

**CALIFORNIA INSTITUTE OF TECHNOLOGY  
JET PROPULSION LABORATORY  
GENERAL PROVISIONS:  
COST-REIMBURSEMENT WITH COMMERCIAL  
ORGANIZATIONS CONTRACT**

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**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.

- Management of Government Property in the Possession of Contractors, Form JPL 0968
- Release of Information, Form JPL 1737
- Affiliate Access Report, Form JPL 1943
- Notification to Prospective Contractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385
- Certifications, Form JPL 2892
- Asbestos Notification, Form JPL 2895
- Notice of Potential Tax Withholding 7/03

**ADDITIONAL DATA REQUIREMENTS** [CT, FP-NR&D, FP-R&D, CREI – 4/99] [FAR 52.227-16 - 6/87]

- (a) In addition to the data (as defined in the "Rights in Data - General" Article or other equivalent included in this Contract) specified elsewhere in this Contract to be delivered, JPL may at any time during Contract performance or within a period of three years after acceptance of all items to be delivered under this Contract, order any data first produced or specifically used in the performance of this Contract.
- (b) The "Rights in Data - General" Article or other equivalent included in this Contract is applicable to all data ordered under this "Additional Data Requirements" Article. Nothing contained in this Article shall require the contractor to deliver any data the withholding of which is authorized by the "Rights in Data - General" Article or other equivalent Article of this Contract, or data which are specifically identified in this Contract as not subject to this Article.
- (c) When data are to be delivered under this Article, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.
- (d) The Contracting Officer through JPL may release the Contractor from the requirements of this Article for specifically identified data items at any time during the three-year period set forth in paragraph (a) above.

**AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 52.222-36 - 4/84]

(This Article applies to contracts over \$2,500, 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 Handicapped Workers (29 U.S.C. 793).

**AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-35 - 4/98]

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

Incorporate by reference 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

**ALLOCATION OF RIGHTS IN PROPERTY AND DATA - COST-SHARE CONTRACTS** [CT, CREI – 4/99]

Whether or not this Contract provides for any cost sharing, rights in data and property are determined as though all costs of performance were to be reimbursed by the Institute.

**ALLOWABLE COST AND PAYMENT** [CT – 4/99] [FAR 52.216-7 – 4/98]

(a) Invoicing and Payment.

- (1) The Contractor shall submit an original and three copies of its commercial invoices monthly, unless otherwise provided in the Schedule of the Contract, to: Jet Propulsion Laboratory, Attention: Accounting Section, 4800 Oak Grove Drive, Pasadena, California 91109. The Government "Public Voucher" form of invoicing is not acceptable.
- (2) The Institute shall make payments to the Contractor once each month (or at more frequent intervals if approved by JPL), in amounts determined to be allowable by the Institute in accordance with Subpart 31.2 of FAR in effect on the date of this contract and any corresponding implementing or supplementing provisions in the NFS in effect on the date of this contract and the terms of this Contract. The Contractor may submit, in such form and reasonable detail as JPL may require, an invoice supported by a statement of the claimed allowable cost for performing this Contract.
- (3) JPL may elect to either send payments to the Contractor by mail or require the Contractor to accept electronic payments. Payment shall be deemed to have been made on the date the check is mailed or the date of payment by electronic funds transfer.

(b) Reimbursing Costs.

- (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only:

- (A) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the Contract;
  - (B) When the Contractor is not delinquent in paying costs of Contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for (i) materials issued from the Contractor's inventory and placed in the production process for use on the Contract; (ii) direct labor; (iii) direct travel; (iv) other direct in-house costs; and (v) properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts or subcontracts; and
  - (C) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.
- (2) Contractor contributions to any pension or other post-retirement benefit, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.
  - (3) Notwithstanding the audit and adjustment of invoices under paragraph (h) below, allowable indirect costs under this Contract shall be obtained by applying indirect cost rates established in accordance with paragraph (e) below.
  - (4) Any statements in specifications or other documents incorporated in this Contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Institute shall be disregarded for purposes of cost-reimbursement under this Article.
- (c) Small Business Concerns. A small business concern may be paid for recorded costs for items or services purchased directly for the Contract, even though the concern has not yet paid for those items or services.
  - (d) (1) Promptly after receipt of each invoice the Institute shall, subject to the provisions of paragraph (h) below, make payment thereon as approved by JPL.
  - (2) Payment of the fee, if any, shall be made to the Contractor as specified in this Contract; provided, however, that after payment of 85% of the fee set forth in the Schedule, further payment on account of the fee may be withheld until a reserve shall have been set aside in an amount which the Institute considers necessary to protect the interests of the Institute and the Government, but such reserve shall not exceed either 15% of the total fee, or \$100,000, whichever is less.
- (e) Final Indirect Cost Rates.
    - (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of FAR and any corresponding implementing or supplementing provisions in the NFS in effect for the period covered by the indirect cost rate proposal; provided, however, that the advance understandings, if any, on particular items of cost, as set forth in the Schedule of this Contract shall be given effect, provided further, however, that in the event of any inconsistency between such advance understandings and the cost principles referred to in (a) above, the cost principles shall prevail.
    - (2) A copy of the annual agreement between the Contractor and the Government for each of the periods applicable to this Contract, setting forth the indirect cost rates established in accordance with subparagraph (1) above, shall be furnished by the Contractor to JPL within two weeks after settlement of the final annual indirect cost rates, and shall be deemed to be automatically incorporated into this Contract, subject to the proviso set forth in subparagraph (1) above.
    - (3) Notwithstanding subparagraphs (1) and (2) above, the Contractor and JPL may agree on indirect rates to be used as final indirect rates for this Contract to expedite the administration and closeout of this Contract, provided such rates can be shown to be reasonable under the circumstances.
  - (f) Billing Rates. Until final annual indirect cost rates are established for any period, the Institute shall reimburse the Contractor at billing rates acceptable to JPL, subject to adjustment when the final rates are established. These billing rates:
    - (1) Shall be the anticipated final rates; and

- (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (g) Quick-Closeout Procedures. The Contractor and JPL may agree to use any reasonable procedures under the circumstances to expedite closeout, including the quick-closeout procedures of Subpart 42.7 of the FAR and any corresponding implementing or supplementing provisions in the NFS.
- (h) Audit.
- (1) JPL shall perform a risk assessment on this Contract in order to select the appropriate method to be utilized in determining allowable cost. Financial audits by an internal or external agency of cost records and charges shall be performed as is considered warranted by the financial condition, integrity and reliability of the Contractor; prior audit experience; adequacy of the accounting system; and unaudited claims, vouchers, invoices and billings.
- (2) At any time or times before final payment, JPL may have the Contractor's invoices or statements of cost audited. Any payment may be (i) reduced by amounts found by JPL not to constitute allowable costs or (ii) adjusted for prior overpayments or underpayments.
- (i) Final Payment.
- (1) The Contractor shall submit a completion invoice, designated as such, promptly upon completion of the work, but no later than 120 days (or longer, as JPL may approve in writing) from the completion date. Upon approval of that invoice, and upon the Contractor's compliance with all terms of this Contract, the Institute shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
- (2) The Contractor shall pay to the Institute any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this Contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Institute. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by JPL. Before final payment under this Contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver:
- (A) An assignment to the Institute, in form and substance satisfactory to JPL, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Institute under this Contract; and
- (B) A release discharging the Institute, its officers, agents and employees from all liabilities, obligations, and claims arising out of or under this Contract, except:
- (i) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
- (ii) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this Contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to JPL within six years following the release date or notice of final payment date, whichever is earlier; and
- (iii) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent provisions of this Contract, excluding, however, any expenses arising from the Contractor's indemnification of the Institute against patent liability.
- (iv) When there is included in this Contract a provision entitled "Additional Data Requirements," claims pursuant to such provision when a written request by the Institute to furnish data is made.
- (C) If the Contractor fails to return the assignment and release described in (A) and (B) above with the release either executed for the amount determined by JPL or with a different amount within 60 days of JPL's request, JPL may make final payment in the amount determined by JPL and the assignment and release (for the JPL-determined amount) described in (A) and (B) above will be deemed to have been executed and delivered by the Contractor.

**ANTI-KICKBACK PROCEDURES** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.203-7 – 7/95]

(a) Definitions.

- (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (3) "Prime contract," as used in this Article, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
- (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
- (6) "Subcontract," as used in this Article, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- (7) "Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher-tier subcontractor.
- (8) "Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime Contractor to the United States or in the Contract price charged by a subcontractor to a prime contractor or higher-tier subcontractor.

(c) (1) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

- (2) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
- (3) The Institute may (i) offset the amount of the kickback against any monies owed under the Contract and/or (ii) direct that the Contractor withhold, from sums owed a subcontractor under the Contract, the amount of any kickback. JPL may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to JPL unless JPL has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Contractor shall notify JPL when the monies are withheld.
- (4) The Contractor agrees to incorporate the substance of this Article, including this subparagraph (c)(4), in all subcontracts under this Contract.

**ASBESTOS NOTIFICATION** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 2/00]

(This Article applies if any of the Contract effort will be performed in JPL-Pasadena buildings. Work performed outside the United States is exempt from the requirements of this Article.)

Contractor 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. Contractor agrees to coordinate with the JPL Safety Operations Section for special asbestos handling

instructions to be given to all Contractor's personnel, including 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 subcontracts issued under this Article for work performed in JPL-Pasadena buildings.

**ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E-4/99] [FAR 52.232-23(a) – 1/86]

- (a) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract 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 Contract, 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 Contract.
  - (3) Two copies of the notice of assignment, signed by the Contractor, shall be furnished to JPL, Attn: Accounts Payable.
  - (4) If a party other than the Contractor provides JPL with a notification that the amount due or to become due under this Contract 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 Contract until JPL is furnished with either (i) verification or denial of assignment from the Contractor or (ii) reasonable proof that the assignment has been made.
  - (5) The Contractor shall not furnish or disclose to any assignee under this Contract any classified document (which term includes this Contract if access to classified material is authorized under this Contract) or information pertaining to classified work under this Contract unless JPL authorizes such action in writing.
  - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Contractor's duty to perform the services or provide the supplies required by this Contract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.
- (c) The Contractor is prohibited, without prior written JPL consent, from delegating any part of the duties required of it by this Contract; provided, however, that nothing contained herein shall be deemed to prohibit the Contractor from placing purchase orders and subcontracts, subject, however, to the provision of this Contract entitled "Subcontracts." Delegation of duties without such consent is void.

**AUDIT AND EXAMINATION OF RECORDS – NEGOTIATION** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E-4/99] [FAR 52.215-2 – 8/96]

(This provision is not applicable for procurements of \$100,000 or less, for commercial items, or for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.)

- (a) As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the Contract.
- (c) Cost or Pricing Data. If the Contractor has been required to submit cost or pricing data in connection with pricing action relating to this Contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to:
  - (1) The proposal for the Contract, subcontract, or modification;

- (2) The discussions conducted on the proposal(s), including those related to negotiating;
  - (3) Pricing of the Contract, subcontract, or modification; or
  - (4) Performance of the Contract, subcontract, or modification.
- (d) Comptroller General.
- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this Contract or a subcontract hereunder.
  - (2) This paragraph (d) may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.
- (f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Article, for examination, audit, or reproduction, until three years after final payment under this Contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Articles of this Contract. In addition:
- (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and
  - (2) Records relating to appeals under the Disputes clause of the Government Prime Contract, or if this Contract contains a "Disputes" Article, to appeals under such Article, or to litigation or the settlement of claims arising under or relating to this Contract, shall be made available until such appeals, litigation, or claims are finally resolved.
- (g) (1) The Contractor shall insert all of the provisions of this Article, including this paragraph (g), in all subcontracts under this Contract that exceed \$100,000, and:
- (A) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
  - (B) For which cost or pricing data are required; or
  - (C) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- (2) The Article may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Prime Contract.
- (h) If this is a cost-reimbursement contract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Contract.

**AUTHORITY OF JPL REPRESENTATIVES** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

- (a) No request, notice, authorization, direction or order received by the Contractor and issued either pursuant to a provision of this Contract, to a provision of any document incorporated in this Contract by reference, or otherwise, shall be binding upon either the Contractor or the Institute unless issued or ratified in writing by the JPL Negotiator, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.
- (b) The Contractor shall immediately notify, in writing, the JPL Negotiator, or the Manager, Acquisition Division, JPL, whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL Negotiator, or the Manager, Acquisition Division, JPL, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Contract amount or amount allotted to this Contract; or (iii) otherwise be the basis for assertion of a claim by the Contractor under any provision of the Contract.

**AUTHORIZATION AND CONSENT** [CT, FP-R&D, T&MC, LH-T&M, CREI, A-E – 4/99] [FAR 52.227-1 – 7/95, ALT I]

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prime Contract or any subcontract at any tier.
- (b) The Contractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$100,000); however, omission of this Article from any subcontract, under or over \$100,000, does not affect this authorization and consent.

**BANKRUPTCY** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.242-13, 7/95]

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the JPL negotiator responsible for administering the Contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL contract numbers for all JPL contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

**BUY AMERICAN ACT – SUPPLIES** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, CREI – 4/99] [FAR 52.225-3 - 1/94]

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

Incorporate by reference FAR 52.225-3, Buy American Act - Supplies.

**CHANGES – COST** [CT – 4/99] [FAR 52.243-2, Alt. V – 8/87; FAR 52.243-6 – 4/84]

- (a) JPL may at any time, by written Contract Unilateral Modification, and without notice to the sureties, if any, make changes within the general scope of this Contract in any one or more of the following:
  - (1) Drawings, designs, or specifications.
  - (2) Method of shipment or packing.
  - (3) Place of inspection, delivery, or acceptance.
  - (4) Description of services to be performed.
  - (5) Time of performance (i.e., hours of the day, days of the week, etc.).
  - (6) Place of performance of the services.
  - (7) Requiring additional work or directing the omission of or variation in work covered by this Contract when time is of the essence and the change has been coordinated with and is acceptable to the subcontractor prior to issuance of the unilateral change.
- (b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the Modification, or otherwise affects any other terms and conditions of this Contract, JPL shall make an equitable adjustment in the (i) estimated cost, delivery or completion schedule, or both; (ii) amount of any fee; and (iii) other affected terms, and shall modify the Contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this Article within 30 days from the date of receipt of the Modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Contract.
- (d) JPL may require change order accounting when deemed necessary. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by JPL.
- (e) Except as provided in paragraph (f) below, nothing contained in this Article shall excuse the Contractor from proceeding with the prosecution of the work as modified.

- (f) Notwithstanding the provisions of paragraphs (a) and (b) above, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this Contract is incrementally funded, the new amount allotted to the Contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds Article of this Contract.

**CLEAN AIR AND WATER** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 23.104 – 4/84; 52.223-2-4/84]

(This Article does not apply to the use of facilities outside the United States. The Article applies to the Contract if it exceeds \$100,000 [or \$100,000 in one year for an indefinite delivery contract], or the facility to be used has been the subject of a conviction under the Air Act or Water Act and is listed by the EPA as a violating facility, and the acquisition is not otherwise exempt under FAR 23.104.)

Incorporate by reference FAR 52.223-2, Clean Air and Water (April 1984).

**COMPLIANCE WITH EXPORT REGULATIONS** [CT, FP-NR&D FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 5-00]

- (a) Hardware, software and related materials, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act, Arms Export Control Act, and their associated regulations, and may be subject to export or import regulations in other countries. Contractor agrees to strictly comply with all U.S. Export Control Regulations and acknowledges that, when applicable, it has the responsibility to obtain export licenses, or other export authority as may be required, for hardware, software, and related materials and services, including technical data, related to the performance of this Contract, which are in its possession or under its control.
- (b) JPL's NASA Contracting Officer is required to provide reports to NASA headquarters on the status and location of government property which has left United States Territory. Contractor will not export any government property without prior approval from the NASA CO through the JPL negotiator.
- (c) (1) The International Traffic in Arms Regulation (ITAR) 22 CFR Parts 120 to 130 inclusive, and Export Administration Regulation (EAR) 15 CFR parts 730 to 774 inclusive, restrict foreign national access to technological information. This information is available on JPL Web Space, in unpublished JPL documents, through technical conversations with JPL employees, and through visual inspection of JPL hardware. For the purpose of this clause, foreign nationals are defined as all individuals in the United States or overseas who are not U.S. Citizens, holders of U.S. green cards, or holders of political asylum papers issued by the U.S. Department of State.
- (2) The Contractor shall not allow access by any foreign national to: JPL material which reveals technology, financial information, or business strategy information, and to JPL internal Web Space in performance of this Contract, without prior written approval by JPL Security, the JPL Network and Computer Security Group, and the JPL International and Legislative Affairs Office through the JPL Negotiator.
- (d) Contractor agrees to insert this clause, including this paragraph, in all subcontracts which could involve: an export as defined in the ITAR and EAR, subcontractor employee access to JPL Web Space, or subcontractor employee access to JPL material which reveals technology, financial information, or business strategy information.

**COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT** [CT, CREI – 8/01]

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

- (a) Contractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) Contractor agrees to insert this Article, including this paragraph (b), in all subcontracts and purchase orders hereunder.

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 22.305 - 7/95; 52.222-4 - 7/95]

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

- (a) This provision is not applicable to contracts for supplies, materials, or articles ordinarily available in the open market, contracts for transportation by land, air, or water, or for the transmission of intelligence, contracts of

\$100,000 or less, contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnson Island, and contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Acts, and contracts for commercial items.

- (b) FAR clause 52.222-4 (July 1995) is hereby incorporated by reference in toto, except that:
- (1) The words "JPL negotiator or JPL's Contracting Officer" shall be substituted for the words "Contracting Officer" wherever they appear;
  - (2) The word "Contractor" shall be substituted for the words "Prime Contractor" wherever they appear; and
  - (3) The words "with JPL" shall be substituted for the words "Federal Contract with the same Prime Contractor" wherever they appear.

**CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, A-E – 8/01] [FAR 15.403-4 - 10/00; 52.215-11 - 10/97; 52.215-12 - 10/97; 52.215-13 - 10/97; 52.215-20 - 10/97; 52.215-21 - 10/97]

(This Article is applicable if either the basic Contract or any modification exceeds \$550,000.)

(a) Contractor Cost or Pricing Data.

- (1) Whenever the negotiated price of the basic Contract, or the negotiated price of any change, or other modification to this Contract is expected to exceed \$550,000, the Contractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the contract is for a commercial item). Whenever certified cost or pricing data are required, the Contractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

(2) Exceptions to Cost or Pricing Data.

- (A) (i) Basic Contracts. In lieu of submitting cost or pricing data for the basic Contract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.
- (ii) Contract Modifications. In lieu of submitting cost or pricing data for modifications under this Contract, for price adjustments expected to exceed \$550,000 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described under paragraph (B), below.
- (iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(B) The relevant part of the following information is to be submitted when requesting an exception:

- (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
- (ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:
  - a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

- b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
- c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government contract, proof that an exception has been granted for the schedule item.

(iii) Information on modifications of contracts or subcontracts for commercial items. If (i) the original Contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a contract or subcontract for a commercial item; and (ii) the modification (to the Contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the Contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(C) The Offeror/Contractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Subcontractor Cost or Pricing Data.

- (1) Before awarding any subcontract expected to exceed \$550,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$550,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the subcontract or modification is eligible for an exception listed in paragraph (a), above.
- (2) The requirement for obtaining certified cost or pricing data with respect to any subcontract change or other modification does not apply to any subcontract change or modification, at any tier, where this Contract is a firm fixed-price or firm fixed-price with escalation contract unless such change or other modification results from a Contract change or other modification to this Contract, nor does it apply to a subcontract change or other modification, at any tier, where this Contract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Contract.
- (3) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (4) In each subcontract that exceeds \$550,000 when entered into, the Contractor shall insert either:
  - (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the subcontract; or
  - (B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

- (1) If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant amount because (i) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction.
- (2) Any reduction in the Contract price under paragraph (1) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual subcontract or (ii) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted

by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

- (3) (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
  - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
  - (iii) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract.
  - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (B) (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Contract price reduction if:
- a. The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
  - b. The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
- a. The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
  - b. The Government proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (4) In the event of a disagreement between the Contracting Officer and the Contractor with respect to a question of fact involved in the Contracting Officer's determination to reduce the price of this Contract, the Contractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.
- (d) If any reduction in the Contract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Contractor's defective pricing including:
- (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
  - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

**CONTRACTOR EMPLOYMENT OF JPL EMPLOYEES' CHILDREN AND RELATIVES (CONTRACTOR'S EMPLOYEES IN RESIDENCE AT JPL)** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M – 2/00]

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

- (a) When work under this Contract is to be performed at any JPL-controlled facility, the Contractor agrees to require applicants for such work, as part of the application process, to identify any relatives they know to be employed at JPL. The Contractor also agrees to notify the cognizant negotiator prior to hiring an applicant who so identifies a relative. The Contractor agrees to abide by JPL's determination as to whether the applicant may be assigned to a particular JPL organization.

- (b) The term "relatives" means parents, stepparents, grandparents, sisters, brothers, spouse/same-sex-domestic-partner, children, stepchildren, grandchildren, aunts, uncles, nieces, nephews, legal wards, and spouse's parents, grandparents, sisters and brothers.

**CONTRACTOR RECRUITING ACTIVITY** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC – 2/00]

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

Except as may be specifically authorized by JPL in writing, during the performance of this Contract the Contractor shall refrain from engaging in any activity related to employment recruiting on any of the premises of JPL.

**CROSS-WAIVERS OF LIABILITY FOR SPACE SHUTTLE SERVICES, NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES, AND FOR SPACE STATION ACTIVITIES** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M – 4/99] [NFS 1852.228-72 - 9/93; 1852.228-78 – 9/93; 1852.228-76 – 12/94]

(This Article is applicable if the Contract value is \$100,000 or more.)

The Contractor understands that the work performed under this Contract may be in support of "Protected Space Operations" as defined in the three paragraphs (b)(5) under Part A, Part B, and Part C below, and therefore agrees to all three cross-waiver provisions set forth below. The Contractor shall incorporate this Article into subcontracts which are for \$100,000 or more.

**PART A. CROSS-WAIVER OF LIABILITY FOR SPACE SHUTTLE SERVICES**

- (a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving Space Shuttle services are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to contractors and related entities under their contracts. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
- (1) "Contractors" and "Subcontractors" include suppliers of any kind.
  - (2) "Damage" means:
    - (A) Bodily injury to, or other impairment of health of, or death of, any person;
    - (B) Damage to, loss of, or loss of use of any property;
    - (C) Loss of revenue or profits; or
    - (D) Other direct, indirect, or consequential damage;
  - (3) "Party" means a person or entity that signs an agreement involving a Space Shuttle service;
  - (4) "Payload" means any property to be flown or used on or in the Space Shuttle; and
  - (5) "Protected Space Operations" means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this Contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this Contract. It includes, but is not limited to:
    - (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;
    - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
  - (6) "Related entity" means:
    - (A) A party's contractors or subcontractors at any tier;
    - (B) A party's users or customers at any tier; or
    - (C) A contractor or subcontractor of a party's user or customer at any tier.
- (c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage

arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

- (A) Any party other than the Government;
  - (B) A related entity of any party other than the Government; and
  - (C) The employees of any of the entities identified in (c)(1)(A) and (c)(1)(B) above.
- (2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389), Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which 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.
- (4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:
- (A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);
  - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
  - (C) Claims for damage caused by willful misconduct; and
  - (D) Intellectual property claims.
- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

#### PART B. CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES

- (a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
- (1) "Contractors" and "Subcontractors" include suppliers of any kind.
  - (2) "Damage" means:
    - (A) Bodily injury to, or other impairment of health of, or death of, any person;
    - (B) Damage to, loss of, or loss of use of any property;
    - (C) Loss of revenue or profits; or
    - (D) Other direct, indirect, or consequential damage;
  - (3) "Party" means a person or entity that signs an agreement involving an ELV launch;
  - (4) "Payload" means any property to be flown or used on or in the ELV; and
  - (5) "Protected Space Operations" means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving an ELV launch or performed under the Contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such

development is for ELV-related activities necessary to implement an agreement involving an ELV launch or to perform the contract. It includes, but is not limited to:

- (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;
  - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
- (6) "Related entity" means:
- (A) A party's contractors or subcontractors at any tier;
  - (B) A party's users or customers at any tier; or
  - (C) A contractor or subcontractor of a party's user or customer at any tier.
- (c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to a delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:
- (A) Any party other than the Government;
  - (B) A related entity of any party other than the Government; and
  - (C) The employees of any of the entities identified in (c)(1)(A) and (B) above.
- (2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.
- (4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:
- (A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);
  - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
  - (C) Claims for damage caused by willful misconduct; and
  - (D) Intellectual property claims.
- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.
- (6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

#### PART C. CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES

- (a) The Intergovernmental Agreement for Space Station Freedom contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this provision is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.
- (b) As used in this provision, the term:

- (1) "Damage" means:
  - (A) Bodily injury to, or other impairment of health of, or death of, any person;
  - (B) Damage to, loss of, or loss of use of any property;
  - (C) Loss of revenue or profits; or
  - (D) Other direct, indirect, or consequential damage.
- (2) "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.
- (3) "Partner State" means each contracting party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement, and also includes any future signatories of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency (ESA), and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.
- (4) "Payload" means any property to be flown or used on or in a launch vehicle or the Space Station.
- (5) "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 performed in furtherance of the Intergovernmental Agreement or performed under this Contract. "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. "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 except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this Contract. It includes, but is not limited to:
  - (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;
  - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
- (6) "Related entity" means:
  - (A) A Partner State's contractors or subcontracts at any tier;
  - (B) A Partner State's users or customers at any tier; or
  - (C) A contractor or subcontractor of a Partner State's user or customer at any tier.
- (7) "Contractors" and "Subcontractors" include suppliers of any kind.
- (c) (1) The Contractor agrees to a cross-waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract against:
  - (A) Any Partner State other than the United States;
  - (B) A related entity of any Partner State other than the United States; and
  - (C) The employees of any of the entities identified in paragraphs (c)(1)(A) and (B) above.

- (2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and Other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.
- (4) Notwithstanding the other provisions of this provision, this cross-waiver of liability shall not be applicable to:
  - (A) Claims between the United States and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Contractor are included within this exception);
  - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
  - (C) Claims for damage caused by willful misconduct; and
  - (D) Intellectual property claims.
- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

**DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS** [CT, FP-NR&D, FP-R&D, T&MC, LHT&M, FPC, CREI, A-E – 4/99] [FAR 52.211-15 – 9/90]

Incorporate by reference FAR 52.211-15, Defense Priority and Allocation Requirements.

**DEFINITIONS** [CT, FP-NR&D, FP-R&D, T&MC, LHT&M, FPC, A-E – 4/99] [FAR 52.202-1 – 10/95]

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

- (a) The term “Administrator” means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term “commercial component” means any component that is a commercial item.
- (c) The term “commercial item” means (see related term “nondevelopmental item,” below):
  - (1) Any item, other than real property, that is of a type customarily used for nongovernmental 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 (c)(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 (c)(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 means 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 (c)(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 such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this Article, and if the source of such services:

- (A) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
- (B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
- (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;
- (7) Any item, combination of items, or service referred to in subparagraphs (c)(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 Contractor; or
- (8) A nondevelopmental item, if the procuring activity 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).
- (d) The term "component" means any item supplied as part of an end item or of another component.
- (e) The term "contract amount" means the Contract price, the estimated cost and fee, if any, or the ceiling price of the Contract.
- (f) 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.
- (g) The term "Contractor" means the selling party to this Contract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Contractor" is the first tier subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
- (h) (1) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Contract, unless otherwise indicated.
- (2) Any reference to the Contract Disputes Act is meant to refer to the Disputes provision in this Contract if any.
- (i) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (j) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (k) The term "Institute" means the California Institute of Technology as a party to this Contract.
- (l) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. The rights of JPL under this Contract are the rights of the California Institute of Technology as a party to this Contract.
- (m) The term "JPL negotiator" means the individual authorized to issue and administer this Contract for JPL.
- (n) The term "NASA" means the National Aeronautics and Space Administration.
- (o) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Contract, unless otherwise indicated.
- (p) The term "nondevelopmental 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 (p)(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 (p)(1) or (2) solely because the item is not yet in use.
- (q) The term "person" means any individual, partnership, corporation, association, institution or other entity.

- (r) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government),.
- (s) The term "Schedule" means the statements in the order/contract, 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 Contract by reference or otherwise.
- (t) The term "subcontract," as used in this Contract, includes, but is not limited to, purchase orders under this Contract.
- (u) The terms "United States" or "U.S." mean the United States of America.

**DISPUTES** [CT – 4/00]

- (a) Any dispute arising under or relating to this Contract which is not settled by agreement of the parties or pursuant to paragraph (b) below may be settled by appropriate legal proceedings. Pending any binding or conclusive decision, appeal or judgment referred to in this Article or the settlement of any such dispute, the Contractor shall proceed diligently with the performance of this Contract.
- (b) Notwithstanding any provisions herein to the contrary:
  - (1) If a decision on any question of fact arising under the Prime Contract is made by the Contracting Officer and such question of fact is also related to this Contract, said decision, if binding upon the Institute under the Prime Contract, shall in turn be binding upon the Institute and the Contractor with respect to such question insofar as it relates to this Contract; provided, however, that if the Contractor is adversely affected by any such decision made by the Contracting Officer, and if the Institute elects not to appeal such decision pursuant to the "Disputes" clause of the Prime Contract, the Institute shall notify the Contractor within 10 days after receipt by the Institute of a copy of the decision. Notification of the Contractor shall be deemed to have been made upon deposit by the Institute of a notice in the mail properly addressed to the Contractor or upon actual delivery of the Notice to Contractor by the Institute. The Contractor shall thereupon have the right reserved to the Institute under the Prime Contract to prosecute an appeal, in the name of the Institute, to the Administrator within 30 days after receipt by the Institute of a copy of the Contracting Officer's decision. Any decision upon appeal either by the Institute or by the Contractor in the Institute's name, if binding upon the Institute under the Prime Contract, shall in turn be binding upon the Contractor and the Institute with respect to such question of fact insofar as it relates to this Contract. The Institute is not required under the provisions of this Article to certify or submit, or permit the Contractor to do so in the Institute's name, such claims to the Government as the Institute does not believe the Government is liable for under the provisions of the Prime Contract and the Contract Disputes Act of 1978.
  - (2) If a decision is made by any representative of the Government on any question of fact and/or law arising under the Prime Contract which is also related to this Contract, from which an appeal under the "Disputes" clause in the Prime Contract is not available, said decision, if binding upon the Institute under the Prime Contract, shall in turn be binding upon the Contractor and the Institute with respect to such question insofar as it relates to this Contract; provided, however, that if the Contractor is adversely affected by any such decision, or if the Contractor is adversely affected by any decision upon an appeal referred to in paragraph (1) above, and if the Institute elects not to bring suit against the Government with respect to such decision, the Institute shall notify the Contractor with reasonable promptness. The Contractor shall thereupon have any right which the Institute would have to prosecute a suit against the Government in the Institute's name. Failure to exercise such right shall preclude the Contractor from objecting to the adverse conclusion or result under this Contract. A final judgment in any such suit shall be conclusive upon the Contractor and the Institute under this Contract. The Institute is not required under the provisions of this Article to certify or submit, or permit the Contractor to do so in the Institute's name, such claims to the Government as the Institute does not believe the Government is liable for under the provisions of the Prime Contract and the Contract Disputes Act of 1978.
  - (3) All costs and expenses of any such appeal or suit prosecuted by the Contractor shall be paid by the Contractor, without prejudice to any right the Contractor may otherwise have to recovery or allowance thereof.
  - (4) If as a result of any decision or judgment which is binding upon the Contractor and the Institute, as provided above, the Institute is unable to obtain reimbursement from the Government under the Prime Contract for, or is required to refund or credit to the Government, any amount with respect to any item of cost or fee for

which the Institute has reimbursed the Contractor, the Contractor shall, on demand, promptly repay such amount to the Institute. Additionally, pending the final conclusion of any appeal and/or suit hereunder, the Institute may demand, and upon such demand the Contractor shall pay over to the Institute, any amount which the Government has disallowed or suspended under the Prime Contract and which arises out of this Contract.

**DRUG-FREE WORKPLACE REQUIREMENTS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]  
[FAR 52.223-6 – 1/97]

The Contractor agrees to inform all Contractor personnel, prior to their first entrance upon JPL premises, that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Contractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

**ELECTRICAL EQUIPMENT ACQUISITION** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 4/99]

(This Article is applicable if the Contract 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 Contractor under this Contract 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 Contractor at the Contractor's expense. The Contractor agrees to require 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 AND VETERANS OF THE VIETNAM ERA** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-37 – 1/88]

(This Article is applicable if this Contract (and any subcontract) is for \$10,000 or more, unless exempted by rules, regulations, or orders of the Secretary of Labor.)

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

**ENVIRONMENTAL COMPLIANCE** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.223-11 – 6/96; 52.223-12 - 5/95]

(This Article is applicable to all contracts to be performed at least partially within the United States, its possessions, and Puerto Rico.)

