

CUSTOMER CONTRACT REQUIREMENTS
Noise Reduction Technologies for Advanced Subsonic Commercial Aircraft
CUSTOMER CONTRACT NNC16AA04A

CUSTOMER CONTRACT REQUIREMENTS

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

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

1274.905 Rights in Data (JUL 2002).

4. Rights in Data (§ 1274.905) (July 2002), As Amended

(a) Definitions.

"Data," means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(b) Data Categories.

(1) General: Data exchanged between NASA and Boeing under this Cooperative Agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided below in this provision. Data that will be exchanged without restriction includes, but is not limited to, the following Data: (1) full scale vehicle design; (2) model scale vehicle design; (3) wind-model design details, including all drawings and all computer-aided design (CAD) files; (4) full scale and model scale finite element models (FEMs); (5) full scale and model scale aero models, including outer mold line (OML); (6) full scale and model scale Aero Servo Elastic (ASE) models; (7) Excel, MATLAB and all other files and data associated with full scale and model scale designs; (8) unrestricted wind tunnel data; and (9) final unrestricted report. Such Data is not governed by paragraphs (b)(2),(b)(3) or (b)(4) of this section and will be furnished to NASA without restriction.

(2) Background Data:

(a) In the event it is necessary for Boeing to furnish NASA with Data which existed prior to, or produced outside of, this Cooperative Agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this Cooperative Agreement. Upon completion of activities under this Cooperative Agreement, such Data will be disposed of as requested by Boeing.

(b) Boeing's Robust and Adaptive Control Law (CLAW) algorithm and implementation of Active Flow Control (AFC) actuators developed outside of this Cooperative Agreement, including associated software, are Background Data hereunder. In the event Boeing determines other Data to be furnished will be considered Background Data, Boeing shall identify such Data to NASA in advance of using such Data under this Cooperative Agreement to permit NASA to make a determination regarding its use under this Cooperative Agreement. NASA will have the sole discretion to determine whether the use of such Data is required.

(3) Data first produced by Boeing:

(a) In the event Data first produced by Boeing in carrying out Boeing's responsibilities under this Cooperative Agreement is furnished to NASA, and Boeing considers such Data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence for a period of (5) five years after development of the data and be disclosed and used by the Government and its contractors (under suitable protective conditions) only for evaluation; research and/or development by or on behalf of the Government during that period, and used

hereafter for any purpose without disclosure restrictions, unless otherwise specified in this paragraph. In order that the Government and its contractors may exercise the right to use such Data for the purposes designated above, NASA, upon request to the Boeing, shall have the right to review and request delivery of Data first produced by Boeing. Delivery shall be made within 30 days.

(b) Notwithstanding paragraph (a) of this section, inseparable modifications to Background Data which are developed by Boeing under this Cooperative Agreement will be maintained in confidence indefinitely (unless such data is released by Boeing or until such time the data is made publicly available) and disclosed and used only for evaluation and research purposes by the Government. These modifications shall be included in the final restricted report.

(4) Data first produced by NASA: As to Data first produced by NASA in carrying out NASA's responsibilities under this Cooperative Agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from Boeing, will be marked with an appropriate legend and maintained in confidence for an agreed to period of (5) five years after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Boeing agrees not to disclose such Data to any third party without NASA's written approval until the aforementioned restricted period expires. Use of this data under a separate cooperative agreement or contract issued to a party other than Boeing for the purpose of continuing the project in the event this Cooperative Agreement is terminated by either party shall constitute a government purpose.

(5) Copyright.

(i) In the event Data is exchanged with a notice indicating the Data is protected under copyright as a published copyrighted work, or are deposited for registration as a published work in the U.S. Copyright Office, the following paid-up licenses shall apply:

(A) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this Cooperative Agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this Cooperative Agreement; and

(B) If the furnished Data does not contain the indication of paragraph (b)(5)(i)(A) of this section, it will be assumed that the Data was first produced under this Cooperative Agreement, and the receiving party and others acting on its behalf, shall be granted a paid up, nonexclusive, irrevocable, world-wide license for all such Data to reproduce, distribute copies to the public, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the receiving party. For Data that is computer software, the right to distribute shall be limited to potential users in the United States.

(ii) When claim is made to copyright, Boeing shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government.

