

ANNOTATED PRIME CONTRACT (through Contract Mod 43)
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SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

B-1 SCOPE

(a) This contract is the sponsoring agreement between the National Aeronautics and Space Administration (NASA) and the California Institute of Technology (Contractor), a private nonprofit educational institution, which establishes the relationship for the operation of the Federally Funded Research and Development Center (FFRDC) at the Jet Propulsion Laboratory (JPL). The Contractor has operated JPL as a NASA FFRDC since 1959 to meet certain Government research and development needs which could not be met as effectively by existing Government resources or normal contractor relationships. The history of this long-standing relationship is reflected in a memorandum of understanding between the parties signed on December 19, 1978, and revised on March 11, 1985. However, this contract is the only document which constitutes the sponsoring agreement between the parties and it shall control in the event of any inconsistency or conflict between it and the memorandum of understanding. The parties anticipate that they will enter into discussions following award of this contract with the objective of updating the memorandum of understanding and with the intent of completing such update by September 30, 1999.

(b) As reflected in FAR 35.017, contractors operating FFRDCs are allowed access beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to Government employees and facilities. Because of this special relationship, it is required that JPL be operated in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to NASA. Additionally, the Contractor shall not use its privileged information or access to facilities gained because of the FFRDC to compete with the private sector in contravention of FAR 35.017. Notwithstanding the special relationship created by this sponsoring agreement, the California Institute of Technology is acting as a contractor and not as an agent of the Government.

(c) The Contractor shall perform such work as is designated in task orders issued by the Contracting Officer using procedures set forth in G-6, Task Order Procedure. The general areas of such work for which the Contractor is encouraged to maintain its expertise to provide a quick response capability, are described in C-1, Description of Work.

B-2 ESTIMATED COST AND AWARD FEE

The estimated cost of this contract will be the sum of the estimated costs set forth in task orders issued hereunder, including all amendments thereto. It is anticipated that the Government will allot funds to task orders from time to time, and such funds shall be available for the payment of allowable costs incurred in the performance of work under the task orders, until the funds allotted equal the estimated costs set forth in the task orders. The amount of such allotted funds, as it may be changed from time to time, shall be specified in each task order. The maximum available award fee is \$ 22 million per year. Total estimated cost and maximum award fee are the sum of the estimated costs set forth in task orders issued hereunder, including all amendments thereto, plus the award fee amount of \$110 million.

B-3 AWARD FEE

NFS 1852.216-76
AWARD FEE
(MAR 1998) (DEVIATION)

(a) The Contractor can earn award fee from a minimum of zero dollars to the maximum stated in B-2 of this contract.

(b) The Government shall annually evaluate the Contractor's performance on or about 30 September of each year, providing feedback to the Contractor and determining the amount of award fee earned by the Contractor during the period. The Contractor may submit a self-evaluation of performance for each annual evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation.

(c) The Government will designate a Fee Determination Official (FDO) as hereinafter provided. Through unilateral designation of the Government, the FDO may be: the Associate Administrator or Deputy Associate Administrator of the Office of Space Science; or, an individual holding an equivalent position within a successor entity having institutional sponsorship of the Jet Propulsion Laboratory; or, if directed by the NASA Administrator, any other individual so designated holding a position at or above the Deputy Associate Administrator level. Any other changes in designation of the FDO must be made bilaterally.

(d) The FDO will determine the award fee amounts based on the Contractor's performance in accordance with the NASA Performance Evaluation Plan for Management

of the Jet Propulsion Laboratory. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis. However, changes to the Factors or changes to the Factor Weights which would result in an increase or decrease in any factor's weighting of more than ten points from that established in the initial Performance Evaluation Plan must be made bilaterally.

(e) The Government will advise the Contractor in writing of the evaluation results. The Contracting Officer will authorize payment based on issuance of a unilateral modification to the contract.

(f) After 85 percent of the potential award fee has been paid, the Contracting Officer may direct the withholding of further payment of award fee until a reserve has been set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total potential award fee.

(g) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth in B-2 of the contract. This amount remains unchanged for the entire 5 year period of this contract except as follows: If the estimated contract New Obligational Authority (NOA) for any year of contract performance (as determined by the Contracting Officer not later than October 30 of each Government fiscal year through NASA's business projections under its initial operating plan and/or by Congressional action) exceeds \$1.5 billion or falls below \$1 billion, the parties shall appropriately renegotiate the award amount to reflect the change in total business activity. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(h)(1) Provisional award fee payments will be made under this contract pending the determination of the amount of fee earned for an evaluation period. Provisional award fee payments will be made to the Contractor on a quarterly basis. Each such provisional payment shall be the lesser of: 75 percent of one-quarter of the maximum available award fee for such year; or, the prior period's evaluation score (expressed as a percentage) multiplied by one-quarter of the maximum available award fee for such year.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. If provisional payments exceed the final evaluation score, the Contractor will refund the difference to the Government, as directed by the Contracting Officer.

(3) If the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it

is determined that such discontinuance or reduction is appropriate. This determination is not subject to the Disputes clause.

(4) Provisional award fee payments will be made prior to the first award fee determination by the Government.

(i) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

(j) Accounting and Appropriation Data

(1) October 1, 1998 to December 31, 1998 \$4,125,000
(mod 2)

(2) January 1, 1999 to March 31, 1999 \$4,125,000 (mod 4)

(3) The Accounting and appropriation data for the third quarter of Year 1 provisional award fee is set forth in Attachments 1 and 2. Attachment 1 sets forth accounting and appropriation data for Fiscal year (FY) 1998 Funds in the amount of \$2,046,397.00 deobligated from Contract NAS7-1260, Task Order RF-273, Amendment 5. Attachment 2 sets forth accounting and appropriation data for FY 1999 Funds in the amount of \$2,078,603.00. (mod 5) The accounting and appropriation data for the third quarter of Year 1 provisional award fee is amended in attachment 1 (see mod 35)

(4) The accounting and appropriation data for the final determination of Year 1 award fee is set forth in Attachment 1. Attachment 1 sets forth accounting and appropriation data for FY 1999 Funds in the amount of \$1,045,000. (mod 6)

(5) The accounting and appropriation data for the first quarter of Year 2 provisional award fee is set forth in Attachment 1. Attachment 1 sets forth accounting and appropriation data for FY 1999 Funds in the amount of \$3,355,000. (mod 8). The Accounting and appropriation data for the Third Quarter of Year 1 Award Fee is amended in Attachment 1. (see mod 34)

(6) The accounting and appropriation data for the second quarter of Year 2 provisional award fee is set forth in Attachment 1. Attachment 1 sets forth accounting and appropriation data for PY 1999 and PY 2000 Funds in the amount of \$3,355,000. (mod 9)

- (7) The accounting and appropriation data for the third quarter of Year 2 provisional award fee is set forth in Attachment 1. Attachment 1 sets forth accounting and appropriation data for PY 1999 Funds in the amount of \$3,355,000. (mod 10)
- (8) The accounting and appropriation data for the final determination of Year 2 award fee is set forth in Attachment 1. Attachment 1 sets forth accounting and appropriation data for FY 1999 and FY 2000 Funds in the amount of \$7,557,000. (mod 14)
- (9) The accounting and appropriation data for the first quarter of Year 3 provisional award fee is set forth in Attachment 1. Attachment 1 sets forth accounting and appropriation data for PY 2000 Funds in the amount of \$4,125,000. (mod 15 and 17)
- (10) The accounting and appropriation data for the second quarter of Year 3 provisional award fee is set forth in Attachment 12. Attachment 12 sets forth accounting and appropriation data for PY 20001 Funds in the amount of \$4,125,000 (mod 20) The accounting and appropriation data for the second quarter of Year 3 provisional award fee is amended in Attachment 1.(mod 28)
- (11) The accounting and appropriation data for the third quarter of Year 3 provisional award fee is set forth in Attachment 1. Attachment 1 sets forth accounting and appropriation data for PY 2000 and PY 2001 funds in the amount of \$4,125,000 (mod 24)
- (12) The accounting and appropriation data for the final determination of Year 3 award fee is amended in Attachment 1.(Mod 29) The accounting and appropriation data for the final determination of Year 3 award fee is set forth in Attachment 2. Attachment 2 sets forth accounting and appropriation data for FY 2001 Funds in the amount of \$7,403,000. (mod 28)
- (13) The accounting and appropriation data for the first quarter of Year 4 provisional award fee is set forth in Attachment 1. Attachment 1 sets forth accounting and appropriation data for PY2001 and PY2002 in the amount of \$4,125,000.(mod 29). The accounting and appropriation data for the First Quarter of Year 4 award fee is amended in Attachment 1. (Mod 34)
- (14) The accounting and appropriation data for the second quarter of Year 4 provisional award fee is set forth in Attachment 1. Attachment 1

sets forth accounting and appropriation data for PY 2001 and PY 2002 in the amount of \$4,125,000. (mod 32)

(15) The accounting and appropriation data for the Third Quarter of Year 4 provisional award fee is set forth in Attachment 1. Attachment 1 sets forth accounting and appropriation data for PY2002 funds in the amount of \$4,125,000.

(16) The accounting and appropriation data for the final determination of Year 4 award fee is set forth in Attachment 2. Attachment 2 sets forth accounting and appropriation data for FY2001 and FY2002 funds in the amount of \$7,161,000. (mod 35) The Accounting and appropriation data for the Forth Quarter of Year 4 provisional award fee is amended in Attachment 1 (Mod 38)

(17) The accounting and appropriation data for the period of October 1,2002 through December 31, 2002 is set forth in Attachment One. Attachment One sets forth accounting and appropriation data for FY2002 funds in the amount of \$4,125,000. (Mod 38)

(18) The accounting and appropriation data for the period of January 1, 2003 through March 31, 2003 is set forth in Attachment One. Attachment One sets forth the accounting and appropriation data for FY2003 funds in the amount of \$4,125,000. (Mod 42)

(19) The accounting and appropriation data for the period of April 1, 2003 through June 30, 2003 is set forth in Attachment One. Attachment One sets forth the accounting and appropriation data for FY2003 funds in the amount of \$4,125,000. (Mod 43)

(End of Clause)

B-4 BUDGETARY ESTIMATES AND FUNDING

(a) General. (1) The Contractor shall prepare and submit budgetary estimates as directed by the Contracting Officer. The estimates shall set forth the funding requirements for each succeeding fiscal year remaining in the term of each task order under which the Contractor anticipates work will be performed. The budgetary estimates shall be supported by detailed discussions of the funding requirements, by a list of major procurements to the extent known at the time, and by such additional information as the Contracting Officer may need for planning purposes.

(2) The Contractor shall also prepare and submit budgetary estimates in the formats required by the NASA program offices in order to support NASA's annual Program Operating Plan (POP) submission.

(b) Time of Submission. (1) On or about the first day of each fiscal year, and at appropriate times throughout the fiscal year, the Contracting Officer will notify the Contractor of the funding guidelines applicable to the contract work to be performed during the fiscal year. Pending establishment of a financial operating plan for the fiscal year, the contract will be funded as required to support the planned program, subject to such limitations on availability or expenditure of funds as are imposed by law. The Contracting Officer shall inform the Contractor at the earliest practicable date of an approved financial operating plan for the fiscal year and shall exert his best efforts to provide funds in accordance with such plan for each quarter of the fiscal year, other than the first quarter, at least thirty (30) days in advance of the beginning of the quarter. Appropriate amendments to task orders shall be issued promptly as funds are made available.

(2) The Contractor shall submit the POP information per annual guidance supplied by the program offices. The POP submission will be forwarded to the program offices with a copy to the Contracting Officer.

(c) Revised Budgetary Estimates. From time to time, the Contractor may submit revised budgetary estimates and recommend changes in the approved funding of any task order, or the issuance of new task orders. The Contracting Officer shall inform the Contractor of the action taken with respect thereto. In the event the Contracting Officer initiates changes in the approved funding, as much advance notice thereof as possible shall be provided the Contractor.

(d) Changes in Approved Funding. In the event of changes in approved funding, the Contracting Officer shall promptly issue task orders or task order amendments, in accordance with the procedure established in G-6, Task Order Procedure, reflecting the changes.

B-5 ALLOWABLE COST

(a) General. For the purpose of determining the amounts payable to the Contractor under this contract, the allowability of costs shall be determined by the Contracting Officer in accordance with --

(1) Federal Acquisition Regulation (FAR) 31.3, Contracts with Educational Institutions, which shall be deemed to refer to Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, dated May 19,

1998 as published in the Federal Register on June 1, 1998 shall be effective on the first day of this contract (hereinafter OMB Circular A-21), and

- (2) the terms of this contract.

In determining the allowability of costs, the Contracting Officer shall give effect to the advance understandings set forth below and to other provisions in this contract dealing with allowable costs. As provided by the preamble to section J of OMB Circular A-21, in the case of an inconsistency between the provisions of this contract and the provisions of section J and section C 2.(d) of OMB Circular A-21, the provisions of this contract shall govern.

(b) Direct Costs. As contemplated by OMB Circular A-21 section D., all costs incurred by the Contractor under this contract, except for those costs identified in B-5(c), Institutional Indirect Costs, shall be considered direct costs.

(c) Institutional Indirect Costs (currently referred to as "Facilities & Administration" costs in OMB Circular A-21). Allowable items of Facilities & Administration (F&A) costs shall include the following:

- (1) Campus Work. (Institutional F&A costs of work performed on the campus of the Contractor or at the Contractor's other non-JPL facilities during each of the Contractor's fiscal years (October 1 - September 30)). The Contractor shall be reimbursed on the basis of those overhead rates for such fiscal years as are negotiated between the Contractor and representatives of the Government, in accordance with Office of Management Budget Circular No. A-21, for those Government contracts under which the preponderance (in dollar amount) of Government work is performed on the campus of the Contractor. If a negotiated rate is provisional, the Contractor shall be reimbursed on the basis of this provisional rate, subject to an appropriate adjustment when the final rate for that period has been established.

- (2) JPL Work. (Institutional F&A costs of work performed at JPL during each of the Contractor's fiscal years.) In lieu of institutional F&A costs applicable to all other work performed by the Contractor for each of the Contractor's fiscal years, the Contractor shall be reimbursed in an amount negotiated between the parties for that fiscal year, as provided for in subsection G.3 of OMB Circular A-21. As also provided for in subsection G.3, the negotiated lump sum for F&A costs will be an offset to the Contractor's institutional F&A costs prior to the application of the provisions of OMB Circular A-21 subsection G.7. Such negotiated amounts, and the period to which they apply, shall be set forth in modifications to this contract. Pending an agreement as to such negotiated amount for each period, the Contractor shall be paid provisionally on a monthly basis in an amount of one-twelfth of the last negotiated amount. If the Government determines that the total amount of such provisional payments will apparently substantially exceed the anticipated

final negotiated amount for that period, the Contracting Officer will direct the suspension or reduction of future payments and/or request a prompt refund of excess payments as appropriate. In addition, the Contracting Officer may reduce the amount of such provisional payments to an amount not less than 75% of the amount that would otherwise be payable hereunder in the event the Contracting Officer determines that the Contractor has not timely submitted information to support its institutional F&A costs for such period.

(d) Discretionary Research Funds.

(1) Director's Research & Development Fund. ~~In addition to funding otherwise made available to the Contractor for the performance of work under this contract, the Contracting Officer shall, by separate task order, make available to the Contractor funding for use in the performance of discretionary research and development at the Jet Propulsion Laboratory. This additional funding shall be used at the discretion of the Laboratory Director to fund research and technology within JPL's purpose and mission or special competencies and shall be known collectively as the "Director's Research & Development Fund"~~ In addition to funding otherwise made available to the Contractor for the performance of work under this contract, the Contracting Officer shall, by separate task order, make available to the Contractor funding for use in the performance of discretionary research and development. This additional funding shall be used at the discretion of the Laboratory Director to fund multi-year research and technology efforts in collaboration with universities, other NASA centers, government laboratories, and industry. These efforts will fall within JPL's purpose and mission or special competencies and shall be known collectively as the "Directors Research and Development Fund" (Mod 30). The amount to be provided each year based upon NASA-sponsored work for the Director's Research & Development Fund shall be determined periodically by the NASA Administrator/Deputy Administrator or their designee after consulting with the President of the Contractor or his designee, to ensure a stable and appropriate level of high quality research and development at the Jet Propulsion Laboratory. An appropriate amount will also be provided by non-NASA sponsors based upon work performed for them under C-1(b).

(2) President's Fund. The Contracting Officer shall, by separate task order, make available funds to match, on a dollar-for-dollar basis, other funds made available by the Contractor to be used for a program of research and development relating to the Jet Propulsion Laboratory's purpose and mission or special competencies and carried out cooperatively by the Laboratory and the Contractor's faculty and students and by faculty and students from other institutions. This program shall be administered by the President of the Contractor and known as the "President's Fund". The level of funding for this program shall be determined periodically by the NASA Administrator/Deputy Administrator or their designee and by the President of the Contractor or his designee.

(e) Other Advance Understandings. ~~As contemplated by section J of OMB Circular A-21, allowable costs shall include, but not be limited to the items of cost listed in~~

~~subparagraphs (1) through (13) below.~~ As contemplated by section J of OMB Circular A-21, allowable costs shall include, but not be limited to the items of cost listed in subparagraphs (1) through (14) below. (Mod 30) Reimbursement of such costs shall be subject to the requirement that any such costs be reasonable in amount, as mandated by subsection C.3. of OMB Circular A-21, and allocable to this contract, as mandated by subsection C.4. thereof.

(1) Anticipatory Costs. As allowed by OMB Circular A-21, subsection J.31., Preagreement Costs, the parties agree that costs shall be allowable if incurred by the Contractor in anticipation of (A) this contract or (B) a subsequently executed task order or task order amendment thereunder, which, if incurred after the execution thereof, would have been allowable items of cost. When the Contractor's management decides to incur costs prior to the execution of a task order or task order amendment pursuant to this subparagraph (1), the Contractor will simultaneously notify the Contracting Officer in writing.

(2) Public Information and Outreach Costs. Pursuant to this contract, and to assist NASA in implementation of its mandate under the Space Act, the Contractor has an obligation to inform the public about NASA programs and accomplishments and about space and science developments generally and to support academic excellence. Costs for Government program-related printed, electronic (e.g., Internet) or other distributable information, displays or exhibits, media access, mailings, photographs, memorabilia, audio or video recordings or other related expenses incurred by the Contractor to inform the public about space, science and technology developments for public events, activities marking accomplishments under this contract, or educational outreach shall be allowable and shall not be considered to be unallowable "advertising costs" or "public relations costs" within the meaning of subsection J.1. of OMB Circular A-21.

(3) Patent Infringement Litigation Costs. As permitted by OMB Circular A-21, subsection J. 11. "Defense and Prosecution of Criminal and Civil Proceedings, Claims, Appeals, and Patent Infringement", costs of legal, accounting and other services, and related costs, incurred in connection with the defense of patent infringement litigation based on the performance of this contract, of Contracts NAS7-1260, NAS7-918, NAS7-920(F), NAS7-100, or of NAS7-270(F), shall be allowable per subsection J.11 (e), provided the Contractor has complied with the requirements of Clause 58 [52.227-2], Notice and Assistance Regarding Patent and Copyright Infringement, of this contract, or of a similar provision in Contract(s) NAS7-1260, NAS7-918, NAS7-920(F), NAS7-100 or NAS7-270(F), with respect to such litigation.

(4) Participation in Public Service Activities. Costs incurred by the Contractor for the Contractor's employees' participation in public service activities, such as U.S. savings bond drives, blood bank drives, charity drives, local youth organizations, and minority and educational outreach programs, shall be authorized and allowable and shall not

be considered to be "donated services," "donations" or "contributions" within the meaning of subsection J.13. of OMB A-21. Cash contributions shall not be allowable.

(5) Equipment. As allowed by OMB Circular A-21, subsection J.16., Equipment and Other Capital Expenditures, costs incurred by the Contractor for equipment necessary for the performance of the contract shall be allowable. The definition for the term "equipment" is found in OMB Circular A-21.

(6) Technology Transfer Activities. Though not expressly contemplated by OMB Circular A-21, in furtherance of NASA's policy objective of encouraging technology transfer, costs incurred in promoting and facilitating U.S. public and private sector technology transfer consistent with the requirements of this contract shall be allowable, and shall not be considered "costs of selling and marketing" within the meaning of subsection J.42. of said Circular.

(7) Facilities Rearrangement and Alteration Costs. Pursuant to OMB Circular A-21, subsection J.35., costs incurred in special facilities modification or rearrangement shall be allowable where performed in accordance with the terms of this contract (including any task order issued expressly therefor).

(8) Reconversion Costs. Pursuant to OMB A-21, subsection J.36., Reconversion Costs, the following considerations shall apply in determining allowability of costs incurred for the restoration or rehabilitation of the Contractor's non-JPL (i.e., campus, campus-related, and/or contractor-leased) facilities to approximately the same condition (fair wear and tear excepted) existing in such facilities immediately prior to the commencement of JPL-related work in such facilities:

(i) Where JPL-related work commenced in such facilities under any predecessor contract (i.e., prior to the effective date of this contract) and is being continued under this contract, such reconversion costs incurred during the period of this contract are allowable under this contract.

(ii) Where JPL-related work commenced in such facilities under this contract (i.e., after the effective date of this contract), such costs are allowable only to the extent they are expressly made allowable by the Contracting Officer at the time NASA approves the use of the facilities.

(9) Travel and Relocation Costs. As contemplated by OMB Circular A-21, subsection J.48., Travel Costs, the following shall be allowable:

(i) Costs incurred by the Contractor for (A) transportation expenses covering travel of (I) persons directly engaged in the performance of work under this contract traveling in connection with such performance, (II) persons directly engaged in

performance of work under this contract, and their families, in connection with a permanent change of duty assignment in such performance, (III) persons directly employed by the Contractor for performance of work under this contract and their families who are relocating to JPL or, in special circumstances contemplated in Contractor's policies, relocating to their home after participating in employment at JPL, or who are relocating or returning to JPL or other permanent work location after off-site employment exceeding or expected to exceed one year, (IV) persons called by the Contractor in connection with performance of work under this contract or with a view to possible employment for such performance; (B) lodging, subsistence and related items of such persons in connection with such travel, and for the lodging, subsistence and related items of the families of persons designated in subparagraphs (II) and (III) hereof in connection with the travel therein designated; and (C) reimbursing the persons designated in subparagraphs (II) and (III) hereof for the movement of their household goods to the location of their work hereunder and back to their homes after participation in such work, and related costs; provided, such costs are incurred pursuant to established policies or practices of the Contractor applicable to the performance of work under this contract, consistently followed, and provided further, that costs incurred by the Contractor for travel outside of the United States and its possessions, and Puerto Rico shall be allowable to the extent such travel is in accordance with Appendix A of this Contract, Foreign Travel.

(ii) The Contractor shall maintain controls over travel by employees, and of other persons identified by paragraph (i) above, and over expenditures by such persons in travel status as are necessary to ensure that costs incurred by the Contractor for travel by such persons are reasonable and in accordance with the Contractor's established policies or practices. Additionally, the Contractor shall use reasonable efforts to obtain hotel or motel rates not in excess of the discounted rates (excluding taxes) granted to government employees on occasional travel.

(iii) In applying subsection J.48.c. of OMB Circular A-21, the requirement to use the "lowest available commercial discount airfares" does not require the use of non-refundable or penalty-bearing airfares. This does not preclude the Contracting Officer from authorizing the Contractor to use, as appropriate, non-refundable or penalty-bearing airfares on a case-by-case or systematic basis. Any cancellation or reticketing costs associated with using such airfares previously authorized by the Contracting Officer shall be allowable.

(iv) In applying subsection J.48.d. of OMB Circular A-21, it is understood that the costs of travel via aircraft chartered by the Contractor, including personnel and equipment related expenses, shall be allowable, and not limited by comparison with "allowable commercial air travel", where such travel is to and from a location not served by commercial flights or if approved by the Contracting Officer.

(10) Termination Costs.

(i) The sentence in subsection J.49.a of OMB Circular A-21, which states that the "Items peculiar to termination are set forth below" shall be construed as referring to illustrative items of allowable costs, and the items indicated as "set forth below" in said subsection J.49 are not intended to be all-inclusive.

(ii) Said subsection J.49, referenced above, to the contrary notwithstanding, the Contractor shall be under no obligation to retain common items of material acquired under this contract.

(iii) The Government agrees that, unless the Contractor has been advised that the term of the contract will not be renewed or extended or the phase-down provision invoked, or that the contract will be terminated, it is reasonable for the Contractor to acquire necessary supplies and services on the assumption that the contract will be renewed or extended. The Government will not object to a termination or phase-down inventory, reasonable when acquired, on the basis that the inventory is excess to the requirements of the performance of the work under contract for the term during which the inventory was acquired.

(iv) The termination settlement shall include an amount, to be determined on an actuarial basis, to compensate the Contractor for the allocable portion of future health and life insurance premiums for employees of the Contractor vested for retirement or retiring during the term of this contract or of the preceding Contract NAS7-1260, Contract NAS7-918, Contract NAS7-920(F), Contract NAS7-100, Contract NAS7-270(F), or Contract NASW-6 or retired upon or as a result of the termination of this contract, to the extent that such employees' qualifications for such health and life insurance benefits were based on their service in performing work under this contract, Contract NAS7-1260, Contract NAS7-918, Contract NAS7-920(F), Contract NAS7-100, Contract NAS7-270(F), or Contract NASW-6.

(v) The termination settlement shall include an allocable portion of terminal leave benefit payments (including, but not limited to, accrued vacation time, pay in lieu of notice, unused sick leave, and otherwise unfunded early retirement costs and pension obligations) made or owed to terminated and retired employees and employees who will be terminated or retired in the future to the extent that such employees' entitlements were based on their service in performing work under this contract, Contract NAS7-1260, Contract NAS7-918, Contract NAS7-920(F), Contract NAS7-100, Contract NAS7-270(F), or Contract NASW-6.

(vi) The termination settlement shall include an amount equal to the cost which it is estimated the Contractor will incur subsequent to termination in discharging its obligations under the provisions and clauses of this contract which require retention of Contractor records.

(vii) The termination settlement shall include a provisional amount equal to the estimated cost of benefits which the Contractor will be required to pay into any state unemployment fund subsequent to the termination or expiration of this contract, based on compensation paid to employees in the performance of this contract, Contract NAS7-1260, Contract NAS7-918, Contract NAS7-920(F), Contract NAS7-100, Contract NAS7-270(F), or Contract NASW-6. The provisional amount will be adjusted to reflect the actual amount of payments made into such unemployment funds, as soon as the actual amount of payments can be finally determined under applicable state and federal law. This understanding is based on the fact that the Contractor has elected to finance its liability for unemployment compensation and related benefits on a cost-of-benefits basis.

(viii) The termination settlement shall include a provisional amount equal to the estimated cost of workers' compensation and employer's liability benefits (including benefits under the Longshoremen's and Harbor Workers' Compensation Act) which the Contractor will be obligated to pay over to the State Compensation Insurance Fund of the State of California, or to any other state compensation or employer's liability carrier, subsequent to the termination or expiration of this contract, based on injuries or death resulting from such injuries sustained in the performance of this contract, Contract NAS7-1260, Contract NAS7-918, Contract NAS7-920(F), Contract NAS7-100, Contract NAS7-270(F), or Contract NASW-6. This provisional amount will be adjusted to reflect the actual amount of payments made to such fund or carrier, as soon as the actual amount of payments can be finally determined under the provisions of the applicable insurance contract or applicable state or federal law.

(11) Litigation Costs. This advance agreement only applies to certain litigation costs the Contractor incurs when it fails to prevail in court or at an administrative board. Specifically, the parties agree that when the Contractor litigates a third party suit and a court or an administrative board finds that the Contractor violated Federal law, the Contractor's legal costs and judgment costs will be allowable only when the Contractor can demonstrate it had a reasonable expectation of prevailing on the merits. The test regarding "reasonable expectation of prevailing" is whether (1) there was a reasonable basis for the facts asserted; (2) there was a reasonable basis for the theory of law advanced; and (3) there was factual support for the legal theory. Additionally, this advanced agreement does not alter the requirement that costs also must be reasonable and allocable.

(12) Treatment of CERCLA Environmental Costs. NASA has designated both the Department of the Army and the California Institute of Technology (Contractor) as potentially responsible parties (PRP) under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9601 for purposes of allocating the cost of responding to JPL CERCLA contamination. In 1992, the facility known as JPL was placed on the National Priorities List of Superfund sites. The designation of PRP's was made in accordance with the CERCLA. This clause

shall govern the extent to which the Contractor can charge its CERCLA environmental costs as a PRP to this contract. This clause does not recognize or create any Government liability for the Contractor's PRP CERCLA liability in the absence of a contract between the Contractor and NASA to operate JPL as an FFRDC. Additionally, this clause does not create or constitute an admission of liability by the Contractor.

The parties agree that, at a minimum, any allowable costs flowing from PRP CERCLA liability associated with the Contractor's business organization referred to as JPL can be treated as an allocated direct cost ("ADC") to this contract. To the extent a cost arises from environmental wrongdoing, as defined in the DCAA manual, NASA shall not consider it an allowable cost under this contract. The Contractor specifically reserves the right to contest determinations of allowability, including the appropriateness and/or application of the DCAA standard of environmental wrongdoing, pursuant to the Disputes provision of this contract. Any other PRP liability apportioned to the California Institute of Technology (Caltech) which constitutes an allowable cost can be treated as an institutional F&A cost. Additionally, Caltech agrees, when cost effective, to pursue any insurance claims relative to its liability under CERCLA as a PRP. The parties agree that insurance proceeds the California Institute of Technology receives as reimbursement for CERCLA liability shall be applied as a credit against CERCLA environmental costs which were or would be otherwise allowable under this contract.

(13) Caltech Faculty Consulting Costs. In addition to work performed by Caltech faculty for JPL under interdivisional transfers issued to the Contractor's campus by JPL, Caltech faculty may be utilized by JPL as consultants only if the needs of the Laboratory cannot be met by JPL staff or more cost effective sources.

(i) Caltech faculty will be used sparingly by JPL as consultants and the circumstances of their engagement will normally meet each of the conditions set forth below:

- The consultant is especially qualified by education or by experience to perform some specialized service in a particular field.
- The specialized service to be performed is the provision of advice to JPL management, typically in a technical area.
- The consultant contributes his knowledge but normally does not physically perform the work involved.
- The consultant is retained as a problem solver since his expertise allows him to recommend solutions when it is not economical or prudent for JPL to work out the solutions.
- The consultant does not supervise or perform operating functions.

(ii) Individual Caltech faculty may provide consulting services to JPL for a maximum of 48 workdays per Caltech fiscal year, in accordance with (i) above and

Caltech policy, unless other arrangements are approved in advance by the NASA Management Office Procurement Officer.

(iii) Caltech faculty engaged by JPL as consultants shall be compensated for such services on a daily basis at a rate equal to 100% of their daily campus salary unless a greater amount is approved in advance by the NMO Procurement Officer. In addition to their compensation, Caltech faculty engaged by JPL as consultants will be reimbursed for allowable transportation, subsistence and other costs necessary for performing the consulting assignment. Transportation between the Campus and the Jet Propulsion Laboratory will not be reimbursed.

(iv) To the extent that foreign travel is involved, approval is required in accordance with Appendix A.

(14) The parties agree that the contractor may, in addition to the discretionary research set forth in paragraph (d) above, carry out Research and Technology Development (R&TD) projects. The Contractor's R&TD program will annually fund in-house research and technology efforts. The contractor's R&TD projects will fall within the purpose and mission of JPL as an FFRDC as defined in C-1(a) of this contract, and be conducted pursuant to policies and procedures approved by the NMO Procurement Officer. The Contractor shall obtain the NMO Procurement Officer's approval that all R&TD program projects fall within the purpose and mission of JPL as an FFRDC. The cost of the Contractor's R&TD projects shall be allocated through the general pool of the Contractor's allocated direct cost structure. The total annual budget for R&TD projects shall not exceed three (3%) of the Contractor's projected Modified Total Cost base at the beginning of each fiscal year. (Mod 30)

(415 Mod 30) Other Cost Agreements. Pursuant to OMB Circular A-21, the NASA Management Office Senior Procurement Official may also approve other advance agreements with the Contractor regarding the allowability of particular types of cost.

B-6 CONTRACTOR FINANCING BY LETTER OF CREDIT

(a) Background. The following procedures and practices will apply to the use of the Letter of Credit method of advance payment in this contract. A new Letter of Credit and a new bank account will be initiated concurrent with the start of this contract.

(b) General. Funds will be advanced through the Department of Health and Human Services - Payment Management System (DHHS/PMS) as set forth in Appendix 9280-2A of the NASA Financial Management Manual (FMM). In addition, any funds provided by the Letter of Credit to the Contractor for advance payments shall be maintained in interest bearing accounts until such funds are expended by the Contractor. Interest earned

on advances in excess of \$250 per year will be remitted monthly to the Department of Health and Human Services (HHS) with a concurrent notice to the Contracting Officer.

(c) Amount. In accordance with those procedures, a Letter of Credit will be issued in an amount determined by the Contracting Officer based upon the needs of the Contractor. Subsequent amendments to the Letter of Credit will be based upon (1) Contracting Officer approval and (2) amendments to the contract.

(d) Reconciliation. The Contractor shall provide a reconciliation of expenditures to letter of credit draws on a monthly basis to the NASA Contracting Officer and the NASA Headquarters Accounting Division. Specific processes which outline the procedures used to manage the new letter of credit will be documented and provided to the Contracting Officer no later than sixty days after the contract's effective date.

(e) Advance Payments to Subcontractors. (1) The Contractor shall not use funds provided by the Letter of Credit to make advance payments to its subcontractors, other than commercial advance payments in accordance with FAR 32.2 or those described in item (2) below, without the approval of the Contracting Officer.

(2) Pending full implementation of FAR Part 12 at the subcontracting level, the Contractor may provide advance payments in the following instances, but only where such payments are common practice in the industry and are required by the vendor for all customers: subscriptions to periodicals; conference sponsorship/registration fees; purchase of office equipment; rentals/leases of commercial equipment; and software maintenance agreements. Commercial subcontractors shall not be paid advance payments greater than 15% of the subcontract price.

(3) When advance notice or written consent is required by the terms of Clause 85, "Subcontracts", the Contractor shall not use advance payments for non-commercial items until such advance notification has been provided and written subcontract consent has been received.

SECTION C - DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

C-1 DESCRIPTION OF WORK

(a) NASA-Sponsored Work. The Contractor shall perform such work as is designated in unilateral task orders issued by the Contracting Officer. The effort under these task orders shall be within the purpose and mission of JPL as an FFRDC which are defined as follows:

(1) Exploring the solar system including earth-based investigations and operations related thereto. JPL's primary mission in support of the Space Science Enterprise (SSE) is planetary science and exploration. JPL has also been designated as NASA's Center of Excellence for Deep Space Systems. JPL will have major responsibilities as well in support of NASA's applications, astrophysics, earth sciences, and such other high science value programs as may be established. Instrument observations from space vehicles will be a primary tool for such explorations, investigations and science programs, supported by ground-based research and laboratory experiments for such work, and for work described in C-1(a)(2) below. JPL will support SSE in its mission as stated in the NASA Strategic Plan.

(2) Carrying out investigations and conducting studies in the field of earth sciences including research into interactions of earth's oceans, atmosphere, continents, and effects of solar energy in order to gain an integrated understanding of the total earth system. JPL will undertake mission assignments that may involve (a) autonomous deep-space and earth-orbiting spacecraft or major subsystems, (b) experiments, instruments, or other devices which may be carried as payload on the space shuttle or space stations, in other spacecraft or in such missions managed by others, and/or (c) ground-based systems. Implicit in mission assignments is a broad range of hardware and software engineering, scientific analysis, and management effort.

(3) Carrying out investigations and conducting studies in the fields of Astrophysics and Astrobiology. JPL will undertake mission assignments that may involve (a) autonomous deep-space and earth-orbiting spacecraft or major subsystems, (b) experiments, instruments, or other devices which may be carried as payload on the space shuttle or space stations, in other spacecraft or in such missions managed by others, and/or (c) ground-based systems. Implicit in mission assignments is a broad range of hardware and software engineering, scientific analysis, and management effort.

(4) Carrying out investigations and conducting studies in the field of Aeronautics and otherwise maintaining relevant capabilities in support of the Nation's needs which aerospace technology can help solve and developing applications of that technology to help advance solutions with funds appropriated to NASA for that purpose, with particular

emphasis on the applications of those technologies for which JPL has experience or competence.

(5) Conducting (a) a program of supporting research and (b) a program of advanced technical development, designed to make contributions to space science, space exploration, and space transportation. JPL will undertake research and technology development for NASA in both principal and supporting roles to enable effective project implementation and to further technological capabilities for future NASA requirements.

(6) Participating in NASA's Commercial Technology Program to promote the transfer of technology.

(7) Providing focused leadership responsibility as NASA's center of excellence in Deep Space Systems. JPL is responsible for the operation, development, and research and technology of the Deep Space Network in the support of NASA and NASA reimbursable missions, as delegated by NASA and the relevant NASA COTR. This responsibility includes management and direction of NASA's Deep Space Network to provide telecommunications and operations services including data acquisition and data delivery required to meet established agency objectives.

(8) Assisting NASA in the formulation and execution of its programs by providing NASA with technical advice, studies, and reports of investigations.

(9) Assisting NASA in conducting education programs and activities in accordance with Appendix E.

(10) Carrying out investigations and conducting studies for advancing the state of the art of C-1(a)(1) through (7) above that are needed for future work for NASA. These studies may lead to future special competencies of the Contractor. Where any activity under this C-1(a)(10) is contemplated, it shall be specifically noted in the task plan.

(11) Providing technical monitoring (as specifically delegated in writing by the associated NASA Contracting Officer) in connection with Small Business Innovation Research (SBIR) contracts for work falling within C-1(a)(1) through (7) above which are awarded by NASA to other contractors.

Deriving as much as possible from the actual performance of research and development work under this contract, JPL will supply an appropriately broad base of scientific and technical capabilities relevant and available to its NASA program responsibilities and assignments, and will maintain professional staff capabilities at the highest possible level. Toward this end, JPL will use cross-cutting processes as described in the NASA Strategic Plan in support of NASA's programs.

Each new or amended task order will include a reference to one or more appropriate subparagraphs of C-1(a).

The parties recognize that as part of fulfilling its purpose and mission as an FFRDC, the Contractor will assume the role of "Lead Center", "Center of Excellence", "Program Manager", and "Project Manager" as defined in the NASA Strategic Plan. Although such roles may encompass activities that are considered to be inherently governmental, this contract shall not be used for the performance of inherently governmental functions. The Contractor shall not knowingly propose, and the Government shall not knowingly request, any work that constitutes an inherently governmental function, including any function listed in Appendix A to Office of Federal Procurement Policy (OFPP) Policy Letter 92-1. The parties acknowledge the necessity for appropriate internal controls and management attention at both NASA and JPL for this purpose.

(b) Work for Non-NASA Sponsors. The Contractor may perform work for non-NASA sponsors, which falls within paragraphs C-1(a)(1) through (10) above, or which makes use of its special competencies and which is designated in bilateral task orders issued by the Contracting Officer and accepted by the Contractor.

(1) Each new or amended task order will include a reference to one or more appropriate subparagraphs of C-1(a) or the special competency of JPL being utilized to perform the effort.

(2) The Contractor shall not seek to compete for or perform work for non-NASA sponsors unless the non-NASA sponsor is willing to accept proposals from FFRDC's.

(3) In no event will JPL compete with any non-FFRDC entity in response to a Federal Agency request for proposal for other than the operation of an FFRDC nor shall JPL submit unsolicited proposals for work which is otherwise available from the private sector or which would place JPL in direct competition with domestic private industry.

(c) Related Facilities Work.

(1) Task Order Funded Facilities Projects. The Contractor may be authorized by task orders issued by the Contracting Officer and accepted by the Contractor (except for ECR Program Activities as described in H-6, Environmental Matters), and funded by special funds of the Government for such purposes and designated as Construction of Facilities (C of F) funds, to construct, restore, remove, relocate, maintain, install, or alter existing facilities provided by paragraph (b) of C-2, Resources for Performance of Contract, below. The Contractor is authorized with Contracting Officer approval, to construct and install, whether with Contractor's in-house staff or through

subcontracts, certain other buildings, premises and facilities for the Contractor's use in the performance of any work under this contract. The Contractor may also obtain by subcontract or provide with its own personnel, design, architectural and engineering services for facilities to be furnished by the Government under this contract.

