be securely attached to the exterior of the package in the most protected location.
3. When more than one package is involved in a shipment, the Contactor shall list on the DD form 250, as additional information, the quantity of packages and the package numbers. The Contractor shall forward the DD Form 250 with the lowest numbered package of the shipment and print the words "CONTAINS DD FORM 250" on the package.

E. MSFC 52.237-92 PLACE OF PERFORMANCE (AUG 1988) (PC: F.3)

The Contractor shall perform the work under this contract at their facilities in Huntsville, Alabama, at the Marshall Space Flight Center, Alabama, and at such other locations as may be approved in writing by the Buyer.

F. TECHNICAL INFORMATION RELEASE AND PUBLICATIONS (CC) (PC: G-3)

The use of technical data first produced in the performance of this contract in oral or written presentations at professional meetings, seminars, and symposia, or in articles to be published in professional, scientific, or technical journals and similar media is subject to approval by the Buyer. A copy of the proposed presentation or article should be forwarded to the Buyer at least six weeks in advance of the desired response date.

G. MSFC – 52.204-90 CONTRACTOR EMPLOYEE BADGING AND EMPLOYMENT TERMINATION CLEARANCE (APR 1994) (PC: G-7)

1. It is anticipated that performance of the requirements of this contract will require employee access to and picture badging by the MSFC. Contractor requests for badging of employees shall be by MSFC Form 1739, Contractor Badge/Decal Application. Requests for badging shall be submitted to the attention of the Buyer for completion and approval prior to staffing by the MSFC Security Division.
2. The Contractor shall establish procedures to ensure that each badged employee is properly cleared in accordance with MSFC Form 383-1, "Contractor Employee Clearance Document," prior to finalization of employment termination.
3. Request for copies of MSFC Forms shall be directed to the Buyer.

H. REGULATIONS AND SECURITY CONTROLS AT OFF-SITE LOCATIONS (CC). (PC: G.11)

1. The Contractor maybe required to perform effort described in the contract Statement of Work at locations other than their facilities. At these facilities, the Contractor must adhere to the regulations and security controls of the Government Agency operating the off-site location. As a minimum, the Contractor must designate security and badging identification officials and display identification badges. When issued, Government identification badges become the property of the Government and the Government reserves the right to invalidate such badges at any time. During the performance of the contract, the Contractor shall, upon termination of an employee, immediately deliver such employee's identification badge to the Buyer so that it can be forwarded to the appropriate security office.
2. If required by the visiting site, Contract Security Classification Specifications Forms shall be provided for security classified visits prior to Contractor personnel being permitted access to the secured sites.

I. NFS 18-52.227-72 DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (APR 1984) (PC: G.17)

1. For purposes of administration of the clause of this contract entitled "New Technology", the following named representative are hereby designated by the Government Contracting Officer to administer such clause:

New Technology Representative:

Chief, Technology Transfer Office  
Attn: LA01  
George C. Marshall Space Flight Center  
Marshall Space Flight Center, AL 35812

Patent Representative:

Patent Counsel  
Attn: Code CC01  
George C. Marshall Space Flight Center  
Marshall Space Flight Center, AL 35812

2. Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a "New Technology" clause, unless otherwise authorized or directed by the Buyer.

J. OBSERVANCE OF REGULATIONS (AT NASA AND OTHER GOVERNMENT LOCATIONS (PC: H-9)

In performing in any capacity while on-site at NASA or other Government locations the Contractor shall comply with all applicable regulations and procedures. Copies of applicable NASA regulations and procedures will be available upon request from the Buyer.

K. NFS 18-52.223-72 POTENTIALLY HAZARDOUS ITEMS (DEC 1988). (PC: H-10)

1. The Contractor shall furnish complete design information and drawings showing all details of construction including materials, for the following items or components:

Acetone (Syn)	Methyl Ethyl Ketone
Ammonia	Nitrogen Tetroxide
Catalyst #9	Perchloroethylene
Polyethylene Amines	Scotch Grip Gasket Adhesive
Humiseal 1B31	Thermalbond Epoxy
Hydrazine	Thermofit S1010 PRT. A Adhe.
Hydrochloric Acid	Trichloroethylene
Lithium Hydroxide	

These items or components are designed as potentially hazardous to employees and subcontractors who are to perform any work in connection with installing them in combination with other equipment, or in testing them either alone or in combination with other items or components, or in handling them. The Contractor shall inform such employees or subcontractors of the potentially hazardous nature of these items or components before requesting or directing the performance of work.