(6) Oral and visual information. If information which Boeing considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(7) Disclaimer of Liability. Notwithstanding the above, NASA shall not be restricted in, nor incur any liability for, the disclosure and use of:

(i) Data not identified with a suitable notice or legend as set in paragraph (b)(2) of this section; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraphs (b)(2) or (3) of this section, if such information is or becomes generally known without breach of the above, is known to or is generated by NASA independently of carrying out responsibilities under this Cooperative Agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(c) Marking of Data. Any Data delivered under this Cooperative Agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the data was generated under this Cooperative Agreement.

(d) SBIR Rights. Notwithstanding the other provisions in this section, Data that was previously developed by Recipient's subcontractor Scientific Systems Company, Inc. under prior SBIR contracts (W31P4Q-09-C-0408, SSCI Project 1488; NNX09CE92P,

SSCI Project 1477; NNX14CA31P, SSCI Project 1596), and for which the subcontractor has asserted SBIR rights under DFARS 252.227-7018 or FAR 52.227-20, as applicable, shall be governed by the applicable DFARS 252.227-7018 or 52.227-20, and the protection period for such Data shall extend through the Phase III protection period of this Cooperative Agreement. All Data developed by such subcontractor under this Cooperative Agreement shall be governed by FAR 52.227-20.

(e) Lower Tier Agreements. The Subcontractor shall include this provision, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work. The Subcontractor shall include FAR 52.227-20 and/or DFARS 252.227-7018 in subcontracts when applicable under paragraph (d) of this section.

1274.906 Designation of New Technology Representative and Patent Representative (JUL 2002).

(a) For purposes of administration of the provision of this Cooperative Agreement entitled "PATENT RIGHTS - RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" or "PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" the following named representatives are hereby designated by the Agreement Officer to administer such provision:

New Technology Representative

Michelle Dail

5 Langley Boulevard

Mail Stop 218,

NASA Langley Research Center

Hampton, VA 23681-2199

e-mail: Michelle.A.Dail@nasa.gov

Patent Counsel Representative

Office of Chief Counsel

5 Langley Boulevard

Mail Stop 30,

NASA Langley Research Center

Hampton, VA 23681-2199

(b) 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 provision shall be included in any subcontract hereunder requiring "PATENT RIGHTS - RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" provision or "PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" provision, unless otherwise authorized or directed by the Agreement Officer. The respective responsibilities and authorities of the above-named representatives are set forth in NFS 1827.305-370.

1274.911 Patent Rights (JUL 2003).

*14 CFR Part 1274 – Cooperative Agreements with Commercial Firms***1274.912 Patent Rights - Retention by the Recipient (Large Business) (JUL 2002).***(a) Definitions.*

(1) "*Administrator*," as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) "*Invention*," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(3) "*Made*," as used in relation to any invention, means the conception or first actual reduction to practice such invention.

(4) "*Nonprofit organization*," as used in this clause, means a domestic university or other institution of higher education or an 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 domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) "*Practical application*," as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in 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.

(6) "*Reportable item*," as used in this clause, means any invention, discovery, improvement, or innovation of the Subcontractor, whether or not the same is or may be patentable or otherwise protectable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

(7) "*Small business firm*," as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) "*Subject invention*," as used in this clause, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq).

(9) "*Manufactured substantially in the United States*" means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component 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 have been made in accordance with Federal Acquisition Regulation 25.101(a) 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 title.*

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in the National Aeronautics and Space Act, 51 USC 20135(b) (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Subcontractor submits to Boeing who will submit to the Agreement Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in 51 USC 20135(b).

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, Boeing may nevertheless file (on behalf of the subcontractor) the statement described in paragraph (b)(1)(i) of this section. The Administrator will review the information furnished by Boeing and the subcontractor in any such statement and any other

available information relating to the circumstances surrounding the making of the subject invention and will notify Boeing whether the Administrator has determined that the subject invention was made in the manner specified in 51 USC 20135(b).

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this section is conclusive or for which there has been a determination that it was made in the manner specified in 51 USC 20135(b) shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this section.