(2) Related Facilities Acquisition and Management. For facilities acquisition and management work other than that authorized under C-1(c)(1) above, the Contractor shall, either with Contractor's in-house staff or through subcontracts, provide design, architectural and engineering services, and/or construct, acquire, restore, remove, relocate, maintain, install, or alter facilities furnished or acquired under this contract, and may appropriately remove or dispose of, the equipment, facilities, buildings, premises, space and accommodations acquired, obtained, constructed, installed or held pursuant to paragraphs (1) or (2) of this paragraph C-1(c) or pursuant to other provisions in this contract.

(d) Technical Direction and Guidance. In the performance of work under each task order issued under this contract, the Contractor shall be responsive to the overall technical direction and guidance of the official designated in the task order recognizing that only the Contracting Officer can direct changes to the task order. With respect to the overall conduct of the work to be performed, the Contractor shall be responsive to the Associate Administrator of the Office of Space Science or his designee.

(e) Reports. General. The Contractor will furnish in whatever format required by NASA such managerial, financial, technical, progress, and other reports as the Contracting Officer determines to be necessary to reflect adequately the activities carried on under this contract and will make such external distribution thereof as the Contracting Officer directs.

(1) Scientific and Technical Reports. Subject to Federal laws and regulations, and the terms of this Contract, the Contractor may also initiate, prepare and distribute to persons in the scientific and technical communities unclassified reports in the fields of aeronautics and space science, and related engineering, and in the fields of advanced research and technology, when, in its judgment, such distribution will effectuate the purposes of this contract or is desirable in order to disseminate scientific and technical knowledge and information; provided, the format of such reports, their review, and their distribution are in accordance with the Contractor's format specifications, and the Contractor's review and distribution policies which have been approved by the Contracting Officer. All such reports will state that the work is funded by NASA or the appropriate reimbursable sponsor.

(2) Public Reports. Reports prepared primarily for members of the public generally, such as general educational and public information reports, shall be subject to the provisions of H-9, Public Affairs Program and Release of Information to the Public.

(3) Distribution Control. The Contracting Officer may require the Contractor to cease the external distribution under this contract, of any reports within a regular or report series, or of any individual report, and any work in connection with such external distribution. However, in such event the Contractor shall remain free to publish, at the Contractor's own expense, any information or data contained in such report(s), subject to any limitations contained in any other provisions of this contract, in bilaterally accepted task orders, or in the laws or regulations of the United States.

(4) NASA Publications. NASA may elect to publish in its own media and formats any of the information contained in reports prepared by the Contractor. When in the judgment of the program Associate Administrator or his designee, information in any such reports should also be published in NASA media and format, the Contractor will make such revisions as are requested, to conform the reports to NASA requirements. Copies of all reports within subparagraph C-1(e)(2) hereof prepared by the Contractor shall be forwarded to the program Associate Administrator as soon as possible after preparation.

(5) Contractor Distribution. Nothing herein shall be deemed to restrict the right of the Contractor to initiate, prepare and distribute to its own personnel, its present or potential subcontractors, and to NASA personnel such reports as it may deem necessary or desirable for the performance of work under this contract, subject to Federal laws and regulations.

(6) External Distribution. The term "external distribution", as used in this paragraph C-1(e), means any distribution except distribution to the Contractor's own personnel, to present and prospective subcontractors of the Contractor, and to NASA personnel. The term "distributed externally" has a like meaning.

(7) Overrun Reports. The Contractor shall submit electronically the status of task orders where expenditures exceed funds allotted by greater than \$1,000 and the Contractor's plan of action on each such task order.

(8) NASA Scientific and Technical Information (STI) Database. The Contractor shall submit to the NASA Center for Aerospace Information, for the NASA STI Database, two reproducible copies of all formal published reports prepared for NASA-sponsored science, technology, research and development, and space flight projects. Such reports shall be reviewed by the Contractor in accordance with JPL's ~~Standard Practice Instruction 3-04-1, entitled "External Release of Scientific or Technical Information". Policy Releasing Information Outside of JPL and JPL's procedure Releasing Information for External Distribution.~~ JPL shall assume responsibility for correctly marking all documents for export control pursuant to existing laws and regulations. JPL shall also assume responsibility to ensure that JPL Form 1330-S includes all data elements that currently exist on NASA Form 1676 "NASA Scientific and Technical Document Availability

Authorization." Any substantive modifications to this policy or procedure shall be approved by the NASA Contracting Officer. The cover pages for reports shall conform to the format requirements specified in Appendix 4 of NPG 2200.2A, "Guidelines for Documentation, Approval and Dissemination of NASA STI," dated September 1997, and shall contain appropriate reference to NASA and the California Institute of Technology. The Contractor shall also include with each such submission a completed OMB Standard Form 298, Report Documentation Page. (mod 13)

(9) Safety and Health.

(i) The Contractor's safety and health plan will be approved or disapproved by the Contracting Officer within 45 working days after contract award (Reference H-4 and H-5). The Contractor shall provide annual updates. The Plan shall include a requirement that quarterly reports be provided in accordance with paragraph (c) of H-4 [18-52.223-70].

(ii) The Contractor shall provide to the Contracting Officer a listing of the types of hazardous operations being performed under this contract within 60 days after contract award. JPL will maintain updates to such listing and will provide these updates to the Contracting Officer. Detailed documentation (Operational Safety Reviews (OSRs)) of potential hazardous operations shall be retained on file at JPL and will be made available upon Contracting Officer request. The parties agree that the reporting requirements of paragraphs (i) and (ii) satisfy the Contractor's obligations under paragraph (g) of H-4, Safety and Health.

(10) Information Exchange with NASA Management Office. In order to enable the NASA Management Office (NMO) to interface more effectively with JPL program offices, the Director of the NMO and the Contracting Officer shall be notified of, and invited to attend regular Program Management Reviews. In addition the Contractor shall present to the Director of the NMO and the Contracting Officer a semi-annual review of major proposals (NASA and non-NASA) and planned new starts.

(11) Workforce Reports. The Contractor shall, by the 60th day after expiration of the yearly Affirmative Action Plan (AAP), provide to NASA Headquarter's Code E the following:

(i) A copy of the new Affirmative Action Plan, including the section containing a review of the results of actions taken during the previous Affirmative Action Plan year.

(ii) A copy of the workforce analysis, prepared in accordance with 41 CFR 60-2.11(b).

(12) Caltech Transfers. The Contractor shall submit a quarterly report to the Director of the NASA Management Office describing the tasks being performed at JPL under Caltech Transfers. The descriptions will include task title, Caltech principal investigator's name, amount of funding for the quarter, type of work, facilities used and the amount of JPL labor in full-time-equivalents used on the task.

(f) Requirements to Ensure Year 2000 Compliance.

(1) "Year 2000 compliant," as used herein, 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.

(2) Any information technology provided, operated and/or maintained under this contract must be Year 2000 compliant. To help ensure this result, the Contractor shall follow NASA Year 2000 Test and Certification Guidelines and Requirements dated June 19, 1998, and any updates thereto.

(3) Milestones for Renovation, Validation and Implementation: Any IT determined to be non-Year 2000 compliant shall be replaced, retired, or repaired in accordance with the following schedule:

- "Renovation" includes making and documenting software and hardware changes, and developing replacement systems. The Contractor must complete renovation of affected software, hardware and firmware by September 30, 1998.
- "Validation" includes unit, integration, system, and end-to-end testing for Year 2000 compliance. The Contractor must complete validation and testing of converted or replaced systems by January 31, 1999.
- "Implementation" includes acceptance testing and integration of converted and replaced systems into a production environment. The Contractor must complete implementation by March 31, 1999.

(4) The status of the JPL effort will be reported to NASA including a quarterly progress report to the Chief Information Officer Headquarters, Code AO. A copy of all reports shall be furnished to the Contracting Officer.

(5)(i) The Contractor shall flow-down the requirements of NASA Procurement Information Circular 98-9 to all subcontracts/letter contracts/purchase orders existing on the effective date of this contract that require the delivery, operation or maintenance of 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) that must accurately process 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.

(ii) The Contractor shall include the Year 2000 Compliance (May 1998) clause in all new solicitations and subcontracts/purchase orders and modifications to existing subcontracts/purchases orders for new work in excess of \$2,500 that require the delivery, operation or maintenance of 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) that must accurately process 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.

C-2 RESOURCES FOR PERFORMANCE OF CONTRACT

(a) The Contractor shall provide, either directly or through subcontract, the management, scientific, engineering, technical and other personnel, labor and services necessary to perform all work required under this contract.

(b) Either directly or through acquisition by the Contractor as provided under this contract, the Government shall provide, on a rent-free basis, all property as defined in FAR 45.101(a) and NASA FAR Supplement (NFS) 18-45.301, which is required for the performance of such work. The property which the Government will provide for the Contractor's use in the performance of the contract work includes the Government-owned facilities, including, but not by way of limitation, the land, buildings and improvements located at 4800 Oak Grove Drive, Pasadena, California, which are generally referred to as the Jet Propulsion Laboratory or "JPL"; the Government-owned facilities at Goldstone Space Communications Station; and Table Mountain; and all other facilities heretofore made available by the Government for use by the Contractor in the performance of this contract (including overseas tracking and data acquisition facilities as allowed by the terms of the

separate NASA international agreement(s) or contract(s) for which there is a current or anticipated use requirement under this contract. Any resources no longer required by the Contractor will be identified to the Contracting Officer.

C-3 USE OF OTHER FACILITIES AND LOCATIONS

(a) The Contractor shall, to the maximum extent practicable, use the facilities provided to the Contractor under paragraph C-2(b) in performing work under this contract. The Contractor is not precluded, however, from:

(1) using other facilities or performing work at other locations when in its judgment such a course will be more practical or economical; or

(2) subcontracting work in accordance with the applicable provisions of this contract.

(b) Prior to leasing facilities for use under this contract, the Contractor shall obtain the Contracting Officer's approval.

(c) The Contractor shall not occupy space which is leased by a subcontractor, other than in exceptional circumstances approved by the Contracting Officer or in specific instances where a limited number of Contractor employees are authorized by the Contractor to occupy such space for the purpose of managing or monitoring the subcontracted effort of that subcontractor.

(d) The Contractor shall submit to the Contracting Officer, on a quarterly basis, a report of facilities leased by the Contractor and of specific locations where Contractor employees are occupying space in subcontractor facilities pursuant to paragraph (c) above.

C-4 EXCESS AND SURPLUS EQUIPMENT

The Contractor shall, from time to time, screen idle equipment lists of the Defense Industrial Plant Equipment Center (DIPEC), and other surplus equipment lists, for machinery and equipment required for performance of this contract, and may request, in accordance with applicable NASA procedures, allocation of such equipment which may be available and suitable for such use. Such allocations shall be made subject to such terms and conditions as the Contracting Officer may specify. Any machinery and equipment so allocated to and accepted by the Contractor shall be deemed to be Government-furnished property subject to the terms and conditions of this contract, and to such other terms and conditions specified by the Contracting Officer.

C-5 FACILITIES MANAGEMENT PROVISIONS

(a) Implementation of C of F Funded NASA Minor and Environmental Compliance and Restoration (ECR) Projects. The following applies to the implementation of the Construction of Facilities (C of F) Minor Facility Projects designated as Revitalization and Minor Construction, and ECR Projects. Individual task orders shall be written to provide for each fiscal year's funding; with the exception of the Superfund Task Order which may include more than one (1) fiscal year's funds. The task orders will list those projects within each program as shown on the NASA Minor Facilities Projects - Summary Brief Project Document (SBPD) and the approved funding as authorized by related Resources Authority Warrant (NASA Form 506A). For ECR projects, the task orders will list those ECR projects as shown on the Environmental Compliance and Restoration - Summary Brief Project Document (ECR-SBPD) - HQ DIV Form 800ENV and the approved funding as authorized by related Resources Authority Warrant (NASA Form 506A).

(1) Application. Projects implemented under the authority of the SBPD shall conform with the intent and scope set forth in the Facility Project Brief Project Document (NASA Form 1509) as approved by the Director, Facilities Engineering Division or designee. ECR projects implemented under the authority of the ECR-SBPD shall conform with the intent and scope set forth in the project approval document, as approved by the Director, Environmental Management Division and placed on the task order by the Contracting Officer.

(2) Resources. The amount shown as the "Approved Program Plan" on the SBPD or ECR-SBPD indicates the total resources available for projects by related NASA Form 506A. At no time may fiscal obligations exceed this amount.

(3) Project Implementation. Projects may be implemented in any order by the Contractor after execution of a task order. The Approved Facility Project Cost Estimate as stated on the SBPD or ECR-SBPD may be increased by up to, but not to exceed, 25 percent for Minor Projects and 10 percent (up to \$150,000) for Environmental Projects provided:

(i) Each of these increases in project cost estimates will be submitted by the Contractor for approval by the NASA Contracting Officer.

(ii) The total of the estimates of all work awarded and any to be awarded to complete an action under consideration does not exceed the amount of the "Approved Program Plan".

(iii) The Facility Project Cost Estimate of any individual Minor Revitalization and any Minor Construction Project does not exceed \$1,500,000.

(iv) The intent and scope of the project remain as indicated on the approved NASA Form 1509.

(4) Project Changes Requiring Headquarters Approval. Any changes in intent or scope, or requiring an increase above the Facility Project Cost Estimate and the introduction of a new, additional, or substitute project will require advance concurrence.

(i) For Minor Projects with a cost estimate increase of more than 25 percent, advance concurrence is required by the cognizant Program Office and approval by the Director, Facilities Engineering Division, by means of appropriate revised NASA Form 1509 or documents applicable.

(ii) For ECR Projects with a cost estimate increase of 10 percent (or over \$150,000), advance concurrence is required by the cognizant Program Office and approval by the Director, Environment Management Division by means of appropriate revised NASA Form 1509 or documents applicable.

(5) Reporting. As each project is implemented, commitments, obligations, schedule for completion etc., are to be reported against its assigned Project Number in a format similar to that contained in the Facilities Project Milestone Schedule described in Appendix F to NPG 8820.2B (in accordance with the conditions of acceptance specified in C-5(b)), Facility Project Implementation Handbook (April 1997).

(6) Bid Notifications. JPL will provide NASA notification of bids received utilizing NASA Form 1579, Flash Bid Report, for those projects having been approved by NASA Headquarters. Said notice shall be made via facsimile within one working day of bid verification. Notification of bids received is required per NPG 8820.2B (in accordance with the conditions of acceptance specified in C-5(b)).

(7) JPL shall submit functional area performance metrics for CoF, Facilities Maintenance, Real Property, Space Utilization, and Environment to Code J at Headquarters by November 1 of each year.

(b) NASA Issuances Applicable to Facilities Work. The provisions of the NASA Manuals/Handbooks listed below shall be used for all work performed under paragraph C-1(c). The issuances referenced in this paragraph apply to both Government-owned facilities and facilities leased by the Contractor.

<u>NASA Publication No.</u>	<u>Title</u>	<u>Date</u>
NHB 4200.1D	NASA Equipment Management Manual Section IV only (mod 11)	April 1992
NPG 4200.1E	NASA Equipment Management Manual (Mod 40), 1999 (Chapter IV only)	July 27
	<u>The Contractor's acceptance of Chapter IV is limited by the understanding that an alternative database (not NEMS) and equivalent source documents are used for asset transaction processing and transfer transactions. (mod 11)</u>	
NPG 4200.2B	Equipment Management Procedures & Guidelines for Property Custodians	September 11, 1998
	<u>The Contractor's acceptance of NPG 4200.2B is conditioned upon the understanding that: 1) NASA forms are not used; 2) JPL does not access the NEMS database directly, but transmits NEMS identification codes via electronic transfer, and 3) The Appendices do not uniformly apply to JPL, but their requirements are met by equivalent JPL transaction codes, reporting requirements and forms. (mod 11)</u>	
NPG 8400 DRAFT 2	Real Estate Management Program Implementation Manual (mod 11)	
NPG 8800.15A	Real Estate Management Program Implementation Manual (mod 11)	September 1, 1998
NPD 8800.14A	Policy for Real Property Management	April 1997
NPG 8800.17	Energy Metrics for NASA Facilities	Oct. 1996
NPD 8820.1	Design and Construction of Facilities	December 2, 1998
	<u>The Contractor's acceptance of the NPD is conditioned upon the understanding that the Contractor reserves the right to selectively apply to minor construction projects only the elements of the NPD policy section concerning comprehensive pre-project planning, constructability methods, value engineering studies and formal</u>	

building commissioning after construction. Compliance with these elements of NASA policy will depend upon the scope, complexity and engineering disciplines associated with each minor construction project being implemented. (mod 11)

NPG 8820.2B Facilities Project Implementation Handbook April 1997

The Contractor's acceptance is limited to the general approach to project development and implementation, and to the specific requirements for project documentation and periodic status reporting found in the following Sections:

4.2, Long Form Write-Ups;
4.3, NASA Forms 1509 and 1510;
4.8, Unforeseen Facility Work;
6.4.5, Flash Bid Reports;
Appendix F, Facility Project Data System, and
Appendix G, Master Planning, only to the extent authorized by Task Order.

The Contractor shall comply with subsection 1.4 and 1.5 of the FPIH as updated in C-5 and G-18 of this contract. When authorized by NASA Headquarters JX, the Contractor may deviate from the specified form, content and timing of project submittals.

NPD 8831.1B Management of Facilities Maintenance July 1996

The Contractor's acceptance excludes references to the Agency-wide coding structure.

NPG 8831.2B Facilities Maintenance and Energy Management Handbook Dec. 1996

The Contractor's acceptance excludes references to the Agency-wide coding structure.

In addition to the issuances accepted above the Contractor shall utilize its JPL Facilities Design Standards handbook for facilities engineering design criteria.

SECTION D - PACKAGING AND MARKING

Packing, packaging and marking requirements, if applicable, are included in task orders under this contract.

SECTION E - INSPECTION AND ACCEPTANCE

E-1 ISO 9001 IMPLEMENTATION AND CERTIFICATION

(a) ISO 9001 Compliant Basis Quality Management System

(1) JPL will plan for and implement all appropriate quality system activities necessary to ensure that the Laboratory will attain third-party certification of registration to ISO 9001/1994 no later than September 30, 1999. JPL will coordinate with the NASA person assigned by the Associate Administrator for Space Science as the key NASA management contact for reviewing JPL's planning and progress toward ISO 9001 certification. Status reports on ISO 9001 progress will be provided by JPL to the NASA contact as requested.

E-2 SAFETY AND MISSION ASSURANCE

(a) NPG ~~7120.5A~~ 7120.5B dated November 21,2002 (Mod 40), NASA Program and Project Management Processes and Requirements, is applicable in accordance with its acceptance in G-11.

(b) It is NASA's intent that program/project managers consider and implement where appropriate industry best practices related to Safety and Mission Assurance.

(c) The Contractor shall implement safety and mission assurance engineering techniques throughout all phases of the project life cycle deemed important for this support.

(1) The Contractor shall assess, on a project-by-project basis, the level of safety and mission assurance support needed. Safety and mission assurance requirements will be tailored and defined in conjunction with the project for both hardware and software. The tailored safety and mission assurance program will be commensurate with cost, schedule, risk and the technical performance requirements for each project. The safety and mission assurance activity will be documented as a part of the risk management effort to address the specific process for achieving safety and mission success, will be referenced in the task order and will be generated in accordance with NPG ~~7120.5A~~ 7120.5B (Mod 40).

(2) For any proposal developed in response to an AO, a safety and mission assurance plan section will be included in the proposal submission to NASA Headquarters. The safety and mission assurance requirements shall be developed during

the proposal and planning phases and applied to the benefit of the project at appropriate levels throughout the mission life cycle.

(d) Projects under the terms of this contract shall implement design and operational practices that limit the generation of space debris during planned operations and anomalous events.

(e) The following documents referenced in NPG ~~7120.5A~~ 7120.5B (Mod 40) will be followed in accordance with E-2(c) above:

(1) NPD 8700.1, NASA Policy for Safety & Mission success, dated June 12, 1997, except that JPL is not scheduled to be ISO 9001 third-party certified until September 30, 1999, and all paragraphs within the policy document referring to ISO 9001 certification and implementation are not applicable to JPL until this certification is complete,

(2) NPD 8710.1, NASA Emergency Preparedness Policy, dated February 24, 1997,

(3) NPD 8621.1G, Mishap Reporting and Investigating Policy, dated December 10, 1997 (in accordance with its acceptance in H-5),

(4) NPD 8720.1, NASA Reliability and Maintainability (R&M) Program, dated October 15, 1997, and

(5) NPD 8710.5, NASA Safety Policy for Pressure Vessels and Pressurized Systems, dated March 17, 1998, except that the Installation Pressure Systems Manager has cognizance over all ground based support pressure vessels/systems and the Systems Safety Office Manager has cognizance over flight systems.

(f) The Contractor shall participate in the GIDEP Alert Program subject to the following conditions:

(1) The Contractor will participate in the Government-Industry Exchange Program as part of the implementation of the ISO 9001 nonconforming material reporting requirements.

(2) The Contractor reserves the discretion to require or request GIDEP reporting from subcontractors as JPL deems appropriate, and not subject to Contracting Officer approval.

(3) The Contractor will continue to use and tailor its own standard procedures, D-11119A, Alert/Concerns Handbook, that includes closed loop problem reporting.

(g) Individual task orders will specify inspection and acceptance criteria as appropriate.

E-3 RELATED FACILITIES MANAGEMENT

Task Orders shall state the Government-specified facilities design characteristics (e.g., JPL Facilities Design Standards handbook) and project management (e.g., NPG 8820.2B (in accordance with the conditions of acceptance specified in C-5(b)), to be observed by the Contractor in connection with the work to be performed under the task orders pursuant to C-1(c) herein.

SECTION F - DELIVERIES OR PERFORMANCE

F-1 TERM OF THIS CONTRACT

The term of this contract shall commence on September 21,1998, and continue through September ~~3028~~, 2003. The Contractor shall not perform work beyond the terminal date of this contract, irrespective of the fact that the anticipated completion date of a task order may extend beyond such terminal date.(Modification 37)

F-2 DELIVERIES

Delivery instructions shall be specified in each task order, as appropriate. Government Bills of Lading may be used as requested by the Contractor and approved by the NASA Transportation Officer.

F-3 NOTIFICATION OF CONTRACTOR

The Contracting Officer will determine whether continuance of the FFRDC sponsoring agreement would be in the best interest of the Government ten months before the terminal date of this contract. In the event the Contracting Officer so determines, the Contractor shall be notified. The Contractor shall, upon receipt of such notification, notify NASA of its intent to enter into negotiations for continuance of the FFRDC sponsoring agreement. Neither of the notifications described herein shall commit the Government or the Contractor to continuance of the sponsoring agreement.

F-4 STOP-WORK ORDER

FAR 52.242-15
STOP-WORK ORDER (AUG 1989), ALT I (APR 1984)
DEVIATION

(a) The Contracting Officer 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 clause. 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 is delivered to the Contractor, or

within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination for the Convenience of the Government (Educational and Other Non-Profit Institutions)(SEP 1996) (DEVIATION) clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, or a combination thereof, and in any other terms of the contract 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 its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(End of clause)

SECTION G - CONTRACT ADMINISTRATION DATA

G-1 COST SEGREGATION AND REPORTING

(a) General. Costs under this contract will be segregated and reported as set forth below. The Contractor shall transmit such reports via telnet, internet, ftp, telecommunication, tape, or hard copy, as requested by the Government. The PSA/DSAs used to identify NASA tasks on this report shall be PSA/DSAs employed by NASA for the task orders to which the costs relate. The Contractor agrees to negotiate in good faith the interface to the IFMP at such time as the IFMP requirements become known.

(1) Research and Development Work. The Contractor shall segregate, account, summarize, and report the accrued costs for each program Unique Project Number (UPN) to the eleven digit level of NASA Agency-wide Coding Structure (AWCS) in accordance with NASA FMM 9121-20, 9121-21, and 9121-22, by each task order for all work performed pursuant to C-1(a) and C-1(b) herein. The Contractor shall not transfer costs between task orders except (i) in those limited instances where the costs are found to have been originally charged to an incorrect JPL Project/Task Number due to a mistake or error, provided that sufficient documentation is maintained by the Contractor to demonstrate that the transfer was indeed required to correct a mistake or error, or (ii) with prior written approval or at the written request of the Contracting Officer. Upon the implementation by NASA of the IFM software, the Contractor will be required to report and collect cost at the task order level and the reporting and tracking of cost at the 11 digit UPN level of the AWCS will no longer be required.

(2) Related Facilities Management/Maintenance. The Contractor shall segregate, account, summarize, and report the accrued costs for each task order and each program Facilities Project Number (FPN) to the four-digit level of the NASA Agency-wide Coding Structure in accordance with NASA Financial Management Manual FMM 9121-30 for all work performed pursuant to C-1(c)(1) herein. The Contractor shall maintain a one-to-one relationship between the FPN and task order to facilitate the accurate tracking of costs for Construction of Facility projects. Costs of task order amendments need not be maintained separately from the task order thus amended unless so specified therein for work performed pursuant to C-1(c)(1). Facilities maintenance costs shall be reported as requested by the Contracting Officer to assist NASA in complying with its CFO Act responsibilities.

(3) Closed Appropriations. Pursuant to P.L. 101-510, all expired appropriation accounts at NASA Headquarters will be closed on September 30th of the fifth (5th) fiscal year after the end of the period of availability for obligation. The Contractor shall track closed appropriation accounts in the Contractor's accounting system in order to

support the aforementioned closeout process. The Closed Account Obligations Reports shall be submitted to NASA as follows:

The following Closed Account Obligations Reports shall be submitted by the Contractor to the Contracting Officer within the times specified for each. All reports will include the task order number, the original (as well as replenishment) appropriation account and program year (if provided to the Contractor), the Agency-wide Coding Structure (AWCS) number and NASA UPN number, the reimbursable code and Reimbursable Agreement Number (RAN), if applicable, and the dollar amounts. Upon the implementation by NASA of the IFM software, the reports outlined in (i), (ii) and (iii) will no longer be required.

(i) Unliquidated Amounts on Task Orders Not Yet Closed. This report will list all task orders (TOs) which contain closed account (i.e., expired) funds which have not been withdrawn or expended in accordance with P.L. 101-510. The report will be cumulative in nature, i.e., it will be updated with each annual submission. It is due within 15 working days of the start of each Government fiscal year (FY).

(ii) Expenditures Against Current Year Funds Designated As Replenishment. This report will list all TOs under which expenditures have been made by the Contractor (during the fiscal year just completed) against current year funds provided for JPL which have been designated by NASA as replenishment funds for closed accounts. It is due within 15 working days of the start of each Government fiscal year (FY).

(iii) Adjustments to Outstanding Obligations Against Closed Accounts. This report will list adjustments to JPL-reported outstanding obligations which occurred against closed accounts from the fiscal year just completed. It is due within 30 working days of the start of each Government fiscal year (FY). A supplemental report, explaining each adjustment, will be provided as soon thereafter as possible.

(4) Uncosted Obligations. A phased costing plan by quarter will be provided by UPN and method of authorization for direct funded task orders. The report will be submitted quarterly to the Contracting Officer. Upon the implementation by NASA of the IFM software, this report will no longer be required.

(5) Replenishment Procedure. The Contractor will follow a Replenishment Procedure that is drafted by the contractor within 30 days of the start of this contract and approved by the Contracting Officer and the NASA Comptroller's office. The procedure should include at least the following topics: a) the ability to flag closed appropriations in the contractor's accounting system, b) how NASA will be notified on a timely basis of obligations and expenditures against these flagged accounts, c) the formal request for replenishment on a one-time basis against a specific PSA/DSA and d) how the Contractor plans to handle expenditures against these flagged accounts for which replenishment was not originally required. Annual updates will be done on the replenishment

procedure. Upon implementation by NASA of the IFM software, replenishment will be performed at a task order level, when the amount allotted in the NASA accounting system differs from the amount allotted on the task order and in the Contractor's system at a task order level.

(6) Electronic submission of cost data. The Contractor shall electronically submit a report of cost data to the HQ Accounting office not later than the end of the calendar month minus six (6) working days and a hard copy should be provided the next business day. Data for the period between report preparation and the end of the Contractor's fiscal month will be estimated actuals. Also, the cost data for the final days of the fiscal year should be transmitted by the second working day of the new fiscal year. Upon the implementation by NASA of the IFM software, this report will no longer be required.

(7) NASA Contractor Financial Management Report. In complying with the reporting requirements of G-22, the Contractor will submit NASA Contractor Financial Management Reports as follows:

(i) Monthly NF533 Reports will be submitted ten (10) work days after the end of the Contractor's fiscal month (the initial report will be submitted 45 work days after award of the contract). Each report will be comprised of a one page summary report at the total (prime) contract level by major cost category (i.e. direct labor, travel, services, procurements, Caltech transfers, benefits and applied burden). The Contractor will also provide 533M data for each task order on a task order basis.

(ii) Quarterly NF533 Reports will be submitted 15 calendar days prior to the beginning of the Contractor's fiscal quarter being reported (the initial report will be submitted 45 work days after award of the contract). Each report will be comprised of a one page summary report at the total (prime) contract level by major cost category (i.e. direct labor, travel, services, procurements, Caltech transfers, and benefits and applied burden), and 533Q data for each task order on a task order basis.

(iii) The NF533 reports will not include narrative reporting, fee reporting at the task order level, or potential termination liability.

(iv) The NF533M will be submitted for three months after the period of performance of this contract is completed. A significant amount of time may pass between the end of the contract and final closeout. If no significant additional costs are being incurred or are anticipated after the first quarter, summary 533M reporting only, on a quarterly basis, reporting only when changes in actual cost occur, or suspension of NF533 reporting altogether may be directed by the NASA Contracting Officer. If the final cost of the contract changes after the submission of the "final" report, the Contractor must submit a revised NF533 in the month the change is recognized.

(v) The NF533 will be submitted electronically once the IFM system is implemented by NASA. The electronic format will include cost and workforce data in a manner consistent with the current formats. Although detailed specifications cannot be provided to the Contractor at this time it is expected that they will not materially vary from the current reporting requirements outlined in this contract for the hardcopy reports.

(vi) The NF533 reports are the official cost and workforce document for actual and estimated cost performance. Any financial data submitted to NASA in addition to the NF533 must be based upon data from the Contractor's financial system and reconcilable as requested by the Contracting Officer.

(vii) The Contractor shall use the UPN breakout on the task orders as the lower level detail for the purposes for G-22(b).

(viii) The requirement in G-22(d) regarding subcontractor cost data is deemed to have been met by the Contractor accurately reflecting subcontractor 533M and other cost data in the proper reporting categories on the Contractor's Form 533 report.

G-2 PROPERTY REPORTING

The Contractor agrees to furnish a current itemized listing of all Government-owned property accountable under this contract within thirty (30) days of receipt of written request from the Contracting Officer for such a listing in the format requested by the Contracting Officer.

G-3 LIST OF GOVERNMENT-FURNISHED PROPERTY

NFS 1852.245-76 List of Government-Furnished Property (OCT 1988)

For performance of work under this contract, the Government will make available Government property in accordance with C-2 of this contract on a no-charge-for-use basis. The Contractor shall use this property in the performance of this contract at the locations stated in C-2(b) of this contract, at the Contractor's campus facilities for on-campus research in accordance with paragraph (d) of Clause 88 [52.245-5] Government Property (Cost-Reimbursement Time and Material or Labor Hour Contracts) (DEVIATION) and at other location(s) as may be approved by the Contracting Officer.

Under the FAR 52.245 Government property clause of this contract, the Contractor is accountable for the identified property.

The Contractor is responsible for all Government property as identified in C-2(b) in the contract in accordance with paragraph (g) of Clause 88. A listing of the property is required as requested per Clause G-2.

(End of clause)

G-4 PROPERTY FINANCIAL CONTROL AND REPORTS

In addition to the requirements of NASA FAR Supplement (NFS) 18-45.505-14, Reports of Government Property, (as revised through NASA FAR Supplement Directive (NFSD) 97-0), the following provisions of the NASA Financial Management Manual (FMM) in effect on the dates shown apply to this contract.

<u>Chapter No.</u>	<u>Title</u>	<u>Effective Date</u>
9256	Tracking Stations	July 1997
9252-4	Timing of Capitalization	July 1997
9252-6	Real Property Type Accounts	July 1997
9255-3	Capitalization Criteria for Real Property	July 1997

In the event of a conflict between the provisions of the NASA FAR Supplement and the applicable provisions of the NASA FMM as specified above, the provisions of the NASA FAR Supplement shall control.

G-5 CONTROL OF PROPERTY AT OVERSEAS TRACKING STATIONS

DELETE SECTION G-5 in its entirety and REPLACE it with the following: (Mod 25)

G-5 CONTROL OF PROPERTY AT OVERSEAS TRACKING STATIONS

Australia. Notwithstanding the provisions of Clause 88 (52.245-5), Government Property, (Cost-Reimbursement, Time-and-Material, or Labor-hour Contracts)(DEVIATION), the Contractor's responsibilities for Government property physically located at Deep Space Network Stations (DNS) in Australia shall be limited to

observance of the requirements placed upon JPL as contained in the Commonwealth of Australia, Commonwealth Scientific and Industrial Research Organization (CSIRO), "Manual of Property Control Instructions for NASA Installations Operated by CSIRO", dated November 1997. All Property as DSN Stations in Australia remains in the physical custody of the Commonwealth of Australia; however, the Contractor shall maintain all property records of DSN property (other than expendable property) and shall furnish all required reports the same as if all such property remained in its custody. It is recognized by the parties hereto that the Contractor, in fulfilling its obligations with respect to records and reports, is dependent, in part, upon compliance by the Commonwealth of Australia with provisions of the Manual. (Contract Mod 27)

Spain. Notwithstanding the provisions of Clause 88 (52.245-5), Government Property, (Cost-Reimbursement, Time-and-Material, or Labor-hour Contracts)(DEVIATION), the Contractor's responsibilities for Government property physically located at Deep Space Network Stations (DNS) in Spain shall be limited to observance of the requirements placed upon JPL as contained in the Government of Spain, Instituto Nacional De Tecnica Aeroespacial (INTA), Manual for U.S. Government Property Control, dated April 1, 1986, updated June 1, 2001. All property at DSN Stations in Spain remains in the physical custody of the Government of Spain; however, the contractor shall maintain all property records of SDN property (other than expendable property) and shall furnish all reports the same as if all such property remained in its custody. It is recognized by the parties hereto that the Contractor, in fulfilling its obligations with respect to records and reports, is dependent, in part, upon compliance by the Government of Spain with provisions of the Manual. (Contract Mod 27)

Australia. Notwithstanding the provisions of Clause 88 [52.245-5], Government Property, (Cost-Reimbursement, Time and Material, or Labor Hour Contracts) (DEVIATION), the Contractor's responsibilities for Government property physically located at Deep Space Network Stations (DSN) in Australia shall be limited to observance of the requirements placed upon JPL as contained in the Commonwealth of Australia, Department of Supply "Manual of Property Control Instructions for NASA Installations Operated by Department of Supply", Issue No. 2, dated September 30, 1967. All property at DSN Stations in Australia remains in the physical custody of the Commonwealth of Australia; however, the Contractor shall maintain all property records of DSN property (other than expendable property) and shall furnish all required reports the same as if all such property remained in its custody. It is recognized by the parties hereto that the Contractor, in fulfilling its obligations with respect to records and reports, is dependent, in part, upon compliance by the Commonwealth of Australia with provisions of the Manual.

G-6 TASK ORDER PROCEDURE

NFS 1852.216-80

Task Ordering Procedure (OCT 1996), ALTERNATE I(OCT 1996)
(DEVIATION)

General. Only the Contracting Officer may issue task orders to the Contractor, providing specific authorization or direction to perform work within the scope of the contract. Except for bilateral task orders, a task order shall be effective as provided therein. The Contractor shall proceed with performance of such task orders in accordance with their terms and the terms and conditions of this contract. A bilateral task order shall be effective upon acceptance by the Contractor.

(a) Statements of Work

(1) NASA Sponsors. Statements of Work for unilateral task orders shall be in accordance with NASA requirements as denoted by approval letters, concurrence on contractor task plans or other documentation signed by NASA program personnel and directed to the Contracting Officer.

(2) Non-NASA Sponsors. Statements of Work for bilaterally accepted work, where the sponsor is other than NASA, shall be in accordance with the Contractor proposals sent to the non-NASA sponsor as negotiated with the Contractor by the NASA Management Office (NMO-JPL) with the concurrence of the non-NASA sponsor. The contractor may procure computer hardware and software for a non-NASA sponsor for prototype units and software development purposes only.

(3) Performance Based Contracting (PBC) Task Orders. NASA task orders may be performance based when the NASA sponsor defines the work as PBC prior to negotiation of the statement of work. NASA must define what the end product must do and any critical constraints for hardware or end-item deliverables and must define performance requirements for services. NASA and the Contractor must agree in the task plan on budget, schedule, and end product or service performance requirements in accordance with the end product definition and critical constraints set by NASA. The Contractor may recommend measurement methods and metrics for approval by the technical director, but the technical director is responsible for employing measurement methods that can be clearly communicated to the Contractor. The Contractor will be held accountable for failure to meet minimum task order requirements in the award fee process. The PBC task orders will be completion type task orders and will be considered complete upon technical director's approval of the end product or service. The NASA Contracting Officer will make the final determination of which tasks shall be PBC.

(b) Description. Task orders shall be in writing, originals shall be in hard copy; be numbered in a succession of numbers; be dated; shall describe the work to be performed or the services or supplies to be furnished; shall state both the estimated cost under this contract, and the amount allotted for performance thereunder, and the programmatic

estimated cost; shall set forth both the contractual period of performance and the programmatic period of performance; shall set forth the appropriation and allotment chargeable and any other pertinent fiscal or administrative data; shall include delivery instructions if required and describe the applicability of the clauses from H-38, Clauses Applicable on a Task Order Basis; may include performance standards and other requirements as appropriate; and shall be signed by the Contracting Officer. In the case of bilateral task orders, the task order shall also be accepted in writing by the Contractor.

(c) Procedure. A task order may be issued by the Contracting Officer upon submission of a task plan pursuant to either (1) or (2) below.

(1) When in a position to do so without a prior request, the Contractor shall provide the Contracting Officer with a task plan which includes:

- (i) A summary statement of work.
- (ii) A functional description of the work identifying the objective or results desired from the contemplated task order.
- (iii) A reference to the project plan, when applicable, which serves as the detailed statement of work for the task order. The project plan shall be approved by the NASA program office.
- (iv) Delivery/performance schedule including start and end dates.
- (v) Any other resources (travel, materials, equipment, facilities, etc.) requested.
- (vi) Deliverables, with the minimum being a final report.
- (vii) A cost estimate for the work to be performed.
- (viii) Mission assurance, import/export and any other special requirements, as appropriate.

(2) When NASA desires to issue a task order pursuant to C-1(a) and a task plan has not been received pursuant to (1) above, the Contracting Officer shall provide the Contractor with the following data:

- (i) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(ii) Proposed performance standards, if any, to be used as criteria for determining whether the work requirements have been met.

(iii) A request for a task plan from the Contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the Contractor's task plan.

(iv) Within 60 calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request. However, within 30 calendar days after receipt of the notice that funds have arrived for the proposed task, the Contractor shall submit a task plan conforming to the request.

(3) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor as set forth in (b) above.

(d) Acceptance. Upon receipt of a unilateral task order issued by the Contracting Officer pursuant to paragraph C-1(a), the Contractor shall promptly, and not later than ten days from such receipt, notify the Contracting Officer in writing, if, in its opinion, (1) the resources provided for performance of the work of the task order are inadequate; or (2) performance of the task is not technically feasible. Additionally, the Contractor shall notify the Contracting Officer of any other major problems that might, in the Contractor's opinion, threaten accomplishment of the work under the task order. Notwithstanding the foregoing, the Contractor shall proceed with performance of the work of the task order in accordance with its terms.

