SOLICITATION, OFFER AND AWARD

1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) — RATING: DO-C9

2. CONTRACT NUMBER	3. SOLICITATION NUMBER	4. TYPE OF SOLICITATION	5. DATE ISSUED	6. REQUISITION/PURCHASE NUMBER
NNK14MA74C	NNK14467515R	☐ SEALED BID (IFB) ☒ NEGOTIATED (RFP)	11/19/2013	4200529082

7. ISSUED BY — CODE KSC

NASA/John F. Kennedy Space Center
Office of Procurement
Mail Code: OP
Kennedy Space Center, FL 32899

8. ADDRESS OFFER TO (If other than Item 7)

Attn: Rogelio Curiel
NASA/John F. Kennedy Space Center
Mail Code: SEB-CERT
Kennedy Space Center, FL 32899

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and SECTION L copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if hand carried, in the depository located in REFER TO SECTION L until 1200 EST (Hour) local time 01/22/2014 (Date)

CAUTION: LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE (NO COLLECT CALLS) AREA CODE	NUMBER	EXT.	C. E-MAIL ADDRESS
	Rogelio Curiel	321	867-7498		ksc-cp2@mail.nasa.gov

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OFFER *(Must be fully completed by offeror)*

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within 270 calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT *(See Section I, Clause No. 52.232-8)*	10 CALENDAR DAYS (%)	20 CALENDAR DAYS (%)	30 CALENDAR DAYS (%)	CALENDAR DAYS (%)
	N/A	N/A	N/A	N/A

14. ACKNOWLEDGEMENT OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):*	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE
	01	12/20/2013		
	02	4/22/2014		

15A. NAME AND ADDRESS OF OFFEROR — CODE 3BVL8 FACILITY 3BVL8

Space Exploration Technologies Corp.
1 Rocket Road
Hawthorne, CA 90250

16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

Gwynne Shotwell
President

15B. TELEPHONE NUMBER AREA CODE	NUMBER	EXT.	15C. CHECK IF REMITTANCE ADDRESS ☐ IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE	17. SIGNATURE	18. OFFER DATE
310	363-6229			[redacted] (b) (4)	7/07/2014

AWARD *(To be completed by government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION
All	$1,115,023,687.00	

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: ☐ 10 U.S.C. 2304 (c) ( ) ☐ 41 U.S.C. 253 (c) ( )

23. SUBMIT INVOICES TO ADDRESS SHOWN IN *(4 copies unless otherwise specified)* — ITEM: See Schedule G

24. ADMINISTERED BY *(If other than Item 7)* — CODE

25. PAYMENT WILL BE MADE BY: See Schedule G — CODE NSSC

26. NAME OF CONTRACTING OFFICER *(Type or print)*: Dudley R. Canon, Jr.

27. UNITED STATES OF AMERICA [redacted] (b) (4) *(Signature of Contracting Officer)*

28. AWARD DATE: 9-16-2014

IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

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Prescribed by GSA - FAR (48 CFR) 53.214(c)

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J.1 LIST OF ATTACHMENTS 112

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SECTION B. SUPPLIES OR SERVICES AND PRICES/COSTS

B.1 NFS 1852.216-78 FIRM FIXED PRICE (DEC 1988)

The total firm fixed price of this contract is the total amount shown in Table B.2, *Services To Be Provided*.

(End of Clause)

B.2 SUPPLIES AND/OR SERVICES TO BE PROVIDED / ITEMS ISSUED

The Contractor shall provide all resources necessary to deliver and/or perform the requirements of the contract in accordance with the following table and per clause C.1, *Specification/Statement of Work*, except for resources provided by the Government under clause G.6, *NFS 1852.245-76 List of Government Property Furnished Pursuant to FAR 52.245-1 (Jan 2011)* and clause H.12 *Government Furnished Services and Data*.

Table B.2 Services To Be Provided

CLIN Category	CLIN	Title	Price
Fixed Price Core Contract	001	Design, Development, Test, and Evaluation (DDTE)/Certification	$ (b) (4)
Fixed Price IDIQ	002	Post Certification Missions (PCM)	TBD
Fixed Price IDIQ	003	Special Studies	TBD
		Total:	(b) (4)

TBP: To Be Proposed / TBD: To Be Determined / IDIQ: Indefinite Delivery Indefinite Quantity / CLIN: Contract Line Item Number

(End of Clause)

B.3 Design, Development, Test and Evaluation (DDTE)/Certification (Core Contract) (CLIN 001)

NASA Certification under CLIN 001 is complete when the Contractor's Crew Transportation System (CTS) has met NASA's requirements for safely transporting crew to and from the International Space Station (ISS) in accordance with documents identified in Section C.1, *Specifications/Statement of Work*. SubCLINS 001A and 001B, identified in Table B.3, *DDTE/Certification SubCLINs,* are delivery milestones that represent completion of required work necessary to achieve NASA Certification. Delivery payment for the ISS Design Certification Review (DCR) for the crewed flight to the ISS includes all work under this CLIN that occurs from the contract effective date through the ISS DCR completion. The delivery payment for the Certification Review (CR) will include all work that occurs from the ISS DCR delivery date through the end of the DDTE/Certification CLIN 001.

Table B.3 DDTE/Certification SubCLINs (CLIN 001)

CLIN Category	CLIN	Title	Price
Fixed Price	001A	ISS Design Certification Review (ISS DCR)*	(b) (4) [redacted]
Fixed Price	001B	Certification Review (CR)	
Sub-Total (CLIN 001 Firm Fixed Price (FFP))			

*ISS DCR is the DCR for the crewed flight to ISS

(End of Clause)

B.4 POST CERTIFICATION MISSIONS (IDIQ) (CLIN 002)

In accordance with clause C.1, *Specification/Statement of Work*, the task ordering procedures and other terms and conditions in the contract, the Contracting Officer may issue Post Certification Mission (PCM) task orders. The Contractor shall use the Mission pricing rates shown in Table B.4.1, *Post Certification Mission Prices*. The per mission prices are for a single order at the price stated per the Calendar Year (CY) based on the number of missions ordered. CTS full mission capability prices shall be based on (1) fulfillment of the design reference mission to the ISS found in CCT-DRM-1110, *Crew Transportation System Design Reference Missions,* Attachment J-03, *Contract Performance Work Statement*, and other terms and conditions in the contract and (2) all inherent CTS capabilities that are within the proposed mission prices.

Post Certification Missions require at least [redacted] (b)(3) prior to launch to account for the lead time to accomplish all procurement, production and integration tasks required to execute a PCM. This lead time ensures that facilities, equipment, hardware, and personnel are available to build the vehicles and complete all required programmatic, safety, manufacturing, training, and integration tasks on-schedule.

The minimum quantity of Post Certification Missions in this contract is two (2). PCM task orders will not be issued until the Contractor has accomplished the criteria shown in clause H.19, *Post Certification Mission Payments, Milestones and ATP Criteria*, paragraph (a).

The maximum potential number of Post Certification Missions which may be ordered under this contract is six (6).

Table B.4.1 Post Certification Mission Prices (CLIN 002)

Calendar Year Ordered	Price Per Mission Based on order quantity of One (1)	Unit Price Per Mission Based on order quantity of Two (2)	Unit Price Per Mission Based on order quantity of Three (3)	Unit Price Per Mission Based on order quantity of Four (4)
2015	[redacted]			
2016				
2017				
2018				
2019				
2020				

Table B.4.2 Post Certification Mission Task Order List (CLIN 002)

Task Order Number	Description	Firm Fixed Price Amount
*To be filled in by Government as Task Orders are issued during contract performance	TBD	TBD
	TOTAL	**TBD**

(End of Clause)

B.5 SPECIAL STUDIES SERVICES (IDIQ) (CLIN 003)

In accordance with Attachment J-03, *Contract Performance Work Statement*, the task ordering procedures and other terms and conditions in the contract, the Contractor shall perform special studies, test and analyses, as initiated by written direction from the Contracting Officer. IDIQ tasks may include performing technical, cost, schedule and risk assessments for potential new or changes to existing requirements, as identified by the Government, for their impact on the Contractor's design, schedule and cost/price as it relates to CCtCap or life cycle activities; performing additional analyses, modeling, and/or tests of hardware or software to provide further confidence and understanding of robustness of design and advance planning, feasibility or trade studies for development or certification activities. These IDIQ tasks do not include any work necessary to accomplish the requirements under CLIN 001 and CLIN 002. The Contractor shall utilize the fully burdened labor rates shown in Table B.5.1, *Special Studies Labor Rates* when proposing to a Government Request for Task Order Proposal. The maximum potential total value of all Special Studies IDIQ tasks which may be ordered under this contract is $150 million.

Table B.5.1 Special Studies Labor Rates

Labor Rates							
Labor Category	**CY14**	**CY15**	**CY16**	**CY17**	**CY18**	**CY19**	**CY20**
Professional / Technical (Exempt)	(b) (4)						
Ops./Mfg. (Non-Exempt)							

Table B.5.2 Special Studies Task Order List (CLIN 003)

Task Order Number	Description	Firm Fixed Price Amount
*To be filled in by Government as Task Orders are issued during contract performance	TBD	TBD
	TOTAL	**TBD**

(End of Clause)

C.1 SPECIFICATION/STATEMENT OF WORK

The purpose of the Commercial Crew Program (CCP) is to facilitate the development of a U.S. commercial crew space transportation capability with the goal of achieving safe, reliable and cost effective access to and from low Earth orbit (LEO) including the International Space Station (ISS) no later than 2017. Once the capability is matured and available, NASA intends to purchase commercial crew transportation services to meet its ISS crew rotation and emergency return needs.