2. This requirement for delivery of data supersedes any items of this contract permitting withholding of data.
3. The Contractor shall include this clause, including this paragraph (3), in each subcontract at any tier under this contract that calls for the manufacture or handling of the items or components designated according to paragraph (1) above as potentially hazardous.

L. UNITS OF MEASURE (CC). (H.21)

The basic measure system to be used in the design and manufacture of the Space Station shall be the conventional English (inch-pound) system of units except for areas in which it is determined to be in the best interest of the Program to use SI (metric) units. Consistent with national policy favoring voluntary metrication by industry, NASA will permit waivers from the conventional units requirement when requested, provided it can be shown that the Program safety, cost, and schedule are not adversely affected.

M. MSFC 52.223-90 ASBESTOS MATERIAL (MAR 1993) (PC: H.31)

During the performance of this contract, Contractor personnel performing work in MSFC buildings may come in contact with materials containing asbestos. MSFC Buildings 4200, 4201, 4202, 4663 and 4666 are of special concern since are known to contain a sprayed on fire insulation on or above the ceiling, usually located on the metal or concrete structure of the buildings. These buildings and all other MSFC buildings may contain asbestos in floor tile, pape and lagging insulation, exterior siding, roofing felt, and may other building materials. Prior to disturbing suspected asbestos material in any manner, the Contractor shall notify the Buyer who will notify representatives of the Environmental Health Office for guidance. Contractor shall be responsible for ensuring that all Contractor personnel working onsite are made aware of and comply with this clause.

N. NFS 18-52.204-75 SECURITY CLASSIFICATION REQUIREMENTS (SEP 1989). (PC: H.38)

Performance under this contract may involve access to and /or generation of classified information, work in a security area, or both, up to the level of SECRET. See FAR 52.204-2 of this contract.

O. NFS 18-52.204-76 SECURITY REQUIREMENTS FOR UNCLASSIFIED TECHNOLOGY INFORMATION RESOURCES (JUL 2000).

(a) The Contractor shall comply with the security requirements outlined in NASA Policy Directive (NPD) 2810.1, Security of Information Technology, and NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology. These policies apply to all IT systems and networks under NASA's purview operated by or on behalf of the Federal Government, regardless of location.

(b) (1) The Contractor shall ensure compliance by its employees with Federal directives and guidelines that deal with IT Security including, but not limited to, OMB Circular A-130, Management of Federal Information Resources, OMB Circular A-130 Appendix III, Security of Federal Automated Information Resources, the Computer Security Act of 1987 (40 U.S.C. 1441 et seq.), and all applicable Federal Information Processing Standards (FIPS).

(2) All Federally owned information is considered sensitive to some degree and must be appropriately protected by the Contractor as specified in applicable IT Security Plans. Types of sensitive information that may be found on NASA systems that the Contractor may have access to include, but are not limited to --

(i) Privacy Act information (5 U.S.C. 552a et seq.);

(ii) Export Controlled Data, (e.g. Resources protected by the International Traffic in Arms Regulations (22 CFR Parts 120-130)).

(3) The Contractor shall ensure that all systems connected to a NASA network or operated by the Contractor for NASA conform with NASA and Center security policies and procedures.

(c) (1) The Contractor's screening of Contractor personnel will be conducted in accordance with NPG 2810.1, Section 4.5 for personnel requiring unescorted or unsupervised physical or electronic access to NASA systems, programs, and data.

(2) The Contractor shall ensure that all such employees have at least a National Agency Check investigation. The Contractor shall submit a personnel security questionnaire (NASA Form 531), Name Check Request for National Agency Check (NAC) investigation, and Standard Form 85P, Questionnaire for Public Trust Positions (for specified sensitive positions), and a Fingerprint Card (FD-258 with NASA overprint in Origin Block) to the Center Chief of Security for each Contractor employee requiring screening. The required forms may be obtained from the Center Chief of Security. In the event that the NAC is not satisfactory, access shall not be granted. At the option of the Government, background screenings may not be required for employees with recent or current Federal Government investigative clearances.

