

Date: June 30, 2003

EXHIBIT A

**GOVERNMENT PROVISIONS
APPLICABLE TO
PRIME PURCHASE CONTRACT NAS8-50000**

The clauses contained in the following Government regulations are incorporated by reference. Where necessary or appropriate to derive proper meaning in a purchase contract situation, "Purchase contractor" shall mean Seller. Government clauses cited elsewhere in the purchase contract shall be those in effect in December 1989.

FAR/DFARS

<u>Reference</u>	<u>Title</u>
52.204-2	Security Requirements (APR 84 (Applies only if the purchase contract requires access to classified information, "Government" means Buyer or the Government.))
52.208-1	Required Sources for Jewel Bearings and Related Items (APR 84)
52.212-8	Defense Priority and Allocation Requirements (MAY 86)
52.215-26	Integrity of Unit Prices (APR 87)
52.215-27	Termination of Defined Benefit Pension Plans (SEP 89) ("Purchase contracting Officer" means Buyer and Seller's cognizant ACO.) (Applicable only if purchase contract is other than firm-fixed-price or if certified cost or pricing data was provided.)
52.215-33	Order of Precedence (JAN 86)
52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (FEB 90)
52.219-13	Utilization of Women-Owned Small Business (AUG 86)
52.222-26	Equal Opportunity (APR 84) [Subparagraphs (b)(1) through (11)]
52.223-3	Hazardous Material Identification and Material Safety Data (DEC 89) (Applies only if hazardous material will be delivered)
52.227-1	Authorization and Consent, Alt I (APR 84)
52.227-10	Filing of Patent Applications – Classified Subject Matter (APR 84) (Applies only if purchase contract will involve access to classified information)
52.237-2	Protection of Government Buildings, Equipment and Vegetation (APR 84) (Applies only if work will be performed on a government installation. "Purchase contracting Officer" means Buyer.)
52.242-15	Stop Work Order (AUG 89) ("Purchase contracting Officer" means Buyer)
52.244-5	Competition in Purchase contracting (APR 84)
52.244-6	Purchase contracts for Commercial Items and Commercial Components (DEC 01)
18-52.204-71	NASA Contractor Financial Management Reporting (DEC 88)
18-52.208-81	Restrictions on Printing and Duplicating (AUG 93)
18-52.227-70	New Technology (APR 88) (Applies if the purchase contract involves experimental, developmental or research work.)
18-52.228-72	Interparty Waiver of Liability During STS Operations (DEC 88)
18-52.245-70	Acquisition of Centrally Reportable Equipment (MAR 89)
18-52.246-73	Manned Space Flight Item (OCT 1988)

The following clauses also apply if the purchase contract price exceeds \$10,000:

52.222-20	Walsh-Healey Public Purchase contracts Act (APR 84)
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- 52.222-35 Affirmative Action for Special Disabled and Vietnam ERA Veterans (APR 84)
- 52.222-36 Affirmative Action for Handicapped Workers (APR 84)
- 52.222-37 Employment Reports on Special Disabled Veterans of the Vietnam Era (JAN 88)

The following clauses also apply if the purchase contract price exceeds \$100,000:

- 52.203-6 Restrictions on Purchase contractor Sales to the Government (JUL 85)
- 52.203-7 Anti-Kickback Procedures (OCT 88)
- 52.215-2 Audit -Negotiation (DEC 89) (Applies if the purchase contract is cost reimbursement, incentive, time-and-materials, labor hour, or price redeterminable type or any combination of these; if cost or pricing data was required; or if cost funding or performance reports will be furnished.)
- 52.220-3 Utilization of Labor Surplus Area Concerns (APR 84)
- 52.223-2 Clean Air and Water (APR 84)
- 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (APR 84). (A copy of each notice sent to the Government will be sent to Buyer.) ("Purchase contracting Officer" means Buyer.)
- 52.230-3 Cost Accounting Standards (SEP 87)
- 52.230-4 Administration of Cost Accounting Standards (SEP 87)
- 52.246-24 Limitation of Liability -- High-Value Items (APR 84) ["Government's" shall mean Government's or Buyer's in paragraph (e)].
- 18-52.244-70 Geographic Participation in the Aerospace Program (APR 85)