NASA is using a two-phased acquisition to certify fully integrated Crew Transportation Systems (CTS) that meet specified NASA safety and ISS requirements and standards, and begin missions to the ISS. Phase 1, the Certification Products Contract (CPC), requires delivery and disposition of specified early lifecycle plans and products that address CTS compliance with NASA's standards and requirements for an ISS design reference mission. The CPC deliverables mature in parallel with the maturation of the CTS design. Phase 2, the Commercial Crew Transportation Capability (CCtCap), is the requirement of this contract as described below.

Requirements:
The Contractor shall complete the design, development, test, evaluation, and certification of an integrated CTS capable of transporting NASA crew to and from the ISS, in accordance with the design reference missions and the certification standards and requirements specified in this contract. Certification of the CTS shall be determined by NASA. The Contractor shall provide special studies for risk reduction and other purposes related to its CTS, to the extent ordered under CLIN 003 of this contract. The Contractor shall also provide complete, initial Post Certification Missions to and from ISS including ground, launch, on-orbit, return and recovery operations, as ordered by IDIQ tasks under this contract.

(a) The Contractor shall provide all facilities, resources, personnel, items or services necessary to perform the requirements specified in Section B, *Supplies or Services and Prices/Costs* (except for Government furnished property as listed in clause G.6, NFS 1852.245-76, *List Of Government Property Furnished Pursuant To FAR 52.245-1* and *Government Furnished Services and Data* as listed in clause H.12) in accordance with the following:

Attachment J-01, *Integrated Crew Transportation System Requirements*
Attachment J-02, *Data Requirement Deliverables (DRDs)*
Attachment J-03, *Contract Performance Work Statement (PWS)* – To be proposed by Offeror
Attachment J-03, Appendix A, *Milestone Acceptance Criteria and Payment Schedule* – To be proposed by Offeror

(b) Section C incorporates Attachments J-01, J-02 and J-03 into the Schedule. In case of a conflict, Attachment J-01 shall take precedence over Attachments J-02, and J-03. Attachment J-03 shall take precedence over Attachment J-02.

(End of Clause)

SECTION D. PACKAGING AND MARKING

D.1 CLAUSES INCORPORATED BY REFERENCE -- SECTION D

Clause(s) at the beginning of this Section are incorporated by reference, with the same force and effect as if they were given in full text. Clauses incorporated by reference which require a fill-in by the Government include the text of the affected paragraph(s) only. This does not limit the clause to the affected paragraph(s). The Contractor is responsible for understanding and complying with the entire clause. The full text of the clause is available at the addresses contained in clause I.1 52.252-2, *Clauses Incorporated by Reference*, of this contract.

NFS 1852.211-70 PACKAGING, HANDLING, AND TRANSPORTATION. (SEP 2005)

(End of Clause)

D.2 NFS 1852.245-74 IDENTIFICATION AND MARKING OF GOVERNMENT EQUIPMENT (JAN 2011)

(a) The Contractor shall identify all equipment to be delivered to the Government using NASA Technical Handbook (NASA-HDBK) 6003, *Application of Data Matrix Identification Symbols to Aerospace Parts Using Direct Part Marking Methods/Techniques*, and NASA Standard (NASA-STD) 6002, *Applying Data Matrix Identification Symbols on Aerospace Parts* or through the use of commercial marking techniques that: (1) are sufficiently durable to remain intact through the typical lifespan of the property: and, (2) contain the data and data format required by the standards. This requirement includes deliverable equipment listed in the schedule and other equipment when no longer required for contract performance and NASA directs physical transfer to NASA or a third party. The Contractor shall identify property in both machine and human readable form unless the use of a machine readable-only format is approved by the NASA Industrial Property Officer.

(b) Equipment shall be marked in a location that will be human readable, without disassembly or movement of the equipment, when the items are placed in service unless such placement would have a deleterious effect on safety or on the item's operation.

(c) Concurrent with equipment delivery or transfer, the Contractor shall provide the following data in an electronic spreadsheet format:

(1) Item Description.

(2) Unique Identification Number (License Tag).

(3) Unit Price.

(4) An explanation of the data used to make the unique identification number.

(d) For equipment no longer needed for contract performance and physically transferred under paragraph (a) of this clause, the following additional data is required:

(1) Date originally placed in service.

(2) Item condition.

(e) The data required in paragraphs (c) and (d) of this clause shall be delivered to the NASA center receiving activity listed below:

Transportation Officer, NASA
C/O ISC Warehouse, Building M6-744
Kennedy Space Center, FL 32899

(f) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that require delivery of equipment.

(End of Clause)

SECTION E. INSPECTION AND ACCEPTANCE

E.1 CLAUSES INCORPORATED BY REFERENCE -- SECTION E

Clause(s) at the beginning of this Section are incorporated by reference, with the same force and effect as if they were given in full text. Clauses incorporated by reference which require a fill-in by the Government include the text of the affected paragraph(s) only. This does not limit the clause to the affected paragraph(s). The Contractor is responsible for understanding and complying with the entire clause. The full text of the clause is available at the addresses contained in clause I.1 52.252-2, *Clauses Incorporated by Reference*, of this contract.

NFS 1852.246-73 HUMAN SPACE FLIGHT ITEM (MAR 1997)

(End of Clause)

E.2 52.246-4 INSPECTION OF SERVICES AND RESEARCH AND DEVELOPMENT WORK - FIXED-PRICE (AUG 1996) (Deviation)

(a) Definition: "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services and Research and Development (R&D) work under 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 all services and R&D work called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government may also inspect on the premises of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Inspection and test by the Government does not relieve the Contractor from responsibility for failures to meet the contract requirements that may be discovered before acceptance. Government failure to inspect and accept or reject the services or R&D work shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming services or R&D work. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the contract.

(f) The Government has the right to reject nonconforming services or R&D work. Nonconforming services or R&D work is when it is defective in material or workmanship or is otherwise not in conformity with contract requirements.

(g) If any of the services or R&D work do not conform with contract requirements, the Government may require the Contractor to perform the services or R&D work again in conformity with contract requirements, at no increase in contract amount. If acceptance is not conclusive for any of the causes in paragraph (e), in addition to any other rights and remedies provided by law, or under other provisions of this contract, or when the defects in services or R&D work cannot be corrected by reperformance, the Government may -

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce the contract price to reflect the reduced value of the services or R&D work performed.

(h) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may –

(1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or

(2) Terminate the contract for default.

(i) The rights in paragraph (g) and (h) of this clause are superseded by the conditions in clause H.21, *Post Certification Mission Success Determination*, specific only to the Post Certification Mission (PCM) flights. For these flights, the rights in clause H.21 regarding acceptance (mission success determination), payment procedures in the event of a determination for other than full mission success and waiver of the Government requirement's to re-perform the final PCM flight, shall apply.

(End of Clause)

SECTION F. DELIVERIES OR PERFORMANCE

F.1 CLAUSES INCORPORATED BY REFERENCE -- SECTION F

Clause(s) at the beginning of this Section are incorporated by reference, with the same force and effect as if they were given in full text. Clauses incorporated by reference which require a fill-in by the Government include the text of the affected paragraph(s) only. This does not limit the clause to the affected paragraph(s). The Contractor is responsible for understanding and complying with the entire clause. The full text of the clause is available at the addresses contained in clause I.1 52.252-2, *Clauses Incorporated by Reference*, of this contract.

52.242-15 STOP-WORK ORDER. (AUG 1989)

52.242-17 GOVERNMENT DELAY OF WORK. (APR 1984)

(End of Clause)

F.2 DELIVERY AND/OR COMPLETION SCHEDULE

The Contractor shall deliver and/or complete performance of the items required under this contract as follows:

(a) CLIN 001, *DDTE/Certification*: The date of delivery for work performed under this contract is from date of award through completion of the last required milestone in Attachment J-03, Appendix A, *Milestone Acceptance Criteria and Payment Schedule*.

Milestone delivery and completion dates are defined in Attachment J-03, Appendix A for CLIN 001.

(End of Clause)

F.3 PLACE OF PERFORMANCE

The principal place of performance shall be The United States Of America.

(End of Clause)

SECTION G. CONTRACT ADMINISTRATION DATA

G.1 CLAUSES INCORPORATED BY REFERENCE -- SECTION G

Clause(s) at the beginning of this Section are incorporated by reference, with the same force and effect as if they were given in full text. Clauses incorporated by reference which require a fill-in by the Government include the text of the affected paragraph(s) only. This does not limit the clause to the affected paragraph(s). The Contractor is responsible for understanding and complying with the entire clause. The full text of the clause is available at the addresses contained in clause I.1 52.252-2, *Clauses Incorporated by Reference*, of this contract.