(3) The Contractor shall have an employee checkout process that ensures --

(i) Return of badges, keys, electronic access devices and NASA equipment;

(ii) Notification to NASA of planned employee terminations at least three days in advance of the employee's departure. In the case of termination for cause, NASA shall be notified immediately. All NASA accounts and/or network access granted terminated employees shall be disabled immediately upon the employee's separation from the Contractor; and

(iii) That the terminated employee has no continuing access to systems under the operation of the Contractor for NASA. Any access must be disabled the day the employee separates from the Contractor.

(4) Granting a non-permanent resident alien (foreign national) access to NASA IT resources requires special authorization. The Contractor shall obtain authorization from the Center Chief of Security prior to granting a non-permanent resident alien access to NASA IT systems and networks.

(d) (1) The Contractor shall ensure that its employees with access to NASA information resources receive annual IT security awareness and training in NASA IT Security policies, procedures, computer ethics, and best practices.

(2) The Contractor shall employ an effective method for communicating to all its employees and assessing that they understand any Information Technology Security policies and guidance provided by the Center Information Technology Security Manager (CITSM) and/or Center CIO Representative as part of the new employee briefing process. The Contractor shall ensure that all employees represent that they have read and understand any new Information Technology Security policy and guidance provided by the CITSM and Center CIO Representative over the duration of the contract.

(3) The Contractor shall ensure that its employees performing duties as system and network administrators



in addition to performing routine maintenance possess specific IT security skills. These skills include the following:

- (i) Utilizing software security tools.
  - (ii) Analyzing logging and audit data.
  - (iii) Responding and reporting to computer or network incidents as per NPG 2810.1.
  - (iv) Preserving electronic evidence as per NPG 2810.1.
  - (v) Recovering to a safe state of operation.
- (4) The Contractor shall provide training to employees to whom they plan to assign system administrator roles. That training shall provide the employees with a full level of proficiency to meet all NASA system administrators' functional requirements. The Contractor shall have methods or processes to document that employees have mastered the training material, or have the required knowledge and skills. This applies to all system administrator requirements.
- (e) The Contractor shall promptly report to the Center IT Security Manager any suspected computer or network security incidents occurring on any system operated by the Contractor for NASA or connected to a NASA network. If it is validated that there is an incident, the Contractor shall provide access to the affected system(s) and system records to NASA and any NASA designated third party so that a detailed investigation can be conducted.
- (f) The Contractor shall develop procedures and implementation plans that ensure that IT resources leaving the control of an assigned user (such as being reassigned, repaired, replaced, or excessed) have all NASA data and sensitive application software permanently removed by a NASA- approved technique. NASA- owned applications acquired via a "site license" or "server license" shall be removed prior to the resources leaving NASA's use. Damaged IT storage media for which data recovery is not possible shall be degaussed or destroyed. If the assigned task is to be assumed by another duly authorized person, at the Government's option, the IT resources may remain intact for assignment and use of the new user.
- (g) The Contractor shall afford NASA, including the Office of Inspector General, access to the Contractor's and subcontractor's facilities, installations, operations, documentation, databases and personnel. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data, and to preserve evidence of computer crime.
- (h) (1) The Contractor shall document all vulnerability testing and risk assessments conducted in accordance with NPG 2810.1 and any other IT security requirements specified in the contract or as directed by the Contracting Officer.
- (2) The results of these tests shall be provided to the Center IT Security Manager. Any Contractor system(s) connected to a NASA network or operated by the Contractor for NASA may be subject to vulnerability assessment or penetration testing as part of the Center's IT security compliance assessment and the Contractor shall be required to assist in the completion of these activities.
- (3) A decision to accept any residual risk shall be the responsibility of NASA. The Contractor shall notify the NASA system owner and the NASA data owner within 5 working days if new or unanticipated threats or hazards are discovered by the Contractor, made known to the Contractor, or if existing safeguards fail to function effectively. The Contractor shall make appropriate risk reduction recommendations to the NASA system owner and/or the NASA data owner and document the risk or modifications in the IT Security Plan.
- (i) The Contractor shall develop a procedure to accomplish the recording and tracking of IT System Security Plans, including updates, and IT system penetration and vulnerability tests for all NASA systems under its control or for systems outsourced to them to be managed on behalf of NASA. The Contractor must report the results of these actions directly to the Center IT Security Manager.
- (j) When directed by the Contracting Officer, the Contractor shall submit for NASA approval a post-award security implementation plan outlining how the Contractor intends to meet the requirements of NPG 2810.1. The plan shall subsequently be incorporated into the contract as a compliance document after receiving Government approval. The plan shall demonstrate thorough understanding of NPG 2810.1 and shall include as a minimum, the security measures and program safeguards to ensure that IT resources