(3) *Waiver of rights.*

(i) 51 USC 20135(g) provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in 51 USC 20135(b). The promulgated NASA Patent Waiver Regulations, 14 CFR Part 1245, Subpart 1, have adopted the Presidential memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR Part 1245, Subpart 1, Boeing (on behalf of the subcontractor) may petition, either prior to execution of the Cooperative Agreement or within 30 days after execution of the Cooperative Agreement, for advance waiver of rights to any or all of the inventions that may be made under an Agreement. If such a petition is not submitted, or if after submission it is denied, Boeing (on behalf of the subcontractor (or an employee inventor of Boeing or the subcontractor may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this section or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in the REQUESTS FOR WAIVER OF RIGHTS - LARGE BUSINESS provision.

(c) *Minimum rights reserved by the Government.*

(1) With respect to each Boeing or subcontractor subject invention for which a waiver of rights is applicable in accordance with 14 CFR Part 1245, Subpart 1, the Government reserves -- (i) An irrevocable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Recipient (Boeing).*

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Recipient subject invention and any resulting patent in which the Government acquires title, unless the Recipient fails to disclose the subject invention within the times specified in paragraph (e)(2) of this section. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR Part 1245, Subpart 3, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the Recipient 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 Administrator to the extent the Recipient, 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 Recipient will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Recipient will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with 14 CFR 1245.112, any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.*

(1) The Recipient shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Recipient personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Recipient shall furnish the Agreement Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient will disclose each reportable item to the Agreement Officer within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of this clause or, if earlier, within six months after the Recipient becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to the agency shall be in the form of a written report and shall identify the Agreement under which the reportable item was made and the inventor(s) or innovator(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 physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such 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 Recipient will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Recipient for such invention.

(3) The Recipient shall furnish the Agreement Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Agreement Officer) from the date of the Cooperative Agreement, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this section have been followed.

(ii) A final report, within three months after completion of the work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Recipient agrees, upon written request of the Agreement Officer, to furnish additional technical and other information available to the Recipient as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Recipient agrees, subject to 48 CFR (FAR) 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.*

(1) The Agreement Officer or any authorized representative shall, pursuant to the Retention and Examination of Records provision of this Cooperative Agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether -

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintained the procedures required by paragraph

(e)(1) of this section; and

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Agreement Officer learns of an unreported Recipient invention that the Agreement

Officer believes may be a subject inventions, the Recipient may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Subcontracts.*

(1) Unless otherwise authorized or directed by the Agreement Officer, the Recipient shall --

(i) Include this Clause Patent Rights - Retention by the Recipient - (Large Business) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause Patent Right - Retention by the Recipient - (Small Business)(suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the

Recipient --

(i) Shall promptly submit a written notice to the Agreement Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Agreement Officer.

(3) The Recipient shall promptly notify the Agreement Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Agreement Officer, the Recipient shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Recipient in the clause of paragraph (g)(1)(i) or (1)(ii) of this section, whichever is included in the subcontract, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(5) Notwithstanding paragraph (g)(4) of this section, and in recognition of the contractor's substantial contribution of funds, facilities and/or equipment to the work performed under this Cooperative Agreement, the Recipient is authorized, subject to the rights of NASA set forth elsewhere in this clause, to:

(i) Acquire by negotiation and mutual agreement rights to a subcontractor's subject inventions as the Recipient may deem necessary to obtaining and maintaining of such private support; and

(ii) Request, in the event of inability to reach agreement pursuant to paragraph (g)(5)(i) of this section, that NASA invoke exceptional circumstances as necessary pursuant to 37 CFR 401.3(a)(2) if the prospective subcontractor is a small business firm or organization, or for all other organizations, request that such rights for the Recipient be included as an additional reservation in a waiver granted pursuant to 14 CFR Part 1245, Subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the contract officer.

(A) Exceptional circumstances: A request that NASA make an "exceptional circumstances" determination pursuant to 37 CFR 401.3(a)(2) must state the scope of rights sought by the Recipient pursuant to such determination; identify the proposed subcontractor and the work to be performed under the subcontract; and state the need for the determination.

(B) Waiver petition: The subcontractor should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 CFR Part 1245, Subpart 1), NASA will acquire title to the subject invention (51 USC 20135(b)). If a waiver is not requested or granted, the Recipient may request a license from NASA (see licensing of NASA inventions, 14 CFR Part 1245, Subpart 3). A subcontractor requesting a waiver must follow the procedures set forth in the attached clause REQUESTS FOR WAIVER OF RIGHTS - LARGE BUSINESS.