NFS 1852.227-70 NEW TECHNOLOGY. (MAY 2002)

(End of Clause)

G.2 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:

New Technology Representative
Technology and Integration Office, Mail Code: KSC-NET
NASA, John F. Kennedy Space Center
Kennedy Space Center, FL 32899

Patent Representative
Office of Chief Counsel, Mail Code: KSC-CC
NASA, John F. Kennedy Space Center
Kennedy Space Center, FL 32899

(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.3 APPOINTMENT OF CONTRACTING OFFICER REPRESENTATIVE

(a) Performance of the work under this contract is subject to the functions of the Contracting Officer Representative (COR), who shall be specifically appointed by the Contracting Officer in writing in accordance with NASA FAR Supplement (NFS) 1842.270. The COR will serve as the Contracting Officer's technical liaison with the Contractor by providing performance monitoring; review of Contractor's progress; support to Government Insight activities as defined in clause H.15, *Government Insight*; or furnishing similar monitoring for work within the scope of the contract.

(b) The COR does not have the authority to, and shall not, issue any instruction or direction that:

(1) Constitutes an assignment of additional work outside the statement of work;

(2) Constitutes a change as defined in the changes clauses in I.2, *Clauses Incorporated by Reference*;

(3) Constitutes a basis for any increase or decrease in contract requirements; or any contract price; or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the Contractor's rights to perform the terms and conditions of the contract.

(c) If, in the Contractor's opinion, any communication by the COR is deemed to be an instruction or direction that falls within any of the categories defined in paragraph (b) of this clause, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receiving it and shall request the Contracting Officer to take action as described in this clause. Upon receiving this notification, the Contracting Officer shall either issue an appropriate contract modification within a reasonable time or advise the Contractor in writing within fifteen (15) days that the communication is -

(1) Rescinded in its entirety; or

(2) Within the functions of the COR and does not constitute a change under the changes clauses of the contract, and that the Contractor should continue to proceed with contract performance.

(d) A failure of the Contractor and Contracting Officer to agree that the communication by the COR does not constitute a change under the changes clauses in I.2, or a failure to agree upon the contract action to be taken with respect to the communication, shall be subject to the Disputes clause of this contract.

(e) Any action(s) taken by the Contractor in response to any instruction or direction given by any person other than the Contracting Officer shall be at the Contractor's risk.

(End of Clause)

G.4 NFS 1852.245-73 FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS. (JAN 2011)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with this clause, the instructions on the form and NFS subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA.

(b) (1) 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.

(2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(3) One copy shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: NASA, John F. Kennedy Space Center, Attn: OP-OS-IP, Industrial Property Officer, Kennedy Space Center, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c) (1) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 15. 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 15. Some activity may be estimated for the month of September, if necessary, to ensure the NF 1018 is received when due. However, Contractors' procedures must document the process for developing these estimates based on planned activity such as planned purchases or NASA Form 533 (NF 533 Contractor Financial Management Report) cost estimates. It should be supported and documented by historical experience or other corroborating evidence, and be retained in accordance with FAR Subpart 4.7, Contractor Records Retention. Contractors shall validate the reasonableness of the estimates and associated methodology by comparing them to the actual activity once that data is available, and adjust them accordingly. In addition, differences between the estimated cost and actual cost must be adjusted during the next reporting period. Contractors shall have formal policies and procedures, which address the validation of NF 1018 data, including data from subcontractors, and the identification and timely reporting of errors. The objective of this validation is to ensure that information reported is accurate and in compliance with the NASA FAR Supplement. If errors are discovered on NF 1018 after submission, the Contractor shall contact the cognizant NASA Center Industrial Property Officer (IPO) within 30 days after discovery of the error to discuss

corrective action.

(2) The Contracting Officer may, in NASA'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 in accordance with NFS subpart 1845.71 and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the Contracting Officer has determined that NASA has received the required reports. 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 shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with paragraph (b)(1) through (3) of this clause.

(End of Clause)

G.5 NFS 1852.245-75 PROPERTY MANAGEMENT CHANGES. (JAN 2011)

(a) The Contractor shall submit any changes to standards and practices used for management and control of Government property under this contract to the assigned property administrator prior to making the change whenever the change -

(1) Employs a standard that allows increase in thresholds or changes the timing for reporting loss, damage, or destruction of property;

(2) Alters physical inventory timing or procedures;

(3) Alters recordkeeping practices;

(4) Alters practices for recording the transport or delivery of Government property; or

(5) Alters practices for disposition of Government property.

(End of Clause)

G.6 NFS 1852.245-76 LIST OF GOVERNMENT PROPERTY FURNISHED PURSUANT TO FAR 52.245-1. (JAN 2011)

For performance of work under this contract, the Government will make available Government property identified below on a no charge-for-use basis pursuant to the clause at FAR 52.245-1, *Government Property (Alt I)*, as incorporated in this contract. The Contractor shall use this property in the performance of this contract at the Contractor's facility and at other location(s) as may be approved by the Contracting Officer. Under FAR 52.245-1 (Alt I), the Contractor is accountable for the identified property.

Description	Part Number (Docking Adapter Kit Docking Adapter Assembly)	Acquisition Value	Quantity	Available Date
NASA Docking System Block 1 (NDSB1) Flight Unit 1	683-100100-0001 683-100000-0001	$14,000,000	0	02/2016
NDSB1 Flight Unit 2	683-100100-0001 683-100000-0001	$14,000,000	0	04/2016
NDSB1 Flight Unit 3	683-100100-0001 683-100000-0001	$14,000,000	0	06/2016
NDSB1 Flight Unit 4	683-100100-0001 683-100000-0001	$14,000,000	0	08/2016

The Government understands that the NDSB1 Flight Units may be consumed in performance of this contract.

(End of Clause)

G.7 NFS 1852.245-78 PHYSICAL INVENTORY OF CAPITAL PERSONAL PROPERTY. (JAN 2011)

(a) In addition to physical inventory requirements under the clause at FAR 52.245-1, *Government Property*, as incorporated in this contract, the Contractor shall conduct annual physical inventories for individual property items with an acquisition cost exceeding $100,000.

(1) The Contractor shall inventory -

(i) Items of property furnished by the Government;

(ii) Items acquired by the Contractor and titled to the Government under the clause at FAR 52.245-1;

(iii) Items constructed by the Contractor and not included in the deliverable, but titled to the Government under the clause at FAR 52.245-1; and

(iv) Complete but undelivered deliverables.

(2) The Contractor shall use the physical inventory results to validate the property record data, specifically location and use status, and to prepare summary reports of inventory as described in paragraph (c) of this clause.

(b) Unless specifically authorized in writing by the Property Administrator, the inventory shall be

performed and posted by individuals other than those assigned custody of the items, responsibility for maintenance, or responsibility for posting to the property record. The Contractor may request a waiver from this separation of duties requirement from the Property Administrator, when all of the conditions in either (1) or (2) of this paragraph are met.

(1) The Contractor utilizes an electronic system for property identification, such as a laser bar-code reader or radio frequency identification reader, and

(i) The programs or software preclude manual data entry of inventory identification data by the individual performing the inventory; and

(ii) The inventory and property management systems contain sufficient management controls to prevent tampering and assure proper posting of collected inventory data.

(2) The Contractor has limited quantities of property, limited personnel, or limited property systems; and the Contractor provides written confirmation that the Government property exists in the recorded condition and location;

(3) The Contractor shall submit the request to the cognizant property administrator and obtain approval from the property administrator prior to implementation of the practice.

(c) The Contractor shall report the results of the physical inventory to the property administrator within 10 calendar days of completion of the physical inventory. The report shall -

(1) Provide a summary showing number and value of items inventoried; and

(2) Include additional supporting reports of -

(i) Loss in accordance with the clause at 52.245-1, Government Property;

(ii) Idle property available for reuse or disposition; and

(iii) A summary of adjustments made to location, condition, status, or user as a result of the physical inventory reconciliation.

(d) The Contractor shall retain auditable physical inventory records, including records supporting transactions associated with inventory reconciliation. All records shall be subject to Government review and/or audit.

(End of Clause)

G.8 SUBMISSION OF INVOICES FOR PAYMENT

(a) The Contractor shall submit invoices for the work completed in accordance with Attachment J-03, Appendix A, *Milestone Acceptance Criteria and Payment Schedule* and task orders issued under this contract. The designated billing office for invoices for purposes of clause FAR 52.232-25, *Prompt Payment*, in I.2, *Clauses Incorporated by Reference*, is indicated below. Invoices shall include a reference to the number of this contract.

(b) Original invoices shall be submitted to:

NASA Shared Services Center
Financial Management Division (FMD)
Accounts Payable
Building 1111, C Road
Stennis Space Center, MS 39529-6000
Phone: 1-877-677-2123
Fax: 1-866-209-5415
e-mail: NSSC-AccountsPayable@nasa.gov

(c) Additional copies shall be furnished to:

Copy 1:
Contracting Officer, Mail Code: OP-MS
NASA, John F. Kennedy Space Center
Kennedy Space Center, FL 32899

Copy 2:
Commercial Crew Program Office, Mail Code: FA-A
NASA, John F. Kennedy Space Center
Kennedy Space Center, FL 32899

(End of Clause)

G.9 REQUIREMENTS FOR DATA OTHER THAN CERTIFIED COST OR PRICING DATA

NASA has waived the Certified Cost or Pricing Data required per FAR 15.403-4 for contractors but not subcontractors. "Certified Cost or Pricing Data" means cost or pricing data that is required to be submitted in accordance with FAR 15.403-4 and 15.403-5 and have been certified, or are required to be certified, in accordance with 15.406-2. Certified Cost or Pricing Data will not be required for contract modifications and task orders of any amount under this contract. In lieu of Certified Cost or Pricing Data, the Contractor shall submit "Data Other Than Certified Cost or Pricing Data" as defined in FAR 2.101, if required by the Contracting Officer as part of the Contractor's proposal to support any contract price adjustments. This data may be requested such as in the case when the Contracting Officer issues a contract modification, a change order in

accordance with the *Changes* clauses in I.2 or any Request for Task Order Proposal issued per CLIN 002 or CLIN 003 of this contract.