(e) Modification Procedure. Any unilateral task order issued pursuant to paragraph C-1(a) may be amended by the Contracting Officer at any time. Bilateral task orders may be amended by mutual agreement of the parties. Funds withdrawal from any task order shall be coordinated with the Contractor to ensure the funds decrease does not reduce the amount allotted to the task order below that amount estimated by the Contractor to be necessary to cover (i) all expenditures and other amounts accrued against the task order, (ii) all outstanding obligations and commitments against the task order to the extent they cannot be withdrawn. The Contractor will identify all funds available for withdrawal upon completion of the task order's period of performance. Subject to the provisions of Clause 71 [52.232-20; 52.232-22], Limitation of Cost; Limitation of Funds (DEVIATION), the Contractor shall not terminate work on any task order, unless so directed by the Contracting Officer.

(f) Performance on the Task Order. During the performance of the task order, the Contractor shall notify the Contracting Officer of any major problems that might, in the Contractor's opinion, threaten accomplishment of the work being performed within schedule and within budget under the task order. The Contractor shall forward a copy of the

final report or notice of hardware or other deliverables to the Contracting Officer for all task orders.

(g) In the event of a conflict between the requirements of the task order and the Contractor's approved task plan, the task order shall prevail in all cases except for those elements of a PBC task plan which requires NASA-Contractor agreement under subparagraph G-6(a)(3) above.

(h) The Contracting Officer shall be copied on all financial and progress reports required under any task order, including but not limited to NASA Contractor Financial Management Reports (NASA Form 533 reports) and Project Management Reports.

(End of clause)

G-7 TRANSFERS OF FUNDS BETWEEN TASK ORDERS

(a) General. Funds may not be transferred from one task order to another task order unless specifically authorized by the Contracting Officer. The Contractor shall not transfer costs between task orders except (i) in those limited instances where the costs are found to have been originally charged to an incorrect JPL Project/Task Number due to a mistake or error, provided that sufficient documentation is maintained by the Contractor to demonstrate that the transfer was indeed required to correct a mistake or error, or (ii) with prior written approval or at the written request of the Contracting Officer. For the purposes of this schedule provision the term "task order" shall include discretely-funded areas of a task order. When funds are transferred to any task order in accordance with paragraph G-7(b) below, the sum allotted for the performance of work under that task order shall be deemed to be increased in the amount so transferred. In the event the sum previously allotted for the performance of such work plus the sum so transferred exceeds the estimated cost of the performance of such work, such estimated cost shall be deemed to be increased in the amount of such excess. The sum allotted for the performance of work under any task order from which such transfer of funds is made shall be deemed to be decreased in the amount of the transfer. Additionally, the work statements of all affected task orders shall be modified if necessary to include resultant changes in scope of work if any. Such modification shall be in conformance with this provision.

(b) Procedure. The Contractor shall notify the Contracting Officer whenever, in its opinion, the funds made available to the Contractor by any task order are insufficient to permit continuance of the performance of work under that task order for more than fifteen (15) days after the date of the notification. At that time the Contractor may request that the funds which have previously been allotted to another task order or task orders be transferred to the task order requiring additional funds, provided that:

(1) The funds to be transferred and the funds previously allotted to the task order requiring the additional funds are chargeable to the same program authority, and

(2) Additional funds transferred to any task order pursuant to this paragraph (b) shall not be greater than an amount which, together with the funds previously made available in the then-current fiscal year for the performance of work under that task order, equals the amount set forth in the most recent Program Operating Plan submitted by the Contractor for that fiscal year. The request shall state the amount which the Contractor desires to have transferred, the task order or task orders from which this amount is to be transferred, and the effect that the transfer of these funds will have upon the performance of the work under the task order or task orders from which the funds will be transferred. The Contracting Officer shall respond in a timely manner to the Contractor's funds transfer request. If the Contractor's request is approved, the Contracting Officer will issue the appropriate task order amendments to confirm the transfers of funds.

G-8 FUNDS PROCEDURE FOR TERMINATION OF TASK ORDERS

(a) In the event the Government terminates a task order and the funds allotted thereto are insufficient to cover termination costs, the Contractor shall notify the Contracting Officer of its estimate of the additional funds which it believes to be necessary to cover reasonable, allocable, and allowable task order termination costs as follows:

(1) Within 60 days of the notice of termination the Contractor shall provide an initial estimate of the total amount of such funds required, and shall also identify those funds legally available for removal from other task orders which the Contractor recommends be used to cover such estimated total termination costs; and

(2) Within 180 days of the notice of termination, the Contractor shall supplement the initial estimate by providing a funds requirement proposal, with supporting detail for each cost element, and with any further recommendations regarding a source of funds.

(b) Upon receipt of the initial estimate described in (a)(1) above the Contracting Officer will proceed with the actions necessary to support obtaining the requested funds.

(c) Upon receipt of the funds requirement proposal described under (a)(2) above, the Contracting Officer will perform an analysis of such proposal, and the parties will promptly pursue agreement as to the amount of funds mutually determined to be necessary to cover the termination costs.

(d) Within 90 days of receipt of the Contractor's funds requirement proposal described under (a)(2) above, the Contracting Officer will provide the Contractor direction on the source of funds to cover task order termination costs. In the event that the Contracting Officer does not provide such specific redirection of task order funds or provide other unobligated funds within the above-noted 90-day period, the Contracting Officer shall be deemed to have authorized the redirection of the funds as proposed by the Contractor in its notification.

(e) The Contracting Officer will document the transfer of funds by the subsequent issuance of a task order amendment.

(f) Nothing in this G-8 shall be deemed to limit or otherwise affect the rights of the Contractor under paragraph (k) of Clause 71 [52.232-20; 52.232-22], Limitation of Cost; Limitation of Funds (DEVIATION).

(g) In no event shall Construction of Facilities appropriated funds be used for termination costs other than for the authorized CoF project(s).

G-9 TECHNICAL DATA CERTIFICATION, REVISION AND WITHHOLDING OF PAYMENT

The Contractor agrees to insert the clause at FAR 52.227-21, Technical Data Declaration, Revision and Withholding of Payment - Major Systems (JAN 1997), suitably modified to identify the parties, in all subcontracts for a "major system" as that term is defined in 41 U.S.C.A. 403.

G-10 SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN

(a) Appendix D sets forth the Contractor's "Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan" as agreed to by the parties. Socioeconomic procurement goals shall be established annually by mutual agreement between the Contractor and NASA.

(b) In applying paragraph (d)(9) of Clause 27 [52.219-9], Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan, it is understood and agreed that the requirement that the Contractor require subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a similar plan only applies to subcontracts which have subcontracting possibilities. In those cases where the subcontract meets the thresholds but no plan is adopted, the subcontract file shall document why that is the case.

(c) The standards set forth in paragraph (b) above shall also apply to letter subcontracts. However, in acknowledgment of the urgency associated with letter-contract procurements, the small business subcontracting plans included in letter contract files may be preliminary in nature. Furthermore, in limited cases of extreme urgency, development of such preliminary plans for letter contracts may take place after letter-contract award, but in such instances the Contractor shall ensure that the plans are established as soon as possible in order to maximize achievement of socioeconomic procurement goals.

(d) In applying paragraph (i) of said Clause 27 [52.219-9], Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan, it is understood and agreed that the failure of a subcontractor to comply in good faith with the clause of its subcontract entitled "Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns", or with any plan required to be included in its subcontract, shall be a material breach of such subcontract, but that such failure on the part of the subcontractor shall not itself constitute a breach of this prime contract. However, a failure of the Contractor to comply in good faith with such clause in this contract, or with any plan required to be included in this contract, shall be a material breach of this contract.

(e) The Contractor shall as soon as practicable notify the Contracting Officer of any material breach, known to the Contractor, of a subcontract caused by failure of a subcontractor to comply in good faith with its Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan.

G-11 PROGRAM/PROJECT MANAGEMENT

(a) Task orders issued under this contract pursuant to C-1(a) shall be managed by the Contractor under the direction of NPD 7120.4A, Program/Project Management, dated November 1996, and NPG ~~7120.5A~~ 7120.5B (Mod 20), NASA Program and Project Management Processes and Requirements, dated April 1998. Task orders issued under this contract pursuant to C-1(b) shall be managed by the Contractor under internal Contractor procedures and any applicable sponsor requirements.

(1) NPD 7120.4A will be implemented predicated on the condition that Implementation will begin upon task order execution and after approval of the Program Commitment Agreement (PCA).

(2) NPG ~~7120.5A~~ 7120.5B (Mod 40) will be implemented predicated on the following conditions:

(i) Documents referenced within the NPD and NPG do not apply unless otherwise incorporated in this contract.

(ii) The JPL Director may delegate the appointment of project managers.

(b) NASA recognizes that the budgets for projects and programs for which the Contractor has been selected prior to the date of award of this contract were developed before issuance of NPD 7120.4A and NPG ~~7120.5A~~ 7120.5B (Mod 20). The application of NPD 7120.4A and NPG 7120.5A for these projects shall be addressed on a project by project basis with the cognizant Enterprise Associate Administrator or his designee. Tailoring the application of the NPD and NPG shall be commensurate with risk management, program/project life-cycle and resources.

(c) NPGD (Mod 20) 9501.3, Earned Value Performance Management, dated February 1997, applies to cost-reimbursable JPL subcontracts in excess of \$25 million under task orders issued pursuant to C-1(a) of this contract. The application of NPG 9501.3 will be addressed on a project by project basis in either the PCA, Program Plan or Project Plan as approved by NASA. JPL is encouraged to use EVM in its in-house development activities. When EVM is not used on in-house development activities, JPL shall establish a program control activity that integrates the cost, schedule, and technical performance of the program/project being developed.

(d) Any work not to be performed under these directives shall so state in the statement of work on the task order.

G-12 USE OF DEPARTMENT OF DEFENSE SERVICES

The Contractor shall, to the extent required by the Contracting Officer, utilize Department of Defense audit, source inspection and property administration services. Other administrative services of the Department of Defense which may be available to the Contractor shall be utilized to the extent deemed practicable by the Contractor.

G-13 REFERENCES TO FAR "RIGHTS IN DATA" CLAUSE

References in Clause 62 [52.227-16], Additional Data Requirements, to the FAR Clause at 52.227-14, Rights in Data, shall be deemed to refer to Clause 61 [52.227-14], Rights in Data--General (ALT II,III,V) (DEVIATION), of this Contract.

G-14 NASA ISSUANCE SYSTEM

(a) The parties hereto agree that NASA Management Directives System publications ("NASA Issuances") are not in and of themselves applicable to the Contractor,

and that the Contractor therefore is not obligated merely by virtue of their issuance to implement their intent or to observe the policies and procedures set forth therein, irrespective of the fact that certain NASA Issuances may state that they apply to JPL. NASA Issuances become contractually binding and obligatory upon the Contractor only when and to the extent made so by appropriate contractual means.

(b) The parties hereto further agree that certain NASA Issuances referenced in this contract have been made contractually binding and obligatory upon the Contractor. NASA Issuances accepted by the Contractor may be subject to certain conditions and limitations specified in the contract.

(c) In order to provide a bibliography of NASA Issuances in the categories identified in paragraph (b) above, the parties agree to maintain Appendix C to this contract which shall list all NASA Issuances referenced in this contract.

(d) In order to maintain Appendix C in a current condition, it is agreed that the Contractor will issue, periodically for Contracting Officer approval, an up-to-date Appendix C, which shall list all NASA Issuances referenced in the contract contractually binding and obligatory upon the Contractor.

(e)(1) During the period of this contract, NASA anticipates that new NASA issuances will be released, that current NASA issuances may be revised, and that the Agency may consider some of the aforementioned newly-released or revised Issuances to be appropriate for incorporation into this contract. The Contractor therefore agrees to support the timely and orderly generation, review, and disposition of new or revised NASA Issuances as set forth below.

(2) Should NASA request the Contractor's input during formulation or revision of NASA Issuances, the Contractor shall ensure that its representatives in this regard provide support and advice to NASA regarding the content of NASA Issuances from the standpoint of cross-agency functional and technical suitability. Should the Contracting Officer specifically request that such input address the applicability of the Issuance's content to work to be performed under this contract, the Contractor will provide such input, but the parties recognize that (i) the Contractor's input will require additional time due to the need to engage all affected JPL organizations, and (ii) the Issuance shall be binding only as provided in paragraph (4) below.

(3) When the Contracting Officer requests the Contractor to consider a particular Issuance or revision for contractual incorporation, the Contractor shall make a good-faith determination of whether and to what extent such incorporation would be appropriate. Where full acceptance is not considered appropriate, the Contractor shall promptly provide a written explanation to the Contracting Officer, including, when applicable, any specific proposed conditions or exceptions to the content of the Issuance.

(4) The set of contractually binding NASA Issuances shall be revised through bilateral modifications to the Contract.

G-15 RESERVED

G-16 CONSTRUCTION PROJECTS IN PROGRESS

The Contractor shall use the criteria, procedures and reporting requirements for "on-going" Construction of Facilities (C of F) projects as set forth in NPG 8820.2B (in accordance with the conditions of acceptance specified in C-5(b)), Facility Project Implementation Handbook, dated April 25, 1997.

G-17 EXPORT CONTROL REGULATIONS

(a) General. In the performance of this contract, the Contractor will from time-to-time be required to deliver, disclose, or transfer (export) to foreign entities, technical data, software or equipment which may be subject to the export laws and regulations of the United States and which may require an export license (or other regulatory agency approval) or the use of a license exemption/exception. Such exports, which would include, but not be limited to, export of technical data as defined at 22 CFR 120.10, will from time-to-time be required for, and be in furtherance of, the performance of this contract. The Contractor shall comply with Federal export laws and regulations in the performance of this contract.

(b) NASA-Sponsored Work.

(1) In the performance of NASA-sponsored work pursuant to clause G-6 (Task Order Procedure) of this contract where such work is in furtherance of planned or in-place international agreements between NASA and a foreign partner, the Contractor will identify to NASA that such work requires the transfer to foreign entities of equipment, software or technical data controlled under the International Traffic In Arms Regulations (ITAR) or the Export Administration Regulations (EAR). In each such instance, language will be included in the task order indicating that the Contractor is required under the terms of this contract and the task order to deliver, disclose, or transfer (export) technical data, software or equipment to a specific foreign entity, including appropriate limitations, provisos and instructions applicable to the specific transfers. Any and all exports in support of such task orders which do not fall within either generally available license exceptions/exemptions or the 22 CFR 125.4(b)(3) exemption shall be exported as specified by NASA, using exemptions uniquely available to the U. S.

Government or NASA obtained licenses, unless NASA determines that the export is unnecessary for performance of the applicable task order. The Contractor shall provide all documentation required for NASA to issue Government Bills of Lading (GBLs) or to obtain a license. From time-to-time other forms of authorization to the Contractor may be used by NASA (e.g., a letter from the Contracting Officer).

(2) In the event the Contractor determines that in performance of NASA-sponsored work pursuant to clause G-6 (Task Order Procedure) of this contract it would be appropriate to deliver, disclose or transfer (export) technical data, software or equipment to a foreign entity and such work is not in furtherance of a planned or in-place international agreement between NASA and a foreign partner, the Contractor may request NASA to obtain export authorization for such export. If NASA concurs that such export is necessary, NASA may authorize the use of exemptions uniquely available to the U. S. Government or seek to obtain a license. The Contractor shall provide all documentation required for NASA to issue Government Bills of Lading (GBLs) or to obtain a license. From time-to-time other forms of authorization to the Contractor may be used by NASA (e.g., a letter from the Contracting Officer).

(c) Work for Other U. S. Government Sponsors. In the performance of non-NASA-sponsored work for other U. S. Government sponsors pursuant to clause G-6 (Task Order Procedure) of this contract, the Contractor will identify to NASA that such work requires the transfer to foreign entities of equipment, software or technical data controlled under the ITAR or EAR. In each such instance, subject to NASA confirmation with the U. S. Government sponsor that such export is required, language will be included in the task order indicating that the Contractor is required under the terms of this contract and the task order to deliver, disclose, or transfer (export) technical data, software or equipment to a specific foreign entity. Any and all exports in support of such task orders which do not fall within either generally available license exceptions/exemptions or the 22 CFR 125.4(b)(3) exemption shall be exported, as specified by the other U. S. Government sponsor, using exemptions available to that sponsor or using a license obtained by that sponsor or by the Contractor.

(d) Work for Non-U. S. Government Sponsors. Any and all exports in support of task orders for non-U. S. Government sponsored work which do not fall within generally available license exceptions/exemptions shall be exported pursuant to a license obtained by the Contractor or the non-U.S. Government sponsor. The Contractor shall not utilize the 22 CFR 125.4(b)(3) or other exemptions uniquely available to the U.S. Government for such exports.

(e) Limitations. In no instance will NASA apply for a Technical Assistance Agreement or a Manufacturing License Agreement as defined in the ITAR on behalf of the Contractor. In no instance will NASA apply for an export license on behalf of a subcontractor. In all cases not covered by relevant license exemptions as discussed

above or licenses applied for by NASA for NASA-sponsored work as agreed with the Contractor, the Contractor shall be responsible for obtaining required export licenses or other approvals for performance of work under this contract.

(f) Notification. In all instances wherein the Contractor applies for an export license, other prior approval, commodity jurisdiction, classification request or advisory opinion, in furtherance of work under this Contract, a copy of the Contractor application package or other request as submitted to the U. S. government regulatory agency shall be provided to the NASA Management Office at JPL and the Office of External Relations, NASA Headquarters, Mail Code ID, Washington, DC 20546 (Attn: Manager, International Technology Transfer Policy).

(g) Recordkeeping. The Contractor shall be responsible for all regulatory recordkeeping requirements associated with the use of license exemptions/exceptions and licenses.

G-18 FACILITIES

(a) Authorizations. It is the intent of the parties that authorizations for acquisition of facilities will be provided as follows:

(1) Authorizations for the acquisition of facilities involving the use of funds appropriated for construction of facilities, or involving construction of any facility requiring more than \$200,000 of funds from other sources, will be provided pursuant to the terms of subparagraph C-1(c)(1) of this contract, and

(2) In accordance with the facilities terms and conditions of this contract acquisition of other facilities will be made by the Contractor for the performance of work under C-1(a), or C-1(b), provided, however, that nothing shall preclude the issuance of a task order, pursuant to C-1(c)(1) for the acquisition of any such other item of facilities, and provided further, that nothing herein shall preclude the Government from furnishing any item of facilities in lieu of authorizing the Contractor to acquire such item, and

(3) The Contractor shall manage all facility projects funded from NASA appropriations, inclusive of projects involving funds for which NASA will be reimbursed by other federal agencies, estimated to cost \$50,000 or less. Any facility project in excess of \$50,000 must be approved in writing by the Contracting Officer prior to the obligation of any funds for the proposed project. The requirements of this paragraph are in addition to, and not in lieu of, the requirements of Clause 85 [52.244-2], Subcontracts (Cost-Reimbursement and Letter Contracts) (DEVIATION). NASA Form 1509s with a value below \$200,000 shall be submitted to the Contracting Officer for approval. NASA Form 1509s ~~valued at \$200,000 and above~~ using FY 99 and beyond funds with a value below

\$500,000 shall be submitted to the Contracting Officer for approval and NASA Form 1509s valued at \$500,000 and above and using FY 99 and beyond funds, (mod 3) must be submitted to NASA Headquarters Code JX for approval. A copy of the NASA Headquarter's approved 1509 will be forwarded to the Contracting Officer. NPG 8820.2B (in accordance with the conditions of acceptance specified in C-5(b)), "Facility Project Implementation Handbook", shall be utilized by the Contractor in preparing facility approval and implementation documents respectively. This applies to both Government-owned facilities and facilities leased by the Contractor. The definition of words utilized in facility approval documents (e.g., "construction", "repair", "rehabilitation", and "facility") shall have the meanings set forth in Appendix A to NASA Policy Guide NPG 8820.2B (in accordance with the conditions of acceptance specified in C-5(b)), "Facility Project Implementation Handbook".

G-19 FREQUENCY AUTHORIZATION

1852.223-71

Frequency Authorization (DEC 1988)

(a) Authorization of radio frequencies required in support of this contract shall be obtained by the Contractor or subcontractor in need thereof.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. Procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

G-20 NEW TECHNOLOGY

NFS 1852.227-70

NEW TECHNOLOGY (JULY 1995) (DEVIATION)

The following provision shall apply to the performance of work under any task order so specifying, in accordance with Exceptions 1 and 2 set forth in preamble to Clause 67 [52.227-11], Patent Rights--Retention by the Contractor (Short Form) (DEVIATION).

(a) Definitions.

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

"Contract," as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

"Made," as used in this clause, means conception or first actual reduction to practice; provided, that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

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

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

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

"Small business firm," as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used.)

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

(b) Allocation of principal rights.

(1) Presumption of title.

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of Section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Contractor may nevertheless file the statement described in paragraph (b)(1)(i) of this clause. The Administrator will review the information furnished by the Contractor in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Contractor whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

(2) Property rights in subject inventions. Each subject invention for which the presumption of paragraph (b)(1)(i) of this clause is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this clause.

(3) Waiver of rights.

(i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of Section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, have

adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR 1245, Subpart 1, Contractors may petition, either prior to execution of the Task Order or within 30 days after execution of the Task Order, for advance waiver of rights to any or all of the inventions that may be made under a Task Order. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) Minimum rights reserved by the Government.

(1) With respect to each subject invention for which a waiver of rights is applicable in accordance with 14 CFR Section 1245, Subpart 1, the Government reserves--

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

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

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

(d) Minimum rights to the Contractor.

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

(2) The Contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in

accordance with 37 CFR Part 404, Licensing of Government Owned Inventions. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) Invention identification, disclosures, and reports.

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

(2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology clause or, if earlier, within six months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so,

whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.

(3) The Contractor shall furnish the Contracting Officer the following:

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

(ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing first and second tier subcontracts containing a patent rights clause or certifying that there were no such subcontracts.

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

(5) The Contractor agrees, subject to paragraph 27.302(i), of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether--

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

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

(2) If the Contracting Officer learns of an unreported Contractor invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

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

(g) Subcontracts.

(1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall--

(i) Include the clause at NFS 1852.227-70 (JUL 1995) (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227-11 (JUL 1995) as modified by NFS 1852.227-11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

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

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

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

(3) In the case of subcontractors at any tier, the Contractor shall include, or have included, a provision that the mutual obligations of NASA, the subcontractor, and the Contractor created by any clause inserted in a subcontract pursuant to the subparagraph (g), Subcontracts, shall additionally, constitute a contract between the subcontractor and NASA with respect to those matters covered by such a clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, and the applicable patent rights clause. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

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

(h) Preference for United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

G-21 DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND
PATENT REPRESENTATIVE

NFS 1852.227-72
DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE
AND PATENT REPRESENTATIVE (JUL 1997)

(a) For purposes of administration of the clause of this contract entitled "New Technology" or "Patent Rights--Retention by the Contractor (Short Form)" whichever is included, the following named representatives are hereby designated by the Contracting Officer to administer such clause:

Title	Office Code	Address (including Zip Code)
New Technology Representative	SJ/180-800C	NASA Management Office-JPL 4800 Oak Grove Drive Pasadena, CA 91109-8099

Patent
Representative

SJ/180-802C

NASA Management Office-JPL
4800 Oak Grove Drive
Pasadena, CA 91109-8099

(b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquires or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a "New Technology" clause or "Patent Rights--Retention by the Contractor (Short Form)" clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.305-370 of the NASA FAR Supplement.

(End of clause)

G-22 NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING

NFS 1852.242-73

NASA Contractor Financial Management Reporting (JUL 1997)

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in NASA Policy Guidance ~~(NPG) 9501.2, NASA Contractor Financial Management Reporting, NPG 9501.2C~~ NASA Contractor Financial Management Reporting, April 23, 1996, (mod 11) and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall correlate with technical and schedule reporting, shall be set forth in the Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information provided to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule or as designated in writing by the Contracting Officer. Upon completion and acceptance by NASA of all contract line items, the Contracting

Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only, report only when changes in actual cost occur, or suspend reporting altogether.

(d) The Contractor shall ensure that its Form 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

G-23 CONTRACTOR REQUESTS FOR GOVERNMENT-OWNED EQUIPMENT

NFS 1852.245-70, Contractor Requests for Government-owned Equipment (JUL 1997) (DEVIATION)

(a) "Equipment" as used in this clause, means commercially available items capable of stand-alone use, including those to be acquired for incorporation into special test equipment or special tooling.

(b)(1) Notwithstanding the Contractor's ability to provide Government property (other than Equipment as defined in this provision) to its subcontractors in the performance of subcontracts under this contract, the Contractor shall be authorized to permit its subcontractors to use Government-owned equipment only under the circumstances specified below. Upon determination by a subcontractor of need for any Government-owned equipment item for performance of a subcontract under this contract, the subcontractor shall provide to the Contractor a written request justifying the need for the equipment and the reasons why subcontractor-owned property cannot be used, citing the applicable FAR or subcontract authority for use of the Government-owned equipment. Before authorizing the use of the requested Government-owned equipment, the Contractor shall review the subcontractor's written request and such other information as it deems relevant and shall conclude whether the need is justified. Equipment being acquired as a deliverable end item listed in the subcontract or as a component for incorporation into a deliverable end item listed in the subcontract is exempt from this requirement.

(2) The Contractor shall require that a subcontractor's request pursuant to subparagraph (b)(1) shall include a description of the item in sufficient detail to enable the Contractor to screen the Government's inventories for available equipment. For this purpose, the subcontractor shall be required to (i) prepare a separate DD Form

1419, DOD Industrial Plant Equipment Requisition, or equivalent format, for each item requested and (ii) forward it to the Contractor at least 30 days in advance of the date the subcontractor intends to acquire the item if approved by the Contractor. Multiple units of identical items may be requested on a single form. Instructions for preparing the DD Form 1419 are contained in NASA FAR Supplement 1845.7102. The Contractor shall obtain Contracting Officer consent prior to approving the provision to, or acquisition by, its subcontractors of any item of equipment exceeding \$1,000.

(c) Contractors who are authorized to conduct their own screening using the NASA Equipment Management System (NEMS) and other Government sources of excess property shall provide the evidence of screening results with their request for Contracting Officer consent. Requests to purchase based on unsuitability of items found shall include rationale for the determined unsuitability.

(End of clause)

G-24 FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS

NFS 1852.245-73

Financial Reporting of NASA Property in the Custody of Contractors (SEP 1996)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with 1845.505-14, the instructions on the form, and subpart 1845.71. Subcontractor use of NF 1018 is not required by this clause; however, the contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(b) If administration of this contract has been delegated to the Department of Defense, the original of NASA Form 1018 shall be submitted to the NASA installation Financial Management Officer and three copies shall be sent concurrently through the DOD Property Administrator to the NASA office identified below. If the contract is administered by NASA, the original of NF 1018 shall be submitted to the installation Financial Management Officer, and three copies shall be sent concurrently to the following NASA office:

NASA Management Office - JPL
NASA Property Officer
Mailstop 180/802L
4800 Oak Grove Drive
Pasadena, CA 91109

(c) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. The Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports when due. Such reserve shall be withheld until the Contracting Officer has determined that the required reports have been received by the Government. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report is required within 30 days after disposition of all property subject to reporting when the contract performance period is complete.

(End of clause)

G-25 APPLICATION OF CLAUSES INVOLVING FOREIGN ACQUISITIONS

(a) The Balance of Payments Program in Clause 111 [52.225-7] applies only to solicitations and contracts for acquiring R&D efforts for use outside the United States, unless one or more of the exceptions in 25.302(b) applies.

(b) The Buy American Act, Balance of Payments Program -- Construction Materials under the Trade Agreements Act and North American Free Trade Agreement in Clause 113 [52.225-15] (DEVIATION) applies to solicitations and contracts for construction.

(c) The parties recognize that clauses implementing the prohibition in the Trade Agreements Act regarding purchases from nondesignated countries apply to end products, including end products for construction, but do not apply to acquisition of services or construction.

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H-1 REPRESENTATIONS AND CERTIFICATIONS

The representations and certifications completed by the Contractor and included in Part IV are incorporated herein by reference.

H-2 WAGES, SALARIES AND PERSONNEL DATA

(a) The Contractor agrees that all wages, salaries, and other compensation being paid, or to be paid, to the employees of the Jet Propulsion Laboratory are being paid, and will be paid, in accordance with the Contractor's established wage and salary policy and practice and that such payments will be reasonable and consistent therewith. Further, the Contractor agrees to furnish the Contracting Officer its wage and salary schedules, its nonacademic personnel policies, and amendments thereto and modifications thereof, including job titles contained within such rate ranges and/or other descriptive information identifying the types of positions.

(b) The Contractor shall make no appointment to a position of Director for a JPL directorate or an equivalent position, and above, unless such appointment has received the concurrence of the Administrator of NASA or his designee.

(c) The Contractor shall provide the following aggregated data on its work force employed at JPL: occupational distribution, educational levels, average age and rate ranges. Such data shall be submitted annually. Data on individuals shall not be submitted except to the extent otherwise required by applicable law.

(d) When personally identifiable information is required by Government auditors in the conduct of their duties, such information will be provided so long as appropriate measures are agreed upon to protect the legitimate privacy expectations of the Contractor's employees.

H-3 KEY PERSONNEL

The Contractor shall promptly notify the Contracting Officer of the key personnel to be assigned full time to perform work on a "flight project". The designated key personnel shall not be reassigned to any other work by the Contractor without the consent of the task order Program Director in NASA Headquarters. The term "flight project" as used herein is a project which has as one of its principal purposes the construction and operation of one or

more aeronautical or space vehicles and necessary ground support in order to accomplish a scientific or technical objective.

H-4 SAFETY AND HEALTH

NFS 1852.223-70

Safety and Health (MAR 1997/July 2000)

~~(a) — The Contractor shall take all reasonable safety and health measures in performing under this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and health in effect on the date of this contract and with the safety and health standards, specifications, reporting requirements, and provisions set forth in the contract Schedule.~~

~~(b) — The Contractor shall take or cause to be taken any other safety and health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other provision of the contract.~~

~~(c) — The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule, or property loss of \$25,000 or more arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. Service contractors (excluding construction contracts) shall provide quarterly reports specifying lost time frequency rate, number of lost time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule. The Contractor shall investigate all work related incidents or accidents to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.~~

~~(d)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.~~

~~(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (d)(1) of this clause, the Contracting Officer may invoke the stop work order clause in this contract or any other remedy available to the~~

~~Government in the event of such failure or refusal.~~

~~(e) — The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that~~

~~(1) — amount to \$1,000,000 or more (unless the Contracting Officer makes a written determination that this is not required);~~

~~(2) — require construction, repair, or alteration in excess of \$25,000, or~~

~~(3) — regardless of dollar amount, involve the use of hazardous materials or operations.~~

~~(f) — Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and health measures under this clause.~~

~~(g) — As a part of the Contractor's safety plan (and health plan, when applicable) and to the extent required by the Schedule, the Contractor shall furnish a list of all hazardous operations to be performed, including operations indicated in paragraphs (a) and (b) of this clause, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence either or both of the following, as required by the contract Schedule or by the Contracting Officer:~~

~~(1) — Written hazardous operating procedures for all hazardous operations.~~

~~(2) — Qualification Standards for personnel involved in hazardous operations.~~

~~(End of clause)~~

(a) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health in effect on the date of this contract and with the safety and occupational health standards, specifications, reporting requirements, and relevant requirements of this contract.

(b) The Contractor shall take or cause to be taken any other safety and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this

contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule, or property loss of \$25,000 or more, or Close Call (a situation or occurrence with no injury, no damage, or only minor damage (less than \$1,000) but possesses the potential to cause any category of mishap, or any injury, damage, or negative mission impact) that may be of immediate interest to NASA, arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(d) The Contractor shall investigate all work-related incidents, accidents, and Close Calls, to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(e) (1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action. (2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (e)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(f) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (f) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that

(1) Amount to \$1,000,000 or more (unless the Contracting Officer makes a written determination, after consultation with installation safety and health representatives, that this is not required),

(2) Require construction, repair, or alteration in excess of \$25,000, or

(3) Regardless of dollar amount, involve the use of hazardous materials or operations.

(g) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and occupational health measures under this clause.

(h) The contractor shall continually update the safety and health plan when necessary. In particular, the Contractor shall furnish a list of all hazardous operations to be performed, and a list of other major or key operations to be performed, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence—

(1) Written hazardous operating procedures for all hazardous operations.

(2) Qualification Standards for personnel involved in hazardous operations.

(End of clause)

(Modification 25)

H-5 SAFETY AND HEALTH

(a) This schedule provision supplements and implements H-4 [18-52.223-70], Safety and Health.

(b) General. The safety and health plan required to be submitted by the Contractor pursuant to C-1(e)(9) shall implement the requirements of H-4 [18-52.223-70] and of the standards and specifications of paragraph (c) of this provision and shall describe the means to be employed by the Contractor to monitor and enforce said requirements. The plan shall include the Contractor's standards and criteria for imposing safety and health standards upon its subcontractors of any tier and its plans and procedures for monitoring compliance with such standards.

(c) Standards. The following safety and health standards, specifications, reporting requirements and provisions are prescribed pursuant to paragraph (a) of H-4 [18-52.223-70]:

(1) General Standards and Specifications: The Contractor shall comply with applicable provisions of the Occupational Safety and Health Standards of the Occupational Safety and Health Act of 1970, Rules and Regulations of the Department of Labor issued pursuant thereto and applicable regulations of states provided for under the Act. The Government acknowledges the Contractor is required to comply with all applicable safety and health requirements established by the State of California and will also use all NASA Policy Directives (NPD's) and NASA Procedures and Guidelines (NPG's) that have been accepted by the Contractor. The Contractor shall provide a safety program utilizing NPG 8715, DRAFT 2, Safety Manual, as a general policy guide.

(2) Helipad Safety: The Contractor shall comply with all Federal, State, and local requirements applicable to the helipad at JPL. The following documents shall be used to establish a facility operation support and safety program tailored to the use of the helipad at JPL to be included in the safety and health plan to be submitted in accordance with paragraph (b) above.

(i) Chapter 7, Aviation Safety, NHB 1700.1 (V1-B), NASA Safety Policy and Requirements Document.

(ii) ~~NMI 7900.2A & 3, NASA Aircraft Operations Management.~~ [NPG 7900.3A, Aircraft Operations Management, dated April 8, 1999 \(mod 11\)](#)

(iii) NASA 14 CFR 1204.14, Use of NASA Airfield Facilities By Aircraft Not Operated For The Benefit Of The Federal Government, dated July 1991.

(iv) FAA Advisory Circular 150/5390-2A, Heliport Design, dated 1/20/94.

(v) FAA Order 8700.1, Chapter 61, Evaluation and Surveillance of Heliports, dated 7/25/97.

(3) Flight Program Safety: The contractor shall include in each Program Project Plan a description of the risk management process as required by NPG ~~7120.5A~~ 7120.5B (Mod 40) (as accepted in G-11) of this contract) which addresses safety needs and special safety monitoring required for the flight project. The Project Plan containing such requirements will be referenced in the flight project task order issued by the Contracting Officer and the Contractor shall comply with those requirements.

(4) Nuclear Safety: Radioactive material will be handled in accordance with appropriate State of California, Department of Energy and/or Nuclear Regulatory Commission requirements and in accordance with National Aeronautics and Space Council document, "Nuclear Safety Review and Approval Procedures for Minor Radioactive Sources in Space Operations". Additionally, when radioactive material is to be used in space launches, they shall meet the requirements of the Interagency Nuclear Safety Review Panel (INSRP) as directed by the President of the United States.

(5) Propulsion Safety: The Contractor shall comply with all applicable Federal, State, and local requirements applicable to propulsion safety and the requirements shall be used to establish a propulsion safety program to be included in the safety and health plan to be submitted in accordance with paragraph (b) above.

(6) Fire Safety: The Contractor shall comply with all applicable Federal, State, and local requirements pertaining to Fire Protection and Life Safety. NASA Std NSS 1740.11, NASA Safety Standard for Fire Protection and Life Safety will be followed to ensure safety of NASA facilities.

(7) Ammunition and Explosive Safety: The Contractor shall comply with all applicable Federal, State, and local requirements applicable to ammunition and explosive safety and the requirements shall be used to establish an ammunition and explosive safety program to be included in the safety and health plan to be submitted in accordance with paragraph (b) above.

(8) Emergency Preparedness: The Contractor shall comply with NPD 8710.1, NASA Emergency Preparedness Policy, dated February 1997, (as accepted in section E-2 of this contract) and all applicable Federal, State, and local requirements

applicable to emergency preparedness in developing an emergency preparedness program. A separate Multihazard Emergency Response Plan will be developed, reviewed, and, if appropriate, updated and provided to the Contracting Officer or designee on an annual basis.

(9) **Facilities Safety:** The Contractor shall establish a facilities safety program using NASA STD 8719.7, Facility System Safety Guidebook, as a guideline to assure that all new construction and facility modification activities will not impose unnecessary hazards to personnel and that such activities will be reviewed for compliance with applicable building codes and fire and life safety requirements per NTS 1740.11, Fire Protection.

(10) **Pressure Vessel and System Safety:** The Contractor shall establish a pressure systems safety and recertification program in accordance with NPD 8710.5, NASA Safety Policy for Pressure Vessels and Systems, dated March 1998 (as accepted in section E-2 of this contract).

(d) Illness, Incident, and Injury Experience Reports. The following illness, incident, and injury experience reports are prescribed pursuant to paragraph (c) of H-4 [18-52.223-70]:

(1) **Experience Reports:** The Contractor shall prepare and submit to the Contracting Officer or his representative quarterly and semi-annual reports of occupational related illness, incidents, injury experience, and government property damage due to mishaps or natural phenomena in such detail as prescribed in formats approved by the Contracting Officer or his representative.

(2) **Investigative Reports:** The Contractor shall furnish reports of investigation of individual incidents or accidents or close calls in formats approved by the Contracting Officer or his representative, provided, however, that the Contractor shall not be required to furnish personally identifiable information concerning Contractor or subcontractor employees. Lessons learned from these reports, excluding those related to close calls unless the Contractor believes material value may be derived from such reporting, will be inputted into the NASA Lessons Learned Program.

(3) **Mishaps Reports:** The Contractor shall furnish NASA mishap reports and respond to NASA requests for mishap reviews. The Contractor shall conduct its own mishap investigations consistent with NPD 8621.1G, NASA Mishap Reporting and Investigating Policy, dated December 1997, with the understanding that all references to NASA in that policy shall be interpreted to mean JPL. The Contractor shall utilize the NPG 8621 procedures as guidelines. The Contractor shall also report to the Contracting Officer or a designee any incidents that may have visibility in the press, mission failures, or mission anomalies which will have high NASA visibility in the press.

(4) The Contractor shall immediately notify and furnish such other reports as the Contracting Officer or his representative determines to be related to the Contractor's safety and health program and its experiences thereunder.

(5) Nothing herein shall be construed as diminishing the Contracting Officer's rights pursuant to paragraph C-1(e) of this contract.

H-6 ENVIRONMENTAL MATTERS

(a) Environmental Compliance. Environmental controls shall be in accordance with all applicable NASA and other Federal, State and local regulatory requirements and in accordance with all applicable Executive Orders of the President.

(b) Environmental Compliance and Restoration (ECR) Program Provisions.

(1) General. This section pertains to ECR activities (e.g. environmental studies, designs, projects, etc.) included in the ECR Program. The ECR Program funding is part of the CoF budget.

(2) Implementation of ECR Program Activities. The procedural requirements for implementation of activities funded under the ECR Program closely follows the process for the CoF Program. These procedures are provided under Section C-5, Facilities Management Provisions.

(3) Environmental Project Support. NASA may require that certain environmental activities (studies, designs, and projects) be conducted by certain outside organizations or their contractors, including other Government agencies and other Centers. The Contractor shall provide access, facilities support, security, and other support services necessary for the outside organization to complete the environmental activity. The parties recognize that the Contractor is not responsible for the actions of any such outside organization doing business at the facility or at the facility and surrounding areas. In this regard, if third party claims are brought against the Contractor which are caused by or arise from the actions of such an outside organization doing business at the facility or at the facility and surrounding areas, those claims and any resulting liability therefrom to the extent attributable to such actions shall be deemed to "arise out of the performance of this contract" as that phrase is used in Clause 64 [52.228-7] INSURANCE - LIABILITY TO THIRD PERSONS (MAR 1996) (DEVIATION). This understanding, however, shall not alter any liability the Contractor would otherwise have as a Potentially Responsible Party under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601.