- (a) Environmental Compliance. Environmental controls shall be in accordance with all applicable Federal, State and local regulatory requirements and in accordance with all applicable Executive Orders of the President. In addition the contractor shall comply with the provisions set forth below.
- (b) The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C.7671g and 7671h) as each or both apply to this contract.
- (c) (1) Definition. "Ozone-depleting substance", as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.  
  
(2) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING

Contains (or manufactured with, if applicable) (\*)\_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

(\* The Contractor shall insert the name of the substance(s))

**EQUAL OPPORTUNITY** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 52.222-26 – 4/84]

(The following Article is applicable unless this Contract 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 recruited outside 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 Contract], the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with FAR 52.222-26 during performance of this Contract. Upon request, the Contractor shall provide information necessary to determine the applicability of this Article.)

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

**EQUIPMENT (EXCLUDING VEHICLES), TOOLS AND MATERIAL (CONTRACTOR PERSONNEL IN RESIDENCE AT JPL)** [CT, LH-T&M, T&MC – 4/99]

(This Article applies if the Contract work will be performed at a JPL-controlled facility, and tools, equipment, or materials will be issued to the Contractor's personnel by JPL.)

- (a) Contractor personnel will not bring work Items, i.e., tools, equipment (for example, personal computers and printers), or material, upon the premises while working at a JPL-controlled facility. JPL will provide those Items necessary for performance of work at a JPL-controlled facility, and such Items shall not be removed from the premises unless removal from JPL premises is specifically authorized by the JPL Supply and Equipment Section Manager or designated representative. Items so provided shall not be considered "Government-Furnished Property," and will not be subject to the "Government Property" Article of this Contract, but will be issued to individual Contractor personnel. Contractor personnel will be held to the same standards of conduct regarding such Items as JPL employees, that is:
  - (1) Contractor personnel shall promptly notify their supervisor or the Cognizant JPL Technical Representative of any loss, damage, or destruction of Items issued to them.
  - (2) The Contractor will be held liable for any loss, damage, or destruction of such Items resulting from gross negligence, willful misconduct, unlawful appropriation by its personnel for personal use or benefit, or use for other than JPL business on the part of its personnel.
- (b) The Contractor agrees to inform its personnel who may work at a JPL-controlled facility of this procedure and of their responsibilities. JPL will advise the Contractor promptly upon determining that any Contractor personnel has failed to return or satisfactorily account for any Item issued to such personnel. The Contractor agrees that JPL may withhold from any monies due or to become due the Contractor under this Contract, or to otherwise reimburse JPL, the value of any Items issued to Contractor personnel and neither returned nor satisfactorily accounted for upon completion of work under this Contract or when so requested by JPL.

**EXCUSABLE DELAYS** [CT, LH-T&M, T&MC – 4/99]

- (a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these are (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine restrictions, (vii) strikes, (viii) freight embargoes, and (ix) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless:
  - (1) The subcontracted supplies or services were obtainable from other sources;
  - (2) JPL ordered the Contractor in writing to purchase these supplies or services from the other source; and
  - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, JPL shall ascertain the facts and extent of the failure. If JPL determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Institute under the "Termination" Article of this Contract.

**EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, CREI – 4/99] [NFS 1852.227-86 – 12/87]

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

- (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/Contractor proposes its standard commercial software license, only those applicable portions thereof which comply with the other provisions of this Contract, Federal laws, FAR and NFS, including the restricted rights in paragraph (d) below, are incorporated into and made a part of this Purchase Order/Contract.
- (b) Although the Vendor/Contractor might not propose its standard commercial software license until after this Purchase Order/Contract 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/Contract 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/Contractor; however, such signing shall not add to or alter any of the terms and conditions of this Article or the Purchase Order/Contract into which this Article is incorporated.
- (c) The Vendor's/Contractor's acceptance is expressly limited to the terms and conditions of this Purchase Order/Contract. If the specified computer software is shipped or delivered to JPL or NASA, it shall be understood that the Vendor/Contractor has unconditionally accepted the terms and conditions set forth in this Article, and that the terms and conditions of this Purchase Order/Contract (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/Contract.
  - (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 contract 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 contractors or their 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/Contractor'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 contract obligations, the Institute, without disclosure prohibitions, with the rights in subparagraphs (d)(2) and (3) above.
  - (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.
- (e) The Contractor warrants that it has the right to sell, license, or transfer the license for the software furnished to the customer under this Contract in accordance with the terms of this Contract.

**FACSIMILE COPIES ACCEPTABLE** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

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

**FELONY CONVICTION INFORMATION (CONTRACTOR PERSONNEL IN RESIDENCE AT JPL)** [CT, LH-T&M, T&MC – 4/99]

(This Article applies to contracts/subcontracts when contractor- and/or subcontractor-furnished personnel will be performing work in residence at JPL- controlled facilities.)

When access to JPL facilities is required by Contractor personnel, the Contractor shall provide JPL-requested personnel access information, including an Affiliate Access Request (form JPL 1943), attached hereto, executed by the Contractor and the person requiring access. This request shall be provided to the JPL Plant Protection Office at least 24 hours prior to the time access is required to JPL premises. JPL reserves the right to approve or deny access to its facilities, based on the response given on form JPL 1943 or on other information available to JPL.

**GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, CREI – 2/00] [NFS 1852.244-70 – 4/85]

(This Article is applicable to contracts and subcontracts of \$100,000 or more. Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.244-70, Geographic Participation in the Aerospace Program.

**GOVERNMENT PROPERTY** [CT – 4/99] [FAR 52.245-5 – 1/86]

(a) Government-Owned/JPL-Furnished Property (hereafter "GFP").

- (1) The term "Contractor's managerial personnel," as used in paragraph (g) of this Article, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:
  - (A) All or substantially all of the Contractor's business;
  - (B) All or substantially all of the Contractor's operation at any one plant, or separate location at which the Contract is being performed; or
  - (C) A separate and complete major industrial operation connected with performing this Contract.
- (2) JPL shall deliver to the Contractor, for use in connection with and under the terms of this Contract, the property, if any, which JPL has committed to provide in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property.
- (3) The delivery or performance dates for this Contract are based upon the expectation that GFP suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the Contract's delivery or performance dates.
- (4) If GFP is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify JPL, detailing the facts, and, as directed by JPL and at JPL expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, JPL shall make an equitable adjustment as provided in paragraph (h) of this Article.
- (5) If GFP is not delivered to the Contractor by the required time or times, JPL shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this Article.

(b) Changes in GFP.

- (1) JPL may, by written notice, (i) decrease GFP provided or to be provided under this Contract or (ii) substitute other GFP for the property to be provided by JPL or to be acquired by the Contractor for JPL under this Contract. The Contractor shall promptly take such action as JPL may direct regarding the removal, shipment, or disposal of the property covered by this notice.
- (2) Upon the Contractor's written request, JPL shall make an equitable adjustment to the Contract in accordance with paragraph (h) of this Article, if JPL has agreed in the Schedule to make such property available for performing this Contract and there is any:
  - (A) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
  - (B) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) Title.

- (1) Title to all property furnished by JPL shall remain in the Government.
- (2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract shall pass to and vest in the Government upon the vendor's delivery of such property.
- (3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon:
  - (A) Issuance of the property for use in Contract performance;
  - (B) Commencement of processing of the property or use in Contract performance; or
  - (C) Reimbursement of the cost of the property by the Institute;whichever occurs first.
- (4) All GFP and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this Article. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) Use of Government Property. The Government property shall be used only for performing this Contract, unless otherwise provided in this Contract or approved by JPL.

(e) Property Administration.

- (1) The Contractor shall be responsible and accountable for all Government property provided under this Contract and shall comply with the applicable provisions of FAR 45.5, and any corresponding implementing or supplementing provisions in the NFS, as modified by the JPL document "Management of Government Property in the Possession of Contractors" (JPL 0968), a copy of which is attached to and made a part of this Contract.
- (2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR 45.5 and any corresponding implementing or supplementing provisions in the NFS, as modified by JPL 0968.
- (3) If damage occurs to Government property, the risk of which has been assumed by JPL under this Contract, JPL shall replace the items or the Contractor shall make such repairs as JPL directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by JPL. When any property for which JPL is responsible is replaced or repaired, JPL shall make an equitable adjustment in accordance with paragraph (h) of this Article.

(f) Access. JPL or the Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Limited Risk of Loss.

- (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this Contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
- (2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this Contract (including expenses incidental to such loss, destruction, or damage):
  - (A) That results from a risk expressly required to be insured under this Contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
  - (B) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
  - (C) For which the Contractor is otherwise responsible under the express terms of this Contract;

- (D) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or
  - (E) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this Article.
- (3) (A) If the Contractor fails to act as provided by subparagraph (g)(2)(E) above, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.
- (B) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage:
- (i) Did not result from the Contractor's failure to maintain an approved program or system; or
  - (ii) Occurred while an approved program or system was maintained by the Contractor.
- (4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of JPL, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the Contract.
- (5) Upon loss or destruction of, or damage to, Government property provided under this Contract, the Contractor shall so notify JPL and shall communicate with the loss and salvage organization, if any, designated by JPL. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to JPL a statement of:
- (A) The lost, destroyed, or damaged Government property;
  - (B) The time and origin of the loss, destruction, or damage;
  - (C) All known interests in commingled property of which the Government property is a part; and
  - (D) The insurance, if any, covering any part of or interest in such commingled property.
- (6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as JPL directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by JPL, sell such property for the account of this Contract. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the Contract amount for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this Article. However, the Government may directly reimburse the loss and salvage organization for any of their charges. JPL shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.
- (7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Institute may have expressly required the Contractor to carry such insurance under another provision of this Contract.
- (8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the

lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Institute or the Government, as directed by JPL.

- (9) The Contractor shall do nothing to prejudice the Institute's or the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of JPL, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.
- (h) Equitable Adjustment. When this Article specifies an equitable adjustment, it shall be made to any affected Contract provision in accordance with the procedures of the "Changes" Article. When appropriate, JPL may initiate an equitable adjustment in favor of JPL. The right to an equitable adjustment shall be the Contractor's exclusive remedy. JPL shall not be liable to suit for breach of Contract for:
- (1) Any delay in delivery of GFP;
  - (2) Delivery of GFP in a condition not suitable for its intended use;
  - (3) A decrease in or substitution of GFP; or
  - (4) Failure to repair or replace Government property for which JPL is responsible.
- (i) Final Accounting and Disposition of Government Property. Upon completing this Contract, or at such earlier dates as may be fixed by JPL, the Contractor shall submit, in a form acceptable to JPL, inventory schedules covering all items of Government property not consumed in performing this Contract or delivered to JPL. The Contractor shall prepare for shipment, deliver, or dispose of the Government property as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the cost of the work covered by this Contract or paid in such manner as directed by JPL. The foregoing provisions shall apply to scrap from Government property; provided, however, that JPL may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.
- (j) Abandonment and Restoration of Contractor Premises. Unless otherwise provided herein, the Government through JPL:
- (1) May abandon any Government property in place, at which time all obligations of the Government and of the Institute regarding such abandoned property shall cease; and
  - (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or Contract completion). However, if the GFP (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this Article may properly include restoration or rehabilitation costs.
- (k) Communications. All communications under this Article shall be in writing.
- (l) Overseas Contracts. If this Contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (when they appear in this Article) shall be construed as "United States Government" and "United States Government-furnished," respectively.

**HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 4/99] [FAR 52.223-3 – 1/97, Alt. I – 7/95]

(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 Contract].

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

**INJURY AND ILLNESS PREVENTION PROGRAM** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

All Contractors whose personnel work at a site in California must establish and implement an effective injury and illness prevention program in compliance with California law.

**INSPECTION OF RESEARCH AND DEVELOPMENT** [CT – 4/99] [FAR 52.246-3 – 4/84; 52.246-9 – 4/84]

(a) Definitions.

- (1) "Contractor's managerial personnel," as used in this Article, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:
    - (A) All or substantially all of the Contractor's business;
    - (B) All or substantially all of the Contractor's operation at any one plant or separate location at which the Contract is being performed; or
    - (C) A separate and complete major industrial operation connected with performing this Contract.
  - (2) "Work," as used in this Article, includes data when the contract does not include the Warranty of Data Article.
- (b) The Contractor shall provide and maintain an inspection system acceptable to JPL covering the work under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to JPL during Contract performance and for as long afterwards as the Contract requires.
  - (c) JPL through any authorized representatives has the right to inspect and test all work called for by the Contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. JPL may also inspect the plant or plants of the Contractor or its subcontractors engaged in the Contract performance. JPL shall perform inspections and tests in a manner that will not unduly delay the work.
  - (d) If JPL performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
  - (e) Unless otherwise provided in the Contract, JPL shall accept work as promptly as practicable after delivery, and work shall be deemed accepted 90 days after delivery, unless accepted earlier.
  - (f) At any time during performance, but no later than six months (or such other time as may be specified in the Schedule) after final acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the Contract, JPL may require the Contractor to replace or correct work not meeting Contract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be determined as specified in the Article of this Contract entitled "Allowable Cost and Payment," but no additional fee shall be paid. The Contractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
  - (g) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, JPL may:
    - (1) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost incurred by the Institute, or make an equitable reduction in any fee paid or payable under the Contract;
    - (2) Require delivery of any undelivered articles and shall have the right to make an equitable reduction in any fee paid or payable under the Contract; or
    - (3) Terminate the Contract for default, as provided in the Article of this Contract entitled "Termination."
  - (h) Notwithstanding paragraphs (f) and (g) above, JPL may at any time require the Contractor to remedy by correction or replacement, without cost to the Institute, any failure by the Contractor to comply with the requirements of this Contract, if the failure is due to (i) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (ii) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
  - (i) This Article shall apply in the same manner to a corrected or replacement end item or components as to work originally delivered.
  - (j) The Contractor has no obligation or liability under the Contract to correct or replace articles not meeting Contract requirements at time of delivery, except as provided in this Article or as may otherwise be specified in the Contract.

- (k) Unless otherwise provided in the Contract, the Contractor's obligations to correct or replace Government-furnished property shall be governed by the Article pertaining to Government property.
- (l) If this Contract, including those documents forming a part hereof by reference or incorporation, provides for or requires the submission of any of the work to JPL for approval, any such approval given by JPL, prior to final acceptance, shall not relieve the Contractor of its responsibility for complying with the specifications and other provisions of this Contract. Any such approval shall not be construed as an assumption by JPL of the responsibility that such work complies or will comply with the specifications or other provisions of this Contract.
- (m) The Government has the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

**INSURANCE - LIABILITY TO THIRD PERSONS** [CT – 2/00] [FAR 52.228-7 – 4/84]

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

- (a) Except as provided in subparagraph (1) immediately following or in paragraph (h) of this Article (if this Article contains paragraph (h)), the Contractor shall provide and thereafter maintain the following insurance with respect to performance under this Contract:
  - (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 Contract operations are so commingled with the Contractor'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 Contractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Contractor is qualified pursuant to statutory authority to do so.
  - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned and leased), completed operations, products, and Contractual Liability Insurance specifically covering all liability assumed under this Contract. Such insurance shall be written 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.
  - (3) Such other insurance as JPL may from time to time require.

The Contractor agrees to furnish certificates of insurance to JPL for the coverage required hereunder, should JPL so request.

- (b) The Contractor agrees to submit for approval of JPL, to the extent and in the manner required by JPL, any other insurance that is maintained by the Contractor in connection with the performance of this Contract and for which the Contractor seeks reimbursement.
- (c) Except as provided in paragraph (h) of this Article (if this Article contains paragraph (h)), the Contractor shall be reimbursed:
  - (1) For that portion (i) of the reasonable cost of insurance allocable to this Contract and (ii) required or approved under this Article; and
  - (2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise. These liabilities must arise out of the performance of this Contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Institute. These liabilities are for (i) loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or (ii) death or bodily injury.
- (d) The Institute's liability under paragraph (c)(2) of this Article is subject to the availability of funds under the Prime Contract at the time a contingency occurs.
- (e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities):
  - (1) For which the Contractor is otherwise responsible under the express terms of any Article or Articles specified in the Schedule or elsewhere of the Contract;

- (2) For which the Contractor has failed to insure or to maintain insurance as required; or
- (3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:
  - (A) All or substantially all of the Contractor's business;
  - (B) All or substantially all of the Contractor's operations at any one plant or separate location in which this Contract is being performed; or
  - (C) A separate and complete major industrial operation in connection with the performance of this Contract.
- (f) The provisions of paragraph (e) of this Article shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this Contract, other than insurance required in accordance with this Article; provided, that such cost is allowable under the "Allowable Cost and Payment" Article of this Contract.
- (g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this Contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall:
  - (1) Immediately notify JPL and promptly furnish copies of all pertinent papers received;
  - (2) Authorize Institute or Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
  - (3) Authorize Institute or Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Institute, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Institute or the Government representatives in any such claim or litigation.
- (h) (RESERVED)

**INTEGRITY OF UNIT PRICES** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 4/99] [FAR 52.215-14 – 10/97]

(This Article is applicable if the initial Contract price exceeds \$100,000, unless the Contract is for services where supplies are not required, construction or architect-engineer services, utility services, commercial items, or petroleum products.)