acquired and used by Contractor and subcontractor personnel --

- (1) Are protected from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted;
- (2) Can maintain the continuity of automated information support for NASA missions, programs, and functions;
- (3) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the systems' integrity and accuracy;
- (4) Have appropriate technical, personnel, administrative, environmental, and access safeguards;
- (5) Document and follow a virus protection program for all IT resources under its control; and
- (6) Document and follow a network intrusion prevention program for all IT resources under its control.

(k) Prior to selecting any IT security solution, the Contractor shall consult with their Center IT Security Manager to ensure interoperability and compatibility with other systems with which there is a data or system interface requirement.

(l) The Contractor shall comply with all Federal and NASA encryption requirements for NASA flight programs (e.g., secure flight termination systems, encryption for satellite uplinks, encryption for flight and satellite command and control for both up and down link) and involve the Center Communications Security (COMSEC) Manager when selecting encryption solutions.

(m) The Contractor shall incorporate this clause in all subcontracts where the requirements identified in this clause are applicable to the performance of the subcontract.

**P. NFS 18-52.227-87 TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS (APR 1989)**

1. In the cooperative Space Station Freedom program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR) to transfer such data.\*

2. The Contractor agrees, when specifically directed in writing by the Contracting Officer, or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by the Contracting Officer or designated representative.

3. It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with 2, above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.

4. Nothing contained in this clause affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the Rights in Data clause of the contract, nor the protection of any proprietary technical data which may be available to the Contractor or any subcontractor under that clause.

5. The Contractor agrees to include this clause, including this paragraph 5, in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

**Q. NFS 18-52.228-76 CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES (FEB 1989)**

(a) The objective of this clause is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the Space Station. This cross-waiver of liability should be broadly construed to achieve this objective.

(b) For purposes of this clause:

(1) The term "the Contractor" means the person or entity who is a party to this contract, other than the United States Government and NASA.

(2) The term "damage" means:

- (i) bodily injury to, or other impairment of health of, or death of, any person;
- (ii) damage to, loss of, or loss of use of any property;
- (iii) loss of revenue or profits; or
- (iv) other direct, indirect, or consequential damage.

(3) The term "launch vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(4) The term "Partner State" means the Governments of Belgium, Canada, Denmark, France, Italy, the Federal Republic of Germany, Japan, Netherlands, Norway, Spain, and the United Kingdom of Great Britain and Northern Ireland. It includes a Cooperating Agency of a Partner State and the National Space Development Agency of Japan. (The currently designated Cooperating Agencies are the Ministry of State for Science and Technology of Canada, the European Space Agency and the Science and Technology Agency of Japan).

(5) The term "payload" means all property to be flown or used on or in a launch vehicle or the Space Station.

(6) The term "Protected Space Operations" means all launch vehicle activities, Space Station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space related to Space Station. It includes, but is not limited to:

- (i) research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payloads, as well as related support equipment and facilities and services; and
- (ii) all activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

"Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in the Space Station Intergovernmental Agreement signed on September 29, 1988. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station related activities.

(7) The term "related entity" mean:

- (i) a contractor or subcontractors of a Partner State, of the United States Government or of the Contractor, at any tier;
- (ii) a user or customer of a Partner State or of the United States Government, at any tier; or
- (iii) a contractor or subcontractor of a user or customer of a Partner State or of the United States Government, at any tier.

The terms "contractors" and "subcontractors" include suppliers of any kind.

(8) The term "Space Station" means all the elements listed in the Annex to the Space Station Intergovernmental Agreement signed on September 29, 1988, including any capability added to Space Station through evolution as provided in that Agreement.

