

CALIFORNIA INSTITUTE OF TECHNOLOGY JET PROPULSION LABORATORY

GENERAL PROVISIONS: COMMERCIAL ITEMS OR SERVICES SUBCONTRACT

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(See Page 2 for Individual General Provision Applicability)

GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL

The following attachments are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Form JPL 2892.

- Notification to Prospective Subcontractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385
- Asbestos Notification, Form JPL 2895
- Notice of Potential Tax Withholding

APPLICABILITY OF INDIVIDUAL GENERAL PROVISIONS

APPLICABLE TO ALL TRANSACTIONS

Assignment, Novation and Transfer
Assignment of Rights and Delegation of Duties
Authority of JPL Representatives and Required Notices
Buy American Act - Supplies
Changes
Data Removal from Computers
Definitions
Excusable Delays
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Inspection and Acceptance
New Material
Order of Precedence
Payments and Discounts
Preference for Privately Owned U.S. Flag Commercial Vessels
Responsibility for Supplies
Taxes
Termination for Cause - CIS
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Warranty for Commercial Items

FAR FLOWDOWNS APPLICABLE ACCORDING TO THEIR TERMS

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Equal Opportunity
Equal Opportunity for Special Disabled Veterans, Veterans Of the Vietnam Era, and Other Eligible Veterans
Prohibition of Segregated Facilities
Small Business Subcontracting Plan
Small Business Subcontracting reporting
Utilization of Small Business Concerns

APPLICABLE WHEN SUBCONTRACTOR (SELLER) WORKS AT JPL SITE

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Insurance and Indemnification
Drug-Free Workplace Requirements

APPLICABLE IN SPECIAL CIRCUMSTANCES ACCORDING TO THEIR TERMS

Export Licenses
Electrical Equipment Acquisition
Existing Commercial Computer Software - Licensing
Hazardous Material Identification and Material Safety Data
Insurance and Indemnification
Notice of Radioactive Materials

AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.222-36 - 06/98]

(This Article applies to Subcontracts that exceed \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

ASBESTOS NOTIFICATION

[CIS – 09/04]

(This Article applies if any of the Subcontract effort will be performed in JPL-Pasadena buildings.)

Subcontractor acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Subcontractor agrees to coordinate with the JPL Safety Operations Section for special asbestos handling instructions to be given to all Subcontractor's personnel, including Lower-tier Subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all Lower-tier Subcontracts issued under this Article for work performed in JPL-Pasadena buildings.

ASSIGNMENT, NOVATION AND TRANSFER

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, CIS, RSA– 09/04] [FAR 52.244-2 – 08/98]

This Subcontract may be assigned, novated, or transferred to a successor-in-interest, a successor Contractor to operate the Jet Propulsion Laboratory, or the Government.

ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES

[CIS – 09/04] [FAR 52.232-23(a) – 01/86]

- (a) The Subcontractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Subcontract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
 - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Subcontract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
 - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Subcontract.
 - (3) Two copies of the notice of assignment, signed by the Subcontractor, shall be furnished to JPL, Attn: Accounts Payable.
 - (4) If a party other than the Subcontractor provides JPL with a notification that the amount due or to become due under this Subcontract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Subcontract until JPL is furnished with either (i) verification or denial of assignment from the Subcontractor or (ii) reasonable proof that the assignment has been made.
 - (5) The Subcontractor shall not furnish or disclose to any assignee under this Subcontract any classified document (which term includes this Subcontract if access to classified material is authorized under this Subcontract) or information pertaining to classified work under this Subcontract unless JPL authorizes such action in writing.
 - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Subcontractor's duty to perform the services or provide the supplies required by this Subcontract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.
- (c) The Subcontractor agrees that it will delegate no part of the duties required of it by this Subcontract without the prior written consent of JPL; provided, however, that nothing contained herein shall be deemed to prohibit the

Subcontractor from placing purchase orders and Lower-tier Subcontracts, subject, however, to the provision of this Subcontract entitled "Lower-tier Subcontracts," if any.