(End of Clause)

SECTION H. SPECIAL CONTRACT REQUIREMENTS

H.1 CLAUSES INCORPORATED BY REFERENCE -- SECTION H

Clause(s) at the beginning of this Section are incorporated by reference, with the same force and effect as if they were given in full text. Clauses incorporated by reference which require a fill-in by the Government include the text of the affected paragraph(s) only. This does not limit the clause to the affected paragraph(s). The Contractor is responsible for understanding and complying with the entire clause. The full text of the clause is available at the addresses contained in clause I.1 52.252-2, *Clauses Incorporated by Reference*, of this contract.

NFS 1852.223-75 MAJOR BREACH OF SAFETY OR SECURITY. (FEB 2002)

NFS 1852.225-70 EXPORT LICENSES. (FEB 2000) -- ALTERNATE I (FEB 2000)
Paragraph (b): Any NASA installation

NFS 1852.244-70 GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM. (APR 1985)

NFS 1852.246-70 MISSION CRITICAL SPACE SYSTEM PERSONNEL RELIABILITY PROGRAM. (MAR 1997)

(End of Clause)

H.2 NFS 1852.216-80 TASK ORDERING PROCEDURE. (OCT 1996) (Deviation)

(a) 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 and as specified in the schedule. The Contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the Contracting Officer.

(b) Prior to issuing a task order, the Contracting Officer shall provide the Contractor with the following data:

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

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

(3) 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 proposal.

(c) Within 30 calendar days after receipt of the Contracting Officer's request, the Contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the Contracting Officer may issue a task order to the Contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The Contractor shall provide acknowledgment of receipt to the Contracting Officer within 5 working days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The Contracting Officer may amend tasks in the same manner in which they were issued.

(h) 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.

(End of Clause)

H.3 NFS 1852.223-72 SAFETY AND HEALTH (SHORT FORM). (APR 2002)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness; damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) the public, (2) astronauts and pilots, (3) the NASA workforce (including Contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures consistent with standard industry practice in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(c) 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.

(d) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. In situations where the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action. The Government may pursue appropriate remedies in the event the Contractor fails to promptly take the necessary corrective action.

(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 exceed the micro-purchase threshold.

(End of Clause)

H.4 NFS 1852.232-77 LIMITATION OF FUNDS (FIXED- PRICE CONTRACT). (MAR 1989)

(a) Of the total price of all CLIN items identified in Section B, the sum of $129.3M is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allocated to the contract as required by the payment schedules in Attachment J-03, Appendix A, *Milestone Acceptance Criteria and Payment Schedule* and task

orders awarded under CLIN 002 and 003 (see table B.4.2 and B.5.2 respectively) until the total price of said items is allotted.

(b) The Contractor agrees to perform or have performed work on the items specified in paragraph (a) of this clause up to the point at which, if this contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to the contract. The Contractor is not obligated to continue performance of the work beyond that point. The Government is not obligated in any event to pay or reimburse the Contractor more than the amount from time to time allotted to the contract, anything to the contrary in the Termination for Convenience of the Government clause notwithstanding.

(c) (1) It is contemplated that funds presently allotted to this contract will cover the work to be performed until December 15, 2014.

(2) If funds allotted are considered by the Contractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Contractor shall notify the Contracting Officer in writing when within the next 60 days the work will reach a point at which, if the contract is terminated pursuant to the Termination for Convenience of the Government clause of this contract, the total amount payable by the Government (including amounts payable for subcontracts and settlement costs) pursuant to paragraphs (f) and (g) of that clause will approximate 75 percent of the total amount then allotted to the contract.

(3) (i) The notice shall state the estimate when the point referred to in paragraph (c) (2) of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph (c) (1) of this clause, or an agreed date substituted for it.

(ii) The Contractor shall, 60 days in advance of the date specified in paragraph (c) (1) of this clause, or an agreed date substituted for it, advise the Contracting Officer in writing as to the estimated amount of additional funds required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties.

(4) If, after the notification referred to in paragraph (c) (3) (ii) of this clause, additional funds are not allotted by the date specified in paragraph (c) (1) of this clause, or an agreed date substituted for it, the Contracting Officer shall, upon the Contractor's written request, terminate this contract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Government clause.

(d) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree on the applicable period of contract performance to be covered by these funds. The provisions of paragraphs (b) and (c) of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the contract shall be modified accordingly.

(e) If, solely by reason of the Government's failure to allot additional funds in amounts sufficient for the timely performance of this contract, the Contractor incurs additional costs or is delayed in the performance of the work under this contract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items to be delivered, or in the time of delivery, or both.

(f) The Government may at any time before termination, and, with the consent of the Contractor, after notice of termination, allot additional funds for this contract.

(g) The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of the Government under the default clause of this contract. The provisions of this Limitation of Funds clause are limited to the work on and allotment of funds for the items set forth in paragraph (a) of this clause. This clause shall become inoperative upon the allotment of funds for the total price of said work except for rights and obligations then existing under this clause.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the Termination for Convenience of the Government clause of this contract.

(End of Clause)

H.5 NFS 1852.228-76 CROSS-WAIVER OF LIABILITY FOR INTERNATIONAL SPACE STATION ACTIVITIES. (OCT 2012) (Deviation)

(a) The Intergovernmental Agreement for the International Space Station (ISS) contains a cross-waiver of liability provision to encourage participation in the exploration, exploitation, and use of outer space through the ISS. The cross-waiver of liability in this clause is intended to be broadly construed to achieve this objective.

(b) As used in this clause, the term:

(1) “Agreement” refers to any NASA Space Act agreement or contract that contains the cross-waiver of liability provision authorized by 14 CFR Part 1266.102.

(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) “Launch” means the intentional ignition of the first-stage motor(s) of the Launch Vehicle intended to place or try to place a Launch Vehicle (which may or may not include any Transfer Vehicle, Payload or crew) from Earth:

(i) in a suborbital trajectory;

(ii) in Earth orbit in outer space; or

(iii) otherwise in outer space,

including activities involved in the preparation of a Launch Vehicle, Transfer Vehicle or Payload for launch.

(4) “Launch Services” means:

(i) Activities involved in the preparation of a Launch Vehicle, Transfer Vehicle, Payload, or crew (including crew training), if any, for launch; and

(ii) The conduct of a Launch.

(5) “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.

(6) “Partner State” includes each Contracting Party for which the Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, The Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA) has entered into force, pursuant to Article 25 of the IGA or pursuant to any successor Agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan's Cooperating Agency in the implementation of that MOU.

(7) “Party” means a party to an Agreement involving activities in connection with the ISS, including this contract.

(8) “Payload” means all property to be flown or used on or in a Launch Vehicle or the ISS.

(9) “Protected Space Operations” means all Launch or Transfer Vehicle activities, ISS activities, and Payload activities on Earth, in outer space, or in transit between Earth and outer space performed in implementation of the IGA, MOUs concluded pursuant to the IGA, implementing arrangements, and contracts to perform work in support of NASA’s obligations under these Agreements. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of Launch or Transfer Vehicles, the ISS, Payloads, or instruments, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. "Protected Space Operations" also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA. "Protected Space Operations" excludes activities on Earth which are conducted on return from the ISS to develop further a Payload's product or process for use other than for ISS-related activities in implementation of the IGA.

(10) "Reentry" means to return or attempt to return, purposefully, a Transfer Vehicle, Payload, or crew from the ISS, Earth orbit, or outer space to Earth.

(11) "Reentry Services" means:

(i) Activities involved in the preparation of a Transfer Vehicle, Payload, or crew (including crew training), if any, for Reentry; and

(ii) The conduct of a Reentry.

(12) "Related Entity" means:

(i) A contractor or subcontractor of a Party or a Partner State at any tier;

(ii) A user or customer of a Party or a Partner State at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier.

The terms "contractor" and "subcontractor" include suppliers of any kind.

(13) "Transfer Vehicle" means any vehicle that operates in space and transfers Payloads or persons or both between two different space objects, between two different locations on the same space object, or between a space object and the surface of a celestial body. A Transfer Vehicle also includes a vehicle that departs from and returns to the same location on a space object.

(c) Cross-waiver of liability:

(1) The Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause based on Damage arising out of Protected Space Operations. This cross-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, against:

(i) A Party as defined in (b)(7) of this clause;

(ii) A Partner State, including the United States of America;

(iii) A Related Entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this clause; or

(iv) The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this clause.