(h) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Assistant Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(i) *March-in rights.* The Recipient agrees that, with respect to any subject invention in which it has acquired title, NASA has the right

in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Recipient, 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 Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that--

- (1) Such action is necessary because the Recipient 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 Recipient, 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 Recipient, assignee, or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) 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.

1274.914 Requests for Waiver of Rights - Large Business (JUL 2002).

14 CFR PART 1274

1274.915 Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions (JUL 2002).

14 CFR PART 1274

1274.919 Cost Principles and Accounting Standards (JUL 2002).

The expenditure of Government funds by the Recipient (or subcontractor) and the allowability of costs recognized as a resource contribution by the Recipient (or subcontractor) (See clause entitled "Resource Sharing Requirements") shall be governed by the FAR cost principles implemented by FAR Parts 30, 31, and 48 CFR Part 99. (If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.")

1274.921 Publications and Reports: Non-proprietary Research Results (JUL 2002).

- a. NASA encourages the widest practicable dissemination of research results at all times during the course of the investigation consistent with the other terms of this agreement.
- b. All information disseminated as a result of the cooperative agreement shall contain a statement which acknowledges NASA's support and identifies the cooperative agreement by number.
- c. Prior approval by the NASA Technical Officer is required only where the Supplier requests that the results of the research be published in a NASA scientific or technical publication. Approval request should come through Boeing.

1274.923 Equipment and Other Property (FEB 2004).

1. Under no circumstances shall cooperative agreement funds be used to acquire land or any interest therein, to acquire or construct facilities (as defined in 48 CFR (FAR) 45.301), or to procure passenger carrying vehicles.
2. Contractor/Subcontractor acquired equipment or property used in performance of the Cooperative Agreement shall be controlled in accordance with 48 CFR (FAR) 45.6.
3. The government shall have title to equipment and other personal property acquired with government funds. Such property shall be disposed of pursuant to 48 CFR (FAR) 45.603. The Recipient shall have title to equipment and other personal property acquired with Recipient funds. Such property shall remain with the Recipient at the conclusion of the cooperative agreement. Under a shared cost arrangement, the Government and the Recipient have joint ownership of acquired property in accordance with the cost share ratio. Jointly owned property shall be disposed of as agreed to by the parties.
4. Title to Government furnished equipment (including equipment, title to which has been transferred to the Government prior to completion of the work) will remain with the Government.
5. Contractor/Subcontractor shall establish and maintain property management standards for Government property and otherwise manage such property as set forth in 48 CFR (FAR) 45.5 and 48 CFR (NFS) 1845.5.
6. Contractor/Subcontractor shall submit annually a NASA Form 1018, NASA Property in the Custody of Contractors, in accordance with the instructions on the form, the provisions of 48 CFR (NFS) 1845.71 and any supplemental instructions that may be issued by NASA for the current reporting period. The original NF 1018 shall be submitted to the center Deputy Chief Financial Officer, Finance, with three copies sent concurrently to the center Industrial Property Officer. The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. Negative reports (*i.e.* no reportable property) are required. The information contained in the reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 15. A final report is required within 30 days after expiration of the agreement. (As of the date of this rewrite, process changes have been made to facilitate electronic submission of NF 1018. Recipients may use the procedures established by NASA Procurement Notice (PN) 97-64, issued on August 9, 2001.)

1274.924 Civil Rights Act (JUL 2002). Work on NASA [cooperative agreements](#) is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Public Law 88-352; [42 U.S.C. 2000d-1](#)), Title IX of the Education Amendments of 1972 ([20 U.S.C. 1680](#) et seq.), section 504 of the Rehabilitation Act of 1973, as amended ([29 U.S.C. 794](#)), the Age Discrimination Act of 1975 ([42 U.S.C. 6101](#) et seq.), and the NASA implementing regulations ([14 CFR parts 1250, 1251, 1252](#) and [1253](#)).