(c) The United States Government shall require (1) each Partner State; (2) each related entity of a Partner State; and (3) except as provided for in paragraph (h)(1) below, each related entity of the United States

Government; to agree, by contract or otherwise, to waive all claims, based on damage arising out of Protected Space Operations against (1) the Contractor; (2) the Contractor's contractors or subcontractors at any tier; and (3) the employees of the Contractor or the employees of the Contractor's contractors or subcontractors at any tier.

(d) In consideration for the cross-waiver set forth in paragraph (c) above, the Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims, based on damage arising out of Protected Space Operations, against (1) each Partner States; (2) each related entity of a Partner State; (3) except as provided for in paragraph (h)(1) below, each related entity of the United States Government, and (4) except as provided for in paragraph (h)(1) below, the employees of any of the entities identified in paragraph (d)(1) through (3) above.

(e) In addition, the Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (d) above to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims, based on damage arising out of Protected Space Operations, against the entities or persons identified in paragraphs (d)(1) through (d)(4), above, except as provided for in paragraph (h)(1) below.

(f) This cross-waiver in paragraphs (c), (d), and (e) above shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver in paragraphs (c) (d), and (e) above applies to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract.

(g) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(h) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

- (1) claims between (i) the United States Government and the Contractor or between the United States Government and the Contractor's contractors or subcontractors at any tier, (ii) between the Contractor and its related entities; or (iii) between the Contractor's related entities.
- (2) claim made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
- (3) claims for damage caused by willful misconduct; and
- (4) intellectual property claims.

(i) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(j) This clause, including this paragraph (j), shall be included in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties, where the work is to be performed in support of Protected Space Operations.

R. FAR 52.227-11 PATENT RIGHTS – RETENTION BY THE CONTRACTOR (SHORT FORM ) (JUN 1989) – (DEVIATION) – AS MODIFIED BY NASA FAR SUPPLEMENT 18—52.227-11.

(a) Definitions

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or any organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) (a) "Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention through the world.

(c) Invention disclosure, election of title, and filing of patent applications by Contractor.

(1) The Contractor will disclose each subject invention to the Federal agency within two (2) months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor shall promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two (2) years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one (1) year after election of title, or if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Condition when the Government may obtain title. The Contractor will convey to the Federal agency upon written request, title to any subject invention —

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) above, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file.

(1) The Contractor will retain an nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except, when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Contractor action to protect the Government's interest

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title; and (ii) convey title to the Federal agency when requested under paragraph (d) of this clause, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under Contract NAS8-50000 awarded by the Marshall Space Flight Center (MSFC), MSFC, AL 35812. The Government has certain rights in the invention."

(5) The Contractor shall provide the Contracting Officer the following:

(i) A listing every twelve (12) months (or such longer period as the Contracting Officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(g) Subcontracts.

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor shall include the clause in the NASA FAR Supplement at 18-52.227-70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or a nonprofit organization.

(3) In the case of subcontracts, at any tier, the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that--

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (j) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. DELETED.

(l) Communications. RESERVED.

S. FAR 52.227-14 RIGHTS IN DATA – GENERAL (JUN 1987) AS MODIFIED BY NASA FAR SUPPLEMENT 18-52.227-14 – ALTERNATE II (JUN 1987) – ALTERNATE III (JUN A987)

(a).Definitions.

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The terms include technical data and computer software. The term does not include



information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Limited rights data," as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in --

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to --

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause.

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright.

(1) Data first produced in the performance of this contract. Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in the contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

(1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(3) The Contractor agrees not to establish claim to copyright or publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraphs (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to cancelling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request there under.