- (a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.
- (b) The Contractor shall insert the substance of this Article in all subcontracts meeting the applicability prescription above.

**LIMITATION OF COST** [CT – 4/99]

- (a) The parties estimate that the total cost for performance of this Contract, exclusive of any fee, will not cost the Institute more than (i) the estimated cost specified in the Schedule, or, (ii) if this is a cost-sharing contract, the Institute's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this Contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Institute's and the Contractor's share of the cost.
- (b) The Contractor shall notify JPL in writing whenever it has reason to believe that:
  - (1) The costs the Contractor expects to incur under this Contract in the next 60 days, when added to all costs previously incurred, will exceed 75% of the estimated cost specified in the Schedule; or
  - (2) The total cost for the performance of this Contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
- (c) As part of the notification, the Contractor shall provide JPL a revised estimate of the total cost of performing this Contract.

- (d) Except as required by other provisions of this Contract, specifically citing and stated to be an exception to this Article:
  - (1) The Institute is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing Contract, the estimated cost to the Institute specified in the Schedule; and
  - (2) The Contractor is not obligated to continue performance under this Contract (including actions under the "Termination" Article of this Contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until JPL (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this Contract. If this is a cost-sharing Contract, the increase shall be allocated in accordance with the formula specified in the Schedule.
- (e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than a duly authorized representative of JPL shall affect the estimated cost of this Contract. In the absence of the specified notice, the Institute is not obligated to reimburse the Contractor for any costs in excess of the estimated cost, or if this is a cost-sharing Contract, for any costs in excess of the estimated cost to the Institute specified in the Schedule, whether those excess costs were incurred during the course of the Contract or as a result of termination.
- (f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless JPL issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- (g) Directions, orders, notices, requests and the like issued by JPL pursuant to the "Changes" Article or any other provision of this Contract shall not be considered an authorization to exceed the estimated cost specified in the Schedule, in the absence of a statement in a Unilateral Modification or other Contract Modification increasing the estimated cost.

**LIMITATION OF FUNDS** [CT – 4/99]

(This Article shall be applicable and the Article of this Contract entitled "Limitation of Cost" inapplicable until such time as an amount equal to the total estimated cost and fee set forth in the Schedule is allotted to this Contract and thereafter the Article of this Contract entitled "Limitation of Cost" shall be applicable and this Article inapplicable, unless and until the amount allotted to this Contract once again becomes less than the total estimated cost and fee set forth in the Schedule.)

- (a) The parties estimate that performance of this Contract will not cost the Institute more than (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the Institute's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this Contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Institute's and the Contractor's share of the cost.
- (b) The Schedule specifies the amount presently available for payment by the Institute and allotted to this Contract, or the Institute's share of the cost if this is a cost-sharing contract. The parties contemplate that the Institute will allot additional funds incrementally to the Contract up to the full estimated cost to the Institute specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the Contract up to the point at which the total amount paid and payable by the Institute under the Contract approximates but does not exceed the total amount actually allotted by the Institute to the Contract.
- (c) The Contractor shall notify JPL in writing whenever it has reason to believe that the costs which it expects to incur in the performance of this Contract in the next succeeding 60 days, when added to (i) all costs previously incurred; (ii) the amount of termination costs that would be payable by the Institute in the event of termination of this Contract for the convenience of the Institute; and (iii) any fee paid or payable up through such period; will either (i) exceed the total amount so far allotted to the Contract by the Institute or, (ii) if this is a cost-sharing contract, the amount then allotted to the Contract by the Institute plus the Contractor's corresponding share.
- (d) If, after notification, additional funds are not allotted in sufficient time to enable the Contractor to continue performance of this Contract in a timely manner, the Institute will, upon written request by the Contractor, terminate this Contract pursuant to the provisions of the "Termination" Article.
- (e) Except as required by other provisions of this Contract, specifically citing and stated to be an exception to this Article:

- (1) The Institute is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Institute to this Contract; and
  - (2) The Contractor is not obligated to continue performance under this Contract (including actions under the "Termination" Article of this Contract) or otherwise incur costs in excess of (i) the amount then allotted to the Contract by the Institute or, (ii) if this is a cost-sharing contract, the amount then allotted by the Institute to the Contract plus the Contractor's corresponding share, until JPL notifies the Contractor in writing that the amount allotted by the Institute has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Institute to this Contract.
- (f) The estimated cost shall be increased to the extent that (i) the amount allotted by the Institute or, (ii) if this is a cost-sharing contract, the amount then allotted by the Institute to the Contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.
  - (g) No notice, communication, or representation in any form other than that specified in subparagraph (e)(2) above, or from any person other than a duly authorized representative of JPL, shall affect the amount allotted by the Institute to this Contract. In the absence of the specified notice, the Institute is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Institute to this Contract, whether incurred during the course of the Contract or as a result of termination.
  - (h) When and to the extent that the amount allotted by the Institute to the Contract is increased, any costs the Contractor incurs before the increase that are in excess of (i) the amount previously allotted by the Institute to the Contract, or (ii) if this is a cost-sharing Contract, the amount previously allotted by the Institute plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless JPL issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.
  - (i) Change orders shall not be considered an authorization to exceed the amount allotted by the Institute specified in the Schedule, unless they contain a statement increasing the amount allotted.
  - (j) Nothing in this Article shall affect the right of JPL to terminate this Contract. If this Contract is terminated, JPL and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the Contract, based upon the share of costs incurred by each.
  - (k) If the Institute does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equaling the percentage of completion of the work contemplated by this Contract.

**LIMITATION OF LIABILITY** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 8/01] [FAR 52.246-23, 52.246-24, and 52.246-25 – 2/97]

This Article includes 3 Parts: Part 2, Limitation of Liability – High Value Items, applies to all items delivered under this Contract to JPL which have a unit cost exceeding \$100,000; Part 1, Limitation of Liability, applies to all other items delivered under this Contract. Part 3, Limitation of Liability – Services, applies if the contract is over \$100,000 and requires the performance of services.

**PART 1: LIMITATION OF LIABILITY**

*(applies to all items delivered under this Contract other than High Value Items)*

- (a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this Contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this Contract) that (i) occurs after acceptance of the supplies delivered under this Contract and (ii) results from any defects or deficiencies in the supplies.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this Article, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
  - (1) All or substantially all of the Contractor's business;
  - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the Contract is being performed; or

- (3) A separate and complete major industrial operation connected with the performance of this Contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this Contract, the Contractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Institute and the Government occurring after acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this Contract.
- (d) The Contractor shall include this Article, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts.

**PART 2: LIMITATION OF LIABILITY – HIGH VALUE ITEMS**

*(applies to all items delivered under this Contract to JPL which have a unit cost exceeding \$100,000)*

- (a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this Contract, the Contractor shall not be liable for loss of or damage to property of the Institute or the Government (including the supplies delivered under this Contract) that:
  - (1) Occurs after JPL acceptance of the supplies delivered under this Contract; and
  - (2) Results from any defects or deficiencies in the supplies.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or JPL's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this Article, means the Contractor's directors, officers and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
  - (1) All or substantially all of the Contractor's business;
  - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the Contract is being performed; or
  - (3) A separate and complete major industrial operation connected with the performance of this Contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this Contract, the Contractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after JPL acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this Contract.
- (d)
  - (1) This Article does not diminish the Contractor's obligations, to the extent that they arise otherwise under this Contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this Contract.
  - (2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by JPL, the Contractor shall, as determined by JPL:
    - (A) Pay the Institute the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred; or
    - (B) Provide other equitable relief.
- (e) This Article shall not limit or otherwise affect the Institute's or the Government's rights under Articles, if included in this Contract, that cover:
  - (1) Warranty of technical data;
  - (2) Ground and flight risks or aircraft flight risks; or
  - (3) Government property.
- (f) In each subcontract, except a subcontract covered by paragraph (g) below, the Contractor shall insert the appropriate Article, supplemented as necessary to reflect the relationship of the contracting parties, as follows:
  - (1) In subcontracts for high-value items only, after obtaining JPL's advance written approval, insert this Article, including this paragraph (f).

- (2) In subcontracts for other end items only, insert the clause at FAR subsection 52.246-23, Limitation of Liability.
- (g) In any subcontract for both high-value items for which this Article is appropriate, and other end items for which the clause at FAR subsection 52.246-23, and any corresponding implementing or supplementing provisions in the NFS, is appropriate, after obtaining the JPL's advance written approval to use this Article, the Contractor shall:
  - (1) Include both this Article and the FAR clause;
  - (2) Identify high-value items by line item; and
  - (3) Insert the following preamble before paragraph (a) of this Article as used in that subcontract:
 

"(This Article shall apply only to those items identified in this Contract as being subject to this Article.)"

**PART 3: LIMITATION OF LIABILITY – SERVICES**

*(applies if the contract is over \$100,000 and requires the performance of services)*

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this Contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Institute or the Government that:
  - (1) Occurs after Institute acceptance of services performed under this Contract; and
  - (2) Results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Institute acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this provision, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
  - (1) All or substantially all of the Contractor's business;
  - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the Contract is being performed; or
  - (3) A separate and complete major industrial operation connected with the performance of this Contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through the Contractor's performance of services or furnishing of materials under this Contract, the Contractor shall be liable to the Institute or the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Institute or the Government occurring after Institute acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this Contract.
- (d) The Contractor shall include this provision, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts over \$25,000.

**LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.203-12 – 6/97]

(This Article applies if this Contract is expected to exceed \$100,000.)

Incorporate by reference FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 1997).

**LIMITATION ON WITHHOLDING OF PAYMENTS** [CT, LHT&M, T&MC, CREI – 4/99] [FAR 52.232-9 – 4/84]

If more than one Article of this Contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one Article at that time; provided, that this limitation shall not apply to:

- (a) Withholdings pursuant to any Article relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this Contract; and

- (c) The recovery of overpayments.

**MATERIAL REQUIREMENTS** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 4/99] [FAR 52.211-5 – 10/97]

(a) Definitions.

As used in this Article:

- (1) New means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.
  - (2) Reconditioned means restored to the original normal operating condition by readjustments and material replacement.
  - (3) Recovered material means waste materials and by-products that have been recovered or diverted from solid waste including post-consumer material, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
  - (4) Remanufactured means factory rebuilt to original specifications.
  - (5) Virgin material means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.
- (b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, as defined in this Article.
- (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
- (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to JPL for approval.
- (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, shall not be used unless the Contractor has proposed the use of such supplies, and JPL has authorized their use.

**NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.227-2 – 8/96]

(The provisions of this Article shall be applicable only if the amount of this Contract is expected to exceed \$100,000, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless ultimate delivery is into those areas.)

- (a) The Contractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this Contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- (c) The Contractor agrees to include, and require inclusion of, this Article in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

**NOTICE OF RADIOACTIVE MATERIALS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 4/99] [FAR 52.223-7 – 1/97]

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

Incorporate FAR 52.223-7 (January 1997) with JPL negotiator in lieu of Contracting Officer and adding JPL with the Government in all respects.

**NOTICE TO JPL OF LABOR DISPUTES** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-1 – 2/97]

- (a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice to JPL. The initial notice shall include the following:
  - (1) Identification of parts/materials, etc., which are or may be affected;
  - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower-tier subcontractor, advise as to potential alternate sources;
  - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
  - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
  - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
  - (6) Manufacturer/Subcontractor and union data to include:
    - (A) Name, address and telephone numbers of the manufacturer/subcontractor representative and Industrial Relations Representative to be contacted for further information;
    - (B) Union's name and local lodge number, if known.

If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.

- (b) The Contractor agrees to insert the substance of this Article, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher-tier subcontractor or JPL, as the case may be, concerning the dispute.

**ORDER OF PRECEDENCE** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.215-8 – 10/97]

- (a) The rights and obligations of the parties of this Contract 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 Contract 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 Contract by reference or otherwise, in the Schedule, and
  - (2) any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise in the Schedule,(c)(1) has order of precedence over (c)(2).
- (d) All provisions of this Contract which are required by their terms to be included in subcontracts shall be required by the Contractor to take precedence in the subcontract over any other provisions.

**PAYMENT FOR OVERTIME PREMIUMS** [CT, CREI – 4/99]

- (a) Allowable cost shall not include any amount on account of overtime premiums, except to the extent that they either:

- (1) Are approved in writing by JPL; or
- (2) Are paid for work:
  - (A) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
  - (B) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
  - (C) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
  - (D) That will result in lower overall costs to the Institute.
  - (E) For pre-launch activities and mission performance or delivery related events of an urgent nature.
- (b) The cost of overtime premiums otherwise allowable under (a) above shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under this Contract.
- (c) Any request for estimated overtime premiums submitted for approval pursuant to (a) (1) above shall include all estimated overtime for contract completion and shall:
  - (1) Identify the work unit, e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit JPL to evaluate the necessity for the overtime;
  - (2) Demonstrate the effect that denial of the request will have on contract delivery or performance schedule;
  - (3) Identify the extent to which approval of overtime would affect the performance or cost in connection with other JPL contracts, together with identification of each affected contract; and
- (4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

**PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 8/01] [FAR 52.247-64 – 6/97]

(This Article is applicable when the Contract or subcontract amount is expected to exceed \$100,000. This Article is not applicable for the acquisition of commercial items or commercial components.)

- (a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this Contract.
- (b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify JPL and request (i) authorization to ship in foreign-flag vessels or (ii) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by JPL to ship the supplies in foreign-flag vessels, the Contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.
- (c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590) 400 Seventh Street, SW, Washington, D.C. 20590. Contractor and subcontractor bills of lading shall be submitted through JPL.
- (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
  - (A) NASA shown as the sponsoring U.S. Government agency.
  - (B) Name of vessel.
  - (C) Vessel flag of registry.
  - (D) Date of loading.
  - (E) Port of loading.
  - (F) Port of final discharge.

- (G) Description of commodity.
  - (H) Gross weight in pounds and cubic feet, if available.
  - (I) Total ocean freight revenue in U.S. dollars.
- (d) For purchases over \$100,000, the Contractor shall insert the substance of this Article, including this paragraph (d), in all purchase orders and subcontracts under this Contract.
- (e) The requirement in paragraph (a) does not apply to:
- (1) Purchases not exceeding \$100,000;
  - (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
  - (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
  - (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
  - (5) Subcontracts for the acquisition of commercial items or commercial components.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202-366-4610.

**PREFERENCE FOR U.S.-FLAG AIR CARRIERS** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.247-63 – 1/97]

(This Article does not apply to contracts or subcontracts for supplies, nonpersonal services, and construction that do not exceed \$100,000. This Article is not applicable to the acquisition of commercial items or commercial components.)

Incorporate by reference FAR 52.247-63, Preference for U.S.-Flag Air Carriers.

**PRINTING AND DUPLICATING** [CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI, A-E – 4/99] [NFS 1852.208-81 – 8/93]

(This Article does not apply unless this Contract requires the Contractor to provide printing or significant reproduction, i.e., in excess of 5,000 copies of a single page or in excess of 25,000 copies in the aggregate of multiple pages.)

- (a) NFS 1852.208-81, Restrictions on Printing and Duplicating (August 1993), is hereby incorporated into this Article in its entirety.

Note 1: The terms "documentation" referred to in paragraph (a), "printing" referred to in paragraph (b), and "production units" referred to in paragraph (c) of NFS 1852.208-81, Restrictions on Printing and Duplicating (August 1993), pertain solely to "Government publications." "Government publications" is defined as (i) reports intended primarily for internal use by the Government and (ii) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed by or through the Government Printing Office, even though the distribution of these reports and materials may be effectuated by the Contractor for the Government.

Examples of documents which are "Government publications" include, but are not limited to: (i) publications released by the Contractor or a subcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (ii) deliverable final reports, but not interim drafts of such reports; (iii) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

Examples of documents which are not "Government publications" include, but are not limited to: (i) publications for internal usage and communication by JPL or any contractor or a subcontractor such as JPL's or a contractor's Telephone Directory or JPL's or a contractor's internal newsletter; (ii) public information, education and public service documents, and award certificates printed for JPL's or a contractor's usage rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (iii) publications for which the printing costs are not paid for by the Government; (iv) non-deliverable reports provided to the Government for informational purposes which are suitable for publication in academic, technical, or professional journals and similar publications; and (v) review board presentations and conclusions in which a majority of the formal

review board membership consists of JPL, contractor, or subcontractor representatives, where Government attendance is only incidental, and the Contract does not expressly require Government approval of the proceedings.