(c) NASA Issuances Applicable to Environmental Matters. The provisions of the current NASA Policy Directive (NPD) and NASA Procedures and Guidelines (NPG) documents below, shall be used for all work performed under this provision:

(1) NPD 8800.16, NASA Environmental Management, (September 1995) subject to the following conditions:

(i) The Contractor will comply with new or revised Executive Orders which by their terms apply to Government Contractors or operators of Federal Facilities without requiring the consent of such Contractors or operators.

(ii) The Contractor is not required to comply with OMB Circulars A-11 and A-119.

~~(2) _____ (2) _____ NPG 8820, Pollution Prevention (DRAFT) is accepted with the understanding that required actions that are past the due date will be completed within one year after contract award. Is hereby deleted:~~

~~NPG 8820.3: "Pollution Prevention", dated March 1, 1999 is accepted with the understanding that the Contractor is subject to State and L~~

~~(3) NPG 8830, NASA Procedures and Guidelines for Affirmative Procurement of Environmentally Preferable Goods and Services (DRAFT) is acceptable with the understanding that the approval authority for waivers contemplated in the NPG is the Manager of the JPL Environmental Affairs Office. (Mod 11)~~

~~(3) NPG 8830.1, NASA Procedures and Guidelines for Affirmative Procurement of Environmentally Preferable Goods and Services (February 1, 1999) is acceptable with the understanding that the approval authority for waivers contemplated in the NPG is the Manager of the JPL Environmental Affairs Office. (mod 11)~~

~~(4) NPG 8840, NASA Procedures and Guidelines for Implementation of the National Environmental Policy Act and Executive Order 12114 (DRAFT) is acceptable with the addition of the following language as a replacement for the first sentence of the last paragraph in Section 3.3 and the last sentence in Subsection B in Section 7.8 of the NPG:~~

~~"It is ordinarily presumed that, except in unusual circumstances, expenditures up to ten percent (10%) of the proposed project's or activity's cost will not compromise the objectivity of NASA's review and decision making. Whether or not expenditures above that level would compromise the Agency's decision-making should be considered on a case-by-case basis taking all relevant circumstances into account."
(Removed by Mod 40)~~

(4) NPG 8580.1, Implementation of the National Environmental Policy Act (NEPA) and Executive Order 12114, dated November 26, 2001. The Contractor recognizes that JPL is a Government owned Facility and NASA has certain responsibilities pursuant to NEPA for conduct of all programs funded through the Contract. Therefore, the Contractor shall establish and maintain a procedure for coordinating early with NASA on programs, missions, and facility operations consistent with NEPA values. In order to allow adequate time for the Contractor to ensure compliance, the parties agree that the Contractor's acceptance of NPG 8580.1 will be effective May 1, 2003. (Added by Mod 40)

H-7 ENERGY MANAGEMENT

(a) Energy and Water Conservation. The Contractor shall comply with the energy efficiency and water conservation goals and requirements of the National Energy Conservation Policy Act 42 USC 8251-8287, as amended by the Energy Policy Act of 1992, P.L. 102-486, and of Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities. The Contractor shall:

(1) Set annual goals to reduce building energy usage per gross square foot from the FY 1985 baseline. The annual goals shall be indexed to the Federal goals to achieve a 20 percent reduction by the end of FY 2000 and a 30 percent reduction by the end of FY 2005.

(2) Set annual goals to reduce energy usage per gross square foot in energy intensive mission variable facilities by 10 percent by the end of FY 2000, measured from the FY 1985 energy consumption baseline.

(3) Conduct comprehensive energy and water conservation audits of approximately 10 percent of facility gross square footage each year until all NASA-owned or leased facilities have been audited.

(4) To the extent that appropriate funds and alternative financing methods are available, begin implementing cost-effective energy and water conservation measures identified in facility audits within 180 days of audit completions.

(5) Provide quarterly energy consumption reports and an annual energy management progress assessment report to NASA Headquarters.

(6) Minimize the life cycle cost of new facilities by utilizing energy efficiency, water conservation, or solar or other renewable energy technologies where cost effective. The Contractor is required to comply with the State of California Title 24 Energy Efficiency Codes for all new facility design and construction work. This practice satisfies Executive Order 12902, Section 306 requirements.

(b) NASA Issuances Applicable to Energy and Water Conservation. The provisions of the current NASA Policy Directive (NPD) and NASA Procedures and Guidelines (NPG) documents below, shall be used for all work performed under this provision.

(1) NPG 8800.17, Energy Metrics for NASA Facilities, (October 1996)

(2) NPG 8831.2B, Facilities Maintenance and Energy Management Handbook, (December 1996). Caltech's acceptance of this NPG excludes acceptance of any referenced documents within the NPG, except to the extent accepted elsewhere in this contract.

(3) NPG 8800.16, NASA Environmental Management, (September 1995), subject to the conditions set forth in H-6.

(c) Energy and Water Conservation Reports. The Contractor shall provide all reports required by Federal, State, and local regulations, Executive Orders, NPD's and NPG's within the timeframe established by the regulatory requirement, Executive Order or NASA.

H-8 MEDICAL TREATMENT ON THE JOB

The Contractor shall provide a minimum medical service of a scope which shall include (a) treatment of on-the-job illnesses and accidents requiring emergency attention, (b) post-offer/ pre-employment and periodic health examinations in accordance with Contractor's established practice, (c) provisions for medical examinations as specified in OSHA health standards, and (d) operation of an employee assistance program for counseling regarding personal, mental health, and alcohol/chemical dependency problems.

H-9 PUBLIC AFFAIRS PROGRAM AND RELEASE OF INFORMATION TO THE PUBLIC

(a) General. The Contractor shall observe the policies and procedures agreed to by the parties hereto regarding the conduct of its public affairs program and the release of information to the public relative to work performed under this contract or matters relating to NASA programs.

(b) Consultation. The Contractor shall consult freely with the NASA Associate Administrator for Public Affairs or his/her designee for guidance in applying these procedures.

(c) Appendix B. Appendix B sets forth the policies and procedures agreed to by the parties.

H-10 EVALUATION OF PROPOSALS RECEIVED FROM NASA

(a) General. Whenever the Contractor performs an evaluation of a proposal received from NASA, the Contractor agrees that JPL personnel participating in the evaluation shall not reveal any information concerning the proposal or the evaluation of the proposal to anyone not also participating in the evaluation. Additionally, if information is disclosed to others participating in the evaluation, that disclosure shall only be to the extent that the information is required in connection with the evaluation. The parties understand that although this restriction on disclosure does not apply to information which has been previously made available to the public or disclosed publicly, JPL personnel cannot disclose the fact that such public information is part of the proposal.

(b) The JPL employees involved in evaluating proposals shall sign the "Agreement and Conditions for Evaluation of Proposals" in Appendix G of this contract prior to receipt of proposals.

(c) The Contractor shall comply with NFSD 1815.609 during its evaluation of all unsolicited proposals.

(d) Completion. Upon completion of the evaluation of a proposal, the Contractor shall return to NASA all copies of the evaluated proposal furnished by NASA and remaining in the possession of the Contractor.

(e) Rights in Data. Evaluations by the Contractor under this Schedule provision shall not be subject to Clause 61 [52.227-14], Rights in Data--General (ALT II, III, V) (DEVIATION) and shall be used by the Government solely for reference in arriving at its own independent evaluation; provided, however, that if subsequently the Contractor performs work under this contract as the result of the proposal evaluated under this provision, then and in that event any data included in the evaluation of that proposal which is necessary for, or is used in, the performance of such work shall become subject to Clause 61 [52.227-14], Rights in Data--General (ALT II, III, V) (DEVIATION).

H-11 SUBCONTRACT NEW TECHNOLOGY AND PATENT FOLLOW-UP

(a) In accordance with procedures mutually agreed upon, the Contractor shall:

(1) General. Review the technical data submitted for all subcontracts, and the work delivered thereunder, which contain either the New Technology clause or other patent rights clause as required by paragraph (g) of G-20 [18-52.227-70], New Technology (DEVIATION), or paragraph (h) of Clause 60 [52.227-11], Patent Rights--Retention by the Contractor (Short Form) (DEVIATION). Any "Reportable Items" of New Technology, or any "Subject Invention", as defined in paragraph (a) of G-20 [18-52.227-70] which are identified by the Contractor shall be noted and, if not reported by the subcontractor, the Contractor shall request the subcontractor to make the necessary reports.

(2) Subcontract Copies. Furnish to the Contracting Officer upon request a copy of a subcontract or subcontracts and a copy of all technical data submitted under such subcontract or subcontracts.

(3) Withholding of Payment. Where the "New Technology" clause is included in the subcontract, withhold final payment to the subcontractor pursuant to the withholding provisions of that clause until satisfied that the subcontractor has complied with the provisions of such clause, or, in the case of a disagreement as set forth in (b) below, the Contracting Officer has made a determination that the subcontractor has complied with the provisions of the New Technology clause and the Contractor has received authorization from the Contracting Officer for the release of such withheld funds.

(b) Subcontract Disagreements. In the event that there is a disagreement between the Contractor and a subcontractor as to whether any invention, discovery, improvement or innovation has been or should be reported, or whether such invention, discovery, improvement or innovation has been properly reported, the Contracting Officer upon notice shall thereupon assume responsibility for any further follow-up with the subcontractor as to such invention, discovery, improvement or innovation, and for determining compliance by the subcontractor with the New Technology or other patent rights clause.

H-12 PATENT AND NEW TECHNOLOGY SERVICES

The Contractor agrees:

(a) Patent Services. With respect to Patent Services:

(1) To utilize qualified patent personnel to prepare, at the request of the Contracting Officer, detailed technical descriptions in patent specification form on inventions made by the Contractor's employees and by subcontractors' employees in the performance of work under this contract or subcontracts issued thereunder provided said subcontractors' employees' inventions have been reported to the Contracting Officer and said inventions were subject inventions at the time of request;

(2) To utilize qualified patent personnel to prepare, at the request of the Contracting Officer, responsive evaluations of Patent Office Examiners' actions taken on patent applications filed on inventions made by the Contractor's employees and by subcontractors' employees in the performance of work under this contract provided such applications on said subcontractors' employees' inventions relate to inventions, title to which is vested in the Government;

(3) To assist NASA patent personnel in evaluation of Patent Office Examiners' actions taken on patent applications filed on inventions made by the Contractor's employees in the performance of work under this contract;

(4) To assist in the evaluation of reportable items related to this prime contract and subcontracts hereunder;

(5) To prepare invention award abstracts, at the request of the Contracting Officer, on those reportable items determined to be inventions and on which patent applications have been filed or prepared.

(b) New Technology Services. With respect to New Technology Services:

(1) To assist in the evaluation of reportable items relating to this contract and subcontracts hereunder for possible publication in the NASA Tech Briefs magazine, and evaluation of potential uses for New Technology;

(2) To furnish available backup materials assembled in a Technical Support Package (TSP) on all reportable items which are made by Contractor or subcontractor employees as defined by G-20 [18-52.227-70] and Clause 60 [52.227-11] in this contract entitled "New Technology" (DEVIATION) and "Patent Rights--Retention by the Contractor" (Short Form) (DEVIATION) respectively and which have been published as a Tech Brief;

(3) To furnish written replies to inquiries from NASA, other Government organizations, Government contractors and private individuals or industries, relating to reportable items incorporated in said Tech Briefs utilizing only information in possession of the Contractor or made available to the Contractor by the Contracting Officer.

(4) Perform such other work and services as may be provided by a task order issued by the Contracting Officer.

H-13 ALLOCATED DIRECT COST REPORTING

The Contractor will provide financial reports in sufficient detail to enable the Contracting Officer to assess the effectiveness of Contractor's planning, monitoring and control of Allocated Direct Costs. These reports will include:

(a) an annual report which shall include

(1) an overview of the contents of the budget together with the significant factors, requirements and assumptions that influenced the development of the allocated direct cost budget for the current fiscal year,

(2) the results of the prior fiscal year baseline allocated direct cost budget and actuals, and

(3) projections of estimated allocated direct costs and business-base assumptions for the subsequent five years;

(b) monthly reports which shall include

(1) a comparison of baseline budget and allocated direct cost actuals by budget category,

(2) a variance report of the allocated direct costs actually incurred compared to the applied allocated direct costs and associated distribution bases, and

(3) report any significant changes to the baseline allocated direct cost budget, actuals or business base;

(c) and such other special reports as the Contracting Officer may request.

H-14 NASA OFFICES

The Contracting Officer may require the Contractor to assign adequate space and facilities for NASA personnel resident at the Jet Propulsion Laboratory. The Contractor shall also provide office supplies and equipment, light, power, heat, communications, information technology support and such other support services as may be required for the operation of such offices as directed by the Contracting Officer.

In specific instances, the Contracting Officer may also require the Contractor to provide communication and information technology support for NASA personnel at remote sites in the Southern California area.

H-15 PROPERTY RIGHTS IN RECORDS

(a) Except as otherwise provided in this schedule provision, all books, records, writings, papers, maps, photographs, machine readable materials, graphical representations, microcopy, computer media/software, films, recordings, or other documentary materials, regardless of physical form or characteristics, maintained by the Jet Propulsion Laboratory in the performance of this contract (other than those on loan or leased to the Jet Propulsion Laboratory) shall be the property of the Government and shall, subject to the right of the Contractor to make, use and retain copies of said documents, be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer or the NASA Records Officer may from time to time direct during progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract. The Contractor shall provide container lists for all storage boxes containing such records in accordance with secondary identification codes (e.g. 1150) for files falling within the 1000 series and primary identification codes (e.g. 2100) for files falling within the 2000 through 9000 series as set forth in the NASA Record Retention Schedules, NPG 1441.1C, dated ~~April 1994~~, March 17, 1997. Changes 1-23, dated July 31, 2000 is hereby added (Mod 21) when files are sent to Record Storage. The Contractor will implement NPG 1441.1C for records disposition. Without limiting the generality of the foregoing, the Government owns all facilities, scientific and technical records except as set forth in (c) below. To the extent Government records are in the possession of the Contractor, NASA shall have full access to the same.

(b) Any such documents delivered to and stored by the Government shall, during their period of storage, be made available to the Contractor for inspection, copying and use, upon its request. The Contractor shall submit requests for such documents stored by the Government through the Contracting Officer for processing.

(c) Communications, expressions of opinion or interpretation, records of deliberations, written evaluations and preliminary or draft reports, recommendations and plans which are prepared for the Contractor's use only shall be the property of the Contractor, as shall proposals submitted to JPL by prospective subcontractors, documents containing proprietary information, and documents containing personally identifiable information concerning Contractor or subcontractor employees and applicants for employment. Nothing contained in this paragraph (c) is intended to, nor does it, limit any access right to documents which the Government has under other provisions of this contract.

(d) Ownership of documents by either the Government or the Contractor shall not in any way affect the respective rights of the parties to data contained on or in the documents, which they may have under Clause 61 [52.227-14], Rights in Data--General (ALT II,III,V) (DEVIATION), or which they may otherwise have. Documents maintained by the Contractor which are not property of the Government and which are "records" as defined in Clauses 106 [52.215-2] (ALT II) and 112 [52.215-2] (ALT I), Audit and Records -- Negotiation, shall be subject to the provisions of those clauses.

(e) Contractor shall provide NASA personnel full access to the JPL Archives.

(f) The Contractor shall submit to the Contracting Officer on a semiannual basis the latest inventory of the catalogued records in the JPL archives.

(g) In the event of nonrenewal or termination of this contract for the convenience of the Government, the Contractor agrees to leave Government-owned data at the Jet Propulsion Laboratory, and upon request of the Government, the Contractor agrees to deliver such Government-owned data to NASA or its designees, including successor contractors.

H-16 SERVICE CONTRACTS

The Contractor agrees, except to the extent that such subcontracts are exempted by the regulations of the Secretary of Labor or Clause 87 [52.244-6], Subcontracts for Commercial Items and Commercial Components, to insert the following clause with such changes as are necessary to appropriately identify the parties in all subcontracts as applicable.

FAR
Reference
Number

Title

52.222-41

Service Contract Act of 1965--as
amended- (MAY 1989)

H-17 LIMITATION OF LIABILITY

The provisions of Clause 92 [52.246-24], Limitation of Liability--High Value Items, shall apply to all items delivered to the Government under this contract, which have a unit cost exceeding \$100,000. The provisions of Clause 91 [52.246-23], Limitation of Liability, shall apply to all other items delivered to the Government under this contract.

H-18 SUPPORT FOR HISTORICALLY BLACK COLLEGES AND OTHER
MINORITY UNIVERSITIES

As part of its program of supporting research, the Contractor shall develop relationships and involvement with, Historically Black Colleges and Universities, and other Minority Universities.

H-19 FAILURE TO COMPLY WITH CAS OR CONSISTENTLY FOLLOW COST
ACCOUNTING PRACTICES

For the purposes of paragraph (a)(5) of Clause 66, [52.230-2], Cost Accounting Standards (DEVIATION), the phrase "... any increased costs paid by the United States" shall be deemed to refer to increased costs to the United States Government as a totality, but not to increased costs to any one or more individual Federal departments or agencies where the cost impact on the United States Government, taken as a whole, is not increased.

H-20 SUBCONTRACTOR RESPONSIBILITY FOR GOVERNMENT PROPERTY

(a) Where the Contracting Officer consents to or approves, pursuant to Clause 85, Subcontracts, subparagraph (c)(1)(viii), a standard General Provision or Standard Alteration regarding Government property which relieves the subcontractor, to some stated extent, from risk or responsibility for Government property while in the subcontractor's possession and control, then such consent or approval shall constitute advance approval by the Contracting Officer for the purpose of subparagraph (g)(4) of Clause 88, [52.245-5], Government Property (Cost Reimbursement, Time-and-Material, Labor-Hour Contracts) (DEVIATION).

(b) The Contractor's obligation under subparagraph (g)(9) of Clause 88 [52.245-5], Government Property (Cost Reimbursement, Time-and-Material, Labor-Hour Contracts) (DEVIATION), to enforce, for the benefit of the Government, any liability of subcontractors for the loss, destruction, or damage of Government property shall include all appropriate

enforcement steps up to but not including bringing legal actions, on behalf of the Government, against such subcontractors.

H-21 ORDER OF PRECEDENCE

For purpose of the Order of Precedence clause, task orders shall be considered at the same level of precedence as specifications.

H-22 CONSTRUCTION CLAUSES

The following clauses, suitably modified to identify the parties, shall be included by the Contractor in subcontracts for construction as prescribed in FAR Part 22 for work within the United States. The Contractor shall also require the insertion of said clauses in all lower tier subcontracts for construction which fall within the FAR Part 22 prescriptions. Such clauses are:

	<u>FAR</u> <u>Reference</u> <u>Number</u>	<u>Title</u>
(a)	52.222-6	Davis-Bacon Act (FEB 1995)
(b)	52.222-7	Withholding of Funds (FEB 1988)
(c)	52.222-8	Payrolls and Basic Records (FEB 1988)
(d)	52.222-9	Apprentices and Trainees (FEB 1988)
(e)	52.222-10	Compliance with Copeland Act Requirements (FEB 1988)
(f)	52.222-11	Subcontracts (Labor Standards) (FEB 1988)
(g)	52.222-12	Contract Termination--Debarment (FEB 1988)
(h)	52.222-13	Compliance with Davis-Bacon and Related Act Regulations (FEB 1988)
(i)	52.222-14	Disputes Concerning Labor Standards (FEB 1988)
(j)	52.222-15	Certification of Eligibility (FEB 1988)
(k)	52.222-16	Approval of Wage Rates (FEB 1988)
(l)	52.222-27	Affirmative Action Compliance Requirements for Construction (APR 1984)

H-23 AUDIT-NEGOTIATION - ACCESS TO COMPUTERS

In applying the provisions of Clauses 106 [52.215-2] (ALT II) and 112 [52.215-2] (ALT I), Audit and Records--Negotiation, it is understood and agreed that this clause with regard to computer access, pertains primarily to access to information which is stored on computers

used at JPL rather than access to the computers themselves. When the Contractor is required to provide information pursuant to the requirements of this clause which is on computers used by JPL personnel it shall therefore be provided in any media or form normally used by the Contractor and which can be utilized by the auditors on their computers. At their option, Government auditors may be present when the Contractor extracts, compiles or otherwise processes information or test transactions on or from computers used by JPL personnel for the purpose of providing information to Government auditors. Government auditors will also be provided, at their option, access to physically inspect and inventory computer systems, equipment, and software used at JPL. This clause is applicable to all computers used at JPL, regardless of whom owns the computers.

H-24 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION

In applying Clause 35 [52.222-4], Contract Work Hours and Safety Standards Act--Overtime Compensation, it is understood and agreed that in the event that a subcontractor requires or permits laborers or mechanics to work in violation of the Contract Work Hours and Safety Standards Act ("the Act"), the Contracting Officer may direct the Contractor to withhold moneys payable to the subcontractor pursuant to paragraph (c) but such subcontract violation shall not be imputed to the Contractor so as to permit withholding of moneys from the Contractor or to permit liquidated damages against the Contractor unless the Contractor knowingly required or permitted such laborers or mechanics to work in violation of the Act.

H-25 COMPETITION IN SUBCONTRACTING

In applying Clause 86, [52.244-5], Competition in Subcontracting, subcontracts are to be made on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract. The Contractor shall document the file regarding the nature and extent of the competition obtained, or if competition was impracticable, reasonably explain and provide data supporting such conclusion. The parties understand that the policy of better, faster, and cheaper does not, in and of itself, preclude obtaining competition at the subcontract level. The file shall include a noncompetitive justification for procurements anticipated to be \$1,000,000 or more which did not require a noncompetitive source board or receive a waiver. The Contractor shall send the Contracting Officer an information copy of all noncompetitive source board waivers exceeding \$5,000,000 promptly upon issuance. The Contracting Officer shall advise the Contractor of any waiver concerns within five working days. Upon noncompetitive source board evaluation of a procurement which exceeds \$10,000,000, the Contractor shall forward the selection memoranda to the Contracting Officer for concurrence.

H-26 APPLICATION OF CROSS-WAIVERS OF LIABILITY

In applying the Section H clauses, H-44 - Cross-Waiver of Liability for Space Shuttle Services, H-45 - Cross-Waiver of Liability for Expendable Launch Vehicle (ELV) Launches, and H-46 - Cross-Waiver of Liability for Space Station Activities, the Contractor shall incorporate the appropriate clause into subcontracts which are for \$100,000 or more when the work to be performed is in support of "Protected Space Operations" as defined in paragraph (b)(5) of each clause.

H-27 ADVISORY AND ASSISTANCE SERVICES

(a) In accordance with the policies set forth in FAR Part 37.203, this contract may be used to obtain advisory and assistance services, subject to the restrictions set forth in (b) below.

(b) As noted in FAR 37.203(c), advisory and assistance services shall not be:

- (1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;
- (2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;
- (3) Contracted for on a preferential basis to former Government employees;
- (4) Used under any circumstances specifically to aid in influencing or enacting legislation; or
- (5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

H-28 SUBCONTRACTOR PROGRESS PAYMENTS

In making progress payments to subcontractors and suppliers on fixed price subcontracts, the Contractor shall use the policies, standards and procedures of Subpart 32.2 and 32.5 of the FAR and Subparts 18-32.2 and 18-32.5 of the NASA FAR Supplement (NFS) as guidelines.

H-29 APPLICATION OF THE GRATUITIES CLAUSE

Paragraph (c)(2) of Clause 2 [52.203-3], Gratuities, only applies to those task orders funded by the Department of Defense.

H-30 RESERVED NASA ISSUANCES

In accordance with G-14 – NASA Issuance System, the following NASA Issuances are contractually binding and obligatory subject to the stated conditions:

Paragraph (a) – NPD 8020.7E: Biological Contamination Control for Outbound and Inbound Planetary Spacecraft, dated February 19, 1999 is hereby added.

Paragraph (b) – NPD 1360.2: Initiation and Development of International Cooperation in Space and Aeronautics Programs, dated April 16, 1999 is hereby added.

Paragraph (c) – NPD 1383.2: NASA Assistance to Non-Government Entertainment-Orientated Motion Picture, Television, Video, and Multimedia Production/Enterprises and Advertising, dated October 7, 1999 is hereby added.

Paragraph (d) – NPD 4100.1: Supply, Support, and Material Management Policy, dated December 17, 1998 is hereby added with the following provision: “The Contractor is not subject to the reporting requirements of 7.b. of the NPD, but rather those reporting requirements already dictated by Sections C and G of NAS7-1407.”

Paragraph (e) – NPD 4300.1: NASA Personnel Property Disposal Policy, dated February 19, 1999 is hereby added. “The Contractor shall comply with NPD 4300.1, NASA Personal Property Disposal Policy, dated February 19, 1999 with the following exceptions:

- It is understood that the Contractor’s own functional delegations and operational personnel appointments will be responsible for the duties listed for Agency personnel.
- It is recognized that the Contractor does not conduct sales of excess personal property, but instead relies on the GSA to perform that function.
- Funds resulting from the sale of materials recovered through recycling or waste prevention programs at JPL are credited to those accounts that support the programs. Employee programs do not receive funds from the sale of recovered materials.
- The reporting requirements and timeliness metric do not apply to JPL, as reporting requirements are addressed in C-1(e) of this contract.

Paragraph (f) – NPG 4300.1A: NASA Personal Property Disposal Procedures & Guidelines, dated July 19, 1999 is hereby added. The contractor shall comply with NPG 4300.1A, NASA Personal Property Disposal Procedures and Guidelines, dated July 19, 1999 with the following clarifications:

- It is understood that the Contractor’s own functional delegations and operational personnel appointments will be responsible for the Agency duties listed throughout the NPG.
- It is recognized that the Contractor does not conduct sales of NASA excess, surplus, or government personal property, but relies on the GSA to perform those functions. Therefore, the NASA-approved Federal Supply Group Classes for Fixed Price Sales does not apply directly to JPL.

- The Contractor uses an internal asset database in lieu of the NASA Equipment Management Systems (NEMS) or the NASA Supply Management System (NPMS). An internal electronic interface with the NASA Property Disposal Management System (NPDMS) subsequently forwards the information to the GSA.
- The Contractor's compliance with other NASA issuances listed or referenced within NPG 4300.1A is limited to the express conditions under which individual issuances are accepted contractually.
- When reporting NASA idle or excess personal property, the Contractor will utilize the best available description as provided by acquisition personnel.
- The reporting requirements and timeliness of disposal measure do not apply, as the Contractor adheres to the reporting requirements in C-1(e) of this contract.

Paragraph (g) – NPG 4310.1: Identification and Disposition of NASA Artifacts, dated March 16, 1999 is hereby added with the provision that JPL's own functional delegations and operational personnel appointments will be responsible for the duties of Agency personnel. (mod 11)

Paragraph (h) – NPD 8730.1: "Metrology and Calibration", dated May 22, 1998 is hereby added. (Mod 21)

Paragraph (i) – NPD 7500.2 "NASA Technology Commercialization Policy", dated: March 24, 2000 is hereby added with the following clarifications and conditions:

The definition of "electronic commerce" as used in Section 1, Policy is as follows: "1. To establish broad interactive communications between NASA and industry regarding partnering opportunities; and 2. as an effective management tool for both NASA and industry through the transmission of programmatic information such as metrics."

Section 7 of NPD 7500.2 is not applicable to the NAS7-1407 contract

(Modification 25)

Paragraph (j) NPG 8020.12B, Planetary Protection Provision for Robotic Extraterrestrial Missions, dated April 16, 1999. (Modification 39)

H-31 CLARIFICATION OF PROCURMENT INTEGRITY CLAUSES

(a) The parties recognize the Contractor has no liability regarding Clause 7 [52.203-10], Price or Fee Adjustment for Illegal or Improper Activities, and has limited

liability regarding Clause 6 [52.203-8], Cancellation, Rescission, and Recovery of Funds for Illegal and Improper Activity.

(b) Clause 7 [52.203-10], Price or Fee Adjustment for Illegal or Improper Activities, only applies to violations of 27(a), (b), and (c) of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. §423. Section 27(f) of the Procurement Integrity Act defines the term "Federal agency procurement" as "the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds." Section 3.104-2 of the Federal Acquisition Regulation recognizes that sections 27(a), (b), and (c) of the Procurement Integrity Act only apply to Federal agency procurements. Since this contract does not meet the definition of a Federal agency procurement, the contractor has no liability regarding Clause 7 [52.203-10], Price or Fee Adjustment for Illegal or Improper Activities.

(c) Clause 6 [52.203-8], Cancellation, Rescission, and Recovery of Funds for Illegal and Improper Activity, involves sections 27(a), (b), (c), and (d) of the Procurement Integrity Act. The post-employment restrictions in section 27(d) of the Procurement Integrity Act only apply to former Federal employees. Moreover, in the event of a violation of 27(d), the only remedy Clause 6 [52.203-8] provides is to "cancel the solicitation, if the contract has not yet been awarded or issued."

H-32 CLAUSE FLOWDOWN REQUIREMENT

(a) Although the following contract clauses are not applicable to the Contractor, the Contractor shall incorporate these clauses, when appropriate and as suitably modified to identify the parties, into its subcontracts. This provision only applies to new subcontracts the Contractor enters into after the Contracting Officer's approval of standard subcontract terms and conditions in accordance with (c) below. Additionally, this provision will not apply to any subcontract when the solicitation for the subcontract was issued prior to the Contracting Officer's approval of the standard terms and conditions in accordance with subparagraphs (b) and (c). This paragraph (a) does not apply to commercial subcontracts.

(1) FAR 52.215-15, Termination of Defined Benefit Pension Plans (OCT 1997)

(2) FAR 52.215-17, Waiver of Facilities Capital Cost of Money (OCT 1997)
[where a subcontract does not include cost of money as a proposed cost]

(3) FAR 52.215-18, Reversion or Adjustment of Plans for Postretirement

Benefits (PRB) Other than Pensions (OCT 1997)

- (MAR 1990)
- (4) FAR 52.229-8, Taxes - Foreign Cost-Reimbursement Contracts
 - (5) FAR 52.245-16, Facilities Equipment Modernization (APR 1985)
 - (6) FAR 52.249-14, Excusable Delays (APR 1994)
 - (7) NFS 1852.227-85, Invention Reporting and Rights - Foreign (APR 1986)

(b) The flowdown requirements of Clause 87 shall apply to commercial subcontracts.

(c) Additionally, Sections H and I of this contract may contain other clauses which are not included in the Contractor's previously approved standard subcontract terms and conditions. In accordance with paragraph (d) below, the Contractor shall update its standard subcontract terms and conditions to reflect these changes. The Contractor shall continue to use its previously approved subcontract terms and conditions until the Contractor's new subcontract terms and conditions are approved by the Contracting Officer. Additionally, the previously approved subcontract terms and conditions will apply to all solicitations for subcontracts issued prior to the Contracting Officer's approval of the new standard subcontract terms and conditions.

(d) The Contractor shall submit, within 90 days after the execution of this contract, or modifications thereto that change the subcontract flowdown clauses of this contract, its revised standard terms and conditions incorporating the changes required by paragraphs (a), (b) and (c) above for Contracting Officer approval. Once approved by the Contracting Officer, the Contractor shall incorporate the above provisions in its subcontracts consistent with the its approved standard terms and conditions.

H-33 APPLICATION OF INTEGRITY OF UNIT PRICES

It is the understanding and expectation of the parties to this contract that this contract and the task orders placed thereunder will not involve negotiated unit prices for items of supply. The provisions of the Integrity of Unit Prices clause, Clause 19 [52.215-14] (ALT I), therefore, would only apply if for some reason a task order should require negotiated unit prices for items of supply. The Contractor agrees this clause shall be applicable to its subcontract actions meeting the applicability requirements of the clause.

H-34 LIQUIDATED DAMAGES

(a) The parties agree that the phrase "willful or intentional failure to perform" referred to in Clause 28 [52.219-16], Liquidated Damages-Small Business Subcontracting Plan, means the same as the phrase "willful misconduct or lack of good faith on the part of the Contractor's managerial personnel" found in paragraph (g)(2)(iv) of Clause 88 [52.245-5], Government Property (Cost-Reimbursement, Time-and-Material or Labor-Hour Contracts) (DEVIATION). The term "Contractor's managerial personnel" means any of the Contractor's directors, officers, 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 operation at any one plant, or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with performing this contract.

(b) The parties further agree that upon a finding of "failure to make a good faith effort" under paragraph (b) of the referenced Liquidated Damages-Small Business Subcontracting Plan clause, Clause 28 [52.219-16], the Contractor's liability for liquidated damages shall be commensurate with the nature, extent and gravity of the failure to perform under the subcontracting plan.

(c) The parties also agree that for purposes of Clause 28 [52.219-16], Liquidated Damages-Small Business Subcontracting Plan, the only goals against which liquidated damages may be applied are those goals established pursuant to P.L. 95-507. While attainment of NASA's 8% Small Disadvantaged Business Goal under P.L. 101-144 is not subject to the application of FAR 52.219-16, Liquidated Damages-Small Business Subcontracting Plan, the Contractor's efforts in that regard will be evaluated in accordance with the NASA Performance Evaluation Plan for Management of the Jet Propulsion Laboratory specified in this contract.

H-35 PRINTING, DUPLICATING, AND COPYING

(a) The terms "documentation" referred to in paragraph (a), "printing" referred to in paragraph (b), and "production units" referred to in paragraph (c) of Clause H-36 [18-52.208-81], Printing and Duplicating, pertain solely to "Government publications". "Government publications" is defined as (1) reports intended primarily for internal use by the Government and (2) 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.

(b) Examples of documents which are "Government publications" include, but are not limited to: (1) publications released by the Contractor or a subcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (2) deliverable final reports but not interim drafts of such reports; (3) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

(c) Examples of documents which are not "Government publications" include, but are not limited to: (1) publications for internal JPL usage and communication such as the JPL Telephone Directory and the Universe newspaper; (2) public information, education and public service documents, and award certificates printed for JPL rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (3) publications for which the printing costs are not paid for by the Government; (4) 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 (5) review board presentations and conclusions in which a majority of the formal review board membership consists of Contractor or subcontractor representatives, where Government attendance is only incidental, and the contract does not expressly require Government approval of the proceedings.

(d) Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the JPL Installation Printing Management Officer to the NASA Printing Management Officer through the Contracting Officer.

(e) The Contractor will implement NPD 1490.1E, NASA Printing, Duplicating, Copier, Forms, and Mail Management, dated April 1997, and NPG 1490.5A, NASA Procedural Guidance for Printing, Duplicating and Copying Management, dated July 1997, for all printing, duplicating, copying, forms and mail management.

H-36 RESTRICTIONS ON PRINTING AND DUPLICATING

NFS 1852.208-81 RESTRICTIONS ON PRINTING AND DUPLICATING (AUG 1993)

(a) The Contractor shall reproduce any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub 101-9, U.S. Government Printing Office, Washington, DC, 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term "printing" includes the processes of composition, platemaking, presswork, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) "Duplicating/copying" is not considered to be printing. It is material produced by duplicating equipment employing the lithographic process and automatic copy-processing or copier-duplicating machines employing electrostatic, thermal, or other copying processes not requiring the use of negatives or metal plates. The Contractor is authorized to duplicate production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such plates may not exceed a maximum image size of 10-3/4 by 14-1/4 inches. A "production unit" is one sheet, size 8-1/2 x 11 inches (215 x 280mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing or duplicating/copying in excess of the limits set forth above are unallowable without prior written approval of the Contracting Officer. If the Contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating/copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations and NFS 1808.802.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing and/or any duplicating/copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

H-38 CLAUSES APPLICABLE ON A TASK ORDER BASIS

The parties agree that certain contract clauses do not apply to the entire contract and, instead, apply to the extent that they are required by sponsors on specified task orders. The following is an enumeration of these clauses and the guidelines for their applicability:

(a) FAR 52.242-12, Report of Shipment (RESHIP) (JUL 1995) shall be included in task orders which involve shipments of classified material; protected sensitive, and protected controlled material; explosives; poisons, classes A&B; or when a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment that occupies the full visible capacity of a railway car or motor vehicle are required for the task; or radioactive materials requiring the use of a III bar label;

(b) FAR 52.223-3, Hazardous Materials Identification and Material Safety Data, (JAN 1997) (ALT I)(JUL 1995) shall be included in task orders which include an identified list of hazardous materials for delivery.

(c) Higher level quality requirements shall be included in a task order when the higher level quality requirements are deemed appropriate by NASA.

H-39 THE COST ACCOUNTING STANDARDS CLAUSE -- JPL
SUBCONTRACTORS

In regard to applicable subcontracts entered into under this contract, as defined in Clause 66 [52.230-2], Cost Accounting Standards (DEVIATION), the following shall apply:

(a) First-tier subcontractors shall be required to submit their Disclosure Statements either to the Contractor or to their cognizant Government Contract Administration Officer. However, if a subcontractor has previously submitted its Disclosure Statement to another Government Administrative Contracting Officer he may satisfy that requirement by certifying to the Contractor the date of the Statement and the address of the Contracting Officer administering the contract.

(b) In any case where a subcontractor lower than the first-tier determines that the Disclosure Statement information is privileged and confidential and declines to provide it to a higher tier subcontractor, the first-tier subcontractor may authorize direct submission of that lower-tier subcontractor's Disclosure Statement to the same Government offices to which the first-tier subcontractor was required to make submission of its Disclosure Statement.

(c) If a subcontractor is a business unit which, pursuant to 48 CFR Subpart 9903.201-2(b), is entitled to elect modified contract coverage and to follow Standard

9904.401 (Consistency in Estimating, Accumulating, and Reporting Costs) and Standard 9904.402 (Consistency in Allocating Costs Incurred for the Same Purpose), CFR Subpart 9905, and CFR Subpart 9906, all of which standards are referenced in 48 CFR Subpart 9903.201-2(b), the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall be inserted in lieu of the clause prescribed in paragraph (d) of Clause 66 [52.230-2], Cost Accounting Standards (DEVIATION), of this contract.

H-40 PROTECTION OF SCIENTIFIC AND TECHNICAL INFORMATION
OF NATIONAL INTEREST

NASA is concerned about protecting scientific and technical information that may impact the United States' national economic and/or national security interests and/or U. S. competitiveness. Consistent with these concerns, the Contractor shall comply with the terms of this contract and with United States laws and regulations in the dissemination of technical information.

H-41 PHASEDOWN OR TRANSITION OF THE FFRDC

(a) Pursuant to FAR 35.017, the Government may elect to proceed with (1) an orderly phasedown of FFRDC activities; (2) a transfer of the FFRDC to another Government sponsoring agency/ agencies; or (3) a transition of the FFRDC to another contractor. The parties recognize that any potential phasedown is in addition to and differs from the rights and responsibilities of the parties set forth in other provisions of this contract regarding stop work or termination.

(b) Notification and planning period.

(1) Except as provided in paragraph (f)(2) below, NASA must provide the Contractor with written notification of its election to phasedown the contract at least ten months prior to the date on which it would normally expire.

(2) NASA may rescind the decision regarding its election to phasedown at any time during the term of this contract; provided however, such rescission shall be subject to the consent of the Contractor. All reasonable and allocable costs the Contractor incurs due to NASA rescinding its decision regarding phasedown will be allowable under this contract.

(c) Term of phasedown and applicable terms and conditions.

(1) Although the notification for phasedown begins during the term of this contract, the phasedown period does not begin until after the term of this contract would have normally expired. Except as provided for in paragraph (f), the phasedown period shall be no longer than two years unless the parties mutually agree to extend the phasedown period. The contract term in Section F of this contract shall be extended to coincide with the phasedown period and any extension(s) thereof.

(2) The terms and conditions contained in this contract shall be applicable to any phasedown and all periods of transition to a successor contractor or transfer to another Government sponsor. Therefore, the rights, responsibilities and remedies of the

respective parties shall remain the same, except to the extent they are otherwise changed by this provision.