1274.925 Subcontracts (JUL 2002).**38. 1274.925 Subcontracts. (JUL 2002)**

1. Recipients are not authorized to issue grants or cooperative agreements.
2. NASA Agreement Officer consent is required for subcontracts over \$100,000.00 and/or subcontracts for critical systems, subsystems, components, or services.
3. If not submitted by the Recipient and accepted by NASA in the original proposal. The Recipient shall provide the following information to the Agreement Officer:
 - a. A copy of the proposed subcontract.
 - b. Basis for subcontractor selection.
 - c. Justification for lack of competition when competitive bids or offers are not obtained.
 - d. Basis for award cost or award price.
4. The Recipient shall utilize small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and

Universities, and minority educational institutions as subcontractors to the maximum extent practicable.

5. All entities that are involved in performing the research and development effort that is the purpose of the cooperative agreement shall be part of the Recipient's consortium and not subcontractors.

1274.926 Clean Air-Water Pollution Control Acts (JUL 2002). If this [cooperative agreement](#) or supplement thereto is in excess of \$100,000, the [Supplier](#) agrees to notify Boeing promptly of the receipt, whether prior or subsequent to the [Supplier's](#) acceptance of this [cooperative agreement](#), of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this [cooperative agreement](#) or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to [40 CFR 15.20](#). By acceptance of a [cooperative agreement](#) in excess of \$100,000, the Supplier -

(a) Stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance;

(b) Agrees to comply with all requirements of section 114 of the Clean Air Act, as amended ([42 U.S.C. 1857](#) et seq. as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act, as amended ([33 U.S.C. 1251](#) et seq. as amended by Public Law 92-500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the [cooperative agreement](#); and

(c) Agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of \$100,000, and to take such action as the Contracting or Grant Officer may direct to enforce such criteria and requirements.

1274.927 Debarment and Suspension and Drug-Free Workplace (SEP 2014). NASA [cooperative agreements](#) are subject to the provisions of [2 CFR Part 180](#), Government-wide Debarment and [Suspension](#) (Nonprocurement) and [2 CFR Part 182](#), Government-wide requirements for Drug-Free Workplace, unless excepted by [2 CFR 180.110](#) or [180.610](#).

1274.932 Retention and Examination of Records (JUL 2002). Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this [cooperative agreement](#) shall be retained for a period of 3 years, except that records for nonexpendable property acquired with [cooperative agreement](#) funds shall be retained for 3 years after its final disposition and, if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The retention period starts from the date of the submission of the final invoice. The [Administrator](#) of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the [Supplier](#) and of subcontractors to make audits, examinations, excerpts, and transcripts. All provisions of this clause shall apply to any subcontractor performing substantive work under this [cooperative agreement](#).

1274.934 Safety (JUL 2002).

NASA's safety priority is to protect: (1) the public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(a) Supplier shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this Purchase Order. Supplier shall comply with all applicable federal, state, and local laws relating to safety. Supplier shall maintain a record of, and will notify Boeing and NASA Agreement Officer immediately (within one workday) of any accident involving death, disabling injury or substantial loss of property. Supplier will immediately (within one workday) advise NASA of hazards that come to its attention as a result of the work performed.

(b) Where the work under this Purchase Order involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the Supplier.

Compliance with this provision by subcontractors shall be the responsibility of the Supplier.

1274.936 Breach of Safety or Security (JUL 2002).

Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and Boeing and is a material part of this contract. Boeing and NASA's safety priority is to protect: (1) the public; (2) astronauts and pilots; (3) the Boeing and NASA workforce (including contractor employees working on contracts); and (4) high-value equipment and property. A major breach of safety by the Supplier entitles Boeing and NASA to remedies (pending corrective measures by the Supplier) which includes, suspension or termination of the Purchase Contract, require removal or change of Supplier's personnel from performing under the Purchase Contract. A major breach of safety must be related directly to the work on the Purchase Contract. A major breach of safety is an act or omission of the Supplier that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(a) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security by the Supplier entitles Boeing and the Government to remedies (pending corrective measures by the Supplier) which includes, suspension or termination of the Purchase Contract, require removal or change of Supplier's personnel from performing under the Purchase Contract. A major breach of security may occur on or off Government or Boeing installations, but must be related directly to the work on the Purchase Contract. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than \$250,000 to the Government and/or Boeing; or theft.

(b) In the event of a major breach of safety or security, the Supplier shall report the breach to Boeing and NASA. If directed by either, the Recipient shall conduct its own investigation and report the results to Boeing and the Government. The Supplier shall cooperate with the Boeing and/or Government investigation, if conducted.