AUTHORITY OF JPL REPRESENTATIVES AND REQUIRED NOTICES

[CIS – 09/04]

- (a) No order, notice, or direction received by the Subcontractor and issued pursuant to this Subcontract, shall be binding upon either the Subcontractor or the Institute, unless issued or ratified in writing by the JPL Subcontracts Manager, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them.
- (b) Unless otherwise specified in this Subcontract, any notice that the Subcontractor is required to provide to JPL shall be directed to the JPL Subcontracts Manager, the Manager, Acquisition Division, JPL, or to the representative(s) designated in writing by either of them.

BUY AMERICAN ACT – SUPPLIES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, CREI – 09/04] [FAR 52.225-1 - 05/02]

(This Article applies to supply Subcontracts exceeding \$2,500 and to Subcontracts for services which involve the furnishing of supplies when the supply portion of the Subcontract exceeds \$2,500.)

Incorporate by reference FAR 52.225-1, Buy American Act - Supplies.

CHANGES

[CIS – 09/04] [FAR 52.212-4 – 02/02]

Changes in the terms and conditions of this Subcontract may be made only by written agreement of the parties.

DATA REMOVAL FROM COMPUTERS

[CT, FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC, FPC, CREI, A - E – 12/04] [NPG 2810]

The Subcontractor shall completely overwrite or degauss the media containing all data (which can include sensitive, Privacy Act, proprietary, and mission critical data) from hard drives and other computer storage devices and remove licensed software from Government-owned computers before such computers leave the control of the Subcontractor organization by transfer or disposal. JPL data shall also be removed from Subcontractor-owned computers when the computer leaves the control of the Subcontractor. The Subcontractor shall archive all data required to be retained, pursuant to the "Rights in Data - General" Article. Guidance on what constitutes mission-critical data and sensitive information (such as business and restricted technology information and scientific, engineering, and research information) is contained in NASA Procedure and Guidelines for Security of Information Technology (NPG) 2810, available on the worldwide web or from the JPL Subcontracts Manager. Proprietary data consists of trade secrets and other commercial or financial information confidential to the individual owner or organization. Proprietary data is normally labeled as such. Trade secrets or commercial or financial information that has been released to the public or is otherwise in the possession of persons other than the individual owner or organization is in the public domain and may no longer be entitled to proprietary protection.

The Subcontractor shall submit to JPL a written certification that medial containing all JPL data has been overwritten or degaussed from computers when returned to JPL or disposed of.

DEFINITIONS

[CIS 09/04] [FAR 52.202-1 – 12/01]

As used throughout this Subcontract, the following terms shall have the meanings set forth below:

- (a) The term "commercial component" means any component that is a commercial item.
- (b) The term "commercial item" means (see related term "non-developmental item" below):
 - (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that:
 - (A) Has been sold, leased, or licensed to the general public; or
 - (B) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (b)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;

- (3) Any item that would satisfy a criterion expressed in paragraphs (b)(1) or (2) of this Article, but for:
 - (A) Modifications of a type customarily available in the commercial marketplace; or
 - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. "Minor" modifications shall mean modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
 - (4) Any combination of items meeting the requirements of paragraphs (b)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
 - (5) Installation services, maintenance services, repair services, training services, and other services if:
 - (A) Such services are procured for support of an item referred to in paragraph (b)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
 - (B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;
 - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services:
 - (A) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (B) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
 - (7) Any item, combination of items, or service referred to in subparagraphs (b)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or
 - (8) A non-developmental item, if the JPL Subcontracts Manager determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below)
- (c) The term "component" means any item supplied as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definition in 52.225-9(a) and 52.225-11(a).
 - (d) The term "Subcontract amount" means the Subcontract price, the estimated cost and fee, if any, or the ceiling price of the Subcontract.
 - (e) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
 - (f) The term "Subcontractor" means the selling party to this Subcontract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Subcontractor" is the first tier Lower-tier Subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
 - (g) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Subcontract, unless otherwise indicated.
 - (h) The term "Government" means the Government of the United States of America, unless the context is otherwise.
 - (i) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
 - (j) The term "Institute" means the California Institute of Technology as a party to this Subcontract.