(d) Costs associated with phasedown and closeout. The phasedown process has, as one of its objectives, an orderly downsizing of the effort performed by the Contractor for NASA and/or other sponsors. Therefore, costs associated with phasedown will differ in some respects from the costs associated with a termination for convenience. During phasedown, NASA will reimburse the Contractor for all allowable, allocable costs which are reasonably associated with an orderly termination and consequent closeout of the Contractor's FFRDC under this contract, including, but not limited to, the costs associated with the disposal of assets and the settlement of liabilities. As part of the phasedown, the parties recognize that phasedown costs would include those elements of cost delineated in the following paragraphs of Section B-5, Advance Understanding on Termination Costs: (e)(10)(B), (D), (E), (F), (G), and (H) and any such other elements of costs as would be allowable in the event of a termination for convenience of the Government only to the extent that they are appropriate to the closeout following a phasedown under this provision. In addition, the Government recognizes that all costs associated with a phasedown and closeout of the contract may not be fully recognized and recovered during the phasedown period. NASA will reimburse the Contractor for all such additional allowable, allocable costs as are reasonably associated with the phasedown and closeout of the Contractor's FFRDC effort under this contract. The limitation of the Government's obligation to reimburse the Contractor for costs associated with the phasedown shall be the same as that for a termination for convenience pursuant to paragraph (k) of the clause entitled Limitation of Cost; Limitation of Funds, Clause 71 [52.232-20, 52.232-22] (DEVIATION).

(e) New work task orders. Any new work added by task orders must be mutually agreed to if placed after the phasedown election in paragraph (b) has been made. NASA's right to place task orders for new work on a unilateral basis would only be restored if NASA rescinded its decision regarding phasedown.

(f) Nonrenewal of this Contract. (1) If the Contracting Officer does not notify the Contractor ten months prior to the end of the term of this Contract pursuant to Provision F-3 that the Government intends to negotiate a new contract or extension of this contract or if the Contractor notifies the Government pursuant to Provision F-3 that it does not intend to negotiate a new contract or such extension, and the Government does not elect any of the phasedown or other options stated in paragraph (a) above, then the expiration of this contract shall be deemed to be and shall be treated as a termination for the convenience of the Government.

(2) If NASA intends to negotiate a contract renewal, but the parties are unable to reach agreement on a new contract or an extension of this contract, then NASA, prior to the date on which this contract would normally expire, may notify the Contractor that it will phasedown the FFRDC activities at JPL. In this case, all of the provisions

relating to phasedown shall apply, except for the ten month notification requirement in paragraph (b) and except that the period of phasedown would be at least three years after the contract would have normally expired rather than the two years provided for in subparagraph (c)(1). If, notwithstanding NASA's election to proceed with the phasedown process, NASA fails to provide the Contractor with its proposed objectives and schedule for the phasedown within 120 days following such election, such failure shall be deemed to be and be treated as a termination for the convenience of the Government. The Contractor's failure to respond with a proposal within 120 days to NASA's proposed objectives and schedule shall be considered a material breach. If the parties are unable to reach agreement on a new contract or an extension of this contract and NASA does not elect to proceed with this phasedown process, then the expiration of this contract shall be deemed to be and shall be treated as a termination for the convenience of the Government.

(g) The fee provided for during the phasedown period will be negotiated between the parties.

(h) Specific terms relating to phasedown of the FFRDC.

(1) Within 120 days after the initial notification, NASA shall provide the Contractor with its proposed objectives for the phasedown process as well as a proposed schedule for phasedown. NASA will provide the Contractor with (1) a list of the programs and projects it intends to allow to continue during phasedown; (2) the proposed term of phasedown; and (3) a proposed listing of the tasks that the Government would not intend to complete during the phasedown period.

(2) The Contractor shall provide a proposal describing the activities required for phasedown as well as the costs the Contractor estimates it will incur during the phasedown period within 120 days after receipt of the NASA proposed phasedown plan described in subparagraph (h)(1) above. Additionally, the Contractor shall immediately use its best efforts to mitigate cost expenditures for all tasks the Government does not intend to complete during phasedown, including the exercise of the termination provisions in subcontracts or the use of expedited closeout procedures when requested by NASA. Using NASA's objectives and the Contractor's proposal, the parties shall enter into good faith negotiations to mutually agree upon an implementation plan for phasedown.

(3) If, notwithstanding such good faith efforts, the parties are unable to reach agreement upon one or more material aspects of an implementation plan within a reasonable period of time, the Contractor may request, and the Contracting Officer shall take, termination action for the convenience of the Government provided the Contracting Officer concurs in the Contractor's assessment that good faith efforts have failed to produce agreement on an implementation plan and that further negotiations would not be of benefit to the parties. If additional good faith negotiations fail to produce a mutually agreeable implementation plan within 90 days of the Contractor's request for termination, the

Contracting Officer shall proceed to termination for convenience. In no event shall the Contractor request a termination for convenience before the end of the normal term of this contract. In the interim, the Contractor agrees that it will initiate phasedown activities, otherwise consistent with the provisions of this contract, as directed by the Contracting Officer.

(4) In accordance with specific direction from the Contracting Officer, the Contractor will begin preparing an inventory of all items that are not deliverable or will not be consumed during phasedown period of performance. All Government property on the inventory shall be reported to the NASA Property Officer for disposition instructions as soon as such property is no longer required for the performance of the contract. Additionally, the Contractor shall promptly provide NASA with recommended disposition of all lease or other use agreements after a careful review of said leases and agreements. When requested by NASA, the Contractor shall attempt to renegotiate such lease agreements on non-NASA facilities to fit within the phasedown time frame if a cost-effective agreement can be reached. All Contractor property on NASA facilities shall be subject to Government inspection and accounted for and removed per NASA approved procedures.

(i) Transfer to other Government agency/agencies. In the event that the Government desires to transfer cognizance of the FFRDC to another Government agency(s), NASA shall cooperate with the new sponsor(s) in order to realize an orderly and cost effective transition for the incoming sponsor(s). Any such transfer must be bilaterally agreed to by the Government and the Contractor. The parties recognize such transfer may occur concurrently with NASA phasing down its involvement in the FFRDC as described in paragraph (h) above.

(j) Transition to a successor contractor. Prior to the date on which this contract would normally expire, the Contracting Officer may notify the Contractor that NASA has elected to transfer the operation of this FFRDC to another contractor. Once the Contractor receives such a notification, it shall work with both NASA and the successor contractor to ensure an orderly transition of the FFRDC. Unless mutually agreed to by NASA and the Contractor, the transition period to work with the successor contractor shall extend no longer than eighteen months after this contract would have normally expired. The contract term in Section F of this contract shall be extended to coincide with the transition period and any extensions thereof. NASA shall reimburse the Contractor for costs associated with a transition period and its consequent closeout of this contract in the same manner and to the same extent as provided for in a phasedown and closeout in paragraph (d) above, except to the extent that the Contractor will not incur such costs due to assumption of liability for such costs by the successor contractor and/or the Government and concomitant release of the Contractor from such liability.

H-42 TRANSITION FROM CONTRACT NAS7-1260

This contract is a successor contract to NAS7-1260. As a result, the parties to this contract have agreed to certain provisions which are intended to provide an orderly transition from Contract NAS7-1260 to this contract. These provisions are set forth below.

(a) All task orders issued under Contract NAS7-1260 with statements of work where the technical performance has not been completed as of September 20, 1998, shall on and after September 21, 1998 be transferred to task orders issued under Contract NAS7-1407 on and after September 21, 1998. All available funds (with the exception of negative expenditures) which, as of September 20, 1998, remain allotted to such task orders and which are uncosted, as shown by the books and records of the Contractor's JPL operating division and verified by the Government, shall on and after September 21, 1998 be deobligated from NAS7-1260 and obligated to NAS7-1407. All task orders issued under Contract NAS7-1260 with statements of work which have been completed shall remain under NAS7-1260.

(b) In performing the transition, the Contractor shall:

(1) Consistent with its standard accounting practices, accrue normal operating costs for work performed but not recorded through September 20, 1998 under Contract NAS7-1260.

(2) Reverse the accrual for tasks where technical performance has been completed (period of performance on the task order has ended) against Contract NAS7-1260 in October 1998. Charge actual labor and material transactions plus allocated direct costs processed subsequent to September 20, 1998 for this work to Contract NAS7-1260.

(3) Reverse the accrual for tasks where technical performance has not been completed (period of performance on the NAS7-1260 task order has ended and a new task order will be awarded) against Contract NAS7-1407 in October 1998. Charge actual labor and material transactions plus allocated direct costs processed subsequent to September 20, 1998 for this work to Contract NAS7-1407.

(4) Draw all disbursements (i.e., labor, material and allocated direct costs) through September 20, 1998 from the Letter of Credit utilized under Contract NAS7-1260 (the "Contract NAS7-1260 Letter of Credit").

(5) Draw all labor and material disbursements subsequent to September 20, 1998 for tasks where technical performance has been completed (period of performance on the task order has ended) from the Contract NAS7-1260 Letter of Credit.

(6) Draw all labor and material disbursements subsequent to September 20, 1998 for tasks where technical performance has not been completed (period of performance on the NAS7-1260 task order has ended and a new task order will be awarded) on a first-in-first-out (FIFO) basis from the Contract NAS7-1260 Letter of Credit until the FY98 accrual amount for these tasks is equaled. Thereafter, draw all labor and material disbursements from a new Letter of Credit established by the Government for this contract (the "Contract NAS7-1407 Letter of Credit").

(7) Draw all allocated direct cost disbursements subsequent to September 20, 1998 from the Contract NAS7-1260 Letter of Credit on a FIFO basis until the FY98 accrual amount is equaled. Thereafter, draw all allocated direct cost disbursements from the Contract NAS7-1407 Letter of Credit.

(c) The Contractor shall provide the Contracting Officer with a schedule showing the costs included in the accrual made pursuant to (b)(1) above.

(d) Except for those costs which in fact are accrued by JPL under (b)(1), as delineated in the schedule referred to in (c), all allowable costs, liabilities and commitments, including but not limited to those attributable to accrued vacation and unemployment compensation, which have been transitioned to, incurred, accrued or made by the Contractor under Contract NAS7-1260 as of September 20, 1998, but which have not by that date been shown as an expenditure on the books and records of the JPL operating division, shall thereafter be deemed, for all purposes including but not limited to record retention purposes, to be allowable costs, liabilities or commitments incurred, accrued or made under Contract NAS7-1407; and subsequent payments to the Contractor by the Government arising out of such costs, liabilities and commitments shall be deemed to have been made under Contract NAS7-1407 and shall not be included in the calculation or definition of final payment under Contract NAS7-1260 nor be subject to the "completion invoice" (or "completion voucher"), assignment, release, or other final payment-related requirements of Clause 24, Allowable Cost and Payment, of Contract NAS7-1260.

(e) All Government property which is in the possession of the Contractor as of September 20, 1998, for the performance of Contract NAS7-1260 shall remain in the possession of the Contractor for the performance of Contract NAS7-1407, subject to subsequent use or disposition thereof in accordance with the applicable provisions of Contract NAS7-1407.

H-43 STOP-WORK ORDER

The language in Clause F-4 [52.242.15], Stop-Work Order (ALT I) (DEVIATION) in paragraph (b) that refers to "any other terms of the contract" specifically includes task orders issued under this contract.

H-44 CROSS-WAIVER OF LIABILITY FOR SPACE SHUTTLE SERVICES

NFS 1852.228-72
Cross-waiver of Liability
for Space Shuttle Services (SEP 1993)

(a) As prescribed by regulation (14 CFR Part 1266), NASA agreements involving Space Shuttle flights 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 clause 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 clause, the term:

(1) "Contractors" and "Subcontractors" include suppliers of any kind.

(2) "Damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) "Party" means a person or entity that signs an agreement involving a Space Shuttle service;

(4) "Payload" means all 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:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services.

(6) "Related entity" means:

(i) A party's Contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; or

(iii) 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)(i) through (c)(1)(iii) of this clause 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. This 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:

(i) Any party other than the Government;

(ii) A related entity of any party other than the Government;
and

(iii) The employees of any of the entities identified in (c)(1)(i) and (c)(1)(ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause 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)(i) through (c)(1)(iii) of this clause.

(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 clause, this waiver of liability shall not be applicable to:

(i) Claims between any party and its related entities or claims between the Government's related entities (e.g., claims between the Government and the Contractor are included within this exception);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

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

(End of clause)

H-45 CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE
LAUNCH VEHICLE (ELV) LAUNCHES

NFS 1852.228-78

Cross-waiver of Liability for NASA Expendable Launch Vehicle (ELV) Launches (SEP
1993)

(a) As prescribed by regulation (14 CFR 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 clause 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 clause, the term:
- (1) "Contractors" and "Subcontractors" include suppliers of any kind.
 - (2) "Damage" means:
 - (i) Bodily injury to, or other impairment of health of, or death of, any person;
 - (ii) Damage to, loss of, or loss of use of any property;
 - (iii) Loss of revenue or profits; or
 - (iv) Other direct, indirect, or consequential damage;
 - (3) "Party" means a person or entity that signs an agreement involving an ELV launch;
 - (4) "Payload" means all 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 this contract. It includes, but is not limited to:
 - (i) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;
 - (ii) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services.
 - (6) "Related entity" means:
 - (i) A party's Contractors or subcontractors at any tier;
 - (ii) A party's users or customers at any tier; or

(iii) 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)(i) through (c)(1)(iii) of this clause 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:

- (i) Any party other than the Government;
- (ii) A related entity of any party other than the Government; and
- (iii) The employees of any of the entities identified in (c)(1)(i) and (ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause 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)(i) through (c)(1)(iii) of this clause.

(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 clause, this cross-waiver of liability shall not be applicable to:

- (i) 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);
- (ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

- (iii) Claims for damage caused by willful misconduct; and
- (iv) Intellectual property claims.

(5) Nothing in this clause 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.

(End of clause)

H-46 CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES

NFS 1852.228-76

Cross-waiver of Liability for Space Station Activities (DEC 1994)

(a) The Intergovernmental Agreement for the Space Station 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 clause 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 clause, the term:

(1) "Damage" means:

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

(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 all 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:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

(6) "Related entity" means:

(i) A Partner State's Contractors or subcontractors at any tier;

(ii) A Partner State's users or customers at any tier; or

(iii) 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)(i) through (c)(1)(iii) of this clause 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:

- (i) Any Partner State other than the United States;
- (ii) A related entity of any Partner State other than the United States; and
- (iii) The employees of any of the entities identified in paragraphs (c)(1)(i) and (ii) of this clause.

(2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this clause 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)(i) through (c)(1)(iii) of this clause.

(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 clause, this cross-waiver of liability shall not be applicable to:

- (i) 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);

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct; and

(iv) Intellectual property claims.

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

(End of clause)

H-47 SAFETY AND HEALTH

The data submitted in accordance with paragraph (c) of H-4 [1852.223-70], Safety and Health, will not be included in Federal work force statistics.

H-48 APPLICATION OF GOVERNMENT PROPERTY CLAUSES

(a) Clause 89 [52.245-7], Government Property (Consolidated Facilities) (DEVIATION), applies only to real property under this contract. For purposes of this contract and consistent with NASA FAR Supplement Part 18-45.7101-1, "real property" is defined as land, buildings, other structures and facilities, and leasehold improvements. Clause 88 [52.245-5], Government Property (Cost Reimbursement, Time-and-Material, or Labor-Hour Contracts) (DEVIATION), applies to all other property under this contract.

(b) Clause 90 [52.245-8], Liability for the Facilities (DEVIATION), applies only to real property (as defined by paragraph (a) above) under this contract. Clause 91 [52.246-23], Limitation of Liability, and Clause 92 [52.246-24], Limitation of Liability--High-Value Items, applies, as appropriate, to all other property under this contract.

H-49 SECURITY

(a) In establishing JPL procedures and practices in the areas of security, export control and the hiring, hosting or visits of foreign nationals, the Contractor shall comply with all applicable Federal laws and regulations including the National Industrial Security Program Operating Manual (NISPOM), dated January 1995, and the NISPOM supplement and with the following NASA issuances. In any instance where the NISPOM and applicable NASA guidance are in disagreement, the Director of the NASA Security Management Office will resolve such disagreements with the Defense Security Service

(DSS) and inform the Contractor of such resolution in writing. The Contractor shall comply with such guidance.

<u>Issuance No.</u>	<u>Title</u>	<u>Date</u>
NPD 1600.2A	NASA Security Policy	4/20/98

Is acceptable with the understanding that JPL will follow paragraph 5(d)(4) for badging JPL employees for access to NASA Headquarters and other centers only. JPL will use its own badge and badging process for access to the Jet Propulsion Laboratory.

NPG 1600.6 DRAFT NASA Communications Security Manual (Undated)

Is acceptable with the understanding that for the purposes of implementing NPG 1600.6 the responsibilities of the Center Chief of Security (CCS) is to be performed by the Contractor.

NPG 1620 DRAFT NASA Security Handbook (Undated)

The NPG is acceptable with the understanding that the responsibilities defined within apply to the positions of those JPL individuals performing the specified functions. In addition the following conditions and understandings will apply as set forth below:

Chapter 1 (including 1.4.5.1) is acceptable with the following understandings:

With the exception of those responsibilities placed in the NASA Management Office as specified below, the Director of the Jet Propulsion Laboratory has responsibility for the security of JPL for those matters delineated in the NPG and accepted by JPL herein:

- 1.4.5.2 (only as it pertains to the appointment of the NASA Management Office Chief of Security);
- 1.4.5.4 (the Director of JPL is the RAA with coordination with the NASA Management Office);
- 1.4.5.5 (only for access to NASA classified information or other classified information entrusted to NASA);
- 1.4.5.6;
- 1.4.6.7 (only for access to NASA classified information or other classified information entrusted to NASA);
- 1.4.6.8 (only as it applies to NASA personnel);
- 1.4.6.9; and

- 1.4.7.4 regarding system security engineering applies only to Special Access Programs. Other programs will be handled in accordance with 7120.5A.

Chapter 2 is not acceptable. Compliance is regulated by the NISPOM which is incorporated by Clause 9, FAR 52.204-2.

Chapter 3 is not acceptable as this Chapter applies primarily to Civil Service employees. However, JPL will comply with the investigative and adjudicative requirements of subparagraphs 3.2.1, 3.2.2, 3.2.3, 3.2.4 (excluding 3.2.4.1), 3.6 and Appendix D, with the understanding that NASA will provide JPL with a general exception to NRP access requirements under provision 1.2 of NPG 1620. The exception will mitigate NAC processing delays by allowing some interim unescorted access to NRP facilities while the NAC is in process. This exception per NASA letter dated September 1, 1998 will remain in effect commensurate with the principle of risk management.

Chapters 4 and 5 are not applicable because compliance is regulated by NISPOM.

Chapter 6 is acceptable with the following understandings:

6.1 is not acceptable as JPL will follow its own badging process.

6.2 is not applicable as JPL does not issue Special Agent badges nor credentials.

6.10 is not applicable to the Contractor. In the event either party determines that there is a need for TSCM, NASA will provide such services.

Chapter 7 is acceptable with the following conditions and understandings:

7.3 The provision set forth in this chapter shall be incorporated into the activities required by Chapter 4 of NPG ~~7120.5A~~ 7120.5B (Mod 40). These requirements are intended to ensure that necessary security specific requirements (e.g., physical, personnel, technical, communications, and information) are adequately considered and, when appropriate, incorporated into the overall program/project development and management.

7.4 is acceptable with the same understandings set forth in Chapter 3.

7.5 is not acceptable. Compliance is regulated by the NISPOM.

7.6 is acceptable with the understanding that the COMSEC requirements referred to are those specified in NPG 1600.6.

Appendices A, B, and C are not acceptable, compliance is regulated by NISPOM.

NPD 2810.1 Security Information Technology ~~4/17/98~~ October 1, 1998
(~~Draft Version 12~~)

This NPD is acceptable with the following conditions:

- Documents referenced in the NPD and references to guidance, policies, and requirements external to the NPD do not apply unless otherwise incorporated in this contract.
- Information technology security shall be incorporated into the activities required by Chapter 4 of NPG 7120.5A. ~~These~~ Those requirements are intended to ensure that necessary security ~~specific~~ requirements (e.g., physical, personnel, technical, communications, and information) are adequately considered and, when appropriate, incorporated into the overall program/project development and management.

~~NPG 2810 (DRAFT) — NASA Procedures and Guidance for the — July 2, 1998~~
~~Security of Information Technology~~

~~NPG 2810.1 — NASA Procedures and Guidance for the — August 26, 1999~~
~~Security of Information Technology~~

Chapter 3 and Chapter 4.1 through 4.2.13 only

The NPG is acceptable with the following understandings:

- Only the chapters and sections of the NPG specified above are accepted for implementation by the Contractor. All other chapters and sections including the Appendices are not applicable to the Contractor.
- It is recognized that full implementation of the applicable requirements of NPG 2810.1 will require several years. In such implementation, the Contractor shall give highest priority to the most critical JPL systems.

~~(Modification 25)~~

~~(b)~~ The Contractor is authorized to self-approve visits to JPL of up to five (5) business days or less of foreign nationals or foreign representatives (U.S. citizens or

those legally admitted for permanent residence, and seeking to visit on behalf of foreign entities), except for those individuals who are foreign heads of state or government, ambassadors, heads of foreign government ministries, or heads of space or aeronautics agencies, or are nationals or representatives of countries listed on NASA's Designated Areas List (which will from time-to-time be provided/updated by the Contracting Officer). In addition, the Contractor is authorized to self-approve visits for nationals or representatives of countries listed on NASA's Designated Areas List who are participating solely in a non-business related, escorted tour open to members of the general public wherein nationality is not a factor of participation. For access to JPL in all other circumstances involving foreign nationals or representatives, the Contractor must obtain the prior written approval of the NASA Headquarters, Office of External Relations prior to an offer to hire, host, extend a visit request or agree to a requested visit. The Contractor shall provide NASA with a monthly report of foreign nationals or representatives that have been approved for access to JPL. This report shall include the name of the visitor, business affiliation of the visitor, JPL contact person, brief purpose of the visit and dates of the visit.

(c) In seeking NASA's approval for visits of foreign nationals or foreign representatives for thirty (30) days or less, the Contractor must provide at least the following information: name, business affiliation, business address and phone, title, reason for visit, person(s) to be visited, length of visit, and indication of whether or not the proposed visit will involve the foreign visitor or representative having access to proprietary or export controlled goods or technical data, whether or not the visit is in conjunction with an approved international agreement, and such other information as may be required by NASA on a case-by-case basis. For foreign nationals, the Contractor shall also provide both the nationality, passport number and visa type and expiration, and for foreign representatives, name of foreign entity being represented.

(d) In seeking NASA's approval for the hosting of foreign nationals for stays at JPL in excess of thirty (30) calendar days (for example as Resident Research Associates, Post-Doctoral scholars, etc. on J-1 Exchange Visitor visas), all of the above minimum information is required in addition to copies of any existing or proposed IAP-66 forms, details of the proposed assignment at JPL, security plans (including a completed application for a National Agency Check), any background correspondence between the Contractor and the foreign national, and any plans for charging stipends or other costs associated with the hosting of the foreign national to this contract.

(e) In seeking NASA's approval to hire a foreign national as a bona fide Contractor employee working under this contract, the Contractor must provide all of the above minimum information for a foreign national being hosted at JPL, plus confirmation that the foreign national is eligible to accept employment (INS Form I-9), a detailed justification for hiring a foreign national rather than a U.S. citizen, plus any other information that may be requested by NASA on a case-by-case basis.

(f) In each of the above three cases (visits, hosting and hiring), the request from the Contractor to NASA should be as early as possible, and except in unusual circumstances no later than:

30 work-days prior to the proposed date of hiring or hosting

20 work-days prior to a proposed visit involving a Designated Area

10 work-days prior to a proposed visit not involving a Designated Area

(g) The Contractor will provide a quarterly report to the Office of External Relations at NASA Headquarters on foreign nationals who have been hired or hosted, and who are currently at JPL. The report will contain the following information:

Name of the individual

Nationality of the individual

Visa type and expiration

Whether legally admitted for permanent residence

(h) The Contractor shall follow the following for all JPL personnel and visitors:

(1) It is required that all persons engaged in work or visitors to JPL be registered and badged by Security.

(2) All visitors will show an identification card with a picture when signing in at the Visitor Center.

(3) All Foreign National workers or visitors must have their visa or green card with them to gain access to JPL. They will be badged and wear their badge at all times while on the property. When an escort is required, the escort will be with the foreign national at all times while at JPL.

(4) All issued badges shall be worn in such a manner as to be clearly visible on the upper part of the outer garment.

H-50 APPLICATION OF CHANGES

For purposes of applying Clause 114 [52.243-2], Changes--Cost-Reimbursement (ALT IV), or Clause 108 [52.243-2], Changes--Cost-Reimbursement (ALT V), the term "specifications" shall mean those set forth in task orders. This special clause does not in any other way modify or alter the rights, responsibilities, or authorities of the parties to this contract under Clause 114 or Clause 108.

H-51 APPLICATION OF CLAUSE 115 [52.245-9], USE AND CHARGES, CLAUSE 88 [52.245-7], GOVERNMENT PROPERTY (CONSOLIDATED FACILITIES) AND CLAUSE 89 [52.245-8], LIABILITY FOR THE FACILITIES

(a) The operation of Clause 115 [52.245-9], Use and Charges, Clause 89 [52.245-8], Liability for the Facilities (DEVIATION), and Clause 88 [52.245-7], Government Property (Consolidated Facilities) (DEVIATION), are not intended to defeat any obligation of the Government under Provision C-2(b).

(b) Paragraph (d) of 52.245-5 shall be deemed to be within the coverage of (a)(3) of Clause 115 [52.245-9], Use and Charges clause.

(c) It is understood that in applying Paragraph (j) of Clause 115 [52.245-9], Use and Charges, any liability of the Contractor thereunder would arise only where the Contractor has made unauthorized use of Government-owned facilities for its own benefit, and not where an employee of the Contractor has made unauthorized use of such facilities for personal purposes.

H-52 RESERVED

H-53 AGREEMENT ON COMPUTER PROGRAMS

(a) The parties agree that Caltech shall own all rights, including all copyrights and any derivative works, for any computer programs developed under this Contract. Notwithstanding said Caltech rights, including the right to license such copyrights, the U.S. Government shall retain a nonexclusive, irrevocable, nontransferable, royalty-free, worldwide license under said copyrights for use by or on behalf of the US Government, and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States. On the licensing or assignment by Caltech of copyrights on computer programs developed under the Contract, the Government and Caltech agree to share equally in any royalties derived from said licensing or to share equally in any monies received for said assignment. Caltech shall report said royalties quarterly to the Government, specifying the licensed programs, the licenses, and the royalty amounts attributed to specific licenses. Any monies due the Government from said royalties shall be supplied to the Contracting Officer of the NASA Management Office in the form of a check made out to the National Aeronautics and Space Administration. In the licensing and distribution of computer programs developed under the Contract, Caltech agrees to comply with all applicable laws and regulations covering the export of commodities and technical data.

(b) The parties agree that any inventions which are conceived or reduced to practice in the performance of this Contract and which include a computer program developed under this Contract as a significant part of the invention will be treated differently than other inventions made in the performance of this Contract. Said inventions including a computer program may be elected by either party, in the manner specified in Clause 59 of this Contract with Caltech having the first right to elect to retain title as specified in (c)(1)(ii) of Clause 59. However, irrespective of which party elects to file a patent application on an invention including a computer program developed under the Contract, any royalties derived from the licensing of said invention or a patent application or a patent based thereon shall be divided equally between the Government and Caltech after offsetting outside expenses of the electing party against royalties.

H-54 AGREEMENT ON ESTABLISHMENT OF RIGHTS, TECHNOLOGY TRANSFER, AND DISTRIBUTION OF INCOME WITH RESPECT TO MASK WORKS

The parties have agreed to the following arrangement in the belief that certainty with respect to the grant of statutory rights in Mask Works will enhance the transfer to third parties of semiconductor chip product technology.

(a) Within six (6) months after written disclosure of a Mask Work has been made to Contractor personnel responsible for implementation of Section H-12, PATENT AND NEW TECHNOLOGY SERVICES, Contractor shall furnish the Contracting Officer a full and complete technical report thereon, together with notice of whether or not Contractor elects to apply for registration, or publication with appropriate notice, of any Mask Work to which Contractor elects to retain title. In such instances Contractor will file an application to register Mask Works in a timely manner, but no later than six months after said notification. In the event it fails to do so, the rights otherwise provided to Contractor herein shall revert to the Government, with the reservation of a royalty free, nonexclusive license to Contractor for research and educational purposes.

(b) In the event Contractor receives royalty or other monetary consideration from the grant of Mask Work rights to a third party, after deduction of twenty five percent (25%) which includes distribution according to Contractor's established royalty sharing plan, costs associated with registration and licensing, and other administrative costs, the remaining 75% shall be shared equally with the Government.

(c) Caltech shall report such shared income quarterly to the Government specifying the licensed mask works, the licenses, and the income attributed to specific licenses. In the licenses and distribution of Mask Works developed under the contract, Caltech shall include statements regarding any export restrictions that may apply, and shall comply with all applicable U. S. export laws and regulations.

H-55 RESERVED

H-56 PAYMENT OF OVERTIME PREMIUMS

For purposes of administering Clause 33, [52.222-2], Payment of Overtime Premiums, prelaunch activities and mission performance or delivery related events of an urgent nature shall be deemed to be activities covered by Clause 33 paragraph (a)(3). In order to aid in contract administration, the Contractor shall provide the Contracting Officer with a monthly report evidencing overtime hours performed, and shall respond promptly should any further information be requested by the Government in this regard.

H-57 SECURITY PLAN FOR UNCLASSIFIED FEDERAL INFORMATION TECHNOLOGY SYSTEMS

The security plan described in NFS 18-4.470-3 is required for this contract. The plan shall be delivered to the Contracting Officer within 90 days after contract award.

H-58 REQUIRED SOURCES OF SUPPLIES AND SERVICES

The Contractor shall acquire radioisotopes, liquid hydrogen, propellants, and mercury per NFS 1808.002 (PN 89-82).

H-59 USE OF FACILITIES COMMUNICATIONS PLAN

The Contractor shall prepare, maintain and comply with a Use of Facilities Communications Plan. The terms of the Plan shall be subject to the approval of the Director, NASA Management Office (NMO). The Plan shall set forth (1) notification requirements applicable to use of Government-owned and Government-leased facilities provided under C-2 of this contract for specified categories of activity associated with performance of this contract and (2) approval requirements applicable to use of such facilities by third parties.

H-60 INFORMATION TECHNOLOGY

(a) The Contractor shall provide an information technology common/institutional infrastructure that promotes both openness of access and ease of interoperability in most circumstances, yet provides secure access and exchange of

information when system requirements warrant. In developing its information technology architecture and standards, the Contractor shall carefully consider the approaches NASA is taking regarding information technology architectures and standards and shall develop approaches that maximize interoperability to the extent practicable. The Contractor shall undertake investments in information technology common/institutional infrastructure that yield a positive return on investment, reduce risk, and directly contribute to mission success.

(b) The Contractor shall develop and operate information common/institutional infrastructure that is in functional alignment with the following NASA technical architectures and standards:

- (1) NASA-STD-2813, NASA Firewall Strategy, Architecture, Standards and Products
- (2) NASA-STD-2808A, Interoperability Profile for NASA E-Mail Clients
- (3) NASA-STD-2807A, The NASA Directory Service
- (4) NASA-STD-2806, Network Protocol Standard
- (5) NASA-STD-2804A, Minimum Software Standard
- (6) NASA-STD-2802, Intracenter Networking Architecture, Standards, and Products
- (7) NASA-STD-2801, Windows NT

(c) The Contractor shall establish an internal waiver process related to the standards noted above. Waiver requests will be submitted to and approved by the JPL CIO Representative. Waiver requests will include:

- (1) NASA Standard to be waived
- (2) Reason waiver is required
- (3) When the Contractor will be in compliance with the standard

The Contractor will promptly provide copies to the NASA CIO of all waivers granted.

H-61 RESERVED

H-62 OBSERVANCE OF LEGAL HOLIDAYS

NFS 1852.242-72
Observance of Legal Holidays (AUG 1992)

- (a) The on-site Government personnel observe the following holidays:

New Year's Day

Labor Day

Martin Luther King, Jr.'s Birthday

Columbus Day

President's Day

Veterans Day

Memorial Day

Thanksgiving Day

Independence Day

Christmas Day

Any other day designated by Federal statute, Executive order, or the President's proclamation.

(b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the contract.

(End of clause)

H-63 GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM

NFS 1852.244-70

Geographic Participation in the Aerospace Program (APR 1985)

(a) It is the policy of the National Aeronautics and Space Administration to advance a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use its best efforts to solicit subcontract sources on the broadest feasible geographic basis consistent with efficient contract performance and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of \$100,000 and over.

(End of clause)

H-64 GRAPHIC MARKINGS ON PAYLOADS

The Contractor will implement NPD 8610.6D, Graphic Markings on Space Transportation Vehicles, U.S. Components of the International Space Station Component Systems, and Payloads, dated July 1997, when using graphic markings on any payload.

(End of clause)

H-65 RESERVED

H-66 RESERVED

H-67 SPECIAL TEST EQUIPMENT

(a) For the purposes of subparagraph (e)(2)(i) of Clause 88 [52.245, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts)(JAN 1986) (DEVIATION)], the requirement that Special Test Equipment (STE) be treated as a separate category of equipment under this contract shall be deemed satisfied by the Contractor maintaining, for the purposes of property reporting requirements, separate categorizations of government property as STE or plant equipment as described herein.

(b) This requirement applies to:

- (1) All new subcontracts and existing open subcontracts which have property which has not been delivered to the Contractor;
- (2) All future STE and plant equipment developed in-house; and
- (3) Subject to subparagraphs (c), (d), and (e) below, all property held by the Contractor on the effective date of this contract and accountable to this contract.

(c) The Contractor's initial categorizations of each such item of property as plant equipment and STE may be retained for the life of the property, notwithstanding any modifications, changes or disassembly of such property.

(d) Except to the extent provided in (e) below, the requirements of subparagraph (e)(2)(i) of Clause 88 [52.245, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986) (DEVIATION)], as defined in subparagraph (a) above, do not apply to such in-house developed property and such subcontractor developed property as were, upon delivery to JPL, reclassified by the Contractor from an STE classification to a plant equipment classification under NAS7-1260 or predecessor prime contracts.

(e) In addition to the reclassification requirements set forth above, the Contractor will also make an effort during the first thirty days following execution of this Contract to make appropriate reclassifications of Government-owned property held by the Contractor for the performance of this Contract where the appropriateness of such reclassification is readily apparent.

H-68 TRANSITION TO SUCCESSOR CONTRACT

(a) The parties agree to work together toward the goal of facilitating an orderly transition to any successor contract. The Contractor will provide a plan as to how the parties will work together, including a proposed approach and schedule, to the Contracting Officer within 180 days from the start of this contract.

(b) Furthermore, the Contractor will take prompt action to:

- (1) Implement measures, after consultation with NASA, to limit the terms of new subcontracts in certain categories (e.g. level of effort and support services) to a term ending on or before the expiration of this contract; and
- (2) Implement measures, after consultation with NASA, to structure task orders to permit segmentation of projects and programs into logical major phases, thereby limiting the duration of task orders.

(c) Contractor also agrees to take the following steps in performing the transition between Contract NAS7-1407 and any successor contract:

(1) Analyze NASA task orders to identify tasks where the period of performance has been completed.

(2) Associate all tasks where period of performance has been completed under Contract NAS7-1407 with Letter of Credit draws from the Contract NAS7-1407 Letter of Credit.

(3) Establish new task order numbers in the successor contract for tasks where the programmatic period of performance has not been completed.

(4) Analyze each subsequent voucher and determine by the information on the voucher the specific contract/task order to which the payment is associated.

(5) Pay JPL bills and draw from the Contract NAS7-1407 Letter of Credit for Contract NAS7-1407 task orders and from the successor contract Letter of Credit for new task orders under the successor contract.

H-69 ADVANCE PAYMENTS

In applying Clause I-69, Advance Payments, delivery of the Contractor's annual audited financial statements to the Contracting Officer shall be deemed to satisfy the requirements of paragraph (i)(1); and paragraphs (k) and (l) shall not be deemed to take effect (nor shall the specific amounts in paragraph (l) be determined) unless and until, with Contracting Officer approval, an advance payment is taken for estimated costs for future work to be performed under this contract and such paragraphs shall remain in effect only until that advance payment has been fully utilized for contract performance or refunded.

PART II - CONTRACT CLAUSES

SECTION I - CONTRACT CLAUSES

I-1

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. This section lists clauses applicable to this contract and either incorporated by reference or set forth in full text herein.

- A. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) AND NASA FAR SUPPLEMENT CLAUSES APPLICABLE TO ALL WORK PERFORMED UNDER THIS CONTRACT.