(2) In addition, the contractor shall, by contract or otherwise, extend the cross-waiver of liability set forth in paragraph (c)(1) of this clause, to its Related Entities by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause; and

(ii) Require that their Related Entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the *Convention on International Liability for Damage Caused by Space Objects*, which entered into force on September 1, 1972, where the person, entity, or property causing the Damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(i) Claims between the Contractor and its own Related Entities or between its Related Entities;

(ii) Claims made by a natural person (with the exception of Passengers and Commercial Cargo Customers as defined in clause H.23 of this contract), his/her estate, survivors or subrogees (except when a subrogee is a Party to an Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of, such person;

(iii) Claims for Damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for Damage resulting from a failure of the contractor to extend the cross-waiver of liability to its subcontractors or related entities, pursuant to paragraph (c)(2) of this clause;

(vi) Claims by the Government arising out of or relating to the contractor's failure to perform its obligations under this contract.

(vii) Claims against Passengers or Commercial Cargo Customers as defined in clause H.23 of this contract.

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

(d) Waiver of claims Between the Government and Contractor:

(1) This clause provides for a reciprocal waiver of claims between the Government and the Contractor and their Related Entities as described in paragraph (c) above, except that the Government shall waive such claims only to the extent such claims exceed the maximum amount of the Contractor's insurance or financial capability required under paragraph (f) below. This reciprocal waiver of claims shall not apply to rights and obligations arising from the application of any of the other clauses in the contract or to rights and obligations arising from activities that are not within the scope of this contract.

(2) Pursuant to paragraph (c)(2), the Contractor shall extend this waiver of claims to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the Government and its Related Entities. For avoidance of doubt, the Contractor shall require its Passengers and Commercial Cargo Customers, as defined in clause H.23 of this contract, to waive claims against the Government and the Government's Related Entities; however, the Government does not waive such claims against Passengers or Commercial Cargo Customers.

(e) Clause H. 18 of this contract requires the Contractor to obtain a Federal Aviation Administration (FAA) license, in accordance with 51 U.S.C. 50901 *et seq.*, for Launch and Reentry Services performed under CLIN 002 missions. The waivers of claims in this clause H.5 shall apply to CLIN 001 activities. The waivers of claims also shall apply to CLIN 002 activities, except that the waiver of claims between the Government and the Contractor under paragraph (d) shall not be applicable for CLIN 002 Launch Services and Reentry Services that are subject to the FAA license.

(f) The Contractor shall maintain insurance, or demonstrate financial capability to compensate, for damages (as defined in paragraph (b)(2)(ii)) to U.S. Government property, except for: (a) damage to all on orbit ISS structures, modules, and systems required for functionality of the ISS, during Launch Services, Reentry Services, or transportation to, from, in proximity of, or docking with the ISS under this contract; and (b) damage or loss resulting from the willful misconduct of the Government or its employees. For purposes of this paragraph (f), "preparation" of a Launch Vehicle or Transfer Vehicle includes test, assembly, integration or operations of the Launch Vehicle, Transfer Vehicle or their Payloads on a Government installation. Such insurance shall be an amount up to $100 million, or the maximum amount available in the market at reasonable cost, subject to approval by the Contracting Officer. Financial capability, if authorized by the Contracting Officer, shall be in the amount of $100 million. The Contractor shall provide acceptable evidence of the insurance or financial capability to the Contracting Officer, subject to Contracting Officer approval. Insurance policies shall name the United States Government as an

additional insured party. Once approved by the Contracting Officer, insurance policies may not be modified or canceled without the prior, written approval of the Contracting Officer.

(End of Clause)

H.6 NFS 1852.223-74 DRUG- AND ALCOHOL-FREE WORKFORCE (MARCH 1996)

(a) **Definitions.** As used in this clause the terms **"employee," "controlled substance," "employee in a sensitive position,"** and **"use, in violation of applicable law or Federal regulation, of alcohol"** are as defined in 48 CFR 1823.570-2.

(b) (1) The Contractor shall institute and maintain a program for achieving a drug-and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of Contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other Contractors or organizations.

(2) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this clause does not authorize the Contractor to violate foreign law in conducting such testing.

(3) The Contractor's program shall test for the use of marijuana and cocaine. The Contractor's program may test for the use of other controlled substances.

(4) The Contractor's program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (59 FR 29908, June 9, 1994) and the procedures in 49 CFR part 40, "Procedures for Transportation Workplace Drug Testing Programs," in which references to "DOT" shall be read as "NASA", and the split sample method of collection shall be used.

(c) (1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test conducted and confirmed under the Contractor's program indicates that such individual has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(2) The Contractor's program shall further prohibit any such individual from working in a sensitive position on a NASA contract, unless such individual has completed a program of rehabilitation described in paragraph (d) of this clause.

(3) The Contractor's program shall further prohibit any such individual from working in any sensitive position on a NASA contract if the individual is determined under the Contractor's program to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance and the individual meets any of the following criteria:

(i) The individual had undertaken or completed a rehabilitation program described in paragraph (d) of this clause prior to such use;

(ii) Following such determination, the individual refuses to undertake such a rehabilitation program;

(iii) Following such determination, the individual fails to complete such a rehabilitation program; or

(iv) The individual used a controlled substance or alcohol while on duty.

(d) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum, provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(f) For any collective bargaining agreement, the Contractor will negotiate the terms of its program with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change the requirements of this clause. Employees covered under collective bargaining agreements will not be subject to the requirements of this clause until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the Contractor will unilaterally implement the requirements of this clause.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR Parts 2 and 12).

(End of Clause)

H.7 SPECIAL STUDIES TASK ORDERING PROCEDURES (APPLICABLE TO CLIN 003 ONLY)

If the Government issues a Request for Special Studies Task Order Proposal or a modification to a task order, the Contractor shall utilize the fully burdened labor rates shown in Table B.5.1, *Special Studies Labor Rates*, and other data defined in clause G.9, *Requirements for Data Other than Certified Cost or Pricing Data*, as required per the Contracting Officer, for pricing task orders. The Contracting Officer will use this data to determine if the proposed prices for any task orders are fair and reasonable in accordance with FAR 15.4. The types of data other than certified cost and pricing data that may be required to be included in the proposal associated with these task orders could include:

(a) Prior sales, catalog pricing and discounts.

(b) Other information such as: hours by labor category, historical, current and projected labor hours and rates, prime Contractor and subcontractor cost/price analyses, or historical material (non-labor) purchases.

(c) Additional data not included in (a) or (b) that is considered Other Than Certified Cost or Pricing Data.

(End of Clause)

H.8 POST CERTIFICATION MISSION TASK ORDERING PROCEDURES (APPLICABLE TO CLIN 002)

(a) Requirements for Competition.
In the event that two (2) or more commercial crew transportation contracts are awarded, a fair opportunity to be considered for task orders issued under this contract based upon the specific task order requirements will be provided, unless the Contracting Officer determines that one of the following apply:

(1) The Agency need is of such urgency that competing the requirements among Contractors would result in unacceptable delays;

(2) Only one Contractor is capable of providing the service at the level of quality required because the service ordered is unique or highly specialized;

(3) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order issued under the contract, provided that all Contractors were given a fair opportunity to be considered for the original order; or

(4) It is necessary to place an order to satisfy the minimum guarantee per clause B.4, *Post Certification Missions (IDIQ) (CLIN 002).*

(b) Task Ordering Information Applicable to Post Certification Mission Task Orders.

(1) Prior to the issuance of a request for proposal applicable to a Post Certification Mission Task Order, exchanges and fact-finding may take place with Contractor(s). The request for a task order proposal will provide any special instructions regarding the level of detail required in the proposal. The request will include a date and time for submission of the proposal. Proposals will be due within thirty (30) calendar days from the date of the proposal request unless stated otherwise.

(2) The Contractor, when submitting a Post Certification Mission Task Order Proposal, shall indicate that the proposal is compliant with the contract terms, statement of work, and the specific requirements contained in the Task Order Request for Proposal, and shall include the following at a minimum:

(i) A **DRD 202 Post Certification Mission (PCM) Work Plan** anchored to the PCM mission launch date and landing date specified by the Government.

(ii) A **DRD 201 Mission Integration and Operations Management Plan (MIOMP)**.

(iii) Any feedback to the NASA proposed mission success criteria and specific percentages of the final payment (reference clause H.21, *Post Certification Mission Success Determination*).

(iv) Any Contractor proposed mission objectives above PCM objectives and manifesting requirements specified by the Government.

(3) Mandatory Proposal Submission.
Unless otherwise agreed to by the Contracting Officer, it is mandatory for contract holders under multiple award to respond to each Request for Post Certification Mission Task Order Proposal provided these requirements are identified in the schedule and do not conflict with the contract ordering limitations.

(4) All competitive Post Certification Mission Task Order Proposals shall be submitted by the date and time specified in the request, or it will be treated as a late proposal in accordance with FAR 52.215-1(C)(3), *Instructions to Offerors – Competitive Acquisition*. The Contracting Officer will evaluate a Task Order proposal per the evaluation criteria stated in the Request for Task Order Proposal. Each Request for Task Order Proposal will use evaluation criteria tailored for the specific mission, but will at a minimum include technical approach and price.