- (k) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Subcontract. The rights of JPL under this Subcontract are the rights of the California Institute of Technology as a party to this Subcontract.
- (l) The term "JPL Subcontracts Manager" means the individual authorized to issue and administer this Subcontract for JPL.
- (m) The term "NASA" means the National Aeronautics and Space Administration.
- (n) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Subcontract, unless otherwise indicated.
- (o) The term "non-developmental item" means:
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (o)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (o) (1) or (2) solely because the item is not yet in use.
- (p) The term "person" means any individual, partnership, corporation, association, institution, or other entity.
- (q) The term "Prime Contract" means the Subcontract between the Institute and NASA for the United States of America (herein called the Government).
- (r) The term "Schedule" means the statements in the order/Subcontract including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (s) The term "Lower-tier Subcontract," as used in this Subcontract, includes, but is not limited to, purchase orders under this Subcontract.
- (t) The terms "United States" or "U.S." mean the United States of America.

DRUG-FREE WORKPLACE REQUIREMENTS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.223-6 – 05/01]

The Subcontractor agrees to inform all Subcontractor personnel who work at JPL or are involved with any JPL activity on or off JPL premises that they are required to comply with the JPL "Drug Free Workplace Policy." The Subcontractor further agrees to inform all Subcontractor personnel, working at JPL or involved with any JPL activity on or off JPL premises that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Subcontractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

The Subcontractor shall institute and maintain a program for achieving a drug and alcohol-free workforce. As a minimum, the program shall provide for pre-employment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of subcontractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance.

ELECTRICAL EQUIPMENT ACQUISITION

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04]

(This Article is applicable if the Subcontract involves acquisition of off-the-shelf electrical equipment for delivery to or use by JPL or its designees.)

The electrical equipment being provided by the Subcontractor under this Subcontract shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the

Subcontractor at the Subcontractor's expense. The Subcontractor agrees to require Lower-tier Subcontractors, if any, which supply electrical equipment for delivery to or use by JPL or its designees to comply with this Article.

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA, CIS – 09/04] [FAR 52.222-35 – 12/01]

(This Article is applicable to this Subcontract (and any Lower-tier Subcontract) when the Article at 52.22-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans is applicable.)

Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

EQUAL OPPORTUNITY

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.222-26 – 04/02]

(The following Article is applicable unless this Subcontract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees who were not recruited within the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Subcontract], the Subcontractor has been or is awarded nonexempt Federal Subcontracts and/or Lower-tier Subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with FAR 52.222-26 during performance of this Subcontract. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this Article.)

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.222-35 - 12/01]

(This Article applies to Subcontracts of \$25,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

EXCUSABLE DELAYS

[CIS – 09/04] [FAR 52.249-14 – 04/84]

The Subcontractor shall be liable for default, unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence, such as acts of God or the public enemy, acts of JPL in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify JPL in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to JPL of the cessation of such occurrence.

EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, CREI – 09/04] [NFS 1852.227-86 – 12/87]

(This Article is applicable to the acquisition of any existing commercial computer software under this Subcontract.)

- (a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) below. Where the Vendor/Subcontractor proposes its standard commercial software license, only those applicable portions thereof, which comply with the other provisions of this Subcontract, Federal laws, FAR and NFS, including the restricted rights in paragraph (d) below, are incorporated into and made a part of this Purchase Order/Subcontract.
- (b) Although the Vendor/Subcontractor might not propose its standard commercial software license until after this Purchase Order/Subcontract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this Purchase Order/Subcontract under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction

notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Vendor/Subcontractor; however, such signing shall not add to or alter any of the terms and conditions of this Article or the Purchase Order/Subcontract into which this Article is incorporated.