The following clauses also apply if the purchase contract price exceeds \$500,000:

- 52.215-22 Price Reduction for Defective Cost or Pricing Data (JAN 91)
- 52.215-24 Contractor Cost or Pricing Data (OCT 95)
- 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan (FEB 90) (Applies only if Seller is not a small business. "Purchase contracting Officer" in paragraph (c) means Buyer.)
- 52.220-4 Labor Surplus Area Subcontracting Program (APR 84)
- 18-52.219-74 Use of Rural Area Small Businesses (SEP 90)
- 18-52.219-75 Small Business Subcontract Reporting (SEP 92)

The following clause also applies if the purchase contract price exceeds \$1,000,000:

- 18-52.223-70 Safety and Health (DEC 88) (Applies if purchase contract involves use of hazardous materials or operations, or if it exceeds \$1,000,000.)

The following clauses also apply if Technical Data or Computer Software will be Generated or Delivered:

- 52.227-16 Additional Data Requirements (JUN 87)

Additional Provisions:

PRICING OF ADJUSTMENTS. When costs are a factor in any determination of a purchase contract price adjustment pursuant to the "Changes" clause or any other provision of this purchase contract, or when the allowability of costs under this purchase contract are to be determined, determination of such costs shall be in accordance with FAR Part 31.

DEFENSE PRIORITY RATING. If a defense priority rating is identified on the face of this purchase contract, this is a rated order certified for national defense use and the Seller shall follow all the requirements of the Defense Priorities and Allocations Systems Regulation (15 CFR Part 700), including accepting or rejecting this purchase contract in writing within fifteen (15) working days after receipt of DO rated or ten (10) days after receipt if DX rated. If rejected, the reason(s) for such rejection shall be included in the notice to the Buyer. [A/Rev. M]

ANTI-KICKBACK PROCEDURES. Seller agrees to abide by the Anti-Kickback Act of 1986 (41 U.S.C. 51 through 58) and FAR 52.203-7, "Anti-Kickback Procedures" which is incorporated herein by reference, except that subparagraph (c)(1) of FAR 52.203-7 shall not apply to Seller, and further that in subparagraphs (c)(2), (c)(3), and (c)(5), the term "Purchase contractor" shall mean Seller, and in subparagraph (c)(4) the term "Prime Purchase contractor" shall mean Buyer and the term "contractor" shall mean Seller. In addition to reporting possible violations of the Anti-Kickback Act to the Government pursuant to 41 U.S.C. §57(c), Seller shall report such possible violations, if related to Buyer, to the Director of Materiel and/or the Division Counsel of the Boeing division or subsidiary issuing this purchase contract. Seller agrees to hold Buyer harmless from, defend Buyer against, and indemnify Buyer for all costs, expenses, and offsets Buyer may incur as a consequence of violations of this clause by Seller or by Seller's contractors or suppliers. The rights and obligations set forth in this clause shall survive completion of, final payment under, or termination of, this order.

Special Purchase Contract Requirements:

SPECIAL TERMINATION COST

(a) Definition.

"Special termination costs" as used in this clause means those allowable costs as defined in Part 31 of the Federal Acquisition Regulation, including but not limited to:

- (1) Severance pay as provided in FAR 31.205-6(g)
- (2) Reasonable costs continuing after termination as provided in FAR 31.205-42(b);
- (3) Settlement of expenses as provided in FAR 31.205-42(g);
- (4) Cost of return of field service personnel from sites, as provided in FAR 31.205-35 and FAR 31.205-46(c);
- (5) Contractor termination settlements including, but not limited to, the costs in subparagraph (a)(1), (2), (3), and (4) of this clause.

(b) Notwithstanding the Limitation of Funds clause of this purchase contract, the Seller shall not include in its estimate of costs incurred or to be incurred, any amount for termination costs, including special termination costs, to which the Seller may be entitled in the event this purchase contract is terminated for convenience.