(5) Award of Task Orders.
Each of the Contractors will be notified of NASA's award of a Task Order. Pursuant to FAR 16.505(a)(10), no protest under Subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for—(A) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or (B) A protest of an order valued in excess of $10 million. Protests of orders in

excess of $10 million may only be filed with the Government Accountability Office, in accordance with the procedures at Subpart 33.104.

Pursuant to FAR 16.505(b)(1)(iv), for task or delivery orders in excess of $5 million, the requirement to provide all awardees a fair opportunity to be considered for each order shall include an opportunity for a post-award debriefing in accordance with FAR 16.505(b)(6).

(End of Clause)

H.9 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFEROR

The completed provision FAR 52.204-8, *Annual Representations and Certifications*, including any amended representation(s) made at paragraph (b) of the provision; and other representations, certifications and other statements contained in Section K completed and submitted as part of the offer dated July 7, 2014, are hereby incorporated by reference in this resulting contract.

(End of Clause)

H.10 [RESERVED]

H.11 UNITED STATES COMMERCIAL PROVIDER AND DOMESTIC SOURCE CRITERIA

The Contractor shall perform as a United States Commercial Provider per paragraph (a) and meet the domestic source criteria per paragraph (b). Failure to comply with these criteria during the performance of this contract may be grounds for termination in accordance with the Default clauses in I.2.

(a) "United States commercial provider" means a commercial provider, organized under the laws of the United States or of a State, which is—

(1) more than 50 percent owned by United States nationals; or

(2) a subsidiary of a foreign company and the Secretary of Transportation finds that—

(i) such subsidiary has in the past evidenced a substantial commitment to the United States market through—

(A) investments in the United States in long-term research, development, and manufacturing (including the manufacture of major components and subassemblies); and

(B) significant contributions to employment in the United States; and

(ii) the country or countries in which such foreign company is incorporated or organized, and, if appropriate, in which it principally conducts its business, affords reciprocal treatment to companies described in subparagraph (a)(1) comparable to that afforded to such foreign company's subsidiary in the United States, as evidenced by—

(A) providing comparable opportunities for companies described in subparagraph (a)(1) to participate in Government sponsored research and development similar to that authorized under this Act;

(B) providing no barriers, to companies described in subparagraph (a)(1) with respect to local investment opportunities, that are not provided to foreign companies in the United States; and

(C) providing adequate and effective protection for the intellectual property rights of companies described in subparagraph (a)(1).

(b) The Contractor shall produce in performance of this contract a Crew Transportation System (CTS) that is a domestic end product. The CTS intended for this contract, as carried through production for the provision of service missions, shall be a domestic end product only if the cost of its components, mined, produced or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of each component includes transportation costs to the place of incorporation into the CTS and any applicable duty (whether or not a duty-free entry certificate is issued). "Components" as used in this clause, means those articles, materials and supplies directly incorporated into the design of the end product.

(End of Clause)

H.12 GOVERNMENT FURNISHED SERVICES AND DATA

The Government will furnish the following services and data to the Contractor on a no-charge-for-use basis to the extent reasonably necessary for the Contractor to fulfill its contractual obligations:

(a) The Government will provide Tracking and Data Relay Satellite System (TDRSS) and NASA Integrated Services Network (NISN) support over existing assets for tracking and recovery during the performance of flight tests and Post Certification Missions. The Contractor shall optimize the use of TDRSS and limit the Single Access (SA) to critical operations such as system check-out, critical maneuvers, and proximity rendezvous operations. The Contractor shall identify, with reasonable notice, their request for this service with rationale describing the required usage within their mission profile. Standard routing of data will be at NASA's discretion depending on the location of the customer control center in order to achieve the most efficient and cost effective routing.

(b) The Government will make available the NASA Docking System (NDS) data per the schedule below:

(1) The preliminary build-to-print package will be available by November 2014.

(2) The final build-to-print package will be available by June 2016.

(3) The Mass Simulator build-to-print will be available by August 2014.

(End of Clause)

H.13 REMOTELY SENSED DATA

The Contractor consents to the U.S. Government collecting remotely sensed data related to its CTS vehicles and to use such data for U.S. Government purposes. The remotely sensed data may be used, modified, reproduced, released, performed, displayed, or disclosed within the Government under suitable protective conditions. The Government may not, without written permission, of the Contractor, release or disclose the data outside the Government, except as otherwise required by law, use the technical data for manufacture, or authorize the technical data to be used by a party outside the Government. The remotely sensed data may be shared with, released to, or otherwise disclosed to the Contractor.

(End of Clause)

H.14 USE OF GOVERNMENT PROPERTY, FACILITIES, ASSETS, OR SERVICES

This clause applies to any Government support, including property, facilities, assets, or services, not otherwise provided for under this contract whether obtained from NASA or another Government Agency.

(a) Support obtained from a Government Agency other than NASA.

(1) The Contractor shall obtain and maintain any necessary contracts or agreements between the Contractor and any Government Agency authorizing the use of Government property, facilities, assets or services in performance of this contract (except as may be expressly stated in this contract as furnished by the Government). The Contractor shall be responsible to arrange any contracts or agreements outside of this contract as it deems appropriate. The terms and conditions of such contracts or agreements will govern the use of those Government resources. Any costs associated with such contracts or agreements shall result in no increase in the price of this contract. All remedies to disputes or performance issues shall be resolved in accordance with the terms and conditions of those contracts or agreements. The Contractor shall notify the Contracting Officer Representative (COR), or designee, of any contracts or agreements between the Contractor and any Government Agency under this paragraph (a).

(2) NASA makes no warranty whatsoever as to the availability or suitability for use of Government property, facilities, assets, or services made available by another Government Agency under the terms and conditions of other contracts or agreements. The Contractor assumes all responsibility for determining the suitability for use of all property, facilities, assets, or services acquired or made available to the Contractor by a Government Agency under other contracts or agreements. The Contractor further acknowledges and agrees that any use of such Government property, facilities, assets, or services shall not relieve the Contractor of full performance responsibility under the contract.

(b) Support obtained from a NASA Center or Component Facility.

(1) Except as may be expressly stated in this contract as furnished by the Government, the Contractor shall obtain use of any Government property, facilities, assets or services available from a NASA Center or Component Facility (a "Performing Organization") for performance of this contract through the use of an appropriate Task Plan. For Task Plan reference instructions, the Contractor shall contact the Performing Organization Point of Contact (POC). The Contractor shall be responsible for obtaining, negotiating and documenting all Task Plans with the Performing Organization. The Contractor shall be responsible for any costs associated with property, facilities, assets, or services provided by a Performing Organization under a Task Plan and such costs shall result in no increase in the price of this contract. The Contractor shall notify the Contracting Officer Representative (COR), or designee, of any Task Plans between the Contractor and a Performing Organization under this paragraph (b).

(2) NASA makes no warranty whatsoever as to the availability or suitability for use of property, facilities, assets, or services made available by a Performing Organization under a Task Plan. The Contractor assumes all responsibility for determining the suitability for use of all such property, facilities, assets, or services, including technical suitability, schedule availability and cost. The Contractor further acknowledges and agrees that any use of Government property, facilities, assets, or services under a Task Plan shall not relieve the Contractor of full performance responsibility under the contract.

(3) Any implementation issues or disputes arising under a Task Plan shall be referred for resolution to the Points of Contact, or if necessary the signatories, identified in the Task Plan.

(End of Clause)

H.15 GOVERNMENT INSIGHT

(a) Introduction

(1) Government insight provides NASA Commercial Crew Program (CCP) and ISS Program Management an understanding of the Contractor's activities to assess the status, critical paths, and risk associated with successfully completing contract requirements, achieving final certification, and successfully completing Post Certification Missions. Government insight will include: Insight, Quality Assurance function, and Joint Test Team (JTT) participation as defined below.

(2) Government insight is defined as gaining an understanding of the Contractor's activities and data through an effective working relationship, inspections and interactions, without approval or disapproval authority, and provides information for the eventual certification approval.

(i) This clause describes the intended primary working-level interface between the Contractor and the Government during execution of this contract. It is intended to facilitate an exchange of information adequate for nominal activities.

(ii) The Government reserves the right to implement remedies for nonconforming services or work. These remedies are described in clause E.2 52.246-4 *Inspection of Services and Research and Development Work - Fixed-Price (Deviation)*.

(3) The Contractor shall ensure the Government has insight, into all subcontractors and suppliers performing or supporting any critical work associated with this contract.

(4) Details of the Contractor's approach to insight to accomplish items (a)(1), (a)(2) and (a)(3) above shall be implemented in accordance with **DRD 001 Insight Implementation Plan.**

(b) Notification

The Contractor shall notify the Commercial Crew Program designee of technical meetings, control boards, reviews, tests, and areas identified for Government Quality Assurance associated with certification and Post Certification Mission activities in the mutually agreed timeframe to permit meaningful Government participation through the entire event, in accordance with **DRD 001 Insight Implementation Plan**.

(c) Access

(1) The Contractor shall provide the Government and its support services contractor(s), under suitable protective conditions, access to all Contractor activities associated with certification and Post Certification Mission activities under this contract. Activities include, but are not limited to CCT-PLN-1100, *Crew Transportation Plan,* Appendix C, *Insight Areas*.