- (c) The Supplier /Subcontractor's acceptance is expressly limited to the terms and conditions of this Purchase Order/Subcontract. If the specified computer software is shipped or delivered to JPL or NASA, it shall be understood that the Vendor/Subcontractor has unconditionally accepted the terms and conditions set forth in this Article, and that the terms and conditions of this Purchase Order/Subcontract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.
- (d) The following restricted rights shall apply:
 - (1) The commercial computer software may not be used, reproduced, or disclosed by the Institute or the Government except as provided below or otherwise expressly stated in the Purchase Order/Subcontract.
 - (2) The commercial computer software may be:
 - (A) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government, or the Institute in support and furtherance of its Government Subcontract obligations; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) above;
 - (B) Reproduced for safekeeping (archives) or backup purposes;
 - (C) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and
 - (D) Disclosed and reproduced for use by Government or Institute Subcontractors or their Lower-tier Subcontractors in accordance with the restricted rights in subdivisions (A), (B), and (C) above; provided they have the Government's or the Institute's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.
 - (3) If the incorporated Vendor's/Subcontractor's software license contains provisions or rights that are less restrictive than the restricted rights in subparagraph (d)(2) above, then the less restrictive provisions or rights shall prevail.
 - (4) If the computer software is published, copyrighted computer software, it is licensed to the Government, and in support and furtherance of its Government Subcontract obligations, the Institute, without disclosure prohibitions, with the rights in subparagraphs (d)(2) and (3) above. Any copyright license required in order to perform work under this Lower-tier Subcontract is freely transferable to any successor-in-interest of the Subcontractor, a successor Subcontractor to operate JPL, or the Government.
 - (5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in subparagraphs (d) (2), (3), and (4) above.
 - (6) The Subcontractor warrants that it has the right to sell, license, or transfer the license for the software furnished to the customer under this Subcontract in accordance with the terms of this Subcontract.

EXPORT LICENSES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04] [NFS 1852.225-70 – 02/00 (ALT 1 – 02/00)]

- (a) The Subcontractor 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 Subcontract. In the absence of available license exemptions/exceptions, the Subcontractor 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) The Subcontractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this Subcontract, including instances where the work is to be performed on-site at JPL, where the foreign person will have access to export-controlled technical data or software.
- (c) The Subcontractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

- (d) The Subcontractor shall be responsible for ensuring that the provisions of this clause apply to its Lower-tier Subcontractors.
- (e) The Subcontractor may request, in writing, that the Contracting Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting 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.

FACSIMILE COPIES ACCEPTABLE

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04]

The parties agree that facsimile (fax) copies of Subcontract documents are just as binding as originally executed documents.

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.223-3 – 1/97, Alt. I – 07/95]

(This Article applies if any materials are to be supplied which are defined as hazardous under the latest version of Federal Standard No. 313 [including revisions adopted during the term of the Subcontract].

Incorporate FAR 52.223-3 [Jan 97, Alt. I, Jul 95] with JPL Subcontracts Manager in lieu of Contracting Officer and adding JPL with the Government in all respects including safety and rights to data.)

INSPECTION AND ACCEPTANCE

[CIS – 09/04] [FAR 52.212-4 – 02/02]

- (a) Inspection/Acceptance. The Subcontractor shall only tender for acceptance those items that conform to the requirements of this Subcontract. JPL reserves the right to inspect or test any supplies or services that have been tendered for acceptance. JPL may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in Subcontract price. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Subcontract requirements. JPL must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (b) The Subcontractor shall remove supplies rejected or required to be corrected. However, JPL may require or permit correction in place promptly after notice, by and at the expense of the Subcontractor. The Subcontractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- (c) If the Subcontractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, JPL may either (i) by Subcontract or otherwise, remove, replace, or correct the supplies and charge the cost to the Subcontractor or (ii) terminate the Subcontract for default as provided in the Article of this Subcontract entitled "Termination" for Cause." Unless the Subcontractor corrects or replaces the supplies within the delivery schedule, JPL may require their delivery and make an equitable price reduction.
- (d) Inspections and tests by JPL do not relieve the Subcontractor of responsibility for defects or other failures to meet Subcontract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as regards JPL's rights under any warranty or guarantee, or as otherwise specified in this Subcontract.