<u>Clause Number</u>	<u>FAR Reference Number</u>	<u>Title</u>
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1	52.202-1	Definitions (OCT 1995)
2	52.203-3	Gratuities (APR 1984)
3	52.203-5	Covenant Against Contingent Fees(APR 1984)
4	52.203-6	Restrictions on Subcontractor Sales to the Government (JUL 1995)
5	52.203-7	Anti-Kickback Procedures (JUL 1995)
6	52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (JAN 1997)
7	52.203-10	Price or Fee Adjustment for Illegal or Improper Activities (JAN 1997)
8	52.203-12	Limitation on Payments to Influence Certain Federal Transactions(JUN 1997)
9	52.204-2	Security Requirements (AUG 1996)--ALTERNATE I (APR 1984)
10	52.204-4	Printing/Copying Double-Sided on Recycled Paper (JUNE 1996)
11	1852.204-75	Security Classification Requirements (SEP 1989)(FULL TEXT)
12	1852.204-76	Security Requirements for Unclassified Automated Information Resources (SEP 1993) (FULL TEXT)
13	52.208-8	Helium Requirement Forecast

		and Required Sources for Helium (JUN 1997)
14	52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment (JUL 1995)
15	52.211-15	Defense Priority and Allocation Requirements (SEP 1990)
16	52.215-8	Order of Precedence – Uniform Contract Format (OCT 1997)
17	52.215-10	Price Reduction for Defective Cost or Pricing Data (OCT 1997) (DEVIATION)

18	52.215-12	Subcontractor Cost or Pricing Data (OCT 1997)
19	52.215-14	Integrity of Unit Prices (OCT 1997) ALTERNATE I (OCT 1997)
20		RESERVED
21		RESERVED
22	52.215-19	Notification of Ownership Changes (OCT 1997)
23	1852.215-84	Ombudsman (OCT 1996) (FULL TEXT)
24	52.216-7	Allowable Cost and Payment (MAR 1997) (DEVIATION)
25	1852.216-89	Assignment and Release Forms (JUL 1997)
26	52.219-8	Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns(JUN 1997)
27	52.219-9	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (AUG 1996)
28	52.219-16	Liquidated Damages Subcontracting Plan (OCT 1995)
29	1852.219-74	Use of Rural Area Small Businesses (SEP 1990)

30	1852.219-75	Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Reporting (JUL 1997)
31	1852.219-76	NASA 8 Percent Goal (JUL 1997)
32	52.222-1	Notice to the Government of Labor Disputes (FEB 1997)
33	52.222-2	Payment of Overtime Premiums (JUL 1990) (FULL TEXT)
34	52.222-3	Convict Labor (AUG 1996)
35	52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 1995)
36	52.222-20	Walsh-Healey Public Contracts Act (DEC 1996)
37	52.222-26	Equal Opportunity (APR 1984)
38	52.222-28	Equal Opportunity Preaward Clearance of Subcontracts (APR 1984)
39	52.222-29	Notification of Visa Denial (APR 1984)
40	52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)
41	52.222-36	Affirmative Action for Handicapped Workers <u>with Disabilities</u> (APR 1984 Jun 1998) <u>Mod 41</u>
42	52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988)

43	52.223-2	Clean Air and Water (APR 1984)
44		RESERVED
45	52.223-5	Pollution Prevention and Right-to-Know Information (MAR 1997)
46	52.223-6	Drug-Free Workplace (JAN 1997)
47	52.223-7	Notice of Radioactive Materials(JAN 1997) (FULL TEXT)
48	52.223-10	Waste Reduction Program (OCT 1997)
49	52.223-11	Ozone-Depleting Substances (JUN 1996)
50	52.223-12	Refrigeration Equipment and Air Conditioners (MAY 1995)
51	52.223-14	Toxic Chemical Release Reporting (OCT 1996)
52	1852.223-74	Drug-and Alcohol-Free Workforce (MAR 1996)
53		RESERVED
54	52.225-10	Duty Free Entry (APR 1984)
55	52.225-11	Restrictions on Certain Foreign Purchases (OCT 1996)
56	52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises (SEP 1996)

57	52.227-1	Authorization and Consent (JUL 1995)-ALTERNATE I (APR 1984) (DEVIATION)
58	52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)
59	52.227-10	Filing of Patent Applications - Classified Subject Matter (APR 1984)
60	52.227-11	Patent Rights--Retention by the Contractor (Short Form) (JUN 1997), ALTERNATE IV (JUN 1989) as modified by NASA FAR Supplement 1852.227-11 (DEVIATION)
61	52.227-14	Rights in Data--General (JUN 1987), ALTERNATE II (JUN 1987), ALTERNATE III (JUN 1987), ALTERNATE V (JUN 1987) as modified by NASA FAR Supplement 1852.227-14 (DEVIATION)
62	52.227-16	Additional Data Requirements (JUN 1987)
63	18-52.227-87	Transfer of Technical Data Under Space Station International Agreements (APR 1989)
64	52.228-7	Insurance--Liability to Third Persons (MAR 1996) (DEVIATION)
65	1852.228-75	Minimum Insurance Coverage (OCT 1988)

66	52.230-2	Cost Accounting Standards (APR 1998) (DEVIATION)
67	52.230-6	Administration of Cost Accounting Standards (APR 1996) (DEVIATION)
68	52.232-9	Limitation on Withholding of Payments (APR 1984)
69	52.232-12	Advance Payments (APR 1984), ALTERNATE II (APR 1984), ALTERNATE IV (APR 1984), AND ALTERNATE V (APR 1984) (Advance Payments without Special Bank Account (JUL 1990)), as modified by NASA (MAR 1998) (DEVIATION)
70	52.232-17	Interest (JUN 1996)
71	52.232-20, 52.232-22	Limitation of Cost; Limitation of Funds (APR 1984) (DEVIATION)
72	52.232-23	Assignment of Claims (JAN 1986)
73	52.232-33	Mandatory Information for Electronic Funds Transfer Payment (AUG 1996)
74	52.233-1	Disputes (OCT 1995) -ALTERNATE I (DEC 1991)
75	52.233-3	Protest After Award (AUG 1996)-- ALTERNATE I (JUN 1985)
76	1852.235-70	Center for Aerospace Information (NOV 1992)

77		RESERVED
78		RESERVED
79	1852.237-70	Emergency Evacuation Procedures (DEC 1988)
80		RESERVED
81		RESERVED
82	52.242-1	Notice of Intent to Disallow Costs (APR 1984)
83		RESERVED
84	52.242-13	Bankruptcy (JUL 1995)
85	52.244-2	Subcontracts (Cost Reimbursement and Letter Contracts) (OCT 1997)- ALTERNATE 1 (AUG 1996) (DEVIATION)
86	52.244-5	Competition in Subcontracting (DEC 1996)
87	52.244-6	Subcontracts for Commercial Items and Commercial Components (OCT 1995)
88	52.245-5	Government Property (Cost Reimbursement, Time-and Material, Labor-Hour Contracts) (JAN 1986) (DEVIATION) (Applicable to property other than real property)

89	52.245-7	Government Property (Consolidated Facilities) (MAR 1996) (DEVIATION) (Applicable to real property only)
90	52.245-8	Liability for the Facilities (JAN 1997) (DEVIATION) (Applicable to real property only)
91	52.246-23	Limitation of Liability (FEB 1997) (Applicable to property other than real property)
92	52.246-24	Limitation of Liability—High Value Items (FEB 1997) (Applicable to property other than real property)
93	52.247-1	Commercial Bill of Lading Notations (APR 1984)
94	52.247-27	Contract Not Affected by Oral Agreement (APR 1984)
95	52.247-63	Preference for U.S.-Flag Air Carriers (JAN 1997)
96	52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels (JUN 1997)--ALTERNATE I (APR 1984)
97	52.249-5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (SEP 1996) (DEVIATION)
98		RESERVED

99	52.251-2	Interagency Fleet Management System Vehicles and Related Services (JAN 1991)
100	52.253-1	Computer Generated Forms (JAN 1991)
101		RESERVED
102		RESERVED
103		RESERVED
104		RESERVED
105		RESERVED

B. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES
APPLICABLE TO WORK PERFORMED PURSUANT TO C-1(a) AND C-1(b),
RELATED RESEARCH AND DEVELOPMENT OF THE SCHEDULE.

<u>Clause Number</u>	<u>FAR Reference Number</u>	<u>Title</u>
106	52.215-2	Audit and Records—Negotiation (AUG 1996)--ALTERNATE II (JAN 1997)
107	52.225-3	Buy American Act—Supplies (JAN 1994)
108	52.243-2	Changes--Cost-Reimbursement (AUG 1987)--ALTERNATE V (APR 1984)
109	52.246-9	Inspection of Research and Development (Short Form) (APR 1984)
110	52.251-1	Government Supply Sources (APR 1984) (Paragraphs (a) and (b) referenced in this clause refer to FAR Clause 52.245-5)
111	52.225-7	Balance of Payments Program (APR 1984)

C. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)
CLAUSES APPLICABLE TO WORK PERFORMED PURSUANT TO C-1(c),
RELATED FACILITIES MANAGEMENT OF THE SCHEDULE.

<u>Clause Number</u>	<u>FAR Reference Number</u>	<u>Title</u>
112	52.215-2	Audit and Records—Negotiation (AUG 1996)--ALTERNATE I (JAN 1997)
113	52.225-15	Buy American Act—Construction Materials Under the Trade Agreements Act and North American Free Trade Agreement (JUN 1997) (DEVIATION)
114	52.243-2	Changes--Cost-Reimbursement (AUG 1987)--ALTERNATE IV (APR 1984)
115	52.245-9	Use and Charges (APR 1984)
116	52.246-10	Inspection of Facilities (APR 1984) (DEVIATION)
117	52.251-1	Government Supply Sources (APR 1984)--ALTERNATE I (APR 1984)
118	52.225-22	Balance of Payments - Program Construction Materials- NAFTA (MAY 1997)
119		RESERVED
120		RESERVED

I-2 INCORPORATION IN FULL TEXT.

The following clauses are incorporated in full text because they require insertion of supplementary information or are deviations:

<u>Clause Number</u>	<u>FAR Reference Number</u>	<u>Title</u>
11	1852.204-75	Security Classification Requirements (SEP 1989)
12	1852.204-76	Security Requirements for Unclassified Automated Information Resources (SEP 1993)
17	52.215-10	Price Reduction for Defective Cost or Pricing Data (OCT 1997) (DEVIATION)
23	1852.215-84	Ombudsman (OCT 1996)
24	52.216-7	Allowable Cost and Payment(MAR 1997) (DEVIATION)
33	52.222-2	Payment of Overtime Premiums (JUL 1990)
47	52.223-7	Notice of Radioactive Materials (JAN 1997)
113	52.225-15	Buy American Act--[Balance of Payments Program] -- Construction Materials Under Trade Agreements Act and North American Free Trade Agreement (JUN 1997) (DEVIATION)
57	52.227-1	Authorization and Consent (JUL 1995)--ALTERNATE I (APR 1984) (DEVIATION)

60	52.227-11	Patent Rights--Retention by the Contractor (Short Form) (JUN 1997) ALTERNATE IV (JUN 1989) as modified by NASA FAR Supplement 1852.227-11, (NFSD 97-0) (DEVIATION)
61	52.227-14	Rights in Data--General (JUN 1987), ALTERNATE II (JUN 1987), ALTERNATE III (JUN 1987), ALTERNATE V (JUN 1987) as modified by NASA FAR Supplement 1852.227-14 (DEVIATION)
64	52.228-7	Insurance--Liability to Third Persons (MAR 1996) (DEVIATION)
66	52.230-2	Cost Accounting Standards (APR 1998) (DEVIATION)
67	52.230-6	Administration of Cost Accounting Standards (APR 1996) (DEVIATION)
69	52.232-12	Advance Payments (APR 1984), ALTERNATE II (APR 1984), ALTERNATE IV (APR 1984), AND ALTERNATE V (APR 1984) (Advance Payments without Special Bank Account (JUL 1990)), as modified by NASA (MAR 1998) (DEVIATION)
71	52.232-20 52.232-22	Limitation of Cost; Limitation of Funds (APR 1984) (DEVIATION)

85	52.244-2	Subcontracts (Cost Reimbursement and Letter Contracts) (OCT 1997), ALTERNATE 1 (AUG 1996) (DEVIATION) <u>AUG 1998</u>
88	52.245-5	Government Property (Cost Reimbursement, Time-and Material, or Labor-Hour Contracts) (JAN 1986) (DEVIATION)
89	52.245-7	Government Property (Consolidated Facilities) (MAR 1996) (DEVIATION)
90	52.245-8	Liability for the Facilities (JAN 1997) (DEVIATION)
116	52.246-10	Inspection of Facilities (APR 1984) (DEVIATION)
97	52.249-5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (SEP 1996) (DEVIATION)

Clause 11 [1852.204-75 52.204-75] SECURITY CLASSIFICATION
REQUIREMENTS (SEP 1989)

Performance under this contract will involve access to and/or generation of classified information, work in a security area, or both, up to the level of TOP SECRET. See Federal Acquisition Regulation clause 52.204-2 in this contract and DD Form 254, Contract Security Classification Specification, Attachment APPENDIX F.

(End of clause)

Clause 12 [1852.204-76] SECURITY REQUIREMENTS FOR
UNCLASSIFIED AUTOMATED
INFORMATION RESOURCES (SEP 1993)

(a) In addition to complying with any functional and technical security requirements set forth in the schedule and the clauses of this contract, the Contractor shall initiate personnel screening checks and obtain user responsibility agreements, as required by this clause, for each contractor employee requiring unescorted or unsupervised physical access or electronic access to the following limited or controlled areas, systems, programs and data:

Areas and Systems:

Screening checks and user responsibility agreements will be required for application developers, software developers, system administrators and computer operators requiring unescorted or unsupervised physical or electronic access to those controlled areas within the buildings housing the following mission critical systems:

- New Business Systems
- Enterprises Information Systems
- Topex/Poseidon Project Mission Operation Systems
- Telecommunications and Mission Operations Systems

(1) The Contractor shall submit a personnel security questionnaire (NASA Form 531, Name Check Request, for National Agency Check (NAC) investigations and Standard Form 85P, Questionnaire for Public Trust Positions, for specified sensitive positions) and a Fingerprint Card (FD-258 with NASA overprint in Origin Block) to the installation Security Officer for each Contractor employee who requires access. The required forms may be obtained from the installation security office. Employees may have fingerprints taken at the JPL Security Office, Mail Stop 180-102.

(i) Several months may be required for completion of complex personnel screening investigations. Background screening may not be required for employees with recent or current Federal Government investigations.

(ii) When employee access is necessary prior to completion of personnel screening, each contractor employee requiring access may be considered for escorted access. The installation Security Officer will establish the eligibility of proposed escorts.

(2) The Contractor shall ensure that each contractor employee requiring access executes any user responsibility agreements required by the Government prior to access. The Contractor shall provide signed copies of the agreements to the installation Security Officer for inclusion in the employee's security file. Unauthorized access is a violation of law and punishable under the provisions of 18 USC 1029, 18 USC 1030 and other applicable statutes.

(3) The Contractor shall notify the installation AIS Manager no later than the end of the day of the termination for cause of an authorized employee's access. The Contractor shall notify the COTR no later than ten days after an authorized employee no longer requires access for any other type of termination. Verbal notifications shall be confirmed in writing within thirty days.

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

(End of clause)

Clause 17 [52.215-10] PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997) (DEVIATION)

(a) If any price, including profit or fee, negotiated in connection with a first-tier subcontract or any cost reimbursable lower-tier subcontract thereunder, was increased by any significant amount because --

(1) The first-tier subcontractor or lower-tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A first-tier subcontractor or prospective subcontractor at any tier furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the first-tier subcontractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these subcontracting parties furnished data of any description that were not accurate, the Contracting Officer may require the Contractor to reduce accordingly the price or cost of such subcontract and the subcontract shall be modified to reflect the reduction.

(b) Any reduction in the first-tier subcontract price under paragraph (a) of this clause due to defective data from a prospective lower-tier subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--

(1) The actual lower-tier subcontract; or

(2) The actual cost to the first-tier subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the first-tier subcontractor; provided, that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor and subcontractor agree not to raise the following matters as a defense:

(i) The first-tier or lower-tier subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contractor or Contracting Officer as part of their respective negotiation and consent processes should have known that the cost or pricing data in issue were defective even though the first-tier subcontractor or the lower-tier subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer or the Contractor.

(iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.

(iv) The first-tier subcontractor or lower-tier subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a subcontract price reduction if--

(A) The Contractor provides to the Contracting Officer the subcontractor's certification that, to the best of the subcontractor's knowledge and belief, the subcontractor is entitled to the offset in the amount requested; and

(B) The subcontractor 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 were known by the subcontractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the subcontract 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.

(d) If any reduction in the first-tier subcontract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the subcontractor shall be liable to and shall pay the United States through the Contractor at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the first-tier subcontractor to the date the

Government is repaid through the Contractor 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 first -tier subcontractor or lower-tier subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(3) The Contractor shall immediately notify the Contracting Officer of receipt of any such reimbursement by its subcontractors. Reimbursed funds shall not be directed to uses other than the purpose originally authorized without Contracting Officer consent.

(e) The Contractor shall not include in a first-tier subcontract any provisions offering direct dispute remedies or any right of appeal to the Administrator of NASA or his authorized representative. The Contractor may permit a first-tier subcontractor to assert the rights of the Contractor under the "Disputes" clause of this contract.

(End of clause)

Clause 23 [1852.215-84] OMBUDSMAN (OCT 1996)

An ombudsman has been appointed to hear and facilitate the resolution of concerns from offerors, potential offerors, and contractors during the preaward and postaward phases of this acquisition. When requested, the ombudsman will maintain strict confidentiality as to the source of the concern. The existence of the ombudsman is not to diminish the authority of the contracting officer, the Source Evaluation Board, or the selection official. Further, the ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Therefore, before consulting with an ombudsman, interested parties must first address their concerns, issues, disagreements, and/or recommendations to the contracting officer for resolution. If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, Robert Parker, at (818) 354-5359. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the NASA ombudsman, the Deputy Administrator for Procurement, at 202-358-2090. Please do not contact the ombudsman to request copies of the solicitation, verify offer due date, or clarify technical requirements. Such inquiries shall be directed to the contracting officer or as specified elsewhere in this document.

(End of clause)

Clause 24 [52.216-7] ALLOWABLE COST AND PAYMENT
(MAR 1997) (DEVIATION)

(a) Invoicing. The Government shall make payments to the Contractor as work progresses, by means of withdrawals by the Contractor from a Letter of Credit, as described in B-6 of this contract, Contractor Financing by Letter of Credit. Such payments shall be in amounts determined to be allowable by the Contracting Officer in accordance with this clause, with B-5 of this contract and with other terms and conditions of this contract. Within fifteen (15) working days after the close of the Contractor's fiscal month the Contractor will submit to the Contracting Officer, a public voucher (i.e. no pay voucher) supported by a statement (using the same major categories of cost reported on in the NF533 reports) of the costs/expenditures made by the Contractor in the performance of this contract during the prior fiscal month and claimed to constitute allowable costs.

(b) Reimbursing costs/expenditures. (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (2) of this section, with respect to pension contributions), the term "costs/expenditures" includes only--

(i) 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;

(ii) 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--

(A) Direct labor;

(B) Direct travel;

(C) Other direct in-house costs; and

(D) Properly allocable and allowable institutional F&A costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of progress and other payments that have been paid by cash, check or other form of payment to the Contractor's subcontractors under similar cost standards and the amount of advance payment approved and paid in accordance with B-6(d).

(2) Accruals for Contractor contributions to any pension plan funds that are paid quarterly or more often may be included 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 for payment purposes until the Contractor actually makes the payment.

(3) 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 Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) Small business concerns. A small business concern may be paid more often than every 2 weeks and may invoice and 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) Allocated direct costs.

(1) For contract monitoring, budgeting and managerial purposes of NASA, the Contractor shall submit to the Contracting Officer allocated direct cost (planning) rates and the bases to which they apply no later than October 30 for each fiscal year during the term of this contract.

(2) The Contractor shall, within 90 days after the expiration of each fiscal year, or by a later date approved by the Contracting Officer, submit to the cognizant Contracting Officer and, to the cognizant audit activity (DCAA), final allocated direct costs, final allocated direct cost rates and the base(s) to which the costs have been allocated in sufficient detail to allow audit.

(3) Allowability of the allocated direct costs will be determined in accordance with B-5 of this contract. The Contractor shall promptly respond to any questions concerning allowability and the method(s) used in the collection, control, distribution and accounting of allocated direct costs to the cost objectives of the period, and work with the Contracting Officer to resolve any outstanding issues.

(4) The Contractor and the Contracting Officer shall execute a written understanding setting forth any required changes in the Contractor's methods for the collection, control, distribution and accounting of allocated direct costs. Adjustments to the final allocated direct costs or its distribution to the cost objective of the period in question shall be accomplished if those amounts would have had a material effect upon

the costs of the period. Any adjustments shall be accomplished by the Contractor in the current period, consistent with NASA's accounting requirements.

(5) Questions concerning the allowability of any final allocated direct costs which cannot be resolved by the Contracting Officer and the Contractor shall be deemed to be a dispute within the meaning of the Disputes clause.

(e) Quick-closeout procedures. When the Contractor and the Contracting Officer agree, the quick-closeout procedures of FAR Subpart 42.7 may be used for closing out task orders under this contract. However, such procedures are not available to the prime contract.

(f) Audit. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(g) Final payment. (1) The Contractor shall submit a completion invoice or voucher designated as such and a final SF272 to close the Letter of Credit, promptly upon closeout of all task orders under this contract. Upon approval of the completion invoice or voucher submitted by the Contractor in accordance with this clause, and upon the Contractor's compliance with all terms of this contract, the Government 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 Government 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 Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. 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--

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except--

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) 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 the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract,

(D) When there is included in this contract a clause entitled "Additional Data Requirements," claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the one year period after final payment.

(End of clause)

Clause 33 [52.222-2] PAYMENT OF OVERTIME PREMIUMS (JUL 1990)

(a) The use of overtime work is authorized under this contract if the overtime premium does not exceed \$0 or if the overtime premium is paid for work -

(1) 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;

(2) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified 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 the Contracting Officer 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 Government 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.

(End of clause)

Clause 47 [52.223-7] NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, 30 days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall--

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

Clause 113 [52.225-15] BUY AMERICAN ACT--[BALANCE OF PAYMENTS PROGRAM] CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS ACT AND NORTH AMERICAN FREE TRADE AGREEMENT (JUN 1997) (DEVIATION)

(a) Definitions. As used in this clause--

"Components" means those articles, materials, and supplies incorporated directly into construction materials.

"Construction material" means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

"Designated country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a designated country (as defined at FAR 25.401); or

(2) In the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

"Domestic construction material" means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(2) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

"North American Free Trade Agreement (NAFTA) country" means Canada or Mexico.

"NAFTA country construction material" means a construction material that--

(1) Is wholly the growth, product, or manufacture of a NAFTA country; or

(2) In the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially

transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

(b)(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) and the Balance of Payments Program by providing a preference of domestic construction material. In addition the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

(2) Only domestic, designated country, or NAFTA country construction material shall be used in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the excepted construction material or components listed by the Government as follows:

None.

(4) Other foreign construction material may be added to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost would be unreasonable (the cost of a particular domestic construction material subject to the restrictions of the Buy American Act shall be determined to be unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determinations of unreasonable cost under the Balance of Payments Program, a factor of 50 percent shall be used;

(ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination. (1) Contractors requesting to use foreign construction material under paragraph (b)(4) of this clause shall provide adequate information for Government evaluation of the request for a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program. Each submission shall include a description of the foreign and domestic construction materials, including unit of measure, quantity, price, time of delivery or availability, location of the construction project, name and address of the proposed contractor, and a detailed justification of the reason for use of foreign materials cited in accordance with paragraph (b)(4) of this clause. A submission based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause. The price of construction material shall include all delivery costs to the

construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies, the contract shall be modified to allow use of the foreign construction material, and adequate consideration shall be negotiated. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration shall not be less than the differential established in paragraph (b)(4)(i) of this clause.

(3) If the Government does not determine that an exception to the Buy American Act or Balance of Payments Program applies, the use of that particular foreign construction material shall be considered noncompliant with the Buy American Act or Balance of Payments Program.

(d) For evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers shall be included in the request:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

<u>CONSTRUCTION MATERIAL DESCRIPTION</u>	<u>UNIT OF MEASURE</u>	<u>PRICE (DOLLARS)*</u>
--	----------------------------	-----------------------------

Item 1:

Foreign construction material		
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Domestic construction Material		
--------------------------------	--	--

Item 2:

Foreign construction material		
-------------------------------	--	--

Domestic construction material		
--------------------------------	--	--

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

*[*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]*

(End of clause)

Clause 57 [52.227-1] AUTHORIZATION AND CONSENT (JUL 1995)
ALTERNATE I (APR 1984) (DEVIATION)

(a) The Government authorizes and consents: (1) to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier, and (2) to the reproduction, preparation of derivative works, distribution, performance, or display of any work protected under the copyright laws of the United States in the performance of this contract.

(b) The Contractor agrees to include, and require inclusion of, the appropriate Authorization and Consent clause, 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 the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)

Clause 60 [52.227-11] PATENT RIGHTS--RETENTION BY THE
CONTRACTOR (SHORT FORM) (JUN 1997)
ALTERNATE IV (JUN 1989), as modified by FAR
SUPPLEMENT 1852.227-11, (NFSD 97-0) (DEVIATION)

The following clause shall apply to the performance of all work under this contract with the following exceptions:

Exception 1 - The Contracting Officer may specify in task orders issued pursuant to paragraph C-1(a) of this Contract that the Provision G-20 [1852.227-70], New Technology (DEVIATION), will instead apply, provided that the necessary determination has first been made under FAR 27.303(d)(1)(ii) or (iii).

Exception 2 - For a specific task order issued by the Contracting Officer and accepted by the Contractor under paragraph C-1(b), an alternative to the instant clause may apply if the parties agree.

(a) Definitions.

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

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

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

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

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

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

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

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause, Provision H-53 of this Contract, and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

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

(1) After a subject invention has been disclosed in writing by the inventor(s) to Contractor personnel responsible for the administration of patent matters, the Contractor will:

(i) Disclose such inventions to the Contracting Officer within two months, but in any event prior to any on sale, public use, or release for publication known to the Contractor.

(ii) Elect whether or not to retain title to any such invention by notifying the Contracting Office within ten months of disclosure to the Contractor, provided however, requests for extension of time in which to make an election, up to a maximum of twenty-four months, shall be liberally granted and not unreasonably withheld; but in any event prior to any on sale, public use or release for publication

known to the Contractor. In this connection, the Contractor agrees that it will review proposed publications prior to their release. In any instance where such review indicates that a subject invention is involved, the Contractor will either (A) take appropriate timely patent action, as by the filing of a patent application prior to the release of the a publication, or assist NASA in taking such timely patent action; or (B) obtain the concurrence of the Contracting Officer in the release on the basis that foreign patent filing is not desirable in the case of the particular subject invention in question.

(iii) File its initial patent application on an elected invention within two years after election; and

(iv) File patent applications in additional countries within either ten months of the corresponding initial patent application, or six months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing was prohibited for security reasons. In the event that the Contractor elects not to file patent applications in additional countries, it will so notify the Contracting Officer so that the Government may file in such additional countries as it desires.

(2) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing where reasonable, will normally be granted.

(3) The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and accepted at the time of disclosure.

(d) Reporting of Reportable Items.

(1) The Contractor shall furnish the Contracting Officer with a full and complete technical report for each Reportable Item, other than a subject invention, within six months after the identification of any such Reportable Item. The report shall identify the contract and the inventor or innovator and shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the Reportable Item.

(2) The Contractor agrees that the Government may use, duplicate, and disclose, in whole or in part, in any manner and for any purpose whatsoever, and

have others do so, all reports of Reportable Items; provided that, where the Contractor intends to file a patent application covering a subject invention, NASA will use reasonable efforts to comply with any written request to restrict its publication of information disclosing the invention for a reasonable period of time in order to protect the patent rights in the invention. The Contractor must specify the reports and documents to be restricted and the period within which patent applications will be filed.

(3) The Contractor shall establish, maintain and follow active and effective procedures to encourage and ensure that Reportable Items are identified and timely reported by the Contractor. Upon request, the Contractor shall furnish the Contracting Officer a description of these procedures so that they may evaluate and determine their effectiveness.

(4) The Contractor will submit monthly and quarterly summary activity reports to include statistical information on Reportable Item evaluation and publication; on new technology requests from industry and others; special letter requests; and on Computer Program Licensing.

(e) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention--

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

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

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

(f) Minimum rights to Contractor and protection of the Contractor right to file. (1) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally

obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

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

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

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

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c)(3) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(3) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of

reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

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

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under NAS7-1407 awarded by NASA. The Government has certain rights in the invention."

(5) The contractor shall provide the contracting officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of this contract listing subject inventions during that period and certifying that all subject inventions have been disclosed or that there are no such inventions.

(ii) A final report, within three months after completion of the contracted work listing all subject inventions not previously reported, or certifying that there were no such inventions, and listing all first and second tier subcontracts, not previously reported, containing a patent rights clause or certifying that there were no such subcontracts.

(6) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract containing a patent rights or new technology clause by identifying the subcontractor, and the applicable patent rights clause (either the "New Technology (JUL 1995)" clause as required by NFS 1852.227-70 or the "Patent Rights-Retention by the Contractor (Short Form) (JUN 1997) clause as required by FAR 52.227-11 and NFS 1852.227-11). Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(7) The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed, and shall submit a description of the procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

(8) The Contractor shall provide, upon request, the filing date, serial number and title, a copy of the patent application (including an English language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Contractor has retained title.

(9) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(h) Subcontracts. (1) The Contractor will include the clause FAR 52.227-11 (JUN 1997), as modified by NFS 1852.227-11, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in the standard FAR clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor shall include the clause in the NASA FAR Supplement at 1852.227-70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.

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

(i) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (k) of this clause. As required by 35 U.S.C. 202(c)(5), the

agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

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

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

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

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

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

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

(l) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that--

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (1)(4).

(End of clause)

Clause 61 [52.227-14] RIGHTS IN DATA--GENERAL (JUN 1987), ALTERNATE II (JUN 1987), ALTERNATE III (JUN 1987), ALTERNATE V (JUN 1987), as modified by NASA FAR SUPPLEMENT 1852.227-14 (DEVIATION)

(a) Definitions. "Computer software," as used in this clause, means computer programs, computer databases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data, mask works, and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

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

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

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

"Mask work", as used in this clause, means a series of related images, however fixed or encoded (1) having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (2) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

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

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

"Semiconductor chip product", as used in this clause, means the final or intermediate form of any product (1) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and (2) intended to perform electronic circuitry functions.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Copyright and mask work.

(1) Data first produced in the performance of this contract.

(i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. However, the Contractor is granted permission to apply for registration of copyright in, or publish with a notice of copyright any computer software as set forth in Provision H-53 of this contract. Further, Contractor is granted permission to establish claims to mask works subsisting in any data first produced in the performance of this contract, in accordance with Provision H-54, "Agreement on Establishment of Rights, Technology Transfer, and Distribution of Income with Respect to Mask Works".

When claim to copyright or mask work is made, the Contractor shall affix the applicable copyright or mask work notices of 17 U.S.C. 401, 402 or 909 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software or mask work the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

For mask works, the Contractor grants to the Government and others acting on its behalf, a paid up, non-exclusive, irrevocable, worldwide license for all such mask works to reproduce the mask works, to import or distribute a semiconductor chip product in which the mask work is embodied; and to have or permit others to do so.

(ii) If the Government desires to obtain Copyright in computer software first produced in the performance of a subcontract to the present contract for which permission to copyright has not been granted to the subcontractor, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in said computer software and to obtain the assignment of, such copyright to the Government or its designated assignee.

(2) Data not first produced in the performance of this contract. The Contractor shall exert its best efforts not to, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright or mask work notice of 17 U.S.C. 401, 402, or 909, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software furnished by first-tier subcontractors the Contractor shall acquire on behalf of the Government a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

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

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

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

(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 clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor for return to the first-tier subcontractor or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

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

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

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

(2) The time limits in the procedures set forth in sub-paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request 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) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor may process on behalf of a first-tier subcontractor as a dispute under this contract any dispute that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

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

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the first-tier subcontractor's expense of incorrect notices if the first-tier subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software. (1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered to the Contractor by a first-tier subcontractor and qualify as

either limited rights data or restricted computer software, if the first-tier subcontractor desires to continue protection of such data, the first-tier subcontractor shall withhold such data and not furnish them to the Contractor under this contract. As a condition to this withholding, the first-tier subcontractor shall identify the data being withheld and furnish form, fit and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

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

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under Government Contract No. (and subcontract , if appropriate). These data may be reproduced and used by JPL and the Government with the express limitation that they will not, without written permission of [name of first-tier subcontractor] , be used for purposes of manufacture nor disclosed outside JPL or the Government; except that JPL and the Government may disclose these data outside the Government for the following purposes, if any; provided that JPL or the Government makes such disclosure subject to prohibition against further use and disclosure:

- (i) Use (except for manufacture) by Support Service Contractors.
- (ii) Evaluation by non-government evaluators.
- (iii) Use (except for manufacture) by other contractors participating in the Government's Program of which this specific contract is a part, for information and use in connection with the work performed under each contract.
- (iv) Emergency, repair or overhaul work.
- (v) Release to a foreign government, or instrumentality thereof, as the interest of the United States Government may require, for information and evaluation, or for emergency repair or overhaul work by such government.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

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

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government Contract No. (and subcontract , if appropriate). It may not be used, reproduced, or disclosed by JPL 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 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 clause, provided 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 Government, and JPL for governmental purposes, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, 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)

(ii) 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 (JUN 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No.
. . . (and subcontract, if appropriate) with (name of Contractor and subcontractor).

(End of notice)

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

(h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization. FAR clause 52.227-14 (JUN 1987) as modified by NFS 1852.227-14 will be used in subcontracts unless the Contracting Officer approves other appropriate subcontracts requirements pursuant to the flow-down and procurement policies and procedures set forth in subparagraphs (c) and (d) of Clause H-32, Clause Flow-down Requirement and subparagraph (m) of Clause 85 [52.244-2] SUBCONTRACTS (Cost-

Reimbursement and Letter Contracts)(OCT 1997)ALTERNATE I (AUG 1996)
(DEVIATION).

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

(j) 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 or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the first-tier subcontractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the first-tier subcontractor'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.

(End of clause)

Clause 64 [52.228-7]

INSURANCE--LIABILITY TO THIRD
PERSONS (MAR 1996) (DEVIATION)

(a)(1) Except as provided in subparagraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, 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) 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 clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. 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 Government. These liabilities are for--

(i) Loss of or damage to property (other than property owned by the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate

funds sufficient to meet deficiencies.

(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 clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; 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--

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause 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 clause; provided, that such cost is allowable under the Allowable Cost and Payment clause 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 the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize 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 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

Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

Clause 66 [52.230-2] COST ACCOUNTING STANDARDS (APRIL 1998)
(DEVIATION)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall--

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5 including methods of distinguishing direct costs from allocated direct costs (costs typically considered in other organizations to be indirect costs) and the basis used for allocating allocated direct costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor's business unit known as the Jet Propulsion Laboratory (hereafter referred to only as JPL) and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract being performed by JPL and subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5)(i) Agree to an adjustment of the contract price or cost allowance, as appropriate, if JPL or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless JPL made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(ii) The Contractor shall not, however, be held financially liable for the failure of its subcontractors to comply with CAS standards, nor shall its contract price, task order amount, or cost recovery allowance be reduced until, and only to the extent, actual recovery from its subcontractors is accomplished. This waiver of responsibility shall not relieve the Contractor of its responsibilities to effectively manage its subcontractors and fully assist the Government in pursuit of recovery from subcontractors with CAS violations.

(iii) The Contractor shall assist the Government in monitoring subcontractor compliance with CAS requirements, with particular emphasis on providing the Government with any evidence of subcontractor noncompliance coming to the attention of the Contractor and shall be responsible for entering into modifications of subcontracts necessary to reflect adjustments due to CAS noncompliance.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include the substance of the standard FAR clause 52.230-2 in all negotiated subcontracts which the Contractor enters into, and shall require such inclusion in all other subcontracts, of any tier, the substance of this clause except for (5)(ii) and paragraph (b), and shall require such inclusion in all other subcontracts of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(e) The Contractor shall not include in a first tier subcontract any provision offering direct dispute remedies or any right of appeal to the Administrator of NASA or his authorized representative. The Contractor may permit a first tier subcontractor to assert the rights of the Contractor under the Disputes clause of this contract.

(End of clause)

Clause 67 [52.230-6] ADMINISTRATION OF COST ACCOUNTING
STANDARDS (APR 1996) (DEVIATION)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards (APRIL 1998) (DEVIATION); or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards--Educational Institution; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standard (APRIL 1998) (DEVIATION), and FAR 52.230-5, Cost Accounting Standards--Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards (APRIL 1998) (DEVIATION), and FAR 52.230-5, Cost Accounting Standards--Educational Institution; or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards (APRIL 1998) (DEVIATION); or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards--Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts being performed by the Contractor's business unit known as the Jet Propulsion Laboratory (hereinafter referred to only as JPL) containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards--Educational Institution, which have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards (APRIL 1998) (DEVIATION), and FAR 52.230-5, Cost Accounting Standards--Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts being performed by JPL containing the clauses at FAR 52.230-2, Cost Accounting Standards (APRIL 1998) (DEVIATION), FAR 52.230-5, Cost Accounting Standards--Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards (APRIL 1998) (DEVIATION), and FAR 52.230-5, Cost Accounting Standards--Educational Institution; or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate amendments to contracts and subcontracts being performed by JPL to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards, (APRIL 1998) (DEVIATION), and 52.230-5; or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.

(e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5--

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the clauses at FAR 52.230-2, 52.230-3, or 52.230-5, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment subject to the express limitations on contractor financial responsibility stated in paragraph (a)(5) of FAR 52.230-2, Cost Accounting Standards, (APRIL 1998) (DEVIATION), based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after

proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

Clause 69 [FAR 52.232-12]

ADVANCE PAYMENTS (APR 1984), ALTERNATE II (APR 1984),
ALTERNATE IV (APR 1984), AND ALTERNATE V (APR 1984)
(ADVANCE PAYMENTS WITHOUT SPECIAL BANK ACCOUNT (JUL
1990)), AS MODIFIED BY NASA (MAR 1998) (DEVIATION)

(a) Requirements for payment. Advance payments will be made under this contract under a letter of credit. The Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) Use of funds. The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, indirect costs, or such other costs approved in writing by the administering contract office. Payments are subject to any restrictions in other clauses of this contract. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation, other applicable regulations referenced in Part 31, or subpart 1831.2.

(c) Repayment to the Government. At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements.

(d) Maximum payment. Unliquidated advance payments shall not exceed \$20,000,000 at any time outstanding. Upon completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and interest charges payable. The Contractor shall pay any deficiency to the Government upon demand.

(e) Interest. No interest shall be charged to the prime Contractor for advance payments except for interest charged during a period of withholding of advanced payment as described in (g) below. The terms of this paragraph concerning interest charges for advance payments shall not apply to the prime Contractor.

(1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in subparagraph (e)(3) below. Interest shall be computed at the end of each calendar month for the actual number of

days involved. For the purpose of computing the interest charge, the following shall be observed:

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check.

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer.

(iii) Liquidations by deductions from payments to the Contractor shall be considered as decreasing the unliquidated balance as of the dates on which the Contractor presents to the Contracting Officer full and accurate data for the preparation of each voucher. Credits resulting from these deductions shall be made upon the approval of the reimbursement vouchers by the Disbursing Officer, based upon the Contracting Officer's certification of the applicable dates.

(2) Interest charges resulting from the monthly computation shall be deducted from any payments on account of the fixed-fee due to the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments of the contract price or fixed-fee. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon (i) satisfactory completion or (ii) termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.

(f) Lien on property under contract.

(1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.

(2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the supplies, materials, or other property are

commingled. The Contractor shall maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

(4) If, under the termination clause, the Contracting Officer authorizes the contractor to sell or retain termination inventory, the approval shall constitute a release of the Government's lien to the extent that—

- (i) The termination inventory is sold or retained; and
- (ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(g) Withholding of advanced payments.

(1) If any of the following events occur, the Government may, by written notice to the Contractor, withhold further payments on this contract:

(i) A finding by the administering office that the Contractor has failed to--

- (A) Observe any of the conditions of the advance payment terms;
- (B) Comply with any material term of this contract;
- (C) Make progress or maintain a financial condition adequate for performance of this contract;
- (D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(ii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iii) The commission of an act of bankruptcy.

(2) If any of the events described in subparagraph (g)(1) of this clause continue for 30 days after the written notice to the Contractor, the Government may take any of the following additional actions:

(i) Charge interest, in the manner prescribed in paragraph (e) of this clause, on outstanding advance payments during the period of any event described in subparagraph (g)(1) of this clause.

(ii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iii) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.

(3) The Government may take any of the actions described in subparagraphs (g)(1) and (g)(2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(h) Prohibition against assignment. Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party

(i) Information and access to records. The Contractor shall furnish to the administering office

(1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements,

(2) no later than twenty days after the end of each of the Contractor's Fiscal Quarters, a Standard Form 272, Federal Cash Transactions Report, and, if appropriate, Standard Form 272, Federal Cash Transactions Report Continuation, and,

(3) if requested, other information concerning the operation of the contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(j) Other security. The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the

administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.

(k) Representations and warranties. The Contractor represents and warrants the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations and warranties shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

(l) Covenants. To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or Governmental authority, except direct obligations of the United States;

(6) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; accrue excess remuneration without first obtaining an agreement subordinating it to all claims of the Government; or employ any person at a rate of compensation over \$ _____ a year;

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor's business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;

(12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(13) Make or covenant for capital expenditures exceeding \$_____ in total;

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than \$_____ ; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract: [List the pertinent obligations]

(End of Clause)

Clause 71 [52.232-20] LIMITATION OF COST;
[52.232-22] LIMITATION OF FUNDS (APR 1984) (DEVIATION)

(a) The parties estimate that performance of this contract will not cost the Government more than the estimated cost specified in the Schedule (see B-2).

(b) Each task order specifies the amount presently available for payment by the Government and allotted to such task order. The parties contemplate that the Government will allot additional funds incrementally to task orders up to the full estimated cost specified in each task order. The Contractor agrees to perform, or have performed, work on each task order up to the point at which, in the exercise of reasonable judgment by the Contractor, costs incurred by the Contractor in performing work in-house, plus obligations incurred by the Contractor in subcontracting, approximate the amount of funds then allotted, by the Government as specified in each task order.

It is recognized that the point to which the Contractor is required to continue performance does not include an allowance for termination costs which will be incurred in the event the task order is terminated. It is the intention of the Government to allot the additional funds necessary to provide for termination costs to such terminated task order subject to the limitations set forth in paragraph (k) herein and using procedures set forth in G-8, FUNDS PROCEDURE FOR TERMINATION OF TASK ORDERS.

(c) The Contractor shall notify the Contracting Officer in writing at least fifteen (15) days prior to the date on which, in the reasonable judgment of the Contractor, costs incurred by the Contractor in performing work in-house, plus obligations incurred by the Contractor in subcontracting, will approximate the amount of funds then allotted, by the Government as specified in each task order. In such notification the Contractor shall advise the Contracting Officer of the estimated amount of additional funds required to continue performance of work under the task order to completion, or for an additional period of three months, whichever is earlier.

(d) If, after notification, additional funds are not allotted to the task order by the end of the period specified in the notification or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate the task order on that date in accordance with the provisions of the Termination clause of this contract. If subsequent to the fifteen (15) day notice the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond the initially specified date, it may specify a later date in another request, and the Contracting Officer may terminate the task order on that later date.

(e) The Government may at any time prior to the termination of a task order allot additional funds to the task order. After notice of termination of a task order, the

Government may rescind such termination in whole or in part, and allot additional funds to the task order; provided, however, such rescission and allotment of additional funds shall be subject to the consent of the Contractor.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause-

(1) The Government is not obligated to reimburse the Contractor for costs incurred in the performance of a task order in excess of the total amount allotted by the Government to such task order.