1274.937 Security Requirements for Unclassified Information Technology Resources (JUL 2002).

(a) The Supplier shall be responsible for Information Technology security for all systems connected to a NASA network or operated by the Supplier for NASA, regardless of location. This provision is applicable to all or any part of the cooperative agreement that includes information technology resources or services in which the Supplier must have physical or electronic access to NASA's sensitive information contained in unclassified systems that directly support the mission of the Agency.

This includes information technology, hardware, software, and the management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems. Examples of tasks that require security provisions include:

- (1) Computer control of spacecraft, satellites, or aircraft or their payloads;
- (2) Acquisition, transmission or analysis of data owned by NASA with significant replacement cost should the Supplier's copy be corrupted; and
- (3) Access to NASA networks or computers at a level beyond that granted the general public, e.g. bypassing a firewall.

(b) The Supplier shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this cooperative agreement. The plan shall describe those parts of the cooperative agreement to which this provision applies.

The Supplier's IT Security Plan shall be compliant with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 et seq.) and the Government Information Security Reform Act of 2000. The plan shall meet IT security requirements in accordance with Federal and NASA policies and procedures that include, but are not limited to:

- (1) OMB Circular A-130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;
- (2) NASA Procedures and Guidelines (NPG) 2810.1, Security of Information Technology; and
- (3) Chapter 3 of NPG 1620.1, NASA Security Procedures and Guidelines.

(c) Within 30 days after cooperative agreement award, the Supplier shall submit for Boeing approval (or may adopt the Boeing Plan attached to the Purchase Contract) an IT Security Plan. This plan must be consistent with and further detail the approach contained in the Supplier's proposal that resulted in the award of this cooperative agreement and in compliance with the requirements stated in this provision. The plan, as approved by the Agreement Officer, shall be incorporated into the Purchase Contract as a compliance

document.

(d)(1) Supplier personnel requiring privileged access or limited privileged access to systems operated by the Supplier for NASA or interconnected to a NASA network shall be screened at an appropriate level in accordance with NPG 2810.1, Section 4.5; NPG 1620.1, Chapter 3; and paragraph (d)(2) of this provision. Those Supplier personnel with non-privileged access do not require personnel screening. NASA shall provide screening using standard personnel screening National Agency Check (NAC) forms listed in paragraph (d)(3) of this provision, unless Supplier screening in accordance with paragraph (d)(4) is approved. The Supplier shall submit the required forms to the NASA Center Chief of Security (CCS) within fourteen (14) days after cooperative agreement award or assignment of an individual to a position requiring screening.

The forms may be obtained from the CCS. At the option of the government, interim access may be granted pending completion of the NAC.

(2) Guidance for selecting the appropriate level of screening is based on the risk of adverse impact to NASA missions. NASA defines three levels of risk for which screening is required (IT-1 has the highest level of risk): (i) IT-1 -- Individuals having privileged access or limited privileged access to systems whose misuse can cause very serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of spacecraft, satellites or aircraft.

(ii) IT-2 -- Individuals having privileged access or limited privileged access to systems whose misuse can cause serious adverse impact to NASA missions. These systems include, for example, those that can transmit commands directly modifying the behavior of payloads on spacecraft, satellites or aircraft; and those that contain the primary copy of "level 1" data whose cost to replace exceeds one million dollars.

(iii) IT-3 -- Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the Supplier for NASA whose function or data has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as follows:

(i) IT-1: Fingerprint Card (FC) 258 and Standard Form (SF) 85P, Questionnaire for Public Trust Positions;

(ii) IT-2: FC 258 and SF 85, Questionnaire for Non-Sensitive Positions; and

(iii) IT-3: NASA Form 531, Name Check, and FC 258.

(4) The Buyer may allow the Supplier to conduct its own screening of individuals requiring privileged access or limited privileged access provided the Supplier can demonstrate that the procedures used by the Supplier are equivalent to NASA's personnel screening procedures. As used here, equivalent includes a check for criminal history, as would be conducted by NASA, and completion of a questionnaire covering the same information as would be required by NASA.