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for a good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor —

- (i) Identifies the data to which the omitted notice is to be applied;
- (ii) Demonstrates that the omission of the notice was inadvertent;
- (iii) Establishes that the use of the proposed notice is authorized; and
- (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

- (i) Permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or
- (ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

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* * * * * LIMITED RIGHTS NOTICE (JUN 1987) * * * * *
*
* (a)These data are submitted with limited rights
* under Government Contract No. NAS8-50000 (and Subcon-
* tract _____, if appropriate). These data may be
* reproduced and used by the Government with the express
* limitation that they will not, without written permis-
* sion of the Contractor, be used for purposes of manu-
* facture nor disclosed outside the Government; except
* that the Government may disclose these data outside
* the Government for the following purposes, if any,
* provided that the Government makes such disclosure
* subject to prohibition against further use and
* disclosure:
*
* (i) Use (except for manufacture) by
* support Contractors.
*
* (ii) Evaluation by nongovernment evaluators;
*
* (iii) Use (except for manufacture) by other
* contractors participating in the Government's program of

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\* which the specific contract is a part, for information \*  
 \* and use in connection with the work performed under \*  
 \* each contract. \*  
 \* \*  
 \* (iv) Emergency repair or overhaul work; \*  
 \* (v) Release to a foreign government, or \*  
 \* instrumentality thereof, as the interests of the United \*  
 \* States Government may require, for information or \*  
 \* evaluation, or for emergency repair or overhaul work by \*  
 \* such government. \*  
 \* \*  
 \* (b) This Notice shall be marked on any reproduction \*  
 \* of this data, in whole or in part. \*  
 \* \*  
 \* \* \* \* \* (End of Notice) \* \* \* \* \*

(3) (i) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

\* \* \* \* \* RESTRICTED RIGHTS NOTICE (JUN 1987) \* \* \* \* \*

\* (a) This computer software is submitted with \*  
 \* restricted rights under Government Contract No. \*  
 \* NAS8-50000 (and Subcontract \_\_\_\_\_, if appropriate). \*  
 \* It may not be used, reproduced, or disclosed by the \*  
 \* Government except as provided in paragraph (b) of this \*  
 \* Notice or as otherwise expressly stated in the contract. \*  
 \* \*  
 \* (b) This computer software may be -- \*  
 \* \*  
 \* (1) Used or copied for use in or with the \*  
 \* computer for which it was acquired, including use at any \*  
 \* Government installation to which such computer may be \*  
 \* transferred; \*  
 \* \*  
 \* (2) Used or copied for use in a backup \*  
 \* computer if any computer for which it was acquired is \*  
 \* inoperative; \*  
 \* \*  
 \* (3) Reproduced for safekeeping (archives) \*  
 \* or backup purposes; \*  
 \* (4) Modified, adapted, or combined with \*  
 \* other computer software, provided that the modified, \*  
 \* combined, or adapted portions of the derivative software \*  
 \* incorporating restricted computer software are made \*  
 \* subject to the same restricted rights; \*  
 \* \*  
 \* (5) Disclosed and reproduced for use of \*  
 \* support service Contractors in accordance with sub- \*  
 \* \*

\* paragraphs (b)(1) through (4) of this clause, provided \*  
 \* the Government makes such disclosure of reproduction \*  
 \* subject to these restricted rights; and \*  
 \* \*  
 \* (6) Used or copied for use in or transferred \*  
 \* to a replacement computer. \*  
 \* \*  
 \* (c) Notwithstanding the foregoing, if this \*  
 \* computer software is published copyrighted computer \*  
 \* software, it is licensed to the Government, without \*  
 \* disclosure prohibitions, with the minimum rights set \*  
 \* forth in paragraph (b) of this clause. \*  
 \* \*  
 \* (d) Any other rights or limitations regarding \*  
 \* the use, duplication, or disclosure of this computer \*  
 \* software are to be expressly stated in the contract \*  
 \* \*  
 \* (e) This Notice shall be marked on any reproduction \*  
 \* of this computer software, in whole or in part. \*  
 \* \*  
 \* \* \* \* \* (End of Notice) \* \* \* \* \*

(ii) Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

\* \* \* \* \* RESTRICTED RIGHTS NOTICE (SHORT FORM) (JUN 1987) \* \*  
 \* \*  
 \* Use, reproduction, or disclosure is subject to \*  
 \* restrictions set forth in Contract No. NAS8-50000 \*  
 \* (and Subcontract \_\_\_\_\_, if appropriate) \*  
 \* with \_\_\_\_\_(name of Contractor and Subcontractor) \*  
 \* \*  
 \* \* \* \* \* (End of Notice) \* \* \* \* \*

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Contractor includes the following statement with such copyright notice: "Unpublished -- rights reserved under the Copyright Laws of the United States."

(h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.