(c) Seller recognizes that under Buyer's prime purchase contract, the Government has agreed to pay Buyer for special termination costs from amounts reserved within NASA's Human Space Flight appropriation or from such other funds appropriated or to be appropriated by Congress for this purpose. IN the event of a termination for convenience, and subject to negotiation of a termination settlement, Buyer agrees to pay the Seller is termination costs; provided, however, if at the time of termination NASA does not make available funds sufficient to cover Buyer's termination costs in full, Buyer agrees to share with Seller on a pro rata basis funds provided under Buyer's prime purchase contract as such funds are received by Buyer from NASA. Seller's "pro rata" share is the ratio of Seller's termination costs to Buyer's total termination costs and shall be determined on an interim basis at the time Boeing submits its termination proposal to NASA and shall be finalized when Boeing receives the modification from the Purchase contracting Officer definitizing its termination settlement. In the event any additional funding is required to reimburse the Buyer for full termination liability. Buyer shall request and NASA has agreed to seek such funds and provide them to the Buyer when available. When Buyer has received funds sufficient to cover its full termination liability, Buyer agrees to pay the Seller the balance remaining due and payable, if any, to Seller under the termination settlement previously negotiated between Seller and Buyer.

(d) This clause shall not be construed as affecting the allowability of termination costs in any manner other than limiting the sources of funds from which the Buyer would allowable costs.

(e) This clause shall remain in full force and effect until this purchase contract is fully funded or other mutually agreeable provisions are established to cover such termination costs.

(f) Notwithstanding paragraph (b) above, Seller shall provide Buyer with a separate estimate of remaining termination liability on a quarterly basis.

POTENTIALLY HAZARDOUS ITEMS (18.52-223-72) (DEC 88), CLAUSE H.10 OF THE PRIME PURCHASE CONTRACT [A/Rev. N]

(a) The Seller 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	Thermobond Epoxy
Hydrazine	Thermofit S1010 PRT.A Adhe.
Hydrochloric Acid	Trichlorethylene
Lithium Hydroxide	

These items or components are designed as potentially hazardous to employees and contractors 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 Seller shall inform such employees or contractors of the potentially hazardous nature of these items or components before requesting or directing the performance of work.

(b) This requirement for delivery of data supersedes any items of this purchase purchase contract permitting withholding of data.

(c) The Seller shall include this clause, including this paragraph (c), in each contract at any tier under this purchase contract that calls for the manufacture or handling of the items or components designated according to paragraph (a) above as potentially hazardous.

ASBESTOS MATERIAL (MSFC 52.223-90) (MAR 93), CLAUSE H.31 OF THE PRIME PURCHASE CONTRACT

During the performance of this purchase contract, Seller 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 they 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, pipe and lagging insulation, exterior siding, roofing felt, and many other building materials. Prior to disturbing suspected asbestos material in any manner, the Seller shall notify representatives of the Environmental Health Office, an office within the MSFC Medical Center, for guidance. Seller shall be responsible for ensuring that all Seller personnel working onsite are made aware of and comply with the clause.

DATA PROVISIONS (CC) (CLAUSE H.25 OF THE PRIME CONTRACT) R/Rev. N

A. Licensing of Commercial Software - (The following is limited to computer programs, if any, to be obtained by the Seller and subsequently furnished to the SSE purchase contractor for use in SSE System)

1. In addition to the rights prescribed in subparagraph (g)(3) of the "Rights in Data -- General" clause of this purchase contract, for each commercial computer program to be furnished under this purchase contract, the Seller shall grant, provide or otherwise acquire on behalf of the Government sufficient licensing rights for the Government (1) to load a copy of such program onto a hard disk or other types of memory in a host computer and (2) to use and copy such program in or with multiple processors, computers, workstations, and terminals (approximately 1,500, with a maximum of 1,750) which may form a network or system located at a single site or be connected by communications to their networks or systems located at different sites and (3) to acquire additional processor, computer, workstation, and terminal rights at the appropriate incremental rate.

2. Unless otherwise specified elsewhere in this purchase contract, two (2) of each computer program shall be furnished one of which will be for backup. The cost and license fee for each computer program shall be listed separately, also with an indication of whether the documentation or instructional material is included in such cost and license fee.