INSURANCE AND INDEMNIFICATION

[FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC – 09/04] [FAR 52.228-5 - 01/97]

(Work performed outside the United States is exempt from the requirements of this Article.)

(a) This Article is applicable if:

- (1) The performance of this Subcontract includes activities which could endanger non-Subcontractor personnel and such activities are performed at a location which is not secured by appropriate Subcontractor-controlled access restrictions; or
- (2) This Subcontract requires work on a Government installation or premises under the control of the Institute, unless:
 - (A) Only a small amount of work is required on the Government installation or Institute-controlled premises; or
 - (B) All such work is to be performed outside the United States, its possessions, or Puerto Rico.

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

- (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Subcontract operations are so commingled with the Subcontractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Subcontractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Subcontractor is qualified pursuant to statutory authority to do so.
- (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.

(c) Insurance Certificates and Endorsements. Before commencing work under this Subcontract, the Subcontractor shall furnish (i) certificates of insurance for the coverages specified in paragraph (b) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the Subcontract for the coverage specified in paragraph (b)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Subcontract is to be performed prescribe, or (ii) until 30 days after the insurer or the Subcontractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Subcontract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Subcontractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Subcontractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Subcontractor.

(d) Indemnification. The Subcontractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefore, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Subcontractor or any of its Lower-tier Subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.

(e) Lower-tier Subcontracts

- (1) The Subcontractor shall insert the substance of this Article, including this paragraph (e), in Lower-tier Subcontracts under this Subcontract if:
 - (A) The performance of the Lower-tier Subcontract includes activities which could endanger non-Lower-tier Subcontractor personnel and such activities are performed at a location which is not secured by appropriate Lower-tier Subcontractor-controlled access restrictions; or
 - (B) This Lower-tier Subcontract requires work on a Government installation or premises under the control of the Institute, unless:
 - (i) Only a small amount of work is required on the Government installation or Institute-controlled premises; or
 - (ii) All such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties.
- (2) At least five days before entry of each such Lower-tier Subcontractor's personnel on the Government installation or Institute-controlled premises, the Subcontractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance meeting the requirements of paragraph (c) above, for each such Lower-tier Subcontractor.

NEW MATERIAL

[CIS – 09/04]

(a) Definitions

- (1) "Material," as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.
 - (2) "New," as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.
 - (3) "Other than new", as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.
- (b) Unless this Subcontract specifies otherwise, the Subcontractor represents that the supplies, are new and are not of such age or so deteriorated as to impair their usefulness or safety.
- (c) If the Subcontractor believes that furnishing other than new material will be in JPL's interest, the Subcontractor shall so notify the JPL Subcontracts Manager in writing and request authority to use such material. The Subcontractor's notice shall include the reasons for the request along with a proposal for any consideration due JPL if the JPL Subcontracts Manager authorizes the use of other than new material.

NOTICE OF RADIOACTIVE MATERIALS

CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 09/04] [FAR 52.223-7 – 01/97]

(This Article is applicable only if this Subcontract is for radioactive materials as defined in this provision.)

Incorporate FAR 52.223-7 (January 1997) inserting 30 days in paragraph (a), with JPL Subcontracts Manager in lieu of Contracting Officer, and adding JPL with the Government in all respects.

ORDER OF PRECEDENCE

[CIS – 09/04] [FAR 52.215-8 - 10/97]

- (a) The rights and obligations of the parties of this Subcontract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
 - (1) The Alterations Article.
 - (2) The GPs not altered.
 - (3) The Schedule, other than the Alterations Article.

- (c) To the extent of any inconsistency between
 - (1) The Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise, in the Schedule or the General Provisions, and
 - (2) Any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise in the Schedule or the General Provisions,
 - (3) Note: c1 has order of precedence over c2.