(2) The Contractor is not obligated to continue its performance of a task order, or to subcontract further for the performance of work under such task order or otherwise incur costs in excess of the amount then allotted to each task order by the Government, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to the task order.

(g) The estimated cost shall be increased to the extent that the amount allotted by the Government exceeds the estimated cost specified in the task order.

(h) No notice, communication, or representation in any form other than that specified in subparagraph (f)(2) above, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to a task order. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to a task order whether incurred during the performance of a task order or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of the amount previously allotted by the Government shall be allowable to the same extent as if incurred afterward. The Contracting Officer may issue a termination or other notice and direct that that portion of the increase not required for outstanding obligations be used to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the task order, unless they contain a statement increasing the amount allotted.

(k) Anything in this contract (including any task order and paragraphs (f) and (h) hereof) to the contrary notwithstanding, in the event this contract is terminated in

whole or in part pursuant to the Termination clause of this contract, and the amounts necessary to settle the termination of any one or more task orders will cause the costs incurred under such task order or orders to exceed the amount allotted thereto then, and in that event, the limit of the Government's obligation to reimburse the Contractor for such costs shall be the amount allotted thereto and such other available unobligated funds, as determined by NASA, which may be lawfully used for the payment of such costs. The determination by NASA as to the availability of unobligated funds shall not be subject to appeal by the Contractor under the Dispute clause of this contract.

(l) For the purposes of this clause, the words and phrases "cost(s)", "estimated cost(s)", "allowable costs", and "costs incurred" shall be deemed to include direct and institutional F&A costs.

(m) For the purposes of this clause, the term "task order" shall include any task order and any task order amendment for which separate cost segregation and reporting is required in accordance with G-1, Cost Segregation and Reporting.

(End of clause)

~~Clause 85 [52.244-2] SUBCONTRACTS (COST REIMBURSEMENT AND
LETTER CONTRACTS)(OCT 1997) ALTERNATE I (AUG
1996) (DEVIATION)~~

~~(a) "Subcontract," as used in this clause, includes subcontracts, purchase orders, and other instruments by which JPL acquires goods or services and changes and modifications thereto. Except as otherwise agreed to by the Contracting Officer, the Contractor shall notify the Contracting Officer by the earlier of either: the issue date of the solicitation; or in the case of any subcontract or modification thereto that is a BOA order, work order contract, release under a BPA, or Unilateral Modification, 3 working days prior to entering into any such instrument; or in the case of any other subcontract, 10 days prior to its issuance; if~~

~~(1) The proposed subcontract is in excess of \$100,000 regardless of type of contract. Advance notification is also required under this subparagraph for modifications in excess of \$100,000 for actions other than incremental funding of the previously reported contract value. A supplemental advance notice will be issued when the negotiated subcontract value exceeds 25% of the original value stated in the original Advance Notice of Intent to Subcontract;~~

~~(2) The proposed subcontract is for the acquisition of management engineering or management consulting services, of any type, at any value;~~

~~(3) The proposed subcontract involves a purchase from a foreign source in excess of \$25,000;~~

~~(4) The proposed subcontract is for the acquisition of supplies or services from Government sources in excess of \$75,000. In these cases, the notice shall clearly state that it is a purchase from a Government source and shall provide pertinent information. Pertinent information to be provided shall include, in addition to the items specified in paragraph (b) below: (1) the GSA or other Government contract number; (2) expiration date; and (3) any unusual contract requirements or clauses which are to be incorporated into the GSA contract acquisition; or~~

~~(5) The proposed subcontract is a Basic Ordering Agreement (BOA), Basic Agreements (BA), or Blanket Purchase Agreements (BPA) regardless of dollar value.~~

~~(b) Such advance notification shall include the following:~~

~~(1) An adequate description of the goods/services to be acquired and whether the subcontract is a follow-on acquisition, provided that the Contractor shall~~

~~promptly furnish the Contracting Officer with such additional information regarding such goods/services as may be requested by the Contracting Officer in any particular case;~~

~~_____ (2) Anticipated Contract Type;~~

~~_____ (3) NASA Account;~~

~~_____ (4) Estimated cost;~~

~~_____ (5) Relevant Task Order/Task Order Amendment, if applicable, and estimated Task Order performance end date as shown on the Task Order;~~

~~_____ (6) JPL Procurement Requisition Number;~~

~~_____ (7) Anticipated term of subcontract or estimated completion date;~~

~~_____ (8) Type and initial amount of funding;~~

~~_____ (9) Requirement for SEB;~~

~~_____ (10) Whether the acquisition will be on a competitive or noncompetitive basis. If the contract will be competitive and is estimated to meet the consent threshold, a solicitation list will be included;~~

~~_____ (11) For noncompetitive procurements, a copy of the sole source justification, or if it is not available, a detailed explanation of why a sole source procurement is warranted. E-mailed electronic copies of such sole source justifications may be submitted to NASA provided that an original signed copy is available in the procurement file; and~~

~~_____ (12) The nature of the procurement instrument, if other than a subcontract or purchase order.~~

~~(e)(1) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract which:~~

~~_____ (i) is for the procurement of any management engineering or management consultant services;~~

~~_____ (ii) acquires an interest in real property, including lease of such property;~~

~~(iii) is for the lease, rental, use or acquisition of any interest in any house trailer, motor vehicle, fixed-wing aircraft or helicopter;~~

~~_____ (iv) except as provided in (v) below, exceeds \$50,000 and which (A) effects the fabrication, construction, purchase, rental, installation or other acquisition of any type of severable or nonseverable facilities (excluding plant equipment, special tooling and STE) or (B) effects the modification, rehabilitation or renovation of existing facilities (excluding plant equipment, special tooling and STE);~~

~~_____ (v) effects the purchase, rental or other acquisition, or modification, rehabilitation or renovation of any item of plant equipment, special tooling, or STE exceeding \$75,000;~~

~~_____ (vi) is \$1,000,000 or over or is one of a number of subcontracts placed under this contract at or about the same time with a single contractor for the same or related supplies or services which, in the aggregate is \$1,000,000 or over;~~

~~(vii) is a modification of a subcontract included within the scope of subparagraphs (i), (ii) or (iii) of this paragraph, or which is a modification of a subcontract included within subparagraphs (iv), (v), or (vi) of this paragraph which increases the total amount of that subcontract to an amount exceeding the next whole multiple of the amount set forth in subparagraphs (iv),(v) or (vi) whichever is applicable; or which is a modification which decreases the amount of a subcontract, and the amount of the decrease, plus the amount of any decreases effected since the Contracting Officer last consented to the subcontract exceeds \$50,000 if the subcontract is of the type included in subparagraph (iv) hereof, exceeds \$75,000 if the subcontract is of the type included in subparagraph (v) hereof, or exceeds \$1,000,000 and over if the subcontract is of the type included in subparagraph (vi) hereof;~~

~~_____ (viii) contains, or is a subcontract modification which contains a new standard General Provision or Standard Alteration, or revises or deletes an existing standard General Provision or Standard Alteration;~~

~~_____ (ix) is a change order to a construction subcontract estimated to exceed \$100,000 which required the prior written consent of the Contracting Officer;~~

~~_____ (x) involves the purchase from a foreign source when specifically required in writing by the Contracting Officer; or~~

~~(xi) is a BOA, BA, or BPA, under which the, expenditures, during the life of the instrument, are anticipated to be in excess of \$1,000,000. BOA~~

~~orders, work order contracts, and releases under BPA's will be subject to NASA consent on an individual basis, as opposed to an aggregate basis under (c)(1)(vi) above.~~

~~(2) The subcontract consent thresholds specified in paragraph (c)(1) are variable as determined at the discretion of the Contracting Officer. The Contracting Officer intends to make adjustments to the dollar thresholds within the ranges specified below based on an evaluation of the effectiveness and efficiency of the contractor's subcontract actions, the Contractor's compliance with subcontract terms of this contract and the Contractor's own purchasing system policies and procedures. The thresholds specified in (c)(1) are the initial consent thresholds, which shall be effective until changed by written letter of direction of the Contracting Officer. Such written direction shall provide the Contractor at least 30 days notice prior to a change in consent threshold. The specified ranges within which the Contracting Officer may vary the consent thresholds are as follows:~~

~~(i) The threshold specified in subparagraph (c)(1)(v) for subcontract consent shall range from \$50,000 to \$100,000.~~

~~(ii) The threshold specified in subparagraph (c)(1)(vi) for subcontract consent shall range from \$500,000 to \$1,500,000.~~

~~(iii) The threshold specified in subparagraph (c)(1)(ix) for subcontract consent shall range from \$50,000 to \$100,000.~~

~~(3) The Contractor's request for written consent shall include the information specified below:~~

~~(i) A description of the supplies or services to be subcontracted.~~

~~(ii) Identification of the type of subcontract to be used.~~

~~(iii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained.~~

~~(iv) The proposed subcontract price and the Contractor's cost or price analysis.~~

~~(v) The cost or pricing data that the subcontractor has provided to the Contractor as being current, complete, and accurate and Certificate of Current Cost or Pricing Data, if required by other contract provisions.~~

~~(vi) The subcontractor's Disclosure Statement, if submitted to the Contractor, or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.~~

~~(vii) A negotiation memorandum reflecting--~~

~~(A) The principal elements of the subcontract price negotiations;~~

~~(B) The most significant considerations controlling establishment of initial or revised prices;~~

~~(C) The reason cost or pricing data were or were not required;~~

~~(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;~~

~~(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;~~

~~(F) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and~~

~~(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.~~

~~(d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which consent is required under paragraph (c) above. However, the Contracting Officer may ratify in writing any such subcontract if it has first been ratified by the JPL Acquisition Division Manager's delegated representative. Ratification shall constitute the consent of the Contracting Officer.~~

~~(e) The Contractor is not required to obtain Contracting Officer consent to purchase from Government sources for which advance notice has been given pursuant to subparagraph (a)(4) above.~~

~~(f) — If the Contractor has an approved purchasing system and the subcontract is within the scope of such approval, the Contractor may enter into the subcontracts described in subparagraph (c)(1) of this clause without the consent of the Contracting Officer.~~

~~(g) — Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contracting Officer's written consent before placing subcontracts that the Contractor has been advised have been selected for special surveillance.~~

~~(h) — Unless the consent or approval specifically provides otherwise, consent by the Contracting Officer to any subcontract or approval of the Contractor's purchasing system shall not (1) constitute a determination of the acceptability of any subcontract terms or conditions, except for those which have been incorporated in accordance with the Contractor's standard subcontract terms and conditions as approved by the Contracting Officer in accordance with H-32, Flowdown requirements of this contract; (2) constitute a determination of the allowability of any cost under this contract; or (3) relieve the Contractor of any responsibility for performing this contract.~~

~~(i)(1) — No subcontract placed under this contract shall provide for payment on a cost plus a percentage of cost basis.~~

~~(2) — Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in paragraph 15.404-4(c)(4)(i) of the Federal Acquisition Regulation (FAR).~~

~~(3) — Further, the fee limitations in FAR 15.404(c)(4)(i)(A) and FAR 15.404(c)(4)(i)(C) shall also constitute the maximum fees on cost plus incentive fee and cost plus award fee subcontracts, except for those specific instances where the Contractor has requested, and the Contracting Officer has authorized, subcontract fees in excess of such limitations.~~

~~(4) — In accordance with the NASA policy set forth in NASA FAR Supplement (NFS) 1815.404-470(d), facilities cost of money shall be considered to be "fee" for the purposes of the fee limitations in FAR 15.404(c)(4)(i), except where (1) NASA consents on a case by case basis to subcontracts which do not treat facilities cost of money as fee; or (2) NASA approves procurement policies or procedures which exempt facilities cost of money from being treated as fee in designated circumstances. The requirement that facilities cost of money be treated as fee for the purpose of such fee limitation shall be satisfied as follows: (1) facilities cost of money shall not be included in the cost base for calculating fee when determining the appropriate fee for such fee limitations; and (2) a reduction in the fee shall be made in an amount equal to the negotiated facilities capital cost of money to be paid under the subcontract.~~

~~(j) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, 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 the Government.~~

~~(k) To facilitate small business participation in subcontracting, the Contractor agrees to provide progress payments on subcontracts under this contract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.~~

~~(l) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.~~

~~(m) Consistent with the requirements of this contract, the Contractor agrees to establish procurement policies and procedures and conform to good business practice for the guidance of its personnel concerned with the negotiation, administration and termination of subcontracts. Serious consideration shall be given to adapting and including therein those policies and procedures established by FAR and NFS which the Contractor deems susceptible to adaptation on a practical basis, compatible with the Contractor's policies and potentially beneficial. Further, the Contractor agrees to give special consideration to any NASA procurement policy or procedure which the Contracting Officer brings to the Contractor's attention. The Contractor's procurement policies and procedures set forth in those policies, including Source Evaluation Board Procedures, shall be subject to the approval of the Contracting Officer prior to implementation.~~

(End of clause)

Clause 85 [52.244-2] , SUBCONTRACTS (AUG 1998) (Modification 33)

(a) Definitions. As used in this clause—

“Approved purchasing system” means a Contractor’s purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR)

“Consent to subcontract” means the Contracting Officer’s written consent for the Contractor to enter into a particular subcontract.

“Subcontract” means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at FAR 52.245-18, Special Test Equipment.

(c) Except as stated in paragraph (e), the Contractor shall obtain the Contracting Officer’s written consent before placing the following subcontracts

(1) Is for the procurement of any management engineering or management consultant services;

(2) Acquires an interest in real property, including storage space; including lease or rental of such property;

(3) Is for the lease, rental use or acquisition of any interest in any house trailer, motor vehicle, fixed –wing aircraft or helicopter;

(4) Effects the purchase, rental, fabrication, construction or other acquisition, or modification, rehabilitation or renovation of any item of plant equipment, special tooling or special test equipment exceeding \$100,000;

(5) Is \$25,000,000 or over or is one of a number of subcontracts placed under this contract at or about the same time with a single contractor for the same or related supplies or services which, in the aggregate is \$25,000,000 or over, and any modification which increases the subcontract over the next \$25,000,000 thresholds;

(6) Is a BOA, BA or BPT under which the expenditures during the life of the instrument are anticipated to be in excess of \$25,000,000. BOA orders, BA orders, BA work order subcontracts, and releases under BPAs will be subject to NASA consent on an individual basis as opposed to an aggregate basis;

(7) Is a letter subcontract, which when definitized is expected to exceed \$10,000,000;

(8) Is a subcontract which revises, deletes or fails to include an existing NMO approved Prime Contract flowdown required General Provision, Additional General Provision or Standard Alteration;

(9) Is a subcontract for which the Contractor has been advised in writing has been selected for Special Surveillance.

(d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which consent is required under paragraph (c) above. However, the Contracting Officer may ratify in writing any such subcontract placed prior to receipt of Contracting Officer consent if it has been ratified by the JPL Acquisition Division Manger or his delegated representative. Ratifications by the Contracting Officer shall constitute consent.

(e) The Contractor is not required to obtain Contracting Officer consent for any acquisitions directly with the Government when the Government's terms and conditions have been accepted as proposed; from Government established contracts for which advance notice has been given, when such advance notice is required pursuant to paragraph (f) below; or from Government established contracts for which advance notice is not required. When the Contractor negotiates the terms and conditions proposed by the Government, consent is required in all cases. It is understood that FFRDCs are not the Government.

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification in excess of \$100,000 including the following information:

(i) A description of the supplies or services to be subcontracted;

(ii) Identification of the type of subcontract to be used;

(iii) Identification of the proposed subcontractor;

(iv) The proposed subcontract price;

(v) Relevant task order/task order amendment, identification of NASA sponsoring code, and the task order performance end date as shown on the task

order;

(vi) JPL procurement requisition number;

(vii) Anticipated term of the subcontract or estimated completion date;

(viii) Type and initial amount of funding;

(ix) Requirement for SEB;

(x) Whether the acquisition will be on a competitive or noncompetitive basis, with attachment of the sole source justification; and

(xi) The nature of the procurement instrument, if other than a subcontract or purchase order.

(f)(2) Subcontract files submitted for consent will include those items identified for the advance notice and the following:

(i) The subcontractor's current, complete and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(ii) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(iii) A negotiation memorandum reflecting--

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current, the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reason for any significant differences between the Contractor's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the contractor's purchasing system shall constitute a determination--

(1) Of the acceptability of any subcontract terms and conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof 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 FAR 15.404-4 (c) (4) (i) (A) and FAR 15.404(c) (4) (i) (C) shall also constitute the maximum fees on a cost-plus-incentive-fee and cost-plus-award-fee subcontracts, except for those instances where the Contractor has requested, and the Contracting Officer has authorized, subcontract fees in excess of such limitations.

(i) In accordance with the NASA policy set forth in NASA FAR Supplement (NFS) 1815.504-471-5, when facilities capital cost of money is included as an item of cost in the subcontractor's proposal, it shall not be included in the cost base for calculating profit/fee. In addition, a reduction in the profit/fee objective shall be made in the amount equal to the facilities capital cost of money allowed in accordance with FAR 31.205-10(a)(2) or 1 percent of the cost base, whichever is less. (Note: CAS 417, cost of money as an element of the cost of capital assets under construction, should not appear in subcontract proposals. These costs are included in the initial value of the facility for purposes of calculating depreciation under CAS 414.)

(j) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, 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 the Government.

(k) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR Subpart 44.3.

(l) Consistent with the requirements of this contract, the Contractor agrees to establish procurement policies and procedures and conform to good business practices for the guidance of its personnel concerned with the negotiation, administration and termination of subcontracts. Serious consideration shall be given to adapting and including therein those policies and procedures established by FAR and NFS which the Contractor deems susceptible to adaptation on a practical basis, compatible with the Contractor's policies and potentially beneficial. Further, the contractor agrees to give special consideration to any NASA procurement policy or procedure, which the Contracting Officer brings to the Contractor's attention. Contractor's General Provisions, Additional General Provisions and Standard Alterations which are based on Prime Contract flowdown requirements shall be subject to the approval of the Contracting Officer prior to implementation. Copies of all General Provisions and Additional General Provisions which are not based on Prime Contract flowdown requirements, procurement related policies, and procedures will be provided to the Contracting Officer at the time of final publication.

(m) The Contractor agrees to include language in subcontracts that allows for the assignment, novation, or transfer of the subcontract in the event of a termination, phasedown or transfer of the FFRDC to another contractor or government agency.

Clause 88 [52.245-5] GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (JAN 1986) (DEVIATION)

(a) Government-furnished property.

(1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described 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 (hereinafter referred to as "Government-furnished property").

(3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property 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 Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government 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, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer 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 clause.

(b) Changes in Government-furnished property.

(1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any--

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) Title.

(1) The Government shall retain title to all Government-furnished property.

(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--

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property for use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) All Government-furnished property 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 clause. 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 the Contracting Officer. The Contractor is authorized to use Government-owned equipment, furnished or acquired for use in the performance of this contract, in its on-campus research programs on a non-interference, no charge loan basis, under procedures, including property and reporting procedures, which the Contracting Officer approves. However, Government property which has no use under this contract will not be retained solely for the Contractor's use. The Contractor is also authorized to use Government-owned equipment, furnished or acquired for use in the performance of this contract to perform contracts and grants for non-government sponsors provided that the Contractor obtains specific advance approval from the Contracting Officer.

(e) Property administration.

(1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date 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 Subpart 45.5.

(i) Special Test Equipment will be treated as a separate category of equipment under this contract, and

(ii) FAR 45.509.2(b)(1,2, and 3) do not apply to this contract.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) Access. 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)--

(i) 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;

(ii) 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;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) 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 clause.

(3)(i) If the Contracting Officer, in accordance with the procedure set forth in FAR 45.104, notifies the Director of the Jet Propulsion Laboratory in writing that the Government has disapproved, withdrawn approval of, or has not accepted a program for the use, maintenance, repair, protection and preservation of Government property as required by paragraph (e) of this clause, the Contractor agrees to use its best efforts to promptly review and revise that program and resubmit it for approval to the Government.

(ii) If the Contractor fails to take action as provided by subdivision (g)(3)(i) above, 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.

(iii) 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 a preponderance of the evidence that such loss, destruction, or damage--

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) 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 the Contracting Officer, 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 prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. 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 the Contracting Officer a statement of--

- (i) The lost, destroyed, or damaged Government property;
- (ii) The time and origin of the loss, destruction, or damage;
- (iii) All known interests in commingled property of which the Government property is a part; and
- (iv) 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 the Contracting Officer 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 the Contracting Officer, sell such property for the account of the Government. 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 price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer 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 cost, 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 Government 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 Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, 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 clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed

or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer 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--

(1) May abandon any Government property in place, with the Contractor's agreement, at which time all obligations of the Government regarding such abandoned property shall cease.

(k) Communications. All communications under this clause 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" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

Clause 89 [52.245-7] GOVERNMENT PROPERTY (CONSOLIDATED FACILITIES)(MAR 1996) (DEVIATION)

(a) Definitions. For the purpose of this contract, the following definitions apply:

"Facilities," as used in this clause, means all property provided under this contract.

(b) Facilities to be provided. (1) The Contractor, at Government expense and subject to the provisions of this contract, shall acquire, construct, or install the facilities and perform the related work as described in the Schedule.

(2) The Government, subject to the provisions of this contract, shall furnish to the Contractor the facilities identified in the Schedule as Government-furnished facilities. The Contractor, at Government expense, shall perform the work with respect to those facilities as is described in the Schedule.

(3) Shipments of the facilities can be accomplished by commercial arrangements without necessity of Contracting Officer approval under subparagraph (b)(4), provided that the Contractor can demonstrate that a cost saving will accrue to the Government over shipment by a Government bill of lading. However, the Government reserves the right to require shipment on a Government bill of lading as described in Provision F-2 of this contract.

(4) All shipments of the facilities shall be made on Government bills of lading, unless the proviso of the first sentence of subparagraph (b)(3) will be satisfied or unless otherwise authorized by the Contracting Officer. The required number of such Government bills of lading will be furnished to the Contractor by, and the Contractor shall be accountable therefor to, the transportation activity designated by the Contracting Officer.

(c) Period of use. If not otherwise specified in the contract and if not previously terminated under paragraph (m), or under clause 97 [52.249-5], Termination for the Convenience of the Government (Educational and other Nonprofit Institutions) (DEVIATION) the use of the facilities authorized under this contract shall terminate upon expiration of this contract as set forth in Provision F-1, Term of This Contract.

(d) Title in the facilities. (1) The Government shall retain title to all Government-furnished property.

(2) Title to all facilities and components, including all replacement parts used by the Contractor in carrying out its normal maintenance obligations under paragraph (h) of this clause, shall pass to and vest in the Government upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this contract.

(3) Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon--

- (i) Issuance of the property for use in performing this contract;
- (ii) Commencement of processing or use of the property in performing this contract; or
- (iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) Title to the facilities shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(5) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(6) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property, that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(e) Location of the facilities. The Contractor may use the facilities at any of the locations specified in the Schedule and, with the prior written approval of the

Contracting Officer, at any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the facilities involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(f) Notice of use of the facilities. The Contractor shall notify the Contracting Officer in writing--

(1) Whenever use of all facilities for Government work in any quarterly period averages less than 75 percent of the total use of the facilities; or

(2) Whenever any item of the facilities is no longer needed or usable for performing existing related contracts that authorize such use.

(g) Property control. The Contractor shall maintain property control procedures and records and a system of identification of the facilities, in accordance with the provisions of Federal Acquisition Regulation (FAR) Subpart 45.5 in effect on the date of this contract.

(h) Maintenance. (1) Except as otherwise provided in the Schedule, the Contractor shall perform normal maintenance of the facilities in accordance with sound industrial practice, including protection, preservation, and repair of the facilities and normal parts replacement for equipment and the applicable provisions of FAR Subpart 45.5 as in effect on the date of this contract.

(2) As soon as practicable after the execution of this contract, the Contractor, as part of its property control system described in paragraph (g) of this clause, shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show its adequacy. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under subparagraphs (h)(1) and (h)(5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made in this contract.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. All such work whether or not in excess of the maintenance required under subparagraphs (h)(1) through (h)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing

when sound industrial practice requires maintenance in excess of the normal maintenance program.

(5) The Contractor shall keep records of all work done on the facilities and shall give the Government reasonable opportunity to inspect these records. When facilities are disposed of under this contract, the Contractor shall deliver the related records to the Government or, if the Contracting Officer directs, to third persons.

(6) The Contractor's obligation under this clause for each item of facilities shall continue until the item is removed, abandoned, or disposed of; until the expiration of the 120-day period stated in subparagraph (n)(4) of this clause; and until the Contractor has discharged its other obligations under this contract with respect to such items.

(i) Access. The Government and any persons designated by it shall, at all reasonable times, have access to the premises where any of the facilities are located.

(j) Indemnification of the Government. The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities for purposes unrelated to performance of the contract or when the circumstances described in paragraph (e)(2) or (e)(3) of Clause 64, [FAR 52.228-7], Insurance--Liability to Third Persons (DEVIATION), exist.

(k) Late delivery, diversion, and substitution. (1) The Government shall not be liable for breach of contract for any delay in delivery or nondelivery of facilities to be furnished under this contract.

(2) The Government has the right, at its expense, to divert the facilities under this contract by directing the Contractor to--

(i) Deliver any of the facilities to locations other than those specified in the Schedule; or

(ii) Assign purchase orders or subcontracts for any of the facilities to the Government or third parties.

(3) The Government may furnish any facilities instead of having the Contractor acquire or construct them. In such event, the Contractor is entitled to reimbursement for the cost related to the acquisition or construction of the facilities, including the cost of terminating purchase orders and subcontracts.

(4) Appropriate equitable adjustment may be made in this contract to the extent that performance of work under it is affected by any nondelivery, delay, diversion, or substitution under this paragraph (k).

(l) Representations and warranties. (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect all the facilities to be furnished by the Government before their shipment.

(2) If the Contractor receives facilities in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it or (ii) effect repairs or modifications. An appropriate equitable adjustment may be made in this contract to the extent that performance of work under it is affected by the return, disposition, repair, or modification of any facilities.

(m) Termination of the use of the facilities. (1) The Contractor may at any time, upon written notice to the Contracting Officer, terminate its authority to use any or all of the facilities. Termination under this paragraph (m) shall not relieve the Contractor of any of its obligations or liabilities under this contract.

(2) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any of the facilities. An equitable adjustment may be made in this contract to the extent that performance of work under it is affected by such notice.

(n) Disposition of the facilities. (1) The provisions of this paragraph (n) shall apply to facilities for which use has been terminated by either the Contracting Officer or the Contractor under paragraph (m), except as provided in subparagraph (n)(2).

(2) Unless otherwise directed by the Contracting Officer, this paragraph shall not apply to facilities terminated by the Contractor if--

(i) The facilities terminated do not comprise all of the facilities in the possession of the Contractor; and

(ii) The Contracting Officer determines that continued retention of the facilities will not interfere with the Contractor's operations.

(3) Within 60 days after the effective date of any notice of termination given under paragraph (m), or within such longer period as the Contracting Officer may approve in writing, the Contractor shall submit to the Contracting Officer, in a form satisfactory to the Contracting Officer, an accounting for all the facilities covered by the notice.

(4) Within 120 days after the Contractor accounts for any facilities under subparagraph (n)(3), the Contracting Officer shall give written notice to the Contractor as to the disposition of the facilities, except as otherwise provided in subparagraph (n)(6). In its disposition of the facilities, the Government may either--

(i) Abandon the facilities in place, with the concurrence of the Contractor, in which case all obligations of the Government regarding such abandoned facilities and the restoration or rehabilitation of the premises in and on which they are located shall immediately cease; or

(ii) Require the Contractor to comply, at Government expense, with such directions as the Contracting Officer may give with respect to--

(A) The preparation, protection, removal, or shipment of the affected facilities;

(B) The retention or storage of the affected facilities; provided, that the Contracting Officer shall not direct the Contractor to retain or store any items of facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations;

(C) The restoration of Government-owned property incident to the removal of the facilities from such property; and

(D) The sale of any affected facilities in such manner, at such times, and at such price as may be approved by the Government, except that the Contractor shall not be required to extend credit to any purchaser.

(5) If the Contracting Officer fails to give the written notice required by subparagraph (n)(4) within the prescribed 120-day period, the Contractor may, upon not less than 30 days' written notice to the Government and at Government risk and expense, (i) retain the facilities in place or (ii) remove any of the affected severable facilities located in Contractor-owned property and store them at the Contractor's plant or in a public insured warehouse, in accordance with sound practice and in a manner compatible with their security classification. Except as provided in this subparagraph, the Government shall not be liable to the Contractor for failure to give the written notice required by subparagraph (n)(4).

(6) Nonseverable items of the facilities or items of the facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(7) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated, other than those for which specific provision is made in subparagraph (n)(6).

(8) (i) The Contractor shall, within a reasonable time after the expiration of the 120-day period specified in subparagraph (n)(4), remove all of its property from the Government-owned facilities and , where the installation of Contractor-owned property was with Government authorization, at Government expense take such action as the Contracting Officer may direct in writing with respect to restoring that Government property (to the extent that it is affected by the installation of the Contractor's property) to its condition before such installation.

(ii) The Contractor shall, within a reasonable time after the expiration of the 120 day period specified in subparagraph (n)(4), remove all of its property from the Government-owned facilities and, take such action as the Contracting Officer may direct in writing with respect to restoring that Government property (to the extent that it is affected by the installation of the Contractor's property) to its condition before such installation.

(9) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at the Contractor's plant, except for restoration or rehabilitation costs caused by removal of the facilities under subdivision (n)(4)(ii). The Contractor (i) agrees to indemnify the Government against all suits or claims for damages arising out of the Government's failure to restore or rehabilitate any property at the Contractor's plant , except any damage as may be caused by the negligence of the Government, its agents, or independent contractors and (ii) agrees to insert in each subcontract for the performance of which it provides facilities to the subcontractor, a provision whereby the subcontractor

agrees that neither the Government nor the Contractor shall be obligated to restore or rehabilitate any subcontractor-owned property which may be damaged by the installation, use, removal or storage of the facilities except any such damage as may be caused by the negligence of the Government or the Contractor.

(End of clause)

Clause 90 [52.245-8] LIABILITY FOR THE FACILITIES (JAN 1997) (DEVIATION)

(a) The term "Contractor's managerial personnel," as used in this clause, means any of the Contractor's directors, officers, 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 or separate location in which the facilities are installed or located; or
- (3) A separate and complete major industrial operation in connection with which the facilities are used.

(b) The Contractor shall not be liable for any loss or destruction of, or damage to, the facilities or for expenses incidental to such loss, destruction, or damage, except as provided in this clause.

(c) The Contractor shall be liable for loss or destruction of, or damage to, the facilities, and for expenses incidental to such loss, destruction, or damage--

(1) 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;

(2) 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;

(3) For which the Contractor is otherwise responsible under the express terms of this contract;

(4) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(5) That results from a failure, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel--

(i) To establish, maintain, and administer a system for control of the facilities in accordance with the "Property control" paragraph of the Government Property clause; or

(ii) To maintain and administer a program for maintenance, repair, protection, and preservation of the facilities, in accordance with the "Maintenance" paragraph of the Government Property clause, or to take reasonable steps to comply with any appropriate written direction that the Contracting Officer may prescribe as reasonably necessary for the protection of the facilities. If the Government Property clause does not include the "Property control" and "Maintenance" paragraphs, then the Contractor shall exercise sound industrial practice in complying with the requirements of this subdivision (c)(5)(ii).

(d)(1) If the Contracting Officer, in accordance with the procedure set forth in FAR 45.104, notifies the Director of the Jet Propulsion Laboratory in writing that the Government has disapproved, withdrawn approval of, or has not accepted a program for the use, maintenance, repair, protection and preservation of Government property as required by paragraph (h), Maintenance, of Clause 89, [52.245-7], Government Property (Consolidated Facilities), the Contractor agrees to use its best efforts to promptly review and revise that program and resubmit it for approval by the Government.

(2) If the Contractor fails to take action as provided by paragraph (d)(1) above, 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.

(3) 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 a preponderance of the 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.

(e) If the Contractor transfers facilities 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 facilities. 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 facilities while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the facilities in as good condition as when received, except for reasonable wear and tear or for their utilization in accordance with the provisions of the prime contract.

(f) Unless expressly directed in writing by the Contracting Officer, the Contractor shall not include in the price or cost under any contract with the Government the cost of insurance (including self-insurance) against any form of loss, destruction, or damage to the facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances) as the Contracting Officer shall require or approve. Such insurance shall provide for 30 days advance notice to the Contracting Officer, in the event of cancellation or material change in the policy coverage on the part of the insurer. Documentation of insurance or an authenticated copy of such insurance shall be deposited promptly with the Contracting Officer. The Contractor shall, not less than 30 days before the expiration of such insurance, deliver to the Contracting Officer documentation of insurance or an authenticated copy of each renewal policy. The insurance shall be in the name of the United States of America (Agency Name), the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

"Any loss under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the office designated by the Contracting Officer."

(g) When there is any loss or destruction of, or damage to, the facilities--

(1) The Contractor shall promptly notify the Contracting Officer and, with the assistance of the Contracting Officer, shall take all reasonable steps to protect the facilities from further damage, separate the damaged and undamaged facilities, put all the facilities in the best possible order, and promptly furnish to the Contracting Officer (and in any event within 30 days) a statement of--

- (i) The facilities lost or damaged;
- (ii) The time and origin of the loss or damage;
- (iii) All known interests in commingled property of which the facilities are a part; and
- (iv) Any insurance covering any part of or interest in such commingled property;

(2) The Contractor shall make such repairs, replacements and renovations of the lost, destroyed, or damaged facilities, or take such other action as the Contracting Officer may direct in writing; and

(3) The Contractor shall perform its obligations under this paragraph (g) at Government expense, except to the extent that the Contractor is liable for such damage, destruction, or loss under the terms of this clause, and except as any damage, destruction, or loss is compensated by insurance.

(h) The Government is not obliged to replace or repair the facilities that have been lost, destroyed, or damaged. If the Government does not replace or repair the facilities, the right of the parties to an equitable adjustment in delivery or performance dates, price, or both, and in any other contractual condition shall be governed by the terms and conditions of this contract.

(i) Except to the extent of any loss or destruction of, or damage to, the facilities for which the Contractor is relieved of liability, the facilities shall be returned to the Government or otherwise disposed of under the terms of this contract (1) in as good condition as when received by the Contractor, (2) improved, or (3) as required under the terms of this contract, less ordinary wear and tear.

(j) If the Contractor is in any way compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by the Government) for any loss or destruction of, or damage to, the facilities, the Contractor, as directed by the Contracting Officer, shall--

(1) Use the proceeds to repair, renovate, or replace the facilities involved; or

(2) Pay such proceeds to the Government.

(k) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, the facilities. Upon the request of the Contracting Officer, the Contractor shall furnish to the Government, at Government expense, 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.

(End of clause)

Clause 116 [52.246-10] INSPECTION OF FACILITIES (APR 1984) (DEVIATION)

(a) Definition. "Contractor's managerial personnel," as used in this clause, is defined in the Liability for the Facilities clause of this contract.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the facilities and work called for by this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test the facilities and work called for by the contract, to the extent practicable at all places and times, including the period of manufacture. The Government may also inspect the facilities and work at the plant or plants of the Contractor or its subcontractors engaged in the performance of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work to be performed by the Contractor under this contract or any related contract.

(d) If the Government performs 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) The Contracting Officer may, at any time, require the Contractor to correct or replace facilities or work that is defective or does not conform to contract requirements. Except as provided in paragraph (f) below, corrections and replacements shall be at Government expense if, under the terms of this contract, the facilities or work corrected or replaced were initially furnished, or required to be performed at Government expense.

(f) The Contracting Officer may, at any time, require the Contractor to correct or replace facilities or work that is defective or does not conform to contract requirements, without cost to the Government under this contract if the defects or failures are due to fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or to 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 knows that the employee is habitually careless or unqualified and the defects or failures are due to such known habitual carelessness or lack of qualification.

(g) Corrected or replacement facilities or work shall be subject to this clause in the same manner as facilities or work originally completed under the contract.

(End of clause)

Clause 97 [52.249-5] TERMINATION FOR CONVENIENCE OF THE
GOVERNMENT (EDUCATIONAL AND OTHER
NONPROFIT INSTITUTIONS) (SEP 1996) (DEVIATION)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
- (3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.
- (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.
- (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings, and information.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer 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 the Contracting Officer, termination inventory other than that retained by the Government under subparagraph (b)(6) of this clause; 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, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 180 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 180-day period.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer 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.

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; provided, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Contractor paid the agreed amount. If after a reasonable period of time the Contractor and the Contracting Officer are unable to agree in whole or in part on the amount to be paid because of the termination, the Contracting Officer shall determine, on the basis of information available, the amount due the Contractor, if any, and shall pay that amount.

(f) Any determination of costs under paragraphs (d) or (e) shall be governed by B-5, Allowable Cost, of this contract.

(g) Pending final determination of cost under paragraphs (d) and (e) above, the Government shall make payments against allowable costs incurred by the Contractor for the terminated portion of this contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(h) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) of this clause and failed to request a time extension, there is no right of appeal.

(End of clause)

PART III - DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J - LIST OF ATTACHMENTS

Appendix A - Foreign Travel

Appendix B - NASA-JPL Policies and Procedures Regarding Public Information Programs and News Issuances

Appendix C - Bibliography of NASA Directives Contractually Implemented

Appendix C (undated) is superceded with Appendix C, dated January 8, 2001. (mod 11s and 18) Appendix C, dated January 8, 2001 is superceded with Appendix C, dated April 20, 2001. (Mod 21)

Appendix D - Small, Small Disadvantaged, and Women-Owned Business Subcontracting Plan

Appendix E - Education Programs and Activities

Appendix F - DD Form 254

Appendix G - Agreement and Conditions for Evaluation of Proposals

APPENDIX A

FOREIGN TRAVEL

Appendix A covers the coordination, review and approval of foreign travel by Contractor employees and others (other than employees of subcontractors, except to the extent specified herein) on official business where the cost is paid by others or is chargeable to the contract.

1. FOREIGN TRAVEL APPROVAL REQUIREMENTS - PRIOR APPROVAL REQUIRED FROM NASA

a. NASA TRAVEL

All foreign travel must be reviewed and approved in advance by the Contractor's Director, Deputy Director, Associate Director or the Director of the applicable Contractor Directorate. Additionally, the Contractor shall obtain the prior approval of the NASA Headquarters, Office of External Relations before undertaking or authorizing foreign travel on behalf of NASA as follows:

- any travel to or within a country with which the United States does not have diplomatic relations, any country on the Department of State's listing at 22 CFR 126.1(d), any country on OFAC's listing at 31 CFR Chapter 5, any country listed at 15 CFR 746, and any country identified in Country Group D:4 (Missile Technology) of Supplement Number 1 to 15 CFR 740 (all collectively referred to as the "Designated Area List"), or
- any travel to or within any country in the NASA Travel Restricted Foreign Destinations Listing (NASA Financial Management Manual, Chapter 9745), or
- any foreign travel that is not in conjunction with an approved international agreement, if the travel involves one or more of the following:
 - research involving over-flight through foreign airspace
 - political or sociological studies
 - site surveys
 - geological studies
 - collection of natural specimens
 - commitment, or discussions of commitment to new or additional cooperative research
 - commitment, or discussions of commitment to provide U.S. government-owned equipment for new or additional cooperative research
 - discussions contemplating new or additional agreements other than those involving preliminary fact finding for informational purposes

- contact with foreign government or affiliated agency representatives for purposes other than engineering and scientific exchanges
- any travel that will involve attendance at a professional meeting (i.e., seminar, conference, workshop, training or educational opportunity) that is to be held in a foreign country.

NASA Headquarters approval shall be sought by submitting a NASA Form 1167, and other appropriate documentation as soon as possible but, in all but exceptional circumstances, at least 15 work-days in advance of the proposed departure date, and in all instances prior to any commitment (including acceptances of invitations) to attend. In all cases, if NASA does not respond within 10 workdays of its receipt of the request, the trip will be deemed approved by NASA. The request package to NASA will include the required level of Contractor management review and endorsement, and in all cases the request to NASA Headquarters for approval shall include the estimate of the costs to be charged to the NASA contract, including the NASA account(s) to be charged.