(5) Screening of Supplier personnel may be waived by the Agreement Officer for those individuals who have proof

of --

(i) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within last three years; or

(iii) Screening conducted by the Supplier, within last three years, that is equivalent to the NASA personnel screening procedures as approved by the Agreement Officer under paragraph (d)(4) of this provision.

(e) The Supplier shall ensure that its employees, in performance of the cooperative agreement, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPG 2810.1, Section 4.3 requirements. The Supplier may use web-based training available from NASA to meet this requirement.

(f) The Supplier shall afford NASA, including the Office of Inspector General, access to the Supplier's, subcontractors' or subawardees' facilities, installations, operations, documentation, databases and personnel used in performance of the cooperative agreement. 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 or to the function of computer systems operated on behalf of

NASA, and to preserve evidence of computer crime.

(g) The Supplier shall incorporate the substance of this clause in all subcontracts or subagreements that meet the conditions in paragraph (a) of this provision.

By acceptance of this purchase contract Seller/Supplier agrees to the terms in the referenced IT security Plan.

1274.938 Modifications (JUL 2002).

During the term of this Purchase Contract and in the interest of achieving program objectives, the parties may agree to changes that affect the responsibility statements, milestones, or other provisions of this Purchase Contract. Any changes to this Purchase Contract will be accomplished by a written bilateral modification.

1274.939 Application of Federal, State, and Local Laws and Regulations (JUL 2002).

(a) *Federal Laws and Regulations.* This Purchase Contract shall be governed by the Federal Laws, regulations, policies, and related administrative practices applicable to the underlying Cooperative Agreement on the date the Agreement is executed. The Supplier understands that such Federal laws, regulations, policies, and related administrative practices may be modified from time to time. The Supplier agrees to any modifications agreed to by Boeing and the Government (NASA) to be governed by those later modified Federal laws, regulations, policies, and related administrative practices that directly affect performance of the Project.

(b) *State or Territorial Law and Local Law.* Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in the Cooperative Agreement shall require Boeing to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of the Cooperative Agreement or Purchase Contract violate any applicable State or territorial law, or if compliance with the provisions of the Agreement or Contract would require the Supplier to violate any applicable State or territorial law, the Supplier agrees to notify the Government (NASA) and Boeing immediately in writing in order that the Government and Boeing may make appropriate arrangements to proceed with the Project as soon as possible.

(c) *Changed Conditions of Performance (Including Litigation).* The Supplier agrees to notify the Government (NASA) and Boeing immediately of any change in State or local law, conditions, or any other event that may significantly affect its ability to perform the Project in accordance with the terms of this Purchase Contract. In addition, the Recipient agrees to notify the Government (NASA) and Boeing immediately of any decision pertaining to the Supplier's conduct of litigation that may affect the Government's or Boeing's interests in the Project or the Government's or Boeing's administration or enforcement of applicable Federal laws or regulations. Before the Supplier may name the Government or Boeing as a party to litigation for any reason, the Supplier agrees to inform the Government and/or Boeing; this proviso applies to any type of litigation whatsoever, in any forum.

(d) *No Government Obligations to Third Parties.* Absent the Government's express written consent, and notwithstanding any concurrence by the Government in or approval of the award of any Agreement of Boeing (third party contract) or subcontract of Boeing (third party subcontract) or the solicitation thereof, the Government shall not be subject to any obligations or liabilities to third party contractors or third party subcontractors or any other person(s).

1274.942 Export Licenses (JUL 2002).

(a) Supplier shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Cooperative Agreement through the Purchase Contract. In the absence of available license exemptions/exceptions, Supplier 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.

(b) Supplier shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this Purchase Contract, including instances where the work is to be performed on-site at NASA Langley Research Center or at Boeing, where the foreign person will have access to export-controlled technical data or software.

(c) Supplier shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license

exemptions/exceptions.

(d) Supplier shall be responsible for ensuring that the requirements of this provision apply to its subcontractors.

(e) Supplier may request, in writing, that Boeing receive from the NASA Agreement Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The NASA Agreement Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

1274.943 Investigation of Research Misconduct (JUL 2002).

Supplier receiving this Purchase Contract under Cooperative Agreement is subject to the requirements of 14 CFR Part 1275, "Research Misconduct."