- (b) To the extent that it applies to subcontractors, the Contractor will implement NASA Policy Guideline (NPG) 1490.5A, Procedural Guidance for Printing, Duplicating and Copying Management, dated July 1997, for all printing, duplicating, copying, forms and mail management related to the performance of this contract.

Note 2: Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the Contractor to the JPL negotiator for submission to the NASA Printing Management Officer through the Contracting Officer.

**PROHIBITION OF CONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN CONTRACT PERFORMANCE**

[CT, FPNR&D, FPR&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99]

The Contractor, its employees, agents and subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Contract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Contractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries and property damage arising from one accident or occurrence. The Contractor shall be required as a condition of JPL's approval to submit an endorsement naming the Institute as an additional insured in such aircraft liability insurance policy. The Contractor shall include this provision in any subcontract involving travel subject to JPL approval or requiring that the subcontractor utilize a privately owned (noncommercial) aircraft.

**RELEASE OF INFORMATION** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99]

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

- (a) The Contractor agrees that all information released by the Contractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See enclosed form letter JPL 1737, "Release of Information.")
- (b) The Contractor agrees to insert this clause including this paragraph in all subcontracts.

**REQUIRED NOTICES** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 4/99]

Unless otherwise specified in this Contract, any notice which the Contractor is required to provide to JPL under any provision of this Contract shall be directed to the JPL Negotiator or the Manager, Acquisition Division, JPL, or their authorized representatives.

**RESTRICTIONS ON CERTAIN FOREIGN PURCHASES** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.225-11 – 10/96]

Incorporate by reference FAR 52.225-11, Restrictions on Certain Foreign Purchases.

**RESTRICTIONS ON SUBCONTRACTOR SALES** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 4/99] [FAR 3.503, 52.203-6 – 7/95]

(This Article is applicable to contracts and subcontracts exceeding \$100,000 for other than commercial items.)

Incorporate by reference FAR 52.203-6, Restrictions on Subcontractor Sales.

**REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS OTHER THAN PENSIONS (PRB)** [CT, CREI – 4/99]

- (a) This Article is applicable if certified cost or pricing data is required or if any preaward or post-award cost determinations will be subject to FAR Part 31.
- (b) The Contractor shall promptly notify the JPL Negotiator in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Institute for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this Article in all subcontracts under this Contract that meet the applicability requirements of FAR 15.408(j)).

(If the Article entitled "Existing Commercial Computer Software - Licensing" is applicable to this Contract, it shall apply in lieu of this Article regarding any acquisition of commercial computer software.)

(a) Definitions.

- (1) "Computer software," as used in this Article, means computer programs, computer data bases, and documentation thereof.
- (2) "Data," as used in this Article, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data, and computer software. The term does not include information incidental to Contract administration, such as financial, administrative, cost or pricing, or management information.
- (3) "Form, fit, and function data," as used in this Article, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
- (4) "Institute" means the California Institute of Technology as a party to this Contract.
- (5) "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. JPL's rights under this Contract are rights of the California Institute of Technology as a party to this Contract.
- (6) "Limited rights," as used in this Article, means the rights of the Government, or in support and furtherance of its Government contract obligations, the Institute, in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this Article.
- (7) "Limited rights data," as used in this Article, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.
- (8) "Restricted computer software," as used in this Article, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.
- (9) "Restricted rights," as used in this Article, means the rights of the Government, and in support and in furtherance of its Government contract obligations, the Institute, in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this Article, or as otherwise may be provided in a collateral agreement incorporated in and made part of this Contract, including minor modifications of such computer software.
- (10) "Technical data," as used in this Article, means data (other than computer software) which are of a scientific or technical nature.
- (11) "Unlimited rights," as used in this Article, means the right of the Government, or in support and furtherance of its Government contract obligations, the Institute, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights.

- (1) Except as provided in paragraph (c) of this Article regarding copyright, the Government and in support and furtherance of its Government contract obligations, the Institute, shall have unlimited rights in:
  - (A) Data first produced in the performance of this Contract;
  - (B) Form, fit, and function data delivered under this Contract;
  - (C) Data delivered under this Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Contract; and

- (D) All other data delivered under this Contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this Article.
- (2) The Contractor shall have the right to:
- (A) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, unless provided otherwise in paragraph (d) of this Article;
  - (B) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this Article;
  - (C) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this Article; and
  - (D) Establish claim to copyright subsisting in data first produced in the performance of this Contract to the extent provided in subparagraph (c)(1) of this Article.
- (c) Copyright.
- (1) Data First Produced in the Performance of This Contract.
- (A) Unless provided otherwise in paragraph (d) of this Article, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer through JPL is required to establish claim to copyright subsisting in all other data first produced in the performance of this Contract.
  - (B) When claim to copyright is made, the Contractor shall affix the applicable copyright or notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including the Prime Contract number) to the data when such data are delivered to JPL, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. (Acknowledgment shall include a statement that "This work was performed for the Jet Propulsion Laboratory, California Institute of Technology, sponsored by the United States Government under a Prime Contract between the California Institute of Technology and NASA.")
  - (C) For data other than computer software, the Contractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government.
  - (D) For computer software, the Contractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.
- (2) Data Not First Produced in the Performance of This Contract. The Contractor shall not, without prior written permission of JPL, incorporate in data delivered under this Contract any data not first produced in the performance of this Contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a license of the same scope as set forth in subparagraph (c)(1) of this Article; provided, however, that if such data are computer software, the Contractor grants to the Government and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a paid-up nonexclusive irrevocable worldwide license as set forth in subparagraph (g)(3) of this Article.
- (3) Removal of Copyright Notices. JPL agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.
- (d) Release, Publication and Use of Data.
- (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data other than computer software first produced or specifically used by the Contractor in the performance of this Contract, except to the extent such data may be subject to the Federal export control or national security

laws or regulations, or unless otherwise provided in this paragraph of this Article or expressly set forth in this Contract.

- (2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this Contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by JPL.
- (3) (A) The Contractor agrees not to establish claim to copyright or publish or release to others any computer software first produced in the performance of this Contract without the Contracting Officer's prior written permission.  
  
(B) If the Government desires to obtain copyright in computer software first produced in the performance of this Contract for which permission to copyright has not been granted to the Contractor as set forth in subdivision (d)(3)(A) of this Article, the Contracting Officer or the Institute may direct the Contractor to assert, or authorize the assertion of, claim to copyright in said data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.  
  
(C) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert."

(e) Unauthorized Marking of Data.

- (1) Notwithstanding any other provisions of this Contract concerning inspection or acceptance, if any data delivered under this Contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this Article and use of such is not authorized by this Article, or if such data bears any other restrictive or limiting markings not authorized by this Contract, JPL may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:
  - (A) JPL shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
  - (B) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer through JPL for good cause shown), the Government or JPL shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
  - (C) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(A) of this Article, the Contracting Officer through JPL shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer through JPL determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer through JPL determines, with concurrence of NASA, that the markings are not authorized, the Contracting Officer through JPL shall furnish the Contractor a written determination, which determination shall become the final Government decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government and JPL shall continue to abide by the markings under this subdivision (e)(1)(C) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government or JPL shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (2) The time limits in the procedures set forth in subparagraph (e)(1) of this Article may be modified in accordance with NASA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
- (3) This paragraph (e) does not apply if this Contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
- (4) (RESERVED)

(f) Omitted or Incorrect Markings.

- (1) Data delivered to the Government or JPL without either the limited rights or restricted rights notice as authorized by paragraph (g) of this Article, or the copyright notice required by paragraph (c) of this Article, shall be deemed to have been furnished with unlimited rights, and the Government and the Institute assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government or JPL, the Contractor may request, within six months (or longer time approved by JPL for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and JPL may agree to do so if the Contractor:
  - (A) Identifies the data to which the omitted notice is to be applied;
  - (B) Demonstrates that the omission of the notice was inadvertent;
  - (C) Establishes that the use of the proposed notice is authorized; and
  - (D) Acknowledges that the Government and the Institute have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.
- (2) JPL may also:
  - (A) Permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or
  - (B) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software.

- (1) When data other than that listed in subdivisions (b)(1)(A), (B), and (C) of this Article are specified to be delivered under this Contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to JPL under this Contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to JPL are to be treated as limited rights data and not restricted computer software.
- (2) Notwithstanding paragraph (g)(1) of this Article, the Contract may identify and specify the delivery of limited rights data, or JPL or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Institute and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with such Notice:

LIMITED RIGHTS NOTICE

- (a) These data are submitted with limited rights under Government contract No. NAS7-1407 (and JPL subcontract No. \_\_\_\_\_). These data may be reproduced and used by the Institute or the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Institute or the Government; except that the Institute or the Government may disclose these data outside the Institute or the Government for the following purposes, if any, provided that the Institute or the Government makes such disclosure subject to prohibition against further use and disclosure:
  - (1) Use by support service contractors.
  - (2) (RESERVED)
- (b) This Notice shall be marked on any reproduction of these data, in whole or in part.

*(end of notice)*

- (3) (A) Notwithstanding paragraph (g)(1) of this Article, the Contract may identify and specify the delivery of restricted computer software, or JPL or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Institute and the Government will thereafter treat the

computer software, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with the Notice:

#### RESTRICTED RIGHTS NOTICE

- (a) This computer software is submitted with restricted rights under Government contract No. NAS7-1407 (and JPL subcontract No. \_\_\_\_\_). It may not be used, reproduced, or disclosed by the Institute or the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the Contract.
- (b) This computer software may be:
  - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Institute or Government installation to which such computer or computers may be transferred;
  - (2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
  - (3) Reproduced for safekeeping (archives) or backup purposes;
  - (4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;
  - (5) Disclosed to and reproduced for use by support service contractors in accordance with subparagraphs (b)(1) through (4) of this Article, provided the Institute or the Government makes such disclosure or reproduction subject to these restricted rights; and
  - (6) Used or copied for use in or transferred to a replacement computer.
- (c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Institute and the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article.
- (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the Contract.
- (e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

*(end of notice)*

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

#### RESTRICTED RIGHTS NOTICE - SHORT FORM

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. NAS7-1407 (and subcontract No. \_\_\_\_\_ with [name of subcontractor]).

*(end of notice)*

- (C) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Institute and the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article, unless the Contractor includes the following statement with such copyright notice: "Unpublished - rights reserved under the Copyright Laws of the United States."
- (h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government and the Institute under this Contract. If a subcontractor refuses to accept terms affording the Government or the Institute such rights, the Contractor shall promptly bring such refusal to the attention of JPL and not proceed with subcontract award without further authorization.
- (i) Relationship to Patents. Nothing contained in this Article shall imply a license to the Government or the Institute under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government or the Institute.

- (j) Inspection of Data Withheld. The Contractor agrees, except as may be otherwise specified in this Contract for specific data items listed as not subject to this paragraph, that the Contracting Officer, an authorized representative, or JPL may, up to three years after acceptance of all items to be delivered under this Contract, inspect at the Contractor's facility any data withheld pursuant to subparagraph (g)(1) of this Article, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the first-tier subcontractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

**RIGHTS IN TECHNICAL PROPOSAL DATA** [CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI – 4/99] [FAR 52.227-23 – 6/87]

(This Article applies to contracts resulting from a proposal containing technical data. The Article does not cover rights to commercial or financial information contained in the successful proposal.)

It is agreed that as a condition of the award of this Contract, and notwithstanding the conditions of any notice appearing thereon, the Government and the Institute shall have the right to use, duplicate, and disclose, and have others so do, for any purpose whatsoever, the technical data contained in the proposals upon which this Contract and any future modifications are based.

**SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (S/SD/WOSB PLAN)** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 8/01] [FAR 52.219-9 – 8/96]

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

- (a) If there will be any subcontracting under this Contract and the basic or any modification exceeds \$500,000, (\$1,000,000 for construction of any public facility), the Contractor agrees to submit for JPL approval a Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (Plan) 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 Subcontracting Plan." The approved Plan and approved updates will be deemed incorporated into this Contract.
- (b) If a Plan is required under this Contract, SF 294, "Subcontracting Report for Individual Contracts," and SF 295, "Summary Subcontract Report," are deliverables, which must be submitted by the Contractor to the JPL Negotiator in accordance with the instructions on the forms.
- (c) It is understood and agreed that the failure of the Contractor to comply in good faith with the Article of this Contract entitled "Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns," or with any Plan required to be included in this Contract, shall be a material breach of this Contract.

**STOP WORK ORDER** [CT, FP-NR&D, FP-R&D, A-E – 8/01] [FAR 52.242-15 - 8/89]

- (a) JPL may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this Article. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, JPL shall either:
- (1) Cancel the stop work order; or
  - (2) Terminate the work covered by such order either for convenience of the Institute or the Government or, if appropriate, for default.
- (b) If a stop work order issued under this Article is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. JPL shall make an equitable adjustment in the delivery schedule, the contract amount, and in any other provisions of the Contract that may be affected, and the Contract shall be modified, in writing, accordingly, if:
- (1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and

- (2) The Contractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage; provided, that, if JPL decides the facts justify the action, it may receive and act upon the claim asserted at any time before final payment under this Contract.
- (c) If a stop work order is not canceled and the work covered by the order is terminated for the convenience of the Institute or the Government, JPL shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.
- (d) If a stop work order is not canceled and the work covered by the order is terminated for default, JPL shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

#### **SUBCONTRACTS** [CT, CREI – 4/99]

- (a) JPL reserves the right to require submission of any subcontract or purchase order, and related documentation, for advance consent; in such cases, JPL may, in its discretion, ratify in writing any subcontract, and such ratification shall constitute consent.
- (b) The Contractor agrees that no subcontract (including lower-tier subcontracts) placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in Part 15.404 of FAR and any corresponding implementing or supplementing provisions in the NFS, unless approved by JPL.
- (c) The Contractor shall give JPL immediate notice in writing of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation related in any way to this Contract with respect to which the Contractor may be entitled to reimbursement from JPL.
- (d) JPL may, in its discretion, specifically approve in writing any of the provisions of a purchase order or subcontract. However, such approval or the consent of JPL obtained as required by this Article shall not be construed to constitute a determination (i) of the acceptability of any subcontract terms and conditions; (ii) of the allowability of any cost under this Contract; or (iii) to relieve the Contractor of any responsibility for performing this Contract.

#### **SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 8/01] [FAR 52.244-6 – 10/95]

- (a) Definition.
  - (1) "Commercial item," as used in this Article, has the meaning contained in the "Definitions" Article and in FAR 52.202-1, "Definitions."
  - (2) "Subcontract," as used in this Article, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Contract.
- (c) Notwithstanding any other Article of this Contract except to the extent needed to satisfy the technical requirements and technical data (including software) deliverables under this Contract, the Contractor is not required to include any JPL provision or Article, other than those FAR provisions listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
  - (1) 52.222-26, Equal Opportunity (E.O. 11246);
  - (2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a)); and
  - (3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).
- (d) The Contractor shall include the terms of this provision, including this paragraph (d), in subcontracts awarded under this Contract.

#### **TERMINATION – COST** [CT – 4/99] [FAR 52.249-6 – 9/96]

- (a) JPL may terminate performance of work under this Contract in whole or, from time to time, in part, if:
  - (1) JPL determines that a termination is in the interest of the Institute or the Government.