(2) The Contractor shall provide the Government and its support services contractor access to all data used in performance of this contract, including but not limited to, data associated with areas of insight identified in CCT-PLN-1100 Appendix C and supporting data/information, and

administrative and management information with the exception of financial information; and any other information, not used in performance of the contract, related to the Crew Transportation System (CTS) design, production, and operations to include technical data, supporting data/information, and administrative and management information with the exception of financial information.

(3) At a minimum, access to data is the ability for Government and its support services contractor personnel, both remotely and on-site at the Contractor's facilities, to locate and review all data (as defined in (4) directly below) in a useable and readable format.

(4) The Government may use the data to which it has access under this provision solely for the purposes specified in paragraph (a)(1).

(5) The Contractor shall provide office space co-located on-site, badging, furniture, telephones, and use of easily accessible fax, data lines, and copy machines, for full-time and temporary Government personnel and its support services contractor performing insight activities, in accordance with **DRD 001 Insight Implementation Plan**.

(d) Joint Test Team Activities

(1) The JTT-related activities will be Contractor-led (reference CCT-PLN-1120, *Crew Transportation Technical Processes,* Section 5.3, *Flight Test*), and shall include active and steady state Government participation both on site and remotely. The Contractor shall accommodate Government personnel who will provide embedded insight during the activities identified in (d)(2). Government JTT members will not provide direction to Contractor personnel on design changes or procedures, or any other aspect of CTS development, production, or operation. Government JTT members provide insight only, and will not approve or disapprove any aspect of the Contractor's CTS design or performance of the contract. Any action(s) taken by the Contractor in response to any direction given by any person other than the Contracting Officer shall be at the Contractor's risk. The JTT will provide a formal, unambiguous, programmatic structure for Government operationally focused input to the Contractor. In addition, the Government lead on the JTT will provide integrated, consolidated operations insight to the CCP. By its structure, the JTT will prevent unintended, informal Government inputs to the Contractor. To the maximum extent possible, the JTT will work together and strive to resolve operational issues at the lowest level.

(2) The Government's JTT insight activities will focus on qualitative assessments of crew operational interfaces with the vehicle and human-in-the-loop assessments of operational suitability. These assessments will include, but are not limited to vehicle handling qualities, situational awareness, workload and operational complexity, usability, cockpit layout, displays and controls, and flight crew suits. In addition, insight will occur through participation during the planning and build up phase of ground testing (e.g., simulator training and evaluations, mockup demonstrations, etc.), during test flights, and during the post-test flight evaluation process. Insight gained through integrated operations assessments will ultimately feed into NASA's verification approval decisions (before test flight) and validation approval decisions (post test flight).

(e) Government Quality Assurance (GQA) Functions

(1) The Government will perform the following quality assurance functions: Product Examination, Process Witnessing, Record Review, Surveillance, and Audit.

(2) GQA functions will be performed for all safety-critical items/processes/products identified by a risk based analysis (RBA). A RBA is an iterative analysis based on a comprehensive understanding of the design, development, testing, critical manufacturing / assembly processes, and operations used to identify areas of risk. The Contractor shall support the RBA, by providing technical expertise, as required. The definition of safety critical is found in CCT-REQ-1130, *ISS Crew Transportation and Services Requirements Document*, and SSP 50808, *ISS to Commercial Orbital Transportation Services (COTS) Interface Requirements Document (IRD)*.

(f) Result of Insight

(1) Insight should result in an effective working relationship between the Government and the Contractor leading to a NASA certification of the Contractor's CTS. Should insight and/or JTT participation identify non-compliance with CCT-REQ-1130, CCT-PLN-1120, and/or SSP 50808; the terms and conditions of the contract; or a difference in interpretation of test results; or disagreement with the Contractor's technical approach; the Government insight team will elevate the issue through the appropriate CCP boards. Through an effective, functioning relationship, the Government and Contractor should strive to resolve issues at the lowest working level and minimize issues elevated to program boards. Program boards will disposition recommendations in a timely manner and provide oversight resolution if necessary. Resulting board decisions and direction will be transmitted to the Contractor through the Contracting Officer. If disposition results in a requirement change, the change clause (I.2, FAR 52.243-1, *Changes-Fixed Price*) would take effect. If the Contractor and Contracting Officer disagree on whether the board disposition provided is within the requirements of the contract, the disputes clause (I.2, FAR 52-233-1, *Disputes-Alternate I*) is applicable.

(2) The data generated as a result of Government insight may be used, modified, reproduced, released, performed, displayed, or disclosed within the Government and its support service contractors under suitable protected conditions. The Government may not, without written permission of the Contractor, release or disclose the data outside the Government, except as otherwise required by law, use the technical data for manufacture, or authorize the technical data to be used by a party outside the Government.

(g) Contractor Responsibility

Notwithstanding the insight set forth in this Clause, the Contractor assumes full performance responsibility as set forth in this contract. The Government's insight or JTT participation under his clause shall not be construed as authorization, endorsement or approval of milestones, certification or final acceptance or rejection of Post Certification Mission success.

(End of Clause)

H.16 NEW ENTRANT

(a) The purpose of this clause is to notify the Contractor that NASA may conduct a subsequent competition due to the loss of an existing CTS provider or if there are additional future NASA requirements for certified crew transportation. NASA will determine if these conditions are met prior to synopsizing and conducting a New Entrant competition. New entrants may compete for all task orders under this contract.

(b) The Government reserves the right to issue a solicitation in the future to seek an additional source(s) for the same or similar efforts/services.

(End of Clause)

H.17 PUBLIC AFFAIRS

(a) It is anticipated that the Contractor will execute media events to cover major contract activities. The Contractor may, consistent with Federal law and this Contract, release general information regarding its activities conducted within the scope of the Contract:

(1) The Contractor will coordinate with the NASA Public Affairs Office (PAO) at Kennedy Space Center in a timely manner prior to major media releases, media interviews, news conferences, contingency statements, media scouts, photo opportunities and film crew activities regarding NASA CCtCap-related efforts.

(2) The use of any direct quote by a NASA official shall be submitted for NASA concurrence to ensure accuracy prior to its release.

(3) NASA will coordinate, with the Contractor, public releases of information to obtain comments and technical corrections related to the Contractor's CCtCap-related efforts prior to NASA's release of information to the public. The Contractor shall use its best efforts to provide its review and comments back to NASA within five (5) days of the request. If comments are not provided within the five (5) day time period, the submitted content will be considered acceptable for release. For breaking news items, there may be a need for more timely release of information to the public in which case the Government PAO team will coordinate with the Contractor for imminent release.

(4) The Contractor shall assist the NASA PAO in developing the mission commentary for NASA Television by furnishing CTS background material.

(5) The Contractor may also be requested to provide information to support the development of press kit documents and NASA news conferences.

(6) At a minimum of forty-five (45) days in advance, the Contractor shall work with the COR to coordinate any public affairs requirements for any launches, landings, major milestones and tests under this contract.

(7) If the Contractor has knowledge that the press is inquiring about an event that meets criteria in paragraph (b) of clause H.26, *Mishap Reporting*, the Contractor shall promptly notify the Contracting Officer, or designee, of the event. The Contracting Officer, or designee, will facilitate access to NASA Public Affairs. NASA Public Affairs will work with the Contractor to generate a coordinated response to the Press and the public.

(b) The Contractor shall protect NASA crew member's audio and imagery for all contract activities in accordance with SSP 50521, *Return, Processing, Distribution and Archiving of Imagery Products from the ISS*, to protect NASA crew member privacy. For downlinked audio and imagery, the Contractor shall route the data in real-time to the NASA Mission Control Center. NASA will monitor feed(s) and instruct the Contractor to remove the feed-from release to the public in the event of a privacy concern. For imagery and audio recorded during flight operations and recovered post-flight, the Contractor shall send a copy of the data to NASA for review. The Contractor shall not release any video and/or audio with NASA crew members in view until the NASA review is complete. NASA will inform the Contractor if any data is restricted. Restricted data cannot be released by the Contractor, either internally or externally, or used in any way. Data that does not contain NASA crew members may be used by the Contractor after proper coordination in accordance with paragraph (a) above.

(c) The Contractor shall not use the words "National Aeronautics and Space Administration" or the letters "NASA" in connection with a product or service in a manner reasonably calculated to convey any impression that such product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. In addition, the Contractor shall submit in advance any proposed public use of the NASA name or initials for NASA review and approval. NASA approval shall be based on applicable law and policy governing the use of the NASA name and initials. NASA's approval will not be unreasonably withheld. Use of NASA emblems/devices (i.e., NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) is governed by 14 C.F.R. Part 1221. The Contractor shall not publicly use such emblems/devices without prior NASA review and approval in accordance with such regulations.

(d) NASA does not endorse or sponsor any commercial product, service, or activity. NASA's certification of the CTS under this Contract does not constitute certification or endorsement by NASA that the CTS is safe for public transportation of humans to Low Earth Orbit. NASA's CTS certification means the Contractor's CTS has met NASA's safety requirements for transporting NASA or NASA-sponsored crew to the ISS. The Contractor agrees that nothing in this Contract will be construed to imply that NASA authorizes supports, endorses, or sponsors any product or service of the Contractor resulting from activities conducted under this Contract.