The Contractor will follow NASA's guidelines on attendance limits for professional meetings, except where otherwise authorized by the Contractor's Director or Deputy Director. NASA may establish attendance limits for specific professional meetings (e.g., COSPAR, IAF) for the entire Agency, which will be binding on the Contractor, and will solicit proposed attendees from each installation, including the Contractor.

If the foreign travel involves the presentation of a formal paper, the request package to NASA must include a copy of the proposed paper or at a minimum its abstract.

b. NON-NASA SPONSORED TRAVEL

The Contractor shall obtain the prior approval of the NASA Management Office (NMO) Contracting Officer before undertaking or authorizing any non-NASA sponsored foreign travel that has not been authorized by a NASA task order. Prior to the granting of approval, the NMO will verify the approval of the non-NASA sponsor, including any required funding. All appropriate attachments to the travel package, as outlined under 1.a above, shall be included in the travel request to NMO.

2. COUNTRY CLEARANCE REQUIREMENTS

The Contractor shall notify the NASA Headquarters, Office of External Relations, using a NASA Form 1167, as soon as possible but, in all but exceptional circumstances, at least 10 work-days in advance of the proposed departure date of certain foreign travel to be conducted by the Contractor pursuant to this contract, for purposes of NASA obtaining "country clearance" from the U.S. Embassy in the country of destination(s). In those instances where the Contractor foreign travel subject to these requirements includes

the travel of subcontractor personnel, the information required below on those subcontractor personnel will also be provided.

Notification to NASA is required if the travel is not otherwise approved by NASA, and

- if the planned travel is to countries that are from time-to-time identified to the Contractor by letter from the Contracting Officer where a U.S. Ambassador has requested "country clearance" for all U.S. Government contractor personnel traveling to the country to which he/she is assigned, or
- if the traveler anticipates requiring support from the U.S. Embassy or Consulate in the country to be visited.

Absent notice from NASA to the contrary, the Contractor may assume country clearance has been granted. The information required from the Contractor for "country clearance" notification is as follows:

- Purpose of travel - program, project, activity, etc.
- Organization/entity to be visited and point of contact/phone number
- Traveler's name
- Traveler's title
- Traveler's citizenship
- Traveler's passport number and expiration date
- Traveler's date and place of birth
- Traveler's employer and address
- Traveler's phone and fax number

3. TRIP FEEDBACK FROM FOREIGN TRAVEL TO "DESIGNATED AREAS" OR TRAVEL TO NON-DESIGNATED AREAS INVOLVING COMMUNICATIONS WITH REPRESENTATIVES OF "DESIGNATED AREAS"

For foreign travel to a country on the "Designated Area List" or where the travel involved communications with nationals or representatives of a country on the "Designated Area List", the Contractor shall provide feedback to NASA's Office of External Relations as follows:

- brief summary of any substantive discussions held with nationals or representatives of countries on the Designated Area List and the names and affiliations of the individuals
- any requests for further communication, visits to NASA installations or information made by such individuals

- any actions accepted by the Contractor or NASA approved traveler(s) as a result of such discussions
- any other information deemed important by the Contractor or NASA approved traveler
- a copy of any trip summary or report that the traveler may prepare independent of a requirement of this contract.

APPENDIX B

NASA-JPL POLICIES AND PROCEDURES REGARDING PUBLIC INFORMATION PROGRAMS AND NEWS ISSUANCES

1. INTRODUCTION

Consistent with Section 203 (a) (3) of the Space Act and the Freedom of Information Act (5 USC 552) it is NASA Policy to carry out a public affairs program designed to make available factual and timely information concerning its activities, its programs, and their results. In carrying out its statutory responsibilities NASA encourages its contractors not only to respond to queries from information media, but to carry out a positive program of dissemination of factual and timely information relating to work being done for NASA. In doing so, contractors are expected to coordinate their activities with NASA Public Affairs officials. Review and approval of any material submitted to NASA does not constitute approval to expend funds; expenditures for information dissemination and advertising remain subject to applicable cost principles under the contract.

2. APPLICABILITY

The policies and procedures set forth herein apply to all public affairs activities and news issuances made by JPL or by JPL employees, bearing on work being performed by JPL for the civil aeronautics and space program of the United States. News issuances include information (textual and/or audiovisual) intended for or distributed to the general public (including via the Internet); i.e., to other than the technical and scientific communities (information of this type being covered under paragraph C-1 (e) rather than H-9 of the Schedule). Information disseminated exclusively for internal JPL use is not considered a news issuance. Examples of news issuances include news releases, fact sheets, press kits, transcripts, speech reprints, notes to editors, feature articles, biographics, etc. News issuances do not include educational products and general information disseminated to the public as a part of routine JPL outreach activities. However, such products and information must be consistent with more news-oriented products coordinated through the clearance process for news issuances. House organs published with funds provided under this contract are considered news issuances only when they are used to disseminate information to external audiences. Guidelines for news issuances by subcontractors of JPL, including lower tier subcontractors, shall be in accordance with guidelines established by the NASA Headquarter's Office of Public Affairs.

3. CLEARANCE REQUIREMENTS FOR NEWS ISSUANCES

(a) Except as otherwise provided in this contract, information may be released to the public by JPL without prior NASA clearance, subject to the provisions of subparagraph (b) below.

(b) Prior NASA clearance is required for all public releases by JPL involving:

(1) discussion of launch vehicle selections or launch schedules.

(2) planning, scheduling, and managing major development programs or space flight missions.

(3) proposed budgets and financial plans.

(4) proposed organization of effort for the execution of NASA programs, including management of projects and plans for use of NASA prime contractors or subcontractors.

(5) information on projects for which a NASA Center or an outside agency has the primary responsibility, except that this shall not be construed as a limitation on speeches or oral statements made by a Director for a Directorate or higher official of the Jet Propulsion Laboratory.

(6) releases having an estimated total cost, including in-house effort, in excess of \$10,000; for example, exhibits, films and pamphlets.

(7) preferred or proprietary arrangements with any particular segment of the information media, publishing or entertainment industries, or any individual elements thereof; provided, however, this requirement in no way limits the Contractor's rights under Clause 61 [52.227-14], Rights in Data--General (ALT II, III, V) (DEVIATION).

(8) information on international matters or for release outside the United States.

(9) information intended for national release, or any information which, because of the nature of the subject matter or timing involved, will, in the opinion of the Director, JPL, be likely to attract more than routine local or regional public interest.

(c) Where prior NASA clearance is required, requests will be directed to the NASA Associate Administrator for Public Affairs or his designee. Requests will be made in writing, provided, however, that if time is critical, telephone requests may be made.

(d) The Director of JPL will establish guidelines and procedures covering public release of information at JPL. These guidelines and procedures will be consistent with the Space Act and the Freedom of Information Act and will follow the spirit and intent of 14 CFR Part 1213 Subpart 1.

4. THE INFORMATION PLAN

(a) General. Public affairs support of a significant program milestone or event such as a rollout, first flight, launch, space rendezvous/encounter, fly-by, high public-interest mission, etc., generally requires preparation and implementation of an Information Plan. The Information Plan sets forth the public affairs support activities, procedures, responsibilities; and the contractor-vs.-government furnished personnel, supplies, equipment, services and funding. Support activities and requirements usually include a combination of, or all of the following; on-site newsroom operation; guest invitations and operations; press conferences; news kits and news releases; still photo, motion picture and video releases; unique equipment and special supplies; supplemental personnel and transportation; NASA feed to television networks, etc.

(b) Preparation of the Information Plan. Information Plans will be prepared by the NASA Office of Public Affairs, with input and assistance from JPL. JPL will respond to requests for assistance in the development of the Information Plan and assume its operational role and responsibilities upon implementation of the Plan.

5. IDENTIFICATION OF RELEASES

(a) All written releases pertaining to NASA programs will identify NASA in format at least equal to the Jet Propulsion Laboratory and the California Institute of Technology, but the JPL logo may be an exception.

(b) All substantive releases which pertain to work being sponsored by NASA will clearly reflect this sponsorship and the NASA/Caltech contractual relationship.

(Appendix C was replaced in its entirety by Mod. 11) Appendix C was modified as noted below by Mods 21 and 25.

APPENDIX C

Bibliography of NASA and Other Issuances Contractually Implemented

NASA ISSUANCE	TITLE AND DATE OF ISSUANCE	CONTRACT SOURCE
NASA 14 CFR 1204.14	Use of NASA Airfield Facilities By Aircraft Not Operated for the Benefit of the Federal Government, dated Jul 1991	H-5(c)(2)(eiii) (Mod 21)
NPD 1360.2	Initiation and Development of International Cooperation in Space and Aeronautics Programs, dated April 16, 1999	H-30(b)
NPD 1383.2	NASA Assistance to Non-Government Entertainment-Orientated Motion Picture, Television, Video, and Multimedia Production/Enterprises and Advertising, dated October 7, 1999	H-30(c)
NPG 1441.1C	NASA Records Retention Schedules, dated March 17, 1997 (Changes 1-23 not included at this time) as updated with Changes 1-23, dated July 31, 2000 (Mod 21)	H-15(a)
NPD 1490.1E	NASA Printing, Duplicating, Copier, Forms, and Mail Management, dated Apr 1997	H-35(e)
NPG 1490.5A	NASA Procedural Guidance for Printing, Duplicating, and Copying Management, dated Jul 1997	H-35(e)
NPD 1600.2A*	NASA Security Policy, dated Apr 1998	H-49(a)
NPG 1600.6* DRAFT	NASA Communications Security Manual, undated	H-49(a)

NASA ISSUANCE	TITLE AND DATE OF ISSUANCE	CONTRACT SOURCE
NPG 1620* DRAFT	NASA Security Handbook, undated	H-49(a)
NSS 1740.11	NASA Safety Standard for Fire Protection and Life Safety	H-5(c)(6)
Appendix 4 of NPG 2200.2A	Standard Front and Back Covers and Title Pages Format Requirements in "Guidelines for Documentation, Approval, and Dissemination of NASA STI," dated Sept 1997	C-1(e)(8)
NASA-STD-2801	Windows NT	H-60(b)(7)
NASA-STD-2802	Intracenter Networking Architectures, Standards, and Products	H-60(b)(6)
NASA-STD-2804A	Minimum Software Standard	H-60(b)(5)
NASA-STD-2806	Network Protocol Standard	H-60(b)(4)
NASA-STD-2807A	The NASA Directory Service	H-60(b)(3)
NASA-STD-2808A	Interoperability Profile for NASA E-Mail Clients	H-60(b)(2)
NPD 2810*_1 Draft Version 12	Security Information Technology, dated Apr 1998 <u>October 1, 1998 (Mod 25)</u>	H-49(a)
NPG 2810*_1 DRAFT Chapter 3 and Chapter 4.1 through 4.2.13 only	NASA Procedures and Guidance for the Security of Information Technology, dated Jul 1998 <u>August 26, 1999 (Mod 25)</u>	H-49(a)
NASA-STD-2813	NASA Firewall Strategy, Architecture, Standards, and Products	H-60(b)(1)
NPD 4100.1*	Supply, Support and Material Management Policy, dated December 17, 1998	H-30(d)

NASA ISSUANCE	TITLE AND DATE OF ISSUANCE	CONTRACT SOURCE
NPG 4200.1E <u>Section IV Only</u> *	NASA Equipment Management Manual, dated July 27 (Mod 40), 1999	C-5(b)
NPG 4200.2B *	Equipment Management Procedures & Guidelines for Property Custodians, dated September 11, 1998	C-5(b)
NPD 4300.1*	NASA Personal Property Disposal Policy, dated February 19, 1999	H-30(e)
NPG 4300.1A*	NASA Personal Property Disposal Procedures and Guidelines, dated July 19, 1999	H-30(f)
NPG 4310.1	Identification and Disposition of NASA Artifacts, dated March 16, 1999	H-30(g)
FAA Advisory Circular 150/5390-2A	Heliport Design, dated 1/20/94	H-5(c)(2)(div) (Mod 21)
DOD 5220.22-M and Supplements	National Industrial Security Program Operating Manual (NISPO), dated Jan 1995	H-49(a)
NPD 7120.4A*	Program/Project Management, dated Nov 1996	G-11(a)(b)
NPG 7120.5A(B) (Mod 40)*	NASA Program and Project Management Processes and Requirements, dated Apr 1998	E-2(a), G(11)(a)
NPD 7500.2	<u>NASA Technology Commercialization Policy,</u> dated: March 24, 2000 (Mod 25)	H-30(i)
NPG 7900.3A	Aircraft Operations Management, dated April 18, 1999	H-5(c)(2)(ii)
NPD 8020.7E	Biological Contamination Control for Outbound and Inbound Planetary Spacecraft, dated February 10, 1999 (Mod 21)	H-30(a)
NPD 8610.6D	Graphic Markings on Space Transportation Vehicles, U.S. Components of the International	H-64

	Space Station Component Systems, and Payloads, dated Jul 1997	
NPD 8621.1G*	Mishap Reporting and Investigating Policy, dated Dec 1997	E-2(e)(3), H-5(d)(3)
NPD 8700.1*	NASA Policy for Safety & Mission success, dated Jun 1997	E-2(e)(1)

NASA ISSUANCE	TITLE AND DATE OF ISSUANCE	CONTRACT SOURCE
FAA Order 8700.1 Chapter 61	Evaluation and Surveillance of Heliports, dated 7/25/97	H-5(c)(2)(<u>ey</u>) <u>Mod</u> <u>21</u>
NPD 8710.1 NPD 8710.5*	NASA Emergency Preparedness Policy, dated Feb 1997 NASA Safety Policy for Pressure Vessels and Pressurized Systems, dated Mar 1998	E-2(e)(2), H-5(c)(8) E-2(e)(5)
NPG 8715 Draft 2	Safety Manual	H-5(c)(1)
NASA STD 8719.7	Facility System Safety Guidebook, dated January 1998	H-5(c)(9)
NPD 8720.1	NASA Reliability and Maintainability (R&M) Program, dated Oct 1997	E-2(e)(4)
<u>NPD 8730.1</u>	<u>Metrology and Calibration, dated May 22, 1998</u>	<u>H-30(h) Mod 21</u>
NPD 8800.14A	Policy for Real Property Management, dated Apr 1997	C-5(b)
NPG 8800.15A	Real Estate Management Program Implementation Manual, dated September 1, 1998	C-5(b)
NPD 8800.16*	NASA Environmental Management, dated Sep 1995	H-6(c)(1), H-7
NPG 8800.17	Energy Metrics for NASA Facilities, dated Oct 1996	C-5(b)
NPG 8820* DRAFT	Pollution Prevention	H-6(c)(2)
NPD 8820.1*	Design and Construction of Facilities, dated December 2, 1998	C-5(b)

NASA ISSUANCE	TITLE AND DATE OF ISSUANCE	CONTRACT SOURCE
NPG 8820.2B*	Facilities Project Implementation Handbook, dated Apr 1997	C-5(b), C-5(a)(5), E-3, G-18(a)(3)
<u>NPG 8820.3</u>	<u>Pollution Prevention, dated March 1, 1999</u>	<u>H-6(c) (2) (Mod 21)</u>
NPG 8830.1*	Affirmative Procurement Plan for Environmentally Preferable Products, dated February 1, 1999	H-6(c)(3)
NPD 8831.1B	Management of Facilities Maintenance, dated Jul 1996	C-5(b)
NPG 8831.2B*	Facilities Maintenance and Energy Management Handbook, dated Dec 1996	C-5(b), H-7(b)(2)
NPG 8840* <u>DRAFT 8580.1 (Mod 40)</u>	NASA Procedures and Guidelines for Implementation of the National Environmental Policy Act and Executive Order 12114 <u>Implementing the National Environmental Policy Act and Executive Order 12114, dated November 26, 2001. (Mod 40)</u>	H-6(c)(4)
FMM 9121-20	Unique Project Number (UPN) and Nonprogrammatic Codes (Digits 1-3)	G-1(a)(1)
FMM 9121-21	UPN Subsidiary Coding (Digits 4-7)	G-1(a)(1)
FMM 9121-22	UPN Subsidiary Coding (Digits 8-11)	G-1(a)(1)
FMM 9121-30	Facility Project Number (FPN) (Digits 1-4)	G-1(a)(2)
FMM 9252-4	Timing of Capitalization, dated Jul 1997	G-4
FMM 9252-6	Real Property Type Accounts, dated Jul 1997	G-4
FMM 9255-3	Capitalization Criteria for Real Property, dated Jul 1997	G-4

FMM 9256	Tracking Stations, dated Jul 1997	G-4

NASA ISSUANCE	TITLE AND DATE OF ISSUANCE	CONTRACT SOURCE
FMM Appendix 9280-2A	Instructions to Recipient Organizations for Acquiring Advance Payments by Letter of Credit	B-6(b)
NPG 9501.2C	NASA Contractor Financial Management Reporting, dated April 23, 1996	G-22(a)
NPG <u>D</u> -9501.3 (Mod 40)*	Earned Value Performance Management, dated Feb 1997	G-11(c)
SPI 3-04-1	External Release of Scientific or Technical Information, dated Jun 1993	C-1(e)(8)
JPL Handbook	JPL Facilities Design Standards Handbook	C-5(b)
JPL Handbook	D-11119A, Alerts/Concerns Handbook	E-2(f)(3)

(Appendix D was replaced in its entirety by Mod. 12.)

APPENDIX D

JET PROPULSION LABORATORY
SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS
SUBCONTRACTING PLAN

TABLE OF CONTENTS

- I. Percentage and Dollar Goals
- II. Principal Products and Service Areas to be Subcontracted
- III. Introduction and Senior Management Support of the Program Plan
- IV. Responsibility for Administration of the Program Plan
- V. Program Objectives and Description of Efforts
- VI. Subcontract Provisions Regarding Utilization of Small Business and Small Disadvantaged Business Concerns
- VII. Small Business and Small Disadvantaged Business Community Interaction

I. PERCENTAGE AND DOLLAR GOALS

JPL strongly supports NASA's socioeconomic program and will make an aggressive effort to assist the Agency with meeting its goals.

To ensure meeting its goals, JPL has a systematic planning and control function that sets goals at the program office and technical division level, tracks progress, and implements programmatic actions during status meetings with Technical Division Small Business Representatives which are conducted by the Principal, Acquisition Operations and Planning, Engineering and Science Directorate (ESD). This role of the Principal is comparable to NASA's Small Business Technical Advisor (SBTA).

JPL's goal setting process starts at the end of the third quarter of each fiscal year. A statement of goals for the next fiscal year, expressed in terms of dollars and percentages for the following: (i) amount planned to be subcontracted; (ii) the amount planned to be subcontracted to small business; (iii) the amount planned to be subcontracted to small disadvantaged business; (iv) the amount planned to be subcontracted to women-owned small business; and, (v) the amount planned to be subcontracted to socioeconomic business,* will be submitted to the Contracting Officer sixty days prior to the end of the fiscal year in order that goals can be established annually by mutual agreement in accordance with paragraph (a) of clause G-10. Final goals will be established within 45 days after finalization of the NASA appropriation by Congress.

The following table will be updated annually to reflect JPL's percentage and dollar goals and actuals for FY1999 through FY2003. For each fiscal year, the top amounts represent goals, and the bottom amounts are actual subcontracting dollars. (2001 Goals Mod 16 and 2002 Goals Mod 31)

<u>Fiscal Year</u>	<u>Total Sub-contracting Base</u>	<u>Small Business Awards</u>	<u>% of Small Business to Total</u>	<u>Small Disadvantaged Business Awards</u>
1999	\$600M	\$180M	30%	\$72M
	\$673.3M	\$231.7M	34.4%	\$118M
2000	\$650M	\$208M	32%	\$110.5
	\$613.8M	\$209.1M	34.1%	\$104.7M
2001	\$650M	\$208M	32%	\$117M
	\$733M	\$258	35%	\$136M

2002	<u>\$720M</u> \$587M	<u>\$230M</u> \$228M	<u>32%</u> 39%	<u>\$129M</u> \$112M
2003	\$650M \$TBD	\$208M \$TBD	32% %TBD	\$117M \$TBD

* Socioeconomic business includes small disadvantaged businesses, women-owned small businesses, HBCU/MI's and subcontract flowdown.

<u>% of Small Disadvantaged Businesses to Total</u>	<u>Women-Owned Business Awards</u>	<u>% of Women-Owned Business to Total</u>	<u>Socio-Economic Business Awards</u>	<u>% of Socio-Economic Business to Total</u>
12%	\$24M	4%	96M	16%
17.5%	\$25.2M	3.7%	\$161.3M	24%
17%	\$22.75M	3.5%	\$123.5M	19%
<u>17.1%</u>	<u>\$25.4M</u>	<u>4.1%</u>	<u>\$116.7M</u>	<u>19%</u>
<u>18%</u>	<u>\$26M</u>	<u>4%</u>	<u>\$130M</u>	<u>20%</u>
<u>18.6%</u>	<u>\$37M</u>	<u>5%</u>	<u>\$153.8M</u>	<u>21%</u>
<u>18%</u>	<u>\$36M</u>	<u>5%</u>	<u>\$137M</u>	<u>19%</u>
%19.1	\$37M	6.3%	\$149M	25%
18%	\$33M	5%	\$130M	20%
TBD%	\$TBD	%TBD	\$TBD	%TBD

<u>Hub Zone Business Awards</u>	<u>% of HUB Zone Business Awards</u>	<u>Fiscal Year</u>
<u>NA</u> <u>NA</u>	<u>NA</u> <u>NA</u>	<u>1999</u>
<u>NA</u> <u>NA</u>	<u>NA</u> <u>NA</u>	<u>2000</u>
<u>\$3.25M</u> <u>\$46K</u>	<u>.5%</u> <u>.0006%</u>	<u>2001</u>
<u>\$7.2M</u> <u>\$356K</u>	<u>1%</u> <u>.06%</u>	<u>2002</u>
<u>\$6.5M</u> <u>\$TBD</u>	<u>1%</u> <u>%TBD</u>	<u>2003</u>

II. PRINCIPAL PRODUCTS AND SERVICE AREAS TO BE SUBCONTRACTED

The JPL Acquisition Division provides acquisition support for the Laboratory's missions involving solar systems exploration, earth sciences and applications, communications, and information systems. JPL serves as NASA's Lead Center for the Mars, Origins, Space Infrared Telescope Facility (SIRTF), and New Millennium programs. Examples of present programs with major contract activity are: Mars Surveyor, X2000, Outer Planets/Solar Probe, Space Interferometry Mission, CloudSat, Deep Impact, and the new Terrestrial Planet Finder. JPL is also heavily involved in the development of flight instruments. The Acquisition Division supports both NASA-funded activities and programs related to reimbursable DOD and other agency requirements. The Acquisition Division supports the Laboratory's workforce requirements with the Technical Support Effort Personnel and Secretarial Blanket contracts, other Task support contracts, construction of facilities, and all institutional supplies and services. Small Business, Small Disadvantaged Business, and Women-Owned Small Business will have an opportunity to compete in all of these areas.

III. INTRODUCTION AND SENIOR MANAGEMENT SUPPORT OF THE PROGRAM PLAN

It is the policy of the Jet Propulsion Laboratory that Small Business, Small Disadvantaged Business, and Women-Owned Small Business shall have an equitable opportunity to compete for subcontracts. This policy is consistent with the spirit and intent of Public Law 95-507.

A major indicator of senior management's support of the Small Business and Small Disadvantaged Business Program is the appointment of the Principal, Acquisition Operations and Planning, Engineering and Science Directorate (ESD) to assist the Business Opportunities Office with administration of the Small Business Program within the Technical Divisions. The Principal provides assistance with Outreach, the Procurement Forecast, the Small Business and Small Disadvantaged Business Representatives, and internal training to technical personnel.

The Business Opportunities Office regularly coordinates with and keeps JPL management informed on the Small Business and Small Disadvantaged Business Program. The Business Opportunity Office Manager has a direct line to the Deputy Director and other members of top management to discuss key issues as the need arises. The Small Business Oversight Council comprised of the Deputy Laboratory Director; Chief Financial Officer; and Director, Engineering and Science Directorate, interface on a semi-annual basis with the Manager of the Business Opportunities Office and the Small Business/Small Disadvantaged Business representatives to provide an advisory planning activity to:

1. Establish annual goals and meaningful program objectives and ensure that proper emphasis and support is provided by all elements of the Laboratory on a continuing basis.
2. Review, modify as necessary, and approve Small Business and Small Disadvantaged Business Program Plans as submitted by the Small Business and Small Disadvantaged Business Liaison Officer.
3. Evaluate progress on the established goals. A weekly e-mail status on the Small Business Program is sent to the Deputy Laboratory Director; Chief Financial Officer; Director, Engineering and Science Directorate; Acquisition managers and supervisors; the Small Business and Small Disadvantaged Business Representatives; NASA Management Office-JPL; and NASA Headquarters Office of Small and Disadvantaged Business (Code K).
4. Discuss implementation and status of continuing NASA initiatives such as the Mentor Protégé Program, the Semi-Annual Science Forum for Small Business, the Annual Space Science Symposium, and the Prime Contractor Round Table.

In addition to these meetings, frequent interface takes place on any small business concern that requires immediate attention. JPL management is supportive of the Small Business Program and assists fully in the implementation and institutionalization of new small business and small disadvantaged business initiatives. JPL senior management participates in many small-business outreach efforts.

IV. RESPONSIBILITY FOR ADMINISTRATION OF THE PROGRAM PLAN

Responsibility for the JPL Small Business and Small Disadvantaged Business Program is assigned to the Manager of the Acquisition Division. The Manager of the Business Opportunities Office is responsible for administration of the Program. The Program is implemented on a day-to-day basis by the Small Business and Small Disadvantaged Business Administrators, the Small Business and Small Disadvantaged Business Representatives in each of the user Divisions, and Acquisition Division Buyers and Negotiators.

V. PROGRAM OBJECTIVE AND DESCRIPTION OF EFFORTS

The overall objective of the program is to assure that Small Business, Small Disadvantaged Business, and Women-Owned Small Business have an equitable opportunity to compete for subcontracts. The following are continuing efforts which contribute towards achieving our objective:

1. Identifying qualified small business, small disadvantaged business and women-owned small business suppliers by reviewing small business and small disadvantaged business listings and directories prepared by Government agencies, prime contractors, private sector companies, and small business, small disadvantaged business and women-owned small business development organizations.

For example, the Business Opportunities Office uses PRO-NET (Procurement Marketing and Access Network) the Small Business Administration's Internet-based database of information on more than 171,000 small, small disadvantaged and women-owned small businesses. JPL Acquisition and end-user personnel are instructed to use PRO-NET for source list development. For many years the Business Opportunities Office had subscribed to PASS (Procurement Automated Source System) to assist in small and small business disadvantaged source list development.

2. Providing practical assistance to the small business, small disadvantaged business and women-owned small business community to better prepare them to respond to JPL solicitations, particularly in arranging for direct interface with cognizant buying and using personnel.

3. Maintaining an awareness of and sensitivity to the program among implementing JPL personnel pursuant to P.L. 95-507. This is accomplished through program indoctrinations given to cognizant technical and Acquisition personnel.

4. Assuring small business, small disadvantaged business and women-owned small business concerns are provided the opportunity to participate in all solicitations for products or services which they are capable of providing. The Contractor will also ensure that Indian organizations, Indian-Owned organizations, HBCU's and MI's are provided similar opportunities.

5. Reviewing solicitations to remove statements, clauses, etc. which may unnecessarily tend to restrict or prohibit small business, small disadvantaged business and women-owned small business participation.

6. Ensuring the establishment and maintenance of records of solicitations and subcontract award activity.

7. Preparing and submitting periodic subcontracting reports as required to JPL management, NASA and the Small Business Administration.

8. Providing Acquisition and technical personnel with specialized compendiums, maintained by the Business Opportunities Office, of small business, small disadvantaged business and women-owned small business firms having capabilities of interest to JPL.

VI. SUBCONTRACT PROVISIONS REGARDING UTILIZATION OF SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS AND WOMEN-OWNED SMALL BUSINESS CONCERNS

A flow-down clause entitled "Utilization of Small Business and Small Disadvantaged Business Concerns" is included in all subcontracts which offer further subcontracting opportunities. In addition, JPL requires that all subcontractors (except small business concerns) which receive subcontracts in excess of \$500,000 (\$1,000,000 for construction) submit a Small Business and Small Disadvantaged Business Subcontracting Plan, similar to this plan, which is submitted to JPL for approval prior to award of subcontract unless a subcontracting plan is not required pursuant to clause G-10(b) of the contract. Written determinations that there are no subcontracting opportunities shall be approved by the Acquisition Division. Any questions regarding a subcontractor's compliance with its plan will be investigated to determine whether or not the subcontractor is in compliance. The Contracting Officer may be requested to provide assistance to secure compliance of a subcontractor. The Contracting Officer may direct the Contractor to assess liquidated damages, if any, to terminate a subcontract, or bring

an action for breach of contract against said subcontractor, as appropriate, for failure to comply with a Subcontracting Plan.

VII. SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS AND WOMEN-OWNED SMALL BUSINESS COMMUNITY INTERACTION

The success of the JPL Small Business and Small Disadvantaged Business Program is very dependent upon interaction with the small business, small disadvantaged business and women-owned small business community and with business development organizations and associations. It is mainly through this interaction and exchange of information that JPL can identify and develop the widest and most effective procurement base within the small business, small disadvantaged business and women-owned small business community.

Over the past several years, JPL has developed several different areas of contact for the purpose of identifying small business, small disadvantaged business and women-owned small business capabilities and exchanging views on how to promote Small Business, Small Disadvantaged Business and Women-Owned Small Business Programs. We maintain close coordination with and regularly take a leadership role in the following Government and private sector organizations:

- DEPARTMENT OF DEFENSE WESTERN REGIONAL COUNCIL FOR SMALL BUSINESS EDUCATION AND ADVOCACY (formerly named: Southern California Small Business Utilization Council)
- LOS ANGELES MINORITY BUSINESS OPPORTUNITY COMMITTEE (LAMBOC)

In December 1994 JPL signed a Memorandum of Agreement with the Los Angeles Minority Business Opportunity Committee.

- NATIONAL ASSOCIATION OF SMALL DISADVANTAGED BUSINESS
- SMALL BUSINESS ADMINISTRATION

Another prime source of identification of potential small disadvantaged business suppliers has been through maintaining a

close and continuing contact with small disadvantaged business development organizations and associations.

JPL also actively participates in a number of Small Business and Small Disadvantaged Business Conferences and outreach efforts. Representative conferences attended annually include: the NASA Technology and Business Conference sponsored by NASA CTC, the Los Angeles Vendor Day Small Business Conference, Navy Gold Coast Conference, the Reservation Economic Summit and American Indian Business Trade Fair, USC Small Business Networking Event, and myriad other small business conferences sponsored by congressional representatives, government agencies, prime contractors, Chambers of Commerce and ethnic associations. JPL also participates in networking and recognition events sponsored by these agencies and associations.

For over eleven years, JPL has coordinated the Annual High-Technology Small Business Conference co-sponsored by NASA and the Small Business Administration (SBA). This conference has been very successful in providing an opportunity for small, small disadvantaged, and women-owned businesses to meet representatives from the Federal Government and prime contract corporations to discuss potential contracting opportunities within their agencies. Workshops are presented on a variety of current interest subjects. Between 1100 and 1600 attendees have participated annually in the conference.

In addition to the Annual High-Technology Small Business Conference, JPL has institutionalized three other outreach efforts: (1) "JPL Goes to Washington: A Space Science Symposium for Small Business" begun in 1995 and held annually in Washington, D.C.; and (2) the "Semi-Annual Science Forum for Small Business" begun in 1997 and hosted at JPL; and (3) the "Prime Contractor Round Table" begun in 1999 and held annually at JPL.

The Prime Contractor Round Table/SDB Forum's main purpose is to enable JPL's major subcontractors to interact with small disadvantaged businesses and pursue subcontracting opportunities, specifically on JPL contracts. The forum also enables other teaming and partnering possibilities to develop between the subcontractors and small disadvantaged businesses on the subcontractors' other contracts. Several subcontractors and small disadvantaged businesses are selected by the Business Opportunities Office, based on the subcontractors' level of business with JPL and the Small Disadvantaged Businesses' potential for matching the subcontractors' high-tech interests. An agenda is sent out to participants. Some subcontractors are asked to participate on a panel and are given specific topics to research. The Round Table's interactive format is an excellent way to address current issues as it allows small disadvantaged businesses to interact with subcontractors on topics of mutual interest.

JPL also participates in special Small Business Briefings initiated by NASA's Administrator and coordinated with NASA Headquarters Office of Small and Disadvantaged Business Utilization (Code K).

The Contractor will participate in the NASA mentor-protégé program and will initiate discussions with NASA to that end during the first year of this contract.

AWARDS

- Award of Distinction presented by the Small Business Administration (1995).
- Certification of Appreciation presented by the Mayor of the City of Los Angeles in recognition of JPL's outstanding support and commitment to increased minority business opportunities in the Greater Los Angeles marketplace and for embracing the principles of partnership and participation (1995).
- Dwight D. Eisenhower Award for Excellence presented by the Small Business Administration to recognize large prime contractors that have excelled in their use of small business subcontractors (1995).
- NASA Group Achievement Award to the Small Disadvantaged Business Subcontracting Team in recognition of outstanding contributions to increasing JPL's subcontracting to small businesses and for the Laboratory far exceeding its goals (1996).
- JPL Award of Excellence - Exceptional Business Operations Excellence presented to the Manager of the Business Opportunities Office for significant achievement in exceeding JPL's small business and small disadvantaged business goals that were set by NASA for FY'96 (1997).
- Advocate of the Year Award presented to the Manager of JPL's Business Opportunities Office by the National Association of Small Disadvantaged Business (NASDB) for continued and outstanding efforts in support of minority-owned business (1997).
- CEO of the Year (1997) presented to the Laboratory Deputy Director by NASDB for his support of minority-owned businesses.

- CEO of the Year (1998) presented to the Laboratory Deputy Director by NASDB for his support of minority-owned businesses.
- NASA Recognition Award for exceeding JPL's socioeconomic goals and for outstanding support of NASA's Small Disadvantaged Business Program through exemplary outreach and advocacy activities (1996, 1997 & 1998).

GLOSSARY

HBCU = Historically Black College or University

MI = Minority Institution

APPENDIX EEDUCATION PROGRAMS AND ACTIVITIES

1. POLICY

A. Purpose. This guidance sets forth the policies, objectives, and responsibilities for the conduct of the NASA Education Program.

B. Definition. "Education Program" for purpose of this guidance, is a generic term covering all individual NASA/JPL and NASA/JPL-sponsored programs, activities, and projects conducted for and with educators and students, in the formal and informal educational community, external to NASA.

"Formal education community," for purpose of this guidance, is a term covering individuals and institutions involved with the following educational levels: K-4, 5-8, 9-12, community college, undergraduate, graduate, and postdoctoral.

"Informal education community," for purpose of this guidance, is a term covering individuals and institutions involved with museums and science and technology centers.

C. Program goal. NASA's direction for education is set forth in the NASA Strategic Plan as one of the five strategic outcomes for the Agency: *Educational Excellence: We involve the educational community in our endeavors to inspire America's students, create learning opportunities, and enlighten inquisitive minds.*

This outcome is accomplished through implementation of a full range of NASA, NASA/JPL and NASA/JPL-sponsored education programs and activities that contribute to the various efforts and activities of those involved with and in the education community, and benefit the participants as well as advance the mission of the Agency.

The NASA/JPL Education Program demonstrates the Agency's commitment to achieving full participation of individuals and organizations from diverse populations in the science, mathematics, engineering and technology communities to support academic excellence and outstanding achievements while advancing U.S. leadership in a competitive scientific and technological economy.

D. Guidance. The NASA/JPL Education Program will: (1) be aligned with the strategic direction and leadership strategies as outlined in the NASA Education Implementation Plan; (2) have clearly defined programmatic objectives and metrics; and (3) be integrated into the Agencywide Education Program evaluation system.

Each program or activity in the NASA/JPL Education Program, is composed of three interrelated components:

1. Customer need. NASA's education customer is defined as both the informal and formal community. The informal community includes museums and science technology centers. The formal education community is divided into the following educational levels: K-4, 5-8, 9-12, community college, undergraduate, graduate, and postdoctoral. At the K-12 level, content (knowledge) derived from the NASA Enterprises is tailored to meet customer needs and is guided by curriculum standards for mathematics, science, technology, and geography at the state and local levels. At the postsecondary level (community college, undergraduate, graduate, and postdoctoral), customers directly support or contribute to NASA mission needs.

2. Content. Every NASA/JPL and NASA/JPL-sponsored education program and activity is built upon the unique knowledge gained by the NASA Enterprises.

3. Implementation approach. The NASA/JPL Education Program is implemented with the formal and informal education customers through six general approaches or educational categories as outlined in the NASA Education Strategic Implementation Plan and Implementation Framework; (a) student support; (b) teacher/faculty preparation and enhancement; (c) support of systemic change; (d) curriculum support and dissemination; (e) educational technology; and (f) research and development.

The JPL Education Implementation Plans (i.e., JPL-Wide Education Plan, OSS Solar System Exploration Education and Public Outreach Forum Plan) must support the strategic direction and leadership as outlined in the NASA Education Implementation Plan and must have the concurrence of the NASA Associate Administrator for Human Resources and Education or his/her designee.

2. RESONSIBILITY

The Office of Human Resources and Education, Education Division, is responsible for Agency-wide direction, policy, and guidance for the NASA Education Program. The Office of Equal Opportunity Programs, Minority University Research and Education Division, has been delegated responsibility for NASA policy related to minority higher education institutions, in coordination with the Office of Human Resources and Education.

Each Enterprise Associate Administrator and each NASA Field Center Director will designate a single individual to serve as the Enterprise or Center education director/coordinator to ensure close coordination with the Office of Human Resources and Education, Education Division.

JPL will do the following:

1. Identify an organizational entity(ies) that will serve as the functional organization for education.
2. Conduct education programs and activities in accordance with established policy, procedures, and guidelines as established in this guidance.
3. Implement the JPL-specific aspects of national or multi-regional programs.
4. Conceive, develop, and implement local education programs and activities to meet the needs of JPL, the state, and or region, and provide support to systemic education reform efforts.
5. If assigned, assume Lead responsibility for a component of the NASA Education Program, in accordance with the policy, procedures and guidelines as established in the guidance.
6. Facilitate local, regional, and state education and private sector participation in the NASA Education Program.
7. Ensure implementation and maintenance at the JPL level of Agency-wide and JPL-unique Education Program data collection and evaluation.

APPENDIX F

SECURITY FORM DD 254

Contact the CAO for a hardcopy

APPENDIX GAGREEMENT AND CONDITIONS FOR
EVALUATION OF PROPOSALS

(1) The recipient agrees to use proposal information for NASA evaluation purposes only. Additionally, the recipient agrees not to reveal any information concerning the proposal or the evaluation of the proposal to anyone not also participating in the evaluation. If information is disclosed to others participating in the evaluation, that disclosure shall only be to the extent that the information is required in connection with the evaluation. Although this limitation does not apply to information which has been previously made available to the public or disclosed publicly, the recipient is never to disclose what public information is contained in the proposal.

(2) The recipient agrees that the NASA proposal cover sheet notice (FAR 15.413-2(e)), and any notice that may have been placed on the proposal by its originator, shall be applied to any reproduction or abstracts of any proposal information furnished.

(3) Upon completion of the evaluation, the recipient agrees to return all copies of proposal information or abstracts, if any, to the NASA office that initially furnished the proposal information.

(4) Unless authorized in writing by the NASA official releasing the proposal information, the recipient agrees not to contact either the business entities originating the proposals or any of their employees, representatives, or agents concerning any aspect of the proposal information or extracts covered by this agreement.

(5) The recipient agrees to review his or her financial interests relative to the entities whose proposal information NASA furnishes for evaluation. This duty to review financial interests begins prior to the receipt of the proposal information and continues until the evaluation is completed and the material is sent back to NASA. At any time the recipient becomes aware that he or she or a person with a close personal relationship (household, family members, business partners, or associates) has or acquires a financial interest in the entities whose proposal information is subject to this agreement, the recipient shall immediately advise the NASA official releasing the proposal information, protect the proposal information, and cease evaluation activities pending a NASA decision resolving the conflict of interest.

(6) For purposes of this agreement, financial interests includes, but is not limited to stock ownership, outside employment, spousal employment, profit sharing and actively negotiating for future employment.

Signature of Recipient

Date