- (2) The Contractor defaults in performing this Contract and fails to cure the default within 10 days (unless extended by JPL) after receiving a JPL notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) JPL shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Institute or the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Article of this Contract entitled "Excusable Delays," the rights and obligations of the parties will be the same as if the termination was for the convenience of the Institute or the Government.
- (c) After receipt of a Notice of Termination, and except as directed by JPL, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
  - (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this Article), except as necessary to complete the continued portion of the Contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to JPL, in the manner and to the extent directed by JPL, all right, title, and interest of the Contractor under the subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Contract; approval or ratification will be final for purposes of this Article.
  - (6) Transfer title (if not already transferred) and, as directed by JPL, deliver to JPL (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to JPL, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Contract, the cost of which the Contractor has been or will be reimbursed under this Contract.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by JPL, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Institute under this Contract, credited to the price or cost of the work, or paid in any other manner directed by JPL.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120 day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of FAR and any corresponding implementing or supplementing provisions in the NFS, the Contractor may submit to JPL a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by JPL. The Contractor may request JPL to remove those items or enter into an agreement for their storage. Within 15 days, JPL will accept the items and remove them or enter into a storage agreement. JPL may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Contractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the

Contractor within this six-month period. However, if JPL determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Contractor fails to submit the proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

- (g) Subject to paragraph (e) above, the Contractor and JPL may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and JPL fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, JPL shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
  - (1) All costs reimbursable under this Contract, not previously paid, for the performance of this Contract before the effective date of the termination, and such of those costs that may continue for a reasonable time with the approval of or as directed by JPL; however, the Contractor shall discontinue those costs as rapidly as practicable.
  - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subparagraph (1) above.
  - (3) The reasonable costs of settlement of the work terminated, including (i) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data; (ii) for the termination and settlement of subcontracts (excluding the amounts of such settlements); and (iii) storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory; provided, however, that if the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
  - (4) A portion of the fee payable under the Contract, determined as follows:
    - (A) If the Contract is terminated for the convenience of the Institute or the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the Contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
    - (B) If the Contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by JPL is to the total number of articles (or amount of services) of a like kind required by the Contract.
  - (5) If the settlement includes only fee, it will be determined under subparagraph (h)(4) above.
- (i) The cost principles and procedures in Part 31 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.
- (j) The determination by JPL of the amount, if any, due the Contractor by reason of the termination of this Contract, as provided in paragraphs (f) or (h) above or paragraph (l) below of this Article, shall not be final and conclusive with regard to the Contractor's right to pursue any available legal remedy in the event the Contractor disagrees with such determination, provided that, if the Contractor has failed to submit its claim within the time provided in paragraph (f) above, and has failed to request an extension of such time, the determination of JPL as to the amount due shall be final and conclusive.
- (k) In arriving at the amount due the Contractor under this Article, there shall be deducted:
  - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this Contract;
  - (2) Any claim which the Institute has against the Contractor under this Contract; and
  - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this Article and not recovered by or credited to the Institute.
- (l) The Contractor and the Institute must agree to any equitable adjustment in fee for the continued portion of the Contract when there is a partial termination and such adjustment shall be evidenced by a modification to this Contract.

- (m) (1) The Institute may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the Institute believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Institute upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid to the Institute. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Institute because of the circumstances.
- (n) The provisions of this Article relating to fee are inapplicable if this Contract does not include a fee.

**TERMINATION OF DEFINED BENEFIT PENSION PLANS** [CT, CREI – 4/99]

- (a) This Article is applicable if certified cost or pricing data is required or if any preaward or post-award cost determinations will be subject to FAR Part 31.
- (b) The Contractor shall promptly notify the JPL Negotiator in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(j)(4). The Contractor shall include the substance of this Article in all subcontracts under this Contract that meet the applicability requirement of FAR 15.408(g).

**TOXIC CHEMICAL RELEASE REPORTING** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.223-14 – 10/96]

(This Article is applicable to all contracts where the value of the contract and all options at the time of award is expected to exceed \$100,000.)

By entering into this Contract, the Contractor agrees to abide by and accept all of the Terms and Conditions found in the Federal Acquisition Regulations (FAR) at 52.223-14.

**TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 8/01] [NFS 1852.227-87 – 4/89]

(This Article applies to contracts and subcontracts in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130, or the Export Administration Regulations (EAR), 15 CFR PARTS 730-799 in accordance with the NASA Export Control Program.)

- (a) In the cooperative Space Station Freedom Program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR).
- (b) The Contractor agrees, when specifically directed in writing by the JPL Negotiator or an authorized JPL representative under this Contract, acting upon the written direction of the NASA Contracting Officer or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by NASA through the JPL Negotiator or an authorized JPL representative under this Contract.
- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with paragraph (b), 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.

- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the "Rights in Data" Article of this Contract, nor the protection of any proprietary technical data which may be available to the Contractor or any subcontractor under that Article.
- (e) The Contractor agrees to include this Article, including this paragraph (e), in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

**UNION DATA FOR ON-SITE CONTRACTORS** [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M – 2/00]

(This Article applies [i] to any time-and-material or labor-hour contract where the work is performed at a JPL-controlled facility and [ii] to any other contract for which any contractor personnel work in residence at a JPL-controlled facility. Work performed outside the United States is exempt from the requirements of this Article.)

The Contractor shall provide JPL-requested union information, including union information pertaining to its Subcontractors, if any, on the "Request for Union Data Regarding On-Site Contractors and Their Subcontractors," set forth below. A copy of this form (sample shown below), filled in, shall be returned to the cognizant negotiator's attention. Any changes in the data, such as the addition of a new union subcontractor, shall be provided to JPL through timely resubmission of the following form:

**REQUEST FOR UNION DATA REGARDING ON-SITE CONTRACTORS AND THEIR SUBCONTRACTORS**

1. Date:
2. Contract number:
3. Scheduled Contract completion date:
4. Contractor name:
5. Total number of on-site personnel:
6. Cognizant Negotiator:
7. Subcontractors under this Contract with union personnel working on-site at JPL-controlled facilities.

Number of Subcontractor Personnel at JPL Site:

<u>Subcontractor</u>	<u>Total Personnel</u>	<u>No. of Union Personnel</u>
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8. Brief description of scope of work and location of work site sufficient to locate the union contract and subcontract workers.
9.
  - a. Local union name: \_\_\_\_\_ Local No. (if any): \_\_\_\_\_
  - b. Number of on-site Contractor/subcontractor personnel represented:
  - c. Name, phone number and address of business agent representing the local union:
    - (1) Name:
    - (2) Phone:
    - (3) Address:
  - d. Expiration date of labor agreement:
  - e.
    - (1) If applicable, the employer association responsible for negotiating each agreement for Contractor/subcontractor:
    - (2) If applicable, the names of Contractor's/subcontractor's local employer representatives who take part in such negotiations:
10. Name, phone number and address of the Contractor's subcontractor's representative who is responsible for handling labor relations/human resources issues:
  - a. Name:
  - b. Phone:
  - c. Address:

*(Note: For items 8., 9., and 10., provide for each union and also for each on-site subcontract, as applicable.)*

**USE OF RURAL AREA SMALL BUSINESSES** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 2/00] [NFS 1852.219-74 – 9/90]

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

Incorporate by reference NFS 1852.219-74, Use of Rural Area Small Businesses.

**UTILIZATION OF SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS CONCERNS** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 4/99] [FAR 52.219-8 – 6/97]

(This Article is applicable when the Contract amount is expected to be over \$100,000, unless (i) a personal services contract is contemplated, (ii) a commercial items or services contract, or (iii) the Contract together with all its 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 FAR 52.219-8, Utilization of Small, Small Disadvantaged, and Women-Owned Small Businesses.

**YEAR 2000 COMPLIANCE REQUIREMENT - NEW WORK** [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [PIC 98-8 - 5/21/98]

(This provision is not applicable to contracts \$2,500 or less.)

The Statement of Work includes the following performance requirements:

- (a) **Definition.** “Year 2000 compliant,” as used in this provision, means that the information technology (hardware, software and firmware, including embedded systems or any other electro-mechanical or processor-based systems used in accordance with its associated documentation) accurately processes date and date-related data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, and, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date and date-related data with it.
- (b) (1) Any information technology provided, operated and/or maintained under this Contract is required to be Year 2000 compliant. To ensure this result, the Contractor shall provide documentation describing how the IT items or services demonstrate Year 2000 compliance, consisting of standard product literature or test reports for commercial items, test procedures, or other documentation, if any, otherwise specifically required in paragraph (b)(2).  
  
(2) (RESERVED)
- (c) The Contractor warrants that any IT items or services provided under this Contract that involve the processing of date and date-related data are Year 2000 compliant. If the Contract requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system.
- (d) The remedies available under this warranty shall include repair or replacement, at no additional cost to JPL (or if this is a cost-reimbursement contract, at no additional fee to JPL) and the Government, of any provided items or services whose non-compliance is discovered and made known to the Contractor in writing within 90 days after acceptance. In addition, all the other terms and limitations of the Contractor’s standard commercial warranty or warranties shall be available to JPL for the IT items or services acquired under this Contract. Nothing in this warranty shall be construed to limit any rights or remedies JPL may otherwise have under this Contract with respect to defects other than Year 2000 performance.
- (e) (RESERVED)

# MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF CONTRACTORS

- (a) Scope. This document prescribes the minimum requirements contractors must meet in establishing and maintaining control over Government property. It applies to contractors organized for profit and, except as otherwise noted, to nonprofit organizations. In order for the special requirements in this document governing nonprofit organizations to apply, the Contract must identify the Contractor as a nonprofit organization. If there is any inconsistency between this document and the terms of the Contract under which the Government property is provided, the terms of the Contract shall govern. JPL's Contractors are to respond to JPL as the prime contractor. All NASA directives do not necessarily apply to JPL. Specifically, directives pertaining to the use of NEMS tags and the NASA Form 1018 reporting period.
- (b) Definitions.
- (1) "Accessory item," as used in this document, means an item that facilitates or enhances the operation of plant equipment but which is not essential for its operation.
  - (2) "Agency-peculiar property," as used in this document, means Government-owned personal property that is peculiar to the mission of NASA (e.g., space property). It excludes Government material, special test equipment, special tooling, and facilities.
  - (3) "Auxiliary item," as used in this document, means an item without which the basic unit of plant equipment cannot operate.
  - (4) "Centrally reportable equipment," as used in this document, means that plant equipment, special test equipment (including components), special tooling, and non-flight space property (including ground support equipment) which is (i) generally commercially available and used as a separate item or component of a system, (ii) is valued at \$1,000 or more, and (iii) is identifiable by a manufacturer and model number.
  - (5) "Contractor-acquired property," as used in this document, means property acquired or otherwise provided by the Contractor for performing a contract with JPL and to which the Government has title.
  - (6) "Custodial records," as used in this document, means written memoranda of any kind, such as requisitions, issue hand receipts, tool checks, and stock record books, used to control items issued from tool cribs, tool rooms, and stockrooms.
  - (7) "Discrepancies incident to shipment," as used in this document, means all deficiencies incident to shipment of Government property to or from a contractor's facility whereby differences exist between the property purported to have been shipped and property actually received. Such deficiencies included loss, damage, destruction, improper status and condition coding, errors in identity or classification, and improper consignment.
  - (8) "Facilities," as used in this document, means property used for production, maintenance, research, development, or testing. It includes plant equipment and real property. It does not include material, special test equipment, special tooling, or agency-peculiar property.
  - (9) "Government property," as used in this document, includes JPL-furnished, Government-owned property and contractor-acquired property.
  - (10) "Government-furnished property (GFP)," as used in this document, means JPL-furnished, Government-owned property in the possession of or directly acquired by the Government and subsequently made available by JPL to the Contractor.
  - (11) "Individual item record," as used in this document, means a separate card, form, document or specific line(s) of computer data used to account for one item of property.
  - (12) "Material", as used in this document, means property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. It includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract.
  - (13) "Nonprofit organization," as used in this document, means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, which is not organized for profit, and from which no part of the net earnings inures to the benefit of any private shareholder or individual.

- (14) "Plant equipment," as used in this document, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.
- (15) "Property Administrator," as used in this document, means an authorized representative of the Contracting Officer or an authorized representative of JPL assigned to administer the contract requirements and obligations relating to Government property.
- (16) "Real property," as used in this document, means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.
- (17) "Salvage," as used in this document, means property that, because of its worn, damaged, deteriorated, or incomplete condition or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs, but has some value in excess of its scrap value.
- (18) "Scrap," as used in this document, means personal property that has no value except for its basic material content.
- (19) "Space property," as used in this document, means personal property which is peculiar to aeronautical and space programs of NASA and is not otherwise included in the categories of property in FAR 45.501 and any corresponding supplementing provisions of the NASA FAR SUPPLEMENT (NFS). It includes such items as aircraft, engines, space vehicles, and other similar components and related support equipment. The term "space property" is synonymous with the term "agency-peculiar property," as defined in paragraph (a)(2) above.
- (20) "Special test equipment," as used in this document, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.
- (21) "Special tooling," as used in this document, means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacements of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include consumable property, material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.
- (22) "Stock record," as used in this document, means a perpetual inventory record which shows by nomenclature the quantities of each item received and issued and the balance on hand.
- (23) "Utility distribution system," as used in this document, includes distribution and transmission lines, substations, or installed equipment forming an integral part of the system by which gas, water, steam, electricity, sewage, or other utility services are transmitted between the outside building or structure in which the services are used and the point of origin, disposal, or connection with some other system. It does not include communication services.
- (24) "Work-in-process," as used in this document, means material that has been released to manufacturing, engineering, design or other services under the contract and includes undelivered manufactured parts, assemblies, and products, either complete or incomplete.
- (c) Contractor Responsibility.
- (1) The Contractor is directly responsible and accountable for all Government property in accordance with the provisions of this Contract. This includes Government property in the possession or control of a subcontractor. The Contractor shall establish and maintain a system in accordance with this document to control, protect, preserve, and maintain all Government property. This property control system shall be in writing unless the Property Administrator determines that maintaining a written system is unnecessary. The system shall be reviewed and, if satisfactory, approved in writing by the property administrator.

- (2) The Contractor shall maintain and make available the records required by this document and account for all Government property until relieved of that responsibility. The Contractor shall furnish all necessary data to substantiate any request for relief from responsibility.
- (3) (A) The Contractor shall be responsible for the control of Government property hereunder upon:
- (i) Delivery by JPL of GFP into its custody or control;
  - (ii) Delivery, when property is purchased by the Contractor and the Contract calls for reimbursement by JPL (this requirement does not alter or modify contractual requirements relating to passage of title).
  - (iii) Approval of its claim for reimbursement by JPL or upon issuance for use in Contract performance, whichever is earlier, of property withdrawn from Contractor-owned stores and charged directly to the Contract. This is not applicable to fixed-price contracts);
  - (iv) Acquisition by the Government of title to property pursuant to specific contractual provisions, or as a result of termination of a contract, or change orders issued under a contract. For purposes of property control, such property shall, unless otherwise provided by the Contract, be considered Government property upon acceptance of title by JPL.
- (B) Property to which the Government has acquired a lien or title solely as a result of advance, progress, or partial payments is not subject to the requirements of this document.
- (4) The Contractor shall require subcontractors that are provided Government property under this Contract to comply with the requirements of this document. Procedures for assuring subcontractor compliance shall be included in the Contractor's property control system.
- (5) If the property administrator finds any portion of the Contractor's property control system to be inadequate, the Contractor must take any necessary corrective action before the system can be approved. If the Contractor and property administrator cannot agree regarding the adequacy of control and corrective action, the matter shall be referred to the Contracting Officer.
- (6) The Contractor shall promptly report all Government property in excess of the amounts needed to complete full performance under this Contract.
- (7) When unrecorded Government property is found, both the cause of the discrepancy and actions taken or needed to prevent recurrence shall be determined and reported to the property administrator.
- (d) Receipts for Government Property. Receipts for Government property shall comply with the instructions for preparation of NASA Form 1018, Report of Government-Owned/Contractor-Held Property (see NFS 18-45.7101).
- (e) Discrepancies Incident to Shipment.
- (1) GFP. If overages, shortages, or damages are discovered upon receipt of GFP, the Contractor shall provide a statement of the condition and apparent causes to the property administrator and to JPL. Only that quantity of property actually received will be recorded on the official records.
  - (2) Contractor-acquired property. The Contractor shall take all actions necessary in adjusting overages, shortages, or damages in shipment of Contractor-acquired property from a vendor or supplier. However, when the shipment has moved by Government bill of lading and carrier liability is indicated, the Contractor shall report the discrepancy in accordance with paragraph (1) above.
- (f) The policy on the provision of Government property (both Government-furnished and contractor acquired) is prescribed in FAR 45.102 and NFS 18-45.102.
- (g) GFP. JPL will describe all GFP in the Contract Schedule or specifications, regardless of property category. Additional GFP must be described in a modification to the Contract. Furthermore, to obtain additional Government-furnished facilities, the Contractor must submit a written statement prescribed by FAR 45-302.1(a)(4) and any corresponding supplementing provisions of the NFS.
- (h) Contractor-Acquired Property. The acquisition (and fabrication) of Government property is subject to the following conditions, depending on category of property:
- (1) Centrally Reportable Equipment Not Otherwise Identified (unless for incorporation into flight qualified or flight monitoring deliverable end items).
    - (A) The Contractor shall provide JPL, at the earliest possible date, a detailed listing of requirements for screening of existing Government inventories. DD Form 1419, DOD Industrial Plant Equipment Requisition, will be prepared for each item of centrally reportable equipment to be acquired and

forwarded to JPL for screening of the NASA Equipment Management System and other Government-available-equipment list for each item required, at least 30 days prior to beginning fabrication of or placement of a purchase order or subcontract for such equipment. In the event a certificate of non-availability is not received within such period, the Contractor may proceed to acquire the equipment or components, subject to any other applicable provisions of this Contract.