40. Restrictions on Funding Activities with China for Awards Subject to 14 CFR § 1274 .

a. 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 grant or cooperative agreement 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.

b. "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.

c. The restrictions in the Acts do not apply to commercial items of supply necessary to perform a grant or cooperative agreement.

d. Subawards - The recipient shall include the substance of this provision in all subawards made hereunder.

41 Assurance of Compliance - China Funding Restriction .

A. (An Assurance of Compliance with 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 herein after referred to as "the Acts", whereas:

(1) NASA is restricted from using funds appropriated in the Acts to enter into or fund any grant or cooperative agreement of any kind to participate, collaborate, or coordinate bilaterally with China or any Chinese-owned company, at the prime recipient level and at all subrecipient levels, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement.

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.

(2) The restrictions in the Acts do not apply to commercial items of supply needed to perform a grant or cooperative agreement.

(3) By submission of its proposal, the proposer represents that the proposer is not China or a Chinese-owned company, and that the proposer 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.

B. When awarding new grants and cooperative agreements that are subject to 14 CFR § 1260, grant officers shall add the following provision which restricts the recipient from participating, collaborating, or coordinating 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.

42 Reporting Subawards and Executive Compensation .

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

a. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsr.gov>.

b. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsr.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if--

a. the total Federal funding authorized to date under this award is \$25,000 or more;

b. in the preceding fiscal year, you received--

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

c. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at <http://www.ccr.gov>.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if--

a. in the subrecipient's preceding fiscal year, the subrecipient received--

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

b. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

c. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

b. Subawards,

2. and

c. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

ii. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

iii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __ .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iv. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- j. Receives a subaward from you (the recipient) under this award; and
- d. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

j. Salary and bonus.

a. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

b. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

c. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

d. Above-market earnings on deferred compensation which is not tax-qualified.

e. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

43 Financial Assistance Use of Universal Identifier .

I. Central Contractor Registration and Universal Identifier Requirements

a. Requirement for Central Contractor Registration (CCR) Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

b. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

.,h Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

.,h May not make a subaward to an entity unless the entity has provided its DUNS number to you.

c. Definitions

For purposes of this award term:

2. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site

(currently at <http://www.ccr.gov>).

3. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

4. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian Tribe;
- b. A foreign public entity;
- c. A domestic or foreign nonprofit organization;
- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

5. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

6. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

45 System for Award Management and Universal Identifier Requirements (JUL 2013).

1. Requirement for System for Award Management (SAM) (previously identified as Central Contractor Registration (CCR)) Unless you are exempted from this requirement under 2 CFR 25.110, you as the Recipient must maintain the currency of your information in the SAM database until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

2. (b) Requirement for Data Universal Numbering System (DUNS) Numbers If you are authorized to make subawards under this award, you:

- a. Must notify potential sub-recipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
- b. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

3. Definitions

For purposes of this award term:

1. SAM means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at

<http://www.sam.gov>).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at

<http://fedgov.dnb.com/webform>).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:

- a. A Governmental organization, which is a State, local government, or Indian Tribe;
- b. A foreign public entity;

- c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
4. Subaward:
- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - a. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - b. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
5. Sub-recipient means an entity that:
- a. Receives a subaward from you under this award; and
 - b. Is accountable to you for the use of the Federal funds provided by the subaward.

EXHIBIT D to PART 1274 CONTRACT PROVISIONS .

1. Equal Employment Opportunity -- All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
2. Copeland "Anti-Kickback" Act (40 U.S.C. 276c) -- All contracts in excess of \$50,000 for construction or repair awarded by Recipients and sub-recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act, as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Recipient or sub-recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Recipient shall report all suspected or reported violations to NASA.
3. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-334) -- Where applicable, all contracts awarded by Recipients in excess of \$2,000 for construction contracts and in excess of \$50,000 for other contracts, other than contracts for commercial items, that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-334), as supplemented by Department of Labor regulations (29 CFR Part 5). Under Subsection 102 of the Act, each Recipient shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
4. Rights to Inventions Made Under a Contract or Agreement-- Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
5. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended -- Contracts, other than contracts for commercial items, of amounts in excess of \$100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).
6. Byrd Anti-Lobbying Amendment (31 U.S.C.1352) -- Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

7. Debarment and Suspension (E.O.s 12549 and 12689) -- No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding its exclusion status and that of its principal employees.