PAYMENTS AND DISCOUNTS

[CIS – 09/04] [FAR 52.212-4(1) – 09/04; FAR 52.232-1 – 04/84; FAR 52.232-8 – 02/02; FAR 52.244-6 (c) – 05/04]

- (a) Invoices shall be submitted in triplicate to the attention of the JPL Accounting Section, unless otherwise specified, and shall contain the following information as applicable: (i) Subcontract number, (ii) item number, (iii) description of supplies or services, (iv) size, (v) quantity, (vi) unit price, (vii) extended totals and (viii) any other information which may be specified on the face of this Subcontract. Any applicable state sales, use taxes, or Federal excise taxes shall be shown separately on the invoice.
- (b) The Institute shall pay the Subcontractor, upon the submission of proper invoices or vouchers, the prices stipulated in this Subcontract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this Subcontract.
- (c) JPL may elect to require the Subcontractor to accept electronic payments
- (d) JPL shall make its best effort to make payments within the net period, if any, specified in the Subcontract, measured from the date of receipt of the goods or services at the destination or the date of receipt of the invoice, whichever is later. Discount time periods will be measured from the same date. Payment shall be deemed to have been made on the date the check is mailed or on the date on which an electronic funds transfer was made. In no event will JPL be liable for or pay a surcharge, interest, or any kind of penalty as a result of JPL's payment not being made within the net period, if any, specified in the Subcontract or the date of payment by electronic funds transfer.
- (e) Payment for goods or services in accordance with this paragraph will not waive or otherwise affect the right of JPL to inspect such goods or services or to reject, or revoke acceptance of, nonconforming goods.
- (f) Unless otherwise specified in this Subcontract, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the Subcontract.
- (g) Except to the extent otherwise stated in the Subcontract Schedule, JPL's obligation to pay the Subcontract price for goods delivered or services performed is automatically waived for an amount of \$1,000 or less if no invoice is received by JPL for that amount due within 60 days of receipt of the related goods or services.

PROHIBITION OF SEGREGATED FACILITIES

[CT, FP_NR&D, CIS, T&MC, LH/T&M, FPC, CREI, A - E – 09/04] [FAR 52.222-21]

(The following Article is applicable to Subcontracts where FAR 52.222-26, Equal Opportunity is applicable)

Incorporate by reference FAR 52.222-21, Prohibition of Segregated Facilities

RESPONSIBILITY FOR SUPPLIES

[CIS – 09/04] [FAR 52.246-16 – 04/84; FAR 52.212-4 (j) – 09/04; FAR 52.244-6 (c) – 05/04]

- (a) Title to supplies furnished under this Subcontract shall pass to the Government upon formal acceptance by JPL, regardless of when or where JPL takes physical possession, unless the Subcontract specifically provides for earlier passage of title.
- (b) Unless the Subcontract specifically provides otherwise, risk of loss or damage to supplies shall remain with the Subcontractor until, and shall pass to JPL upon:
 - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
 - (2) Acceptance by JPL or delivery of the supplies to JPL at the destination specified in the Subcontract, whichever is later, if transportation is f.o.b. destination.

SMALL BUSINESS SUBCONTRACTING PLAN

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, CIS – 09/04] [FAR 52.219-9 – 01/02]

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$500,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (c) If there will be any Lower-tier Subcontracting under this Subcontract and the basic or any modification exceeds \$500,000, (\$1,000,000 for construction of any public facility), the Subcontractor agrees to submit for JPL approval a Lower-tier Subcontracting Plan (Plan) that separately addresses Lower-tier Subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBzone small business concerns, small disadvantaged concerns, and women-owned business concerns. The Subcontractor further agrees to and to provide a written update to the Plan for every modification exceeding \$500,000 (\$1,000,000 for construction of a public facility). JPL's approval will be based on the requirements in JPL form 0294 entitled "Requirements for a Lower-tier Subcontracting Plan." The approved Plan and approved updates will be deemed incorporated into this Subcontract.
- (d) If a Plan is required under this Subcontract, SF 294, "Lower-tier Subcontracting Report for Individual Subcontracts," and SF 295, "Summary Lower-tier Subcontract Report," are deliverables, which must be submitted by the Subcontractor to the JPL Subcontracts Manager in accordance with the instructions on the forms.
- (e) It is understood and agreed that the failure of the Subcontractor to comply in good faith with the Article of this Subcontract entitled "Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns," or with any Plan required to be included in this Subcontract, shall be a material breach of this Subcontract.