- (B) Instructions for preparing the DD Form 1419 are contained in NFS 18-45.7103.
  - (C) See page 8(q)(1) DD Form 1342 (DOD Property Record) for reporting property acquisitions.
- (2) Facilities.
- (A) Prior JPL approval, if not already described in a contract Schedule as Contractor acquired.
  - (B) Submission of DD Form 1419, "DOD Industrial Plant Requisition," and return of Certificate of Nonavailability if it qualifies as Centrally Reportable Equipment (CRE).
  - (C) Submission of a written statement prescribed by FAR 45.302-1(a)(4) and any corresponding supplementing provisions of the NFS.
- (3) Material. If a subcontracts clause is part of the Contract, advance notification to JPL and JPL consent as may be required by that clause.
- (4) Agency Peculiar.
- (A) If a subcontracts clause is part of the Contract, advance notification to JPL and JPL consent as may be required by that clause.
  - (B) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.
- (5) Special tooling.
- (A) If a "Subcontracts" clause is part of the Contract, advance notification to JPL and JPL consent as may be required by that clause.
  - (B) If a fixed-price contract, submission of the list to JPL within 60 days after delivery of the first production end items (or later as prescribed by JPL) unless already identified in the solicitation.
  - (C) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.
- (6) Special test equipment.
- (A) JPL approval 30 days in advance if not identified in the Contract (on negotiated procurements).
  - (B) Submission of DD Form 1419 and return of Certificate of Nonavailability if it (or any component) qualifies as CRE.
- (i) Relief from Responsibility.
- (1) Unless the Contract or JPL provides otherwise, the Contractor shall be relieved of property control responsibility for Government property by:
    - (A) Reasonable and proper consumption of property in the performance of the Contract as determined by the Property Administrator or JPL;
    - (B) Retention by the Contractor, with the approval of JPL and the Contracting Officer, of property for which the Government has received consideration;
    - (C) The authorized sale of property, provided the proceeds are credited to the Contract amount or paid in such a manner as JPL and the Contracting Officer may direct;
    - (D) Shipment from the Contractor's plant, under JPL's and the Government's instructions, except when shipment is to a subcontractor or other location of the Contractor; or
    - (E) A determination by JPL and the Contracting Officer of the Contractor's liability for any property that is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, if:
      - (i) The determination is furnished to the Contractor in writing;

- (ii) JPL is reimbursed where required by the determination; and
  - (iii) Property rendered unserviceable by damage is properly disposed of, and the determination is cross-referenced to the shipping or other documents evidencing disposal.
- (2) Nonprofit organizations are relieved of responsibility for Government property when title to the property is transferred to the Contractor.

(j) Contractor's Liability.

- (1) Subject to the terms of the Contract and the circumstances surrounding the particular case, the Contractor may be liable for shortages, loss, damages, or destruction of Government property. The Contractor may also be liable when the use or consumption of Government property unreasonably exceeds the allowances provided for by the Contract, the bill of material, or other appropriate criteria.
- (2) The Contractor shall report in writing all cases of loss, damage, or destruction of Government property in its possession or control to the property administrator and JPL as soon as such facts become known. A written report shall also be furnished when completed and accepted products or end items are lost, damaged, or destroyed while in the Contractor's possession or control.
- (3) The Contractor shall require any of its subcontractors possessing or controlling Government property accountable under the Contract to investigate and report all instances of loss, damage, or destruction of such property.

(k) Records and Reports of Government Property.

- (1) The Contractor's property control records shall constitute the Government's and JPL's official property records unless an exception has been authorized. The Contractor shall establish and maintain adequate control records for all Government property, including property provided to and in the possession or control of a subcontractor. The property control records specified in this section are the minimum required by the Government and JPL. Unless the property administrator or JPL directs otherwise, when a subcontractor has an approved property control system for Government property provided under its own prime contracts, the Contractor shall use the records created and maintained under that system.
- (2) The Contractor's property control system shall provide financial accounts for Government-owned property in the Contractor's possession or control. The system shall be subject to internal control standards and be supported by property records for such property.
- (3) Official records must identify all Government property and provide a complete, current, auditable record of all transactions. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized Government and JPL personnel.
- (4) Separate property records for each contract are desirable, but a consolidated property record may be maintained if it provides the required information.
- (5) Special tooling and special test equipment fabricated from materials that are the property of the Government shall be recorded as Government-owned immediately upon fabrication. Special tooling and special test equipment fabricated from materials that are the property of the Contractor shall be recorded as Government property at the time title passes to the Government upon acceptance by JPL.
- (6) Property records of the type established for components acquired separately shall be used for serviceable components permanently removed from items of Government property as a result of modification.
- (7) The Contractor's property control system shall contain a system or technique to locate any item of Government property within a reasonable period of time.

(l) Basic Information. Unless summary records are used as authorized under paragraph (p)(1) below, the Contractor's property control records shall provide the following basic information for every item of Government property in the Contractor's possession, regardless of value (other sections in this document require additional information for specific categories of Government property):

- (1) The name, description (model number, manufacturer, serial number), National Stock Number (if furnished by the Government or available in the property control system) and property identification number;
- (2) Acquisition date;
- (3) Quantity received (or fabricated), issued, and on hand;
- (4) Unit price (and unit of measure);

- (5) This Contract or Purchase Order number;
- (6) Location;
- (7) Disposition; and
- (8) Posting reference and date of transaction.

(m) Records of Pricing Information.

- (1) Requirement for unit prices.
  - (A) The Contractor's property control system shall contain the unit price for each item of Government property except as provided in (2) below. When a contractor records the unit price of property on other than the quantitative inventory records, those supplementary records shall become part of the property records.
  - (B) (Note: This paragraph (B) does not apply to nonprofit organizations.) The requirement that unit prices be contained in the official property records does not apply to those separate property records located at a contractor's sites and subcontractor plants; provided, that:
    - (i) Records maintained by the contractor at its primary site include unit prices; and
    - (ii) The contractor agrees to furnish actual or estimated unit prices to the secondary site or subcontractor as the need arises.
  - (C) When definite information as to unit price cannot be obtained, reasonable estimates will be used.
- (2) Determining unit price.
  - (A) Contractor-acquired and contractor-fabricated property. Except for items fabricated by nonprofit organizations for research and development purposes, the unit price of contractor-acquired and contractor-fabricated property shall be determined in accordance with the system established by the Contractor in conformance with appropriately applied accounting principles as described in Section 31 of the FAR and any corresponding implementing or supplementing provisions in the NFS. Generally, separate unit prices should be applied to items of special tooling and special test equipment fabricated or acquired by the Contractor. However, if the Contractor's accounting system is acceptable, and if maintaining detailed cost records results in excessive accounting cost or is otherwise impracticable, group pricing may be used for special tooling, special test equipment, and work-in-process in accordance with the Contractor's acceptable cost accounting system. All processed material, fabricated parts, components, and assemblies charged to the Contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered as work-in-process for this purpose.
  - (B) GFP. The Government or JPL shall determine and furnish to the Contractor the unit price of GFP. Transportation and installation costs shall not generally be considered as part of the unit price for this purpose. Normally, the unit price of Government-furnished property will be provided on the document covering shipment of the property to the Contractor. In the event the unit price is not provided on the document covering shipment of the property to the Contractor, the Contractor will request it from JPL.

(n) Records of Material.

- (1) General. All Government material furnished to the Contractor, as well as other material to which title has passed to the Government by reason of allocation from Contractor-owned stores or purchase by the Contractor for direct charge to a JPL contract, shall be recorded in accordance with the Contractor's approved property control system and the requirements of this section.
- (2) Consolidated stock record. When a contractor has more than one JPL contract under which Government material is provided, a consolidated record for materials may be authorized by the property administrator, provided, the total quantity of any item is allocated to each contract by contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.
- (3) Custodial records. The Contractor shall maintain custodial records for tool crib items, guard force items, protective clothing, and other items issued to individuals for use in their work.
- (4) Use of receipt and issue documents. (Note: This paragraph (4) does not apply to nonprofit organizations.) The property administrator may authorize the Contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Government-provided

material that is issued for immediate consumption and is not entered in the inventory as a matter of sound business practice. This method of control may be authorized for:

- (A) Material charged through overhead, including but not limited to items used in manufacturing, maintenance, and office supplies;
  - (B) Material under research and development contracts;
  - (C) Subcontracted or outside production items;
  - (D) Nonstock or special items (these items are considered to be those whose procurement cycle is irregular and infrequent);
  - (E) Items that are produced for direct charge to a contract, or are acquired and issued for installation upon receipt, and involve no spoilage; and
  - (F) Items issued from contractor-owned inventory direct to production or maintenance, etc.
- (5) Material issued directly upon receipt. (Note: This paragraph (5) applies only to nonprofit organizations.)
- (A) Under fixed-price contracts, the Contractor's documents evidencing receipt and issue will be accepted as property control records for Government-furnished material issued directly by the Contractor upon receipt so as to be considered consumed under the Contract.
  - (B) Under cost-reimbursement contracts, Government invoices, contractor's purchase documents, or other evidence of acquisition and issue will be accepted as adequate property records for material furnished to or acquired by the Contractor and issued directly so as to be considered consumed under the Contract.
- (o) Records of Special Tooling and Special Test Equipment. (Note: The special tooling requirements of this section (o) do not apply to nonprofit organizations except for paragraph (3).)
- (1) The Contractor's property control system shall provide the basic information listed in section (l) above regarding each item of Government-owned special tooling and special test equipment, including any general purpose test equipment incorporated as components in such a manner that removal and reuse may be feasible and economical.
  - (2) If the Contractor uses group pricing of special tooling or special test equipment, as recognized in paragraph (m)(2) above, unit prices may be computed when required.
  - (3) In the case of special tooling acquired or fabricated by nonprofit organizations or furnished by JPL or the Government to nonprofit organizations for research and development, the Contract document will be accepted as adequate property control records.
  - (4) Records identifying special tooling and special test equipment shall include the identification number and item on which used.
  - (5) The Contractor shall, when specified by the Contract, identify and report special tooling and special test equipment by retention category (e.g., assembly tooling or critical tooling for spares or replacements).
- (p) Records of Plant Equipment.
- (1) The Contractor shall maintain individual item records for each item of plant equipment having a unit cost of \$5,000 or more. Summary stock records may be maintained for plant equipment costing less than \$5,000 per unit, except when the Property Administrator or JPL determines that individual item records are necessary for effective control, calibration, or maintenance.
  - (2) In addition to the information required in section (l) above, the Contractor's records of Government-owned plant equipment, regardless of value, shall include:
    - (A) Federal Supply Code for the manufacturer (as listed in Cataloging Handbook H4-1 and H4-2) (available from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402);
    - (B) Federal Supply Classification (Cataloging Handbooks H2-1, H2-2, and H2-3) (available from GPO);
    - (C) The original manufacturer's model or part number.
  - (3) For each item of Government-owned plant equipment having a unit cost of \$5,000 or more, the Contractor shall, in addition to the requirements of (2) above, include:
    - (A) Serial number and year built (when available);

- (B) Government identification/tag number; and
- (C) Acquisition and disposition document references and dates.
- (4) JPL may unilaterally determine that the information in paragraph (3)(A) and (B) above should be recorded in the property records for plant equipment costing less than \$5,000.
- (5) Accessory and auxiliary equipment shall be recorded on the record of the associated item of plant equipment. If the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded either in an individual item record or in a summary stock record. When accessory and auxiliary items are permanently separated from the basic item of plant equipment, the unit price of the basic item shall be appropriately reduced.
- (q) Special Reports of Government Property (Reporting Centrally Reportable Equipment).
  - (1) JPL requires that Contractor-acquired equipment as defined in (b)(4) above, "Centrally Reportable Equipment," be reported to JPL. A DD Form 1342, "DOD Property Record," shall be submitted (i) at the time of receipt and acceptance of accountability, and (ii) when major changes occur in the data initially submitted to JPL.
  - (2) The Contractor shall report excess Government property to JPL on Inventory Schedules (Standard Forms 1426-1434) when the property is no longer required for contract performance. (Reference paragraph (dd)(4)(A) of this form.)
  - (3) Each year the Contractor will be provided a verification listing of property accountable to the Contract. At the direction of JPL, the Contractor shall verify the correctness of this listing or provide the necessary corrections.
- (r) Nonstandard Unique Equipment. For nonstandard unique equipment having a value of \$5,000 or more which is either fabricated by the Contractor or acquired from sources other than NASA or JPL, the Contractor shall provide the following information when such equipment becomes excess to the Contractor's needs:
  - (1) Nomenclature;
  - (2) Contractor-assigned identification number;
  - (3) A brief functional description, include sketches, schematics, performance characteristics, operational manuals, etc., if available;
  - (4) List of major components having a unit value of \$5,000 or more; and
  - (5) Cost.
- (s) Records of Real Property.
  - (1) The Contractor shall maintain an itemized record of the description, location, acquisition cost, and disposition of all Government real property (including unimproved real property); all alterations, all construction work, and sites connected with such alteration and construction, acquired by purchase, lease, or otherwise. These records, including maps, drawings, plans, specifications, and supplementary data where necessary, shall (i) be complete, (ii) show the original cost of the property and improvements and the cost of any changes and additions, and (iii) be appropriately indexed.
  - (2) Costs incurred by the Contractor or JPL for new construction, including erection, installation, or assembly of real property in possession of the Contractor for JPL, shall be capitalized in the official Government real property records and financial accounts maintained by the Contractor for JPL.
  - (3) Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements, including applicable portions of capital maintenance, that increase the value, life, utility, capability, or serviceability of Government real property shall be capitalized.
  - (4) Costs incurred for portable buildings or facilities specifically constructed for tests that involve destruction of the facility shall not be capitalized in the Government real property records or financial accounts.
  - (5) Costs incurred for maintenance, repair, or rearrangement to maintain the Government real property in good physical condition, utility, capacity, or serviceability shall be charged to expense, and the real property records shall not be affected.

- (6) When Government-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned-in-place, or condemned, the financial accounts shall be reduced by the presently recorded cost and the real property records annotated with a supporting statement, including pertinent facts.
- (t) Records of Scrap or Salvage.
- (1) The Contractor shall maintain records of all scrap or salvage generated, except as provided in section (bb) below. These records shall conform to the Contractor's established system of scrap and salvage control approved by the property administrator, who shall take into consideration the need for protecting the Government's and JPL's interest in the proration, disposition, and allocation of proceeds resulting therefrom.
  - (2) The Contractor's property control system shall provide the following information:
    - (A) Contract or purchase order number, if practical, from which the scrap or salvage derived;
    - (B) Nomenclature or description of salvable items or classification (material content) of scrap;
    - (C) Quantity on hand;
    - (D) Posting reference and date of transaction; and
    - (E) Disposition, including record of JPL authorization.
- (u) Records of Related Data and Information. The Contractor shall maintain property control and accountability, in accordance with sound business practice, of manufacturing or assembly drawings; installation, operation, repair, or maintenance instructions; and other similar information furnished to the Contractor by the Government or JPL or generated or acquired by the Contractor under the Contract and for which title vests in the Government. The requirements of this document do not otherwise apply to such property.
- (v) Records of Completed Products. The Contractor shall maintain a record of all completed products produced under a contract as follows:
- (1) When there is no time lapse between JPL inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of a summary of quantities accepted and shipped. When end items are accepted by JPL and stored with the Contractor awaiting shipment, the record shall identify quantities stored, location, and disposition action.
  - (2) On contracts that provide for the Contractor to retain completed products for further use under the Contract or other contracts, such items shall be considered "GFP" upon acceptance and shall be recorded as required by this section.
  - (3) When completed products are returned to a contractor under the terms of a warranty clause, the contractor shall maintain, by contract, a record containing a description of the items involved, quantities received and returned to JPL, and other pertinent data necessary to determine that a proper accounting for all property has been made.
- (w) Records of Transportation and Installation Costs of Plant Equipment. (Note: This section (w) does not apply to nonprofit organizations.)
- (1) Transportation costs.
    - (A) The Contractor shall record within the property control system the transportation and installation costs directly borne by JPL for each item of Government-owned plant equipment with an acquisition cost of \$5,000 or more. The Contracting Officer through JPL may require the Contractor to provide such recorded costs for use in computing rental charges.
    - (B) If transportation costs are not included in the price of equipment delivered, the Contractor shall contact the property administrator or JPL for instructions for obtaining applicable freight data.
  - (2) Installation costs.
    - (A) When the Contractor performs installation, the cost shall be computed in accordance with the Contractor's accounting system (if the system is acceptable for other Contract cost determination purposes) and recorded in the property record.
    - (B) When installation is subcontracted, the Contractor shall record the cost paid to the subcontractor in the property record.
    - (C) When installation costs are included in the price of equipment delivered to the using location, the property records should be so annotated.