3. Such licensing rights shall include that in the event the licensor is unable or unwilling to continue to support the computer program at reasonable rates, a copy of the appropriate source code and documentation together with the rights to maintain, modify or enhance the computer program will be provided to the Government at customary commercial source license cost for use by the Government.

4. The Seller may propose alternative licensing arrangements in lieu of or in addition to that required above, provided each such licensing arrangement is proposed as an option and costed separately.

5. In cases where the Seller proposes to modify a commercial product, in addition to the above actions, the Seller shall obtain an "early release" agreement with the vendor. Early release agreements shall provide the Seller with pre-release information concerning upcoming changes to previous versions as well as pre-release copies of the upgraded software. The intent of these agreements is to provide the Seller with the maximum amount of time to prepare own-code modifications.

B. Developed Computer Software

1. As set forth in NASA Management Instruction NMI 2210.2A, it is NASA policy to make available to potential users significant software developed by NASA and NASA purchase contractors which is suitable for external use. This is accomplished through the Computer Software Management and Information Center (COSMIC), operated for NASA by the University of Georgia.

2. Computer software developed under this purchase contract may constitute a "reportable item" under the "New Technology" clause. Such software shall be promptly reported to the New Technology Representative Designated in the purchase contract. In the event that the "New Technology" clause is not appropriate, such computer software shall nevertheless be promptly reported to the New Technical Representative designated in the purchase contract. Such submittal shall be in accordance with COMSEC guidelines, a copy of which is available through such representative.

3. To assure the prompt identification and reporting of such software, the Seller shall establish and maintain active and effective procedures. Such procedures shall be set forth in the Seller's "Plan for New Technology Reporting."

4. In accordance with Paragraph (d)(3) of the "Rights in Data -- General" call use, the Seller shall not establish claim to copyright, publish, or release to others such software without prior written permission of the Buyer.

5. The Seller shall not include any restricted computer software (as identified in paragraph (a) of the "Rights in Data -- General" clause of this purchase contract) in software developed under this purchase contract, including integration software, without prior written permission from the Buyer.

C. Rights in Data -- Sensitive Business and Financial

The Government shall have the right to use in-house for Government purposes, all sensitive business and financial data delivered pursuant to this purchase contract. Such data shall be identified by the following legend:

"This document contains sensitive business or financial data of

_____ delivered pursuant to Purchase contract NAS8-_____

and shall not be disclosed outside the Government except as provided in the 'Rights in Data--Sensitive Business and Financial' clause of this purchase contract."

This data shall not be disclosed outside the Government except under the following circumstances:

1. The Director of a NASA installation has determined that the disclosure is necessary of Government purposes, and the services to be performed by the party to whom the disclosure is made cannot be performed in-house on a timely basis.

2. The party to whom the disclosure is made shall have agreed not to use the data for any private purpose, not to make further disclosure of the data, and upon completion of the services to be performed, shall return the data and all copies thereof to the Government.

3. To the extent practicable, the Government will not disclose the source of the data.

D. Contractor Data Provisions

1. In addition to the requirements of paragraph (h) "subcontracting" of the FAR clause at 52.227-14, "Rights in Data -- General, Alternate Ii and III (June 1987)," clause of this purchase contract, the Seller shall, unless directed otherwise by the Buyer, include the following clauses (suitably modified to identify the parties) in all contracts of any tier where the performance of research, experimental, design, engineering or developmental work is contemplated:

Handling of Data

Data Provisions

- A. Licensing of Commercial Software
- B. Developed Computer Software
- C. Rights in Data - Sensitive Business and Financial

2. If a contractor refuses to accept terms consistent with the requirements of paragraph 1. above, the Seller shall promptly notify the Buyer and not proceed with contract award without further authorization.

3. The Seller will not use its position to restrict its contractors under this purchase contract from dealing directly with the Government or with other Government purchase contractors participating in this program.

18-52.204-76 SECURITY REQUIREMENTS FOR UNCLASSIFIED TECHNOLOGY INFORMATION RESOURCES (JUL 00)

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

(i) Privacy Act information (t 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 Seller shall ensure that all systems connected to a NASA network or operated by the Seller for NASA conform with NASA and Center security policies and procedures.