SMALL BUSINESS SUBCONTRACTING REPORTING

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, CIS – 09/04] [NFS 1852.219-75 – 05/99]

(This Article is applicable if the basic Subcontract or any separate modification exceeds \$500,000 [\$1,000,000 for construction of any public facility], except it does not apply to Subcontracts with small businesses or orders under GSA Subcontracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (f) The Subcontractor shall submit the Summary Lower-tier Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.
- (g) The Subcontractor shall include this clause in all Lower-tier Subcontracts that include the Article titled "Small Business Subcontracting Plan" (FAR 52.219-9)

TAXES

[CIS –09/04] [FAR 52.212-4 – 05/97]

The Subcontract price includes all applicable Federal, state and local taxes and duties. Items of tangible personal property to be delivered under this Subcontract are for resale to the United States Government (California Resale Certificate No. SR AP 17-006226).

TERMINATION FOR CAUSE – CIS

[CIS – 09/04] [FAR 52.212-4 – 05/97]

The Institute may terminate this Subcontract, or any part of it, for cause in the event of any default by the Subcontractor, or if the Subcontractor fails to comply with any Subcontract terms and conditions, or fails to provide the Institute, upon request, with adequate assurances of future performance. In the event of termination for cause, the Institute shall not be liable to the Subcontractor for any amount for supplies or services not accepted, and the Subcontractor shall be liable to the Institute for any and all rights and remedies provided by law. If it is determined that the Institute improperly terminated this Subcontract for default, such termination shall be deemed a termination for convenience.

TERMINATION FOR CONVENIENCE – CIS

[CIS – 09/04] [FAR 52.212-4 – 05/97]

JPL reserves the right to terminate this Subcontract, or any part hereof, for its sole convenience. In the event of such termination, the Subcontractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and Lower-tier Subcontractors to cease work. Subject to the terms of this Subcontract, the Subcontractor

shall be paid a percentage of the Subcontract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Subcontractor can demonstrate to the satisfaction of JPL, using its standard record keeping system, have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or Subcontract cost principles for this purpose. This paragraph does not give JPL any right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

UTILIZATION OF SMALL BUSINESS CONCERNS

[CT, CIS, FR-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, RSA – 09/04] [FAR52.219-8 – 10/02]

(This article is applicable when the Lower-tier Subcontract is expected to be over \$100,000, unless (i) a personal services Subcontract is contemplated or (ii) the Subcontract together with all its Lower-tier Subcontracts is to be performed entirely outside of any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.)

Incorporate by reference 52.219-8, Utilization of Small Business Concerns.

WARRANTY FOR COMMERCIAL ITEMS

[CIS – 09/04] [FAR 52.212-4 (o) – 09/04; FAR 52.246-6 (c) – 05/04]

The Subcontractor shall provide JPL with a copy of any standard warranty, which is normally offered on a commercial product deliverable under this Subcontract. This warranty shall be deemed to be incorporated by reference and JPL shall be entitled to all rights under such warranty.

NOTIFICATION TO PROSPECTIVE SUBCONTRACTORS OF JPL'S ETHICS POLICIES AND ANTI-KICKBACK HOT LINE

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and Subcontractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/Subcontractor or prospective supplier/Subcontractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, (818) 354-9999. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.



ASBESTOS NOTIFICATION

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the JPL management, working through the JPL Safety Operations Section - Industrial Hygiene and Workers Compensation Group (SOS - IHWC) and the Facilities Division, has had an on-going program of asbestos identification and control. This program has included bulk sampling, air monitoring, and training for members of the Facilities and Maintenance staff.