- (x) Records of Misdirected Shipments. The Contractor's property control system shall provide the following information regarding each misdirected shipment of Government property received:
- (1) Identity of shipment, such as shipping document or bill of lading;
  - (2) Origin of shipment;
  - (3) Content (items in the shipment) per shipping documents, if available;
  - (4) Location; and
  - (5) Disposition.
- (y) Records of Property Returned for Rework.
- (1) The Contractor shall maintain quantitative records of property returned for processing to assure control from time of receipt through return of the items to JPL. The Contractor shall establish item records under its property control system and shall include the information required in section (l) above.
  - (2) The records shall specify the quantity of units returned to JPL and the quantity otherwise disposed of with proper authority.
- (z) Reports of Government Property.
- (1) Property accounts. The Contractor's property control system shall be such as to provide annually the total acquisition cost of Government property for which the Contractor is accountable in the following classifications in accordance with instructions in NFS 18-45.71:
    - (A) Land and rights therein;
    - (B) Buildings;
    - (C) Other structures and facilities;
    - (D) Leasehold improvements;
    - (E) Construction in progress;
    - (F) Equipment;
    - (G) Special test equipment;
    - (H) Special tooling;
    - (I) Agency peculiar;
    - (J) Material; and
    - (K) Contract work in process.
  - (2) Facilities, special tooling, equipment, and special test equipment. The Contractor's accounts covering items in paragraphs (1)(A) through (I) above will be susceptible to local reconciliation in totals and subtotals as to whether Contractor-acquired or Government-furnished.
  - (3) Agency-peculiar property. Includes actual or estimated costs of completed items, systems and subsystems, spare parts and components unique to NASA aeronautical and space programs. Examples include aircraft, engines, satellites, instruments, rockets, prototypes and mock-ups. The amount of property, title to which vests in the Government as a result of progress payments to fixed-price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property.
  - (4) Material and contract work in process. The Contractor's property control system shall be such as to provide the dollar value of items in paragraphs (1) (J) and (K) above for which it is accountable, regardless of value. Includes the costs of all work-in-process and excludes the costs of completed items reported in other categories.
  - (5) Submission of reports. The Contractor shall submit a completed NASA Form 1018, "NASA Property in the Custody of Contractors," or equivalent, (or negative report) annually to JPL. Failure to submit the report when due (date to be determined by JPL) may be deemed noncompliance with contract requirements, and final payment may be withheld in accordance with the Article entitled "Allowable Cost and Payment."

(aa) Identification.

- (1) The Contractor shall identify, mark, and record all Government property promptly upon receipt, unless exempted by this section, and shall record assigned numbers on all applicable documents pertaining to the property control system. NASA NEMS tags shall be affixed to property as directed by JPL. Markings shall be removed or obliterated when Government property is sold, scrapped, or donated.
- (2) All Government material and plant equipment having an acquisition cost less than \$5,000 shall be identified as Government property except in those cases where:
  - (A) No material or plant equipment of the same type costing less than \$5,000 at the same location is owned by the Contractor or its employees.
  - (B) Adequate physical control is maintained over protective clothing, tool crib, guard force, and other items issued to individuals for use in their work;
  - (C) Property is of bulk type, or its general nature of packing or handling precludes adequate marking; or
  - (D) Property is commingled, as authorized by section (bb) below.
- (3) In accordance with procedures approved by JPL, the Contractor shall mark Government-owned special tooling and special test equipment with a serial number and identification number and an indication of NASA ownership, including the recognition that JPL is responsible for funding and control of the property when appropriate. NASA NEMS tags shall be affixed to property as directed by JPL. If marking will damage the equipment or is otherwise impracticable, the Contractor shall promptly report the problem to the property administrator. The Contractor shall mark in a manner similar to plant equipment all components of special test equipment that have an acquisition cost of \$5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.
- (4) The Contractor shall identify Government-owned plant equipment as such, unless (i) summary records are used as authorized under paragraph (p)(1) above, (ii) it is excluded under paragraph (aa)(2) above, or (iii) when the size or nature of the equipment makes identification impracticable. (Excepted items shall be entered and described on the equipment property record.) Property shall be identified by a legible, permanent, conspicuous, and tamper-proof method (e.g., decals, plates, stamping, etc.). Identification shall consist of a serial number and an indication of NASA ownership (unless already properly identified as NASA property). NASA NEMS tags shall be affixed to property as directed by JPL.
- (5) Accessory or auxiliary equipment associated with a specific item of plant equipment and recorded on the property records need not be marked with an identification number, unless necessary to assure its return with the associated basic item.

(bb) Segregation of Government Property. Government property shall be kept physically separate from Contractor-owned property. However, when advantageous to the Government or JPL and consistent with the Contractor's authority to use such property, the property may be commingled:

- (1) When the Government property is special tooling, special test equipment, or plant equipment clearly identified and recorded as Government property;
- (2) When approved by the property administrator in connection with research and development contracts;
- (3) When (i) scrap of a uniform nature is produced from both Government-owned and Contractor-owned material and physical segregation is impracticable, (ii) scrap produced from Government-owned material is insignificant in consideration of the cost of segregation and control, or (iii) Government contracts involved are fixed-price and provide for the retention of the scrap by the Contractor; or
- (4) When otherwise approved by the property administrator.

(cc) Physical Inventories. The Contractor shall periodically physically inventory all Government property (except materials issued from stock for manufacturing, research, design, or other services required by the Contract) in its possession or control and shall cause subcontractors to do likewise. Physical inventories consist of sighting, tagging or marking, describing, recording, reporting, and reconciling the property with the records. The Contractor, with the approval of JPL, shall establish the type, frequency, and procedures. Type and frequency of inventory should be based on the Contractor's established practices, the type and use of the Government property involved, or the amount of Government property involved and its monetary value, and the reliability of the Contractor's property control system. Type and frequency of physical inventories normally will not vary between contracts being performed by the Contractor, but may vary with the types of property being controlled. Personnel who perform the physical inventory shall not be the same individuals who maintain the property

records or have custody of the property unless the Contractor's operation is too small to do otherwise. JPL contractors shall complete reconciliations of inventories described in this section (cc) with the official property records and shall submit reports to the property administrator within 30 days after the completion of an inventory. All instances of loss of property and discovery of unrecorded property shall be investigated by the Contractor to determine (i) the cause of the discrepancy and (ii) actions needed to prevent recurrence of the discrepancy. It may be determined by the property administrator that JPL will perform the physical inventory.

(dd) Inventories upon Termination or Completion.

- (1) General. Immediately upon termination or completion of a contract, the Contractor shall perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property applicable to the contract, unless the requirement is waived as provided in paragraph (2) below.
- (2) Exception. The requirement for physical inventory at the completion of a contract may be waived by the property administrator when the property is authorized for use on a follow-on contract; provided, that:
  - (A) Experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and
  - (B) The Contractor provides a statement indicating that record balances have been transferred in lieu of preparing a formal inventory list and that the Contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.
- (3) Listings for disposal purposes. (Note: This paragraph (3) applies only to nonprofit organizations.)
  - (A) Standard items that have been modified may be described on listings for disposal purposes as standard items with a general description of the modification.
  - (B) Items that have been fabricated, such as test equipment, shall be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.
- (4) Preparation of inventory schedule.
  - (A) Subsequent to termination or completion of this Contract, or determination that property is no longer required for contract performance, the Contractor shall prepare and submit to JPL appropriate inventory schedules as specified in FAR 45.606 and any corresponding supplementing provisions of the NFS (except that in FAR 45.606 the term "plant clearance officer" shall be deemed to mean "property administrator") which reflect all remaining property purchased, fabricated, or constructed with Contract funds and/or property supplied to the Contractor by JPL for the performance of this Contract. The schedules will reflect an appropriate nomenclature, description, quantity, acquisition cost, FSC (Federal Supply Classification), and condition code for each item of property.
  - (B) Inventory schedules shall be signed by an authorized representative of the Contractor, prior to submittal to JPL for disposal action.
  - (C) When no Government property has been furnished to or acquired by the Contractor under this contract, inventory schedules will not be required; instead, a properly completed Property Close-out Certificate, form JPL 0948 (see Exhibit 1), shall be submitted.
- (5) Disposition of residual property.
  - (A) Upon submittal of four executed copies of the appropriate inventory schedules to JPL, screening and disposal action will be initiated. Additional copies of the appropriate inventory schedules shall be furnished upon request.
  - (B) Disposition of residual property shall be made in accordance with specific instructions furnished by the Plant Clearance Officer or the JPL Property Administrator.
- (6) A Property Close-out Certificate, JPL form 0948, or equivalent shall be completed, signed by the Contractor's authorized representative and returned to JPL prior to final payment being effected.

(ee) Reporting Results of Inventories. The Contractor shall, as a minimum, submit the following to JPL promptly after completing the physical inventory:

- (1) A listing that identifies all discrepancies disclosed by a physical inventory;
- (2) A signed statement that physical inventory of all or certain classes of Government property was completed on a given date and that the official property records were found to be in agreement except for discrepancies reported.

- (ff) Quantitative and Monetary Control. When requested by JPL, the Contractor's reports of results of physical inventory shall be prepared on a quantitative and monetary basis and segregated by categories of property.
- (gg) Care, Maintenance, and Use. The Contractor shall be responsible for the proper care, maintenance, and use of Government property in its possession or control from the time of receipt until properly relieved of responsibility, in accordance with sound industrial practice and the terms of the Contract. The removal of Government property to storage, or its contemplated transfer, does not relieve the Contractor of these responsibilities.
- (hh) Contractor's Maintenance Program.
- (1) Consistent with the terms of the Contract, the Contractor's maintenance program shall provide for:
    - (A) Disclosure of need for and the performance of preventive maintenance;
    - (B) Disclosure and reporting of need for capital rehabilitation; and
    - (C) Recording of work accomplished under the program.
  - (2) Preventive maintenance is maintenance performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective preventive maintenance program shall include at least:
    - (A) Inspection of buildings at periodic intervals to assure detection of deterioration and the need for repairs;
    - (B) Inspection of plant equipment at periodic intervals to assure detection of maladjustment, wear, or impending breakdown;
    - (C) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;
    - (D) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;
    - (E) Removal of sludge, chips, and cutting oils from equipment that will not be used for a period of time;
    - (F) Taking necessary precautions to prevent deterioration caused by contamination, corrosion, and other substances; and
    - (G) Proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.
  - (3) The Contractor's maintenance program shall provide for disclosing and reporting the need for major repair, replacement, and other capital rehabilitation work for Government property in its possession or control.
- (ii) Use of Government Property. The Contractor's procedures shall be in writing and adequate to assure that Government property will be used only for those purposes authorized in the Contract.
- (jj) Property in Possession of Subcontractors. The Contractor shall require any of its subcontractors possessing or controlling Government property to adequately care for and maintain that property and assure that it is used only as authorized by the Contract. The Contractor's approved property control system shall include procedures necessary for accomplishing this responsibility.
- (kk) Shipment of Government Property. Copies of DD Form 1149 or comparable documents shall be forwarded to the JPL Property Administrator upon shipment.
- (ll) Audit of Property Control System. The Contractor's Government property control system may be audited by the Government or JPL as frequently as conditions warrant. These audits may take place at any time during Contract performance, upon Contract completion or termination, or at any time thereafter during the period the Contractor is required to retain such records. The Contractor shall make all such records and related correspondence available to the auditors.



**Jet Propulsion Laboratory**  
California Institute of Technology  
4800 Oak Grove Drive  
Pasadena, California 91109-8099  
(818) 354-4321

## PROPERTY CLOSE-OUT CERTIFICATE

The undersigned Contractor, having completed the work called for by Contract No. \_\_\_\_\_ dated \_\_\_\_\_, with the California Institute of Technology, Jet Propulsion Laboratory, certifies that:

*(check one, as appropriate)*

All Government property (as defined in FAR 45.101) has been disposed of by the Contractor and its subcontractors, in accordance with the terms of the Contract.

No Government property was furnished to or acquired by the Contractor or its subcontractors.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**Jet Propulsion Laboratory**  
California Institute of Technology  
4800 Oak Grove Drive  
Pasadena, California 91109-8099  
(818) 354-4321

## **RELEASE OF INFORMATION**

This Contract with the Jet Propulsion Laboratory (JPL) constitutes a subcontract under a prime contract between the California Institute of Technology and the National Aeronautics and Space Administration (NASA). It is NASA's policy to provide the widest practical dissemination of information on all of its activities. Since 90% of NASA's research and development effort is performed by private industry, contractors and subcontractors have played a large role in this process.

In accordance with this policy, the Contractor may want to issue press releases or plan publicity and advertising from time to time, and the Contractor will be expected to respond to queries from information media.

Close coordination in all of these matters is required, and JPL requires that all materials (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL be reviewed by JPL for technical accuracy prior to issuance or use.

To expedite this review, the Contractor shall send the materials to the JPL Media Relations Office, mail stop 186-120, stating the Contractor's deadlines and referencing this Contract number.

In the event this Contract is a cost-reimbursement type contract, review by JPL shall not constitute approval for reimbursement of expenditures made in connection with publicity or advertising releases. Any such expenditures remain subject to applicable cost principles.

Nothing contained herein shall be deemed to change existing requirements relating to the release of classified information.





## **NOTIFICATION TO PROSPECTIVE CONTRACTORS 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 contractors 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/contractor or prospective supplier/contractor 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.



## CERTIFICATIONS

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

### **I. CERTIFICATION OF NONSEGREGATED FACILITIES**

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- (b) By the submission of an offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.
- (c) By submission of the offer, the offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
  - (1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
  - (2) Retain such certifications in its files; and
  - (3) Forward this certification and the following notice to the proposed subcontractors:

#### NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

A Certificate of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontractor for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

- (d) By commencing performance of the Contract work, the selected contractor certifies to the Nonsegregated Facilities provisions above.

### **II. CERTIFICATION OF ANTI-KICKBACK COMPLIANCE**

(A Certification of Anti-Kickback Compliance must be submitted prior to award.)

By submission of an offer, the offeror certifies that it has read the General Provision entitled "Anti-Kickback Procedures," contained in the solicitation and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the Contract. By commencing performance of the Contract work, the selected contractor certifies to Anti-Kickback Compliance.

### **III. CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE**

(The Contractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it complies with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this Contract. By commencing performance of the Contract work, the selected contractor certifies to the Americans with Disabilities Act compliance.

**IV. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS  
TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

(The following certification applies to all offers and awards in excess of \$100,000.)

- (a) The definitions and prohibitions contained in the General Provision Article "Limitation on Payments to Influence Certain Federal Transactions" are hereby incorporated by reference in paragraph (b) of this Certification.
- (b) By submission of an offer, the offeror certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
  - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
  - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," to the JPL Contract Negotiator; and
  - (3) He or she will include the language of this Certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to civil penalty of not less than \$20,000 and not more than \$100,000, for each such failure.

**V. CERTIFICATION OF FULL DISCLOSURE BY THE CONTRACTOR/OFFEROR  
REGARDING WHETHER IT ANTICIPATES BEING OR IS DEBARRED,  
SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE U.S. FEDERAL  
GOVERNMENT AT TIME OF AWARD**

(This certification applies to contracts with a contract value exceeding \$25,000.)

- (a) By submission of an offer, the offeror certifies that it has provided full disclosure in writing to JPL whether as of the anticipated time of award of any contract resulting from the solicitation, it anticipates that it or its principals will be debarred, suspended, or proposed for debarment by the U.S. Federal Government.
- (b) By commencing performance of the Contract work, the selected contractor certifies that it has made full disclosure to JPL in writing as to whether as of the time of award it or any of its principals is debarred, suspended, or proposed for debarment by the U. S. Federal Government. (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs).

## **VI. CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING**

(This certification is required prior to award of a contract with an estimated value, including any options, over \$100,000.)

- (a) Submission of this certification is a prerequisite for making or entering into this Contract imposed by Executive Order 12969, August 8, 1995.
- (b) By submission of an offer, the offeror certifies that it has accepted and certifies to all the Terms and Conditions found in the Federal Acquisition Regulation (FAR) at 52.223-13.

## **VII. CERTIFICATION REGARDING CONTRACTOR REPRESENTATION BY FORMER CALTECH/JPL EMPLOYEES**

(The Contractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it has no previous JPL or Caltech employee involved in this procurement who has been gone from JPL for less than one year, who participated personally and substantially in the subject matter while working for JPL or Caltech, who was officially responsible for the subject matter while working for JPL or Caltech, and who owns or represents the proposer's organization.



## 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 Laboratory 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 than fiber levels found outside.

Asbestos-containing materials do not pose a health hazard, unless the fibers become airborne. Contractor 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 contractor 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 contractor 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.