(c) (1) The Seller's screening of purchase 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 Seller shall ensure that all such employees have at least a National Agency Check investigation. The Seller 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 purchase 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 Seller 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 (3) 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 Seller; and

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

(4) Granting to non-permanent resident alien (foreign national) access to NASA IT resources requires special authorization. The Seller 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 Seller 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 Seller 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 Seller 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 purchase contract.

(3) The Seller 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 Seller 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 Seller 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 Seller shall promptly report to the Center IT Security Manager any suspected computer or network security incidents occurring on any system operated by the Seller for NASA or connected to a NASA network. If it is validated that there is an incident, the Seller 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 Seller 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 Seller shall afford NASA, including the Office of Inspector General, access to the Seller's and contractor'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 Seller shall document all vulnerability testing and risk assessments conducted in accordance with NPG 2810.1 and any other IT security requirements specified in the purchase contract or as directed by the Buyer.

(2) The results of these tests shall be provided to the Center IT Security Manager. Any Seller system(s) connected to a NASA network or operated by the Seller for NASA may be subject to vulnerability assessment or penetration testing as part of the Center's IT security compliance assessment and the Seller 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 Seller shall notify the NASA system owner and the NASA data owner within five (5) working days if new or unanticipated threats or hazards are discovered by the Seller, made known to the Seller, or if existing safeguards fail to function effectively. The Seller 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 Seller 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 Seller must report the results of these actions directly to the Center IT Security Manager.

(j) When directed by the Buyer, the Seller shall submit for NASA approval a post-award security implementation plan outlining how the Seller 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 Seller and contractor 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 Seller shall consult with the buyer and the Center IT Security Manager to ensure interoperability and compatibility with other systems with which there is a data or system interface requirement.

(l) The Seller 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 Seller shall incorporate this clause in all contracts where the requirements identified in this clause are applicable to the performance of the contract.

18-52.227-87 Transfer of Technical Data under Space Station International Agreements (APR 89)

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 purchase contractors, acting as agents of NASA under the specific written direction of the Buyer and Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR) to transfer such data.

2. The Seller agrees, when specifically directed in writing by the Buyer, 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 Buyer 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 Seller 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 Seller or any contractors 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 Seller or any contractor under that clause.

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

18-52.228-76 Cross-Waiver of Liability for Space Station Activities (FEB 89)

(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 Seller" 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 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" means:

- (i) A purchase contractor or contractors of a Partner State, of the United States Government or of the Seller, at any tier.
- (ii) A user or customer of a Partner State or of the United States Government, at any tier; or
- (iii) A purchase contractor or contractor of a user or customer of a Partner State or of the United States Government, at any tier.

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

(8) The term "Space Station" means all the elements listed in 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 purchase contract or otherwise, to waive all claims, based on damage arising out of

Protected Space Operations against (1) the Seller; (2) the Seller's purchase contractors or contractors at any tier; and (3) the employees of the Seller or the employees of the Seller's purchase contractors or contractors at any tier.

(d) In consideration for the cross-waiver set forth in paragraph (c) above, the Seller 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, 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 Seller agrees to extend the cross-waiver of liability as set forth in paragraph (d) above to its own related entities by requiring them, by purchase 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 damages 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 purchase 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 Seller or between the United States Government and the Seller's purchase contractors or contractors at any tier, (ii) between the Seller and its related entities; or (iii) between the Seller'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 contracts hereunder, appropriately modified to reflect the relationship of the parties, where the work is to be performed in support of Protected Space Operations.

CONTRACTOR, EMPLOYEE BADGING AND EMPLOYMENT TERMINATION CLEARANCE (MSFC 52.204-90) (APR 1994), CLAUSE G.7 OF THE PRIME CONTRACT [A/Rev. N]

(a) It is anticipated that performance of the requirements of this contract will require employee access to and picture badging by the Marshall Space Flight Center (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 FD30 appointed Contracting Officer Technical Representative for completion and approval prior to processing by the MSFC Security Division.

(b) 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.

(c) Requests for copies of MSFC Forms 383-1, and 1739 shall be directed to the MSFC Security Division, Marshall Space Flight Center, Alabama 35812.

A = ADDED
D = DELETED
R = REVISED