Through this program, some of the buildings at JPL have been identified to contain friable sprayed-on fireproofing above the ceilings. At the Oak Grove site, these buildings include 167, 168, 169, 179, 180, 183, 186, 230, 238, 264 and 291, and at the Foothill site, buildings 502, 506 and 507. Asbestos may be present in other JPL buildings in other various forms, including, but not limited to: transite, thermal system insulation, roofing products, ceiling tiles, spray-applied acoustical ceiling, wall materials, and floor tiles/linoleum/mastic.

The majority of asbestos at JPL is located in restricted access areas, such as mechanical rooms, boiler rooms, and attics. It is in generally good condition and does not pose a hazard during normal operations.

The SOS-IHAWC staff has taken numerous air samples in JPL buildings. Sampling results indicate that airborne asbestos levels in the buildings are well below regulatory limits and are lower than those found in industrial workplaces where adverse health effects have been observed. Fiber levels in JPL buildings are not significantly different from fiber levels found outside.

Asbestos-containing materials do not pose a health hazard, unless the fibers become airborne. Subcontractor maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers; therefore, only authorized and properly trained personnel are permitted to perform work that may disturb asbestos materials.

General written procedures and handling restrictions have been provided to JPL and Subcontractor personnel. SOS-IHAWC must be given notification and, if deemed necessary, a written description of any asbestos-related work to be conducted in areas where asbestos may be present prior to the initiation of activities. The work to be performed will determine if these areas must be tested and cleared. SOS-IHAWC will review sampling results and documentation after completion of Subcontractor activities prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling, and air sampling. These reports are available for review during normal business hours. Contact SOS-IHAWC at extension 4-1771 to review these documents or if there are any questions.

Notice of Potential Tax Withholding

JPL is legally obligated to withhold federal and/or state income tax from certain contractor and consultant payments when required by law. Withholding may be required under the following circumstances:

1. Nonresident Independent Contractor/Consultant State Source Income Tax

Payments made to California nonresident contractors or consultants, including sole proprietors, corporations, limited liability companies, and partnerships, that do not have a permanent place of business in CA, or that are not registered to do business in California, are subject to a seven percent state income tax withholding for services performed in California. No withholding is required on payments for goods, or for services performed outside California. See State Tax Form 587 (Nonresident Income Allocation Worksheet) and Form 590 (Withholding Exemption Certificate).

2. Nonresident (and Resident) Alien Federal Income Tax

Payments made to nonresident alien contractors/consultants are subject to a thirty percent federal income tax withholding for services performed in the U.S. unless an exception applies. A nonresident alien from a country with an income tax treaty with the United States may be exempt from tax under the Self-employment Article of the treaty if the individual satisfies the conditions of the treaty article. A nonresident alien from a non-treaty country may claim a daily personal exemption amount. Such nonresident aliens who have a U.S. taxpayer identification number (TIN) – either a U.S. Social Security Number or Individual Taxpayer Identification Number - can submit Federal Tax Form 8233 (Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual) to claim a withholding reduction or exemption. No exemption is available for nonresident aliens who lack a TIN. Nonresident aliens not claiming such an exemption should submit Federal Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding). For more information, refer to IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Resident aliens should complete Federal Form W-9 (Payer's Request for Taxpayer Identification Number and Certification) to submit a U.S. taxpayer identification number. Resident aliens with no U.S. taxpayer identification number will be subject to back-up withholding, currently at a rate of twenty-five percent.

3. Federal or State Tax Liens or Levies

JPL may be required to withhold payments in an amount necessary to satisfy tax liens or levies or judgments duly issued against contractors or consultants by cognizant tax or judicial authorities.

Disclaimer: JPL is not liable for amounts incorrectly withheld. However, if JPL determines that amounts have been incorrectly withheld, and provided that such amounts have not been remitted to tax authorities, JPL shall refund such amounts to the contractor/consultant.