(End of Clause)

H.18 LICENSES, PERMITS, AND OTHER AUTHORIZATIONS FOR A LAUNCH OR REENTRY SERVICE OPERATOR

The Contractor shall obtain and maintain the necessary licenses, permits and clearances that may be required by the Department of Transportation, Department of Commerce, Department of Defense, NASA, or other Governmental agencies in order to provide flight tests and Post Certification Missions under this contract. The Contractor shall obtain a Federal Aviation Administration license, in accordance with 51 U.S.C. Section 50901 *et seq.*, for launch and reentry operations performed under CLIN 002, *Post Certification Missions (PCM),* of this contract. All costs and fees associated with obtaining licenses, permits and clearances are included in the standard prices identified for CLIN 001, *DDTE/Certification,* in Table B.3, *DDTE/Certification SubCLINs (CLIN 001),* and for CLIN 002 in Table B.4.1, *Post Certification Mission Prices (CLIN 002).*

The Contractor shall meet all contract requirements, in addition to all requirements necessary to obtain and maintain licenses, permits and clearances. In the event conflicts arise, the Contractor is responsible for resolving the conflict and shall immediately notify the Contracting Officer of the conflict and shall describe the methods the Contractor used to try to resolve the conflict.

(End of Clause)

H.19 POST CERTIFICATION MISSION PAYMENTS, MILESTONES AND AUTHORITY TO PROCEED (ATP) CRITERIA

(a) Post Certification Mission (PCM) task orders may be awarded prior to completion of CLIN 001, *DDTE/Certification.* However, the Contractor shall meet the following development-related criteria before NASA will grant Authority to Proceed (ATP) with such missions. ATP for PCMs is at NASA's sole discretion and is dependent on meeting the criteria. Specific mission objectives and target launch date are provided by NASA.

Table H.19.1: ATP Criteria

Post Certification Mission Number	ATP Criteria
[redacted]	

(b) (4)

The following constraints apply to ATP criteria:

(1) A maximum of two (2) PCMs can be ordered prior to completion of the ISS Design Certification Review (ISS DCR).

(2) Prior to the first PCM ATP, the Certification Baseline Review (CBR) and one or more interim milestones, from Attachment J-03, Appendix A, *Milestone Acceptance Criteria and Payment Schedule*, representing work culminating in a significant design review between CBR and the first DCR must be successfully completed. These interim milestones ensure the detailed design will satisfy the requirements with adequate margins, are sufficiently mature to proceed with fabrication, assembly, integration, and test, and the product verification and product validation plans are complete.

(b) Post certification mission payments will be based upon successful completion of approved milestone schedule and acceptance criteria defined in the Contract PWS and developed per the **DRD 202 Post Certification Mission (PCM) Work Plan**. NASA has up to thirty (30) calendar days to determine whether the performance of the Mission Milestone Review (per Table H.19.2, *Mission Milestone Review Payment Schedule*) satisfies the approved criteria.

(c) All Post Certification Mission milestone payments are performance-based interim financing payments made in accordance with FAR 52.232-32, *Performance Based Payments.* Milestone payments once made are subject to repayment by the Contractor if the conditions defined in FAR 52.232-32 (j), *Special terms regarding default*, apply.

(d) Table H.19.2 identifies the Mission Milestone Reviews required under the contract which are to be included by the Contractor in the **DRD 202 Post Certification Mission Work Plan**.

Table H.19.2: Mission Milestone Review Payment Schedule

Mission Level Milestone	Mission Milestone Reviews	Amount (% of Standard Mission Price) PCM 1	Amount (% of Standard Mission Price) PCM 2 and subsequent missions
[redacted]			

(e) PCM task order payment constraints: The total PCM task order payments made prior to and including:

(1) The completion of the SubCLIN 001A, *ISS Design Certification Review (ISS DCR),* (associated with the required crewed flight test to ISS; see Attachment J-03, Appendix A) shall not exceed 20% of the total price of the mission.

(2) The completion of the Vehicle Baseline Review (VBR) shall not exceed 30% of the total price of the mission.

(3) The completion of the Mission Integration Review (MIR) shall not exceed 50% of the total price of the mission.

(4) The completion of the SubCLIN 001B, *Certification Review (CR),* (see Attachment J-03, Appendix A) shall not exceed 60% of the total price of the mission.

(5) The completion of the NASA Flight Readiness Review (FRR) shall not exceed 75% of the total price of the mission.

(6) The final milestone payment must equal at least 10% of the price of the mission.

(f) Payment schedules may be deferred or canceled by NASA if the Contractor fails to make substantial progress in accomplishing DDTE/Certification and Post Certification Mission major milestone events.

(g) In the event of a mission schedule adjustment by NASA or Contractor in accordance with clause H.20, *Adjustments to Post Certification Mission Schedule,* the payment schedule for the applicable mission shall be postponed for the length of the delay, if necessary, to correspond with the new delivery date and the milestone events in the **DRD 202 Post Certification Mission (PCM) Work Plan**. The requirement to make substantial progress in general conformance with the Post Certification Mission Work Plan, however, is not waived for any postponement of the mission.

(End of Clause)

H.20 ADJUSTMENTS TO POST CERTIFICATION MISSION SCHEDULE

(a) This clause covers launch delays at the convenience of NASA and the Contractor. The provisions of this clause do not apply to circumstances arising under clause H.23 (d), *Non-NASA Passengers, Cargo and Payloads,* related to requested delays to accommodate Contractor's passengers or non-NASA cargo or payloads.

(b) Task orders issued to Contractors are intended to require Post Certification Missions to ISS with limited flexibility to adjust launch dates. To provide flexibility to both the Contractor and NASA, a standard launch window will be established for each planned Post Certification Mission. Authorization to Proceed (ATP) is formal written direction from the Contracting Officer that authorizes the Contractor to proceed with the work detailed within a **DRD 202 Post Certification Mission Work Plan**. The standard launch window will be created by NASA establishing an initial window for each mission at ATP. Thereafter, with mutual agreement between the Contractor and NASA, the launch window will be reduced according to the table below.

Table H.20.1: Launch Windows for PCM ATP Prior to ISS DCR*

Months Prior to Launch Date – First Day to Last Day	Standard Launch Window (Days)
ATP through L-13m	90d
L-13m through L-4m	30d
L-4m through Launch	7d

Table H.20.2: Launch Windows for PCM ATP After ISS DCR*

Months Prior to Launch Date – First Day to Last Day	Standard Launch Window (Days)
ATP through L-13m	30d
L-13m through Launch	7d

*ISS DCR is the DCR for the crewed flight to ISS

(c) At each major review referenced in Table H.19.2, *Mission Milestone Review Payment Schedule*, NASA and the Contractor shall review the window established and mutually agree on the next reduced launch window corresponding to the Tables H.20.1 and H.20.2.

(d) For PCM(s) ordered prior to completion of SubCLIN 001A, *ISS DCR*, Table H.20.1, *Launch Windows for PCM ATP Prior to ISS DCR*, each party, NASA or Contractor, may request a cumulative maximum delay of thirty (30) calendar days per mission regardless of fault without a change in the fixed price of the mission.

(e) If either NASA or Contractor desires a change to the launch date, NASA or the Contractor will give written notice of the desired change. Any request for changes to the launch date should be submitted within twenty-four (24) hours of identifying the need to request a change in the launch date. For any request for changes to launch date submitted greater than one month prior to launch, NASA and the Contractor shall reach mutual agreement on a new launch date within fourteen (14) days of the request. Any requests for changes to the launch date submitted between one (1) month prior to launch and launch day shall be a priority and resolved as soon as possible.

If mutual agreement on the revised launch date cannot be reached, the Contracting Officer shall have the right to unilaterally establish a new schedule.

(f) In the event of a NASA- or Contractor-requested delay of the launch window beyond the days allowable in Table H.20.1 and paragraph (d) or Table H.20.2, *Launch Windows for PCM ATP After ISS DCR*, the Contracting Officer shall direct the Contractor, in writing, of the revised launch window. For a NASA requested delay, the Government will allow the Contractor to submit a proposal for the effect of any delay beyond the days allowable on the task order price of all affected PCMs, launch schedule, or other terms of the contract except for conditions defined in clause H.23, *Commercial Passengers, Cargo, and Payloads*. For a Contractor requested delay, NASA reserves the right to seek an equitable adjustment. Upon failure to agree to an adjustment, the Contracting Officer shall have the right to unilaterally adjust the task order.

(g) There will be no basis for an equitable adjustment when the delay in delivery or performance arises solely out of causes beyond the control of NASA or Contractor and not due to the fault or negligence of NASA or Contractor. Such causes include, but are not limited to the following:

(1) Delays resulting from:
- Range Mission Rules and Range Launch Requirements (Mandatory and Required Assets),
- acts of God,
- acts (including delay or failure to act) of any Governmental authority (De Jure or De Facto),
- wars (declared or undeclared),
- riots,
- revolution,
- hijacking,
- fires,
- freight embargoes,
- sabotage,
- epidemics,
- strikes and
- interruptions of essential services such as electricity, natural gases, fuels and water,

(2) or any condition which jeopardizes the safety of the employees of the Contractor, NASA, or its subcontractors;

(3) or a CTS failure investigation, provided NASA retains its original position in the order of the queue sequence and that all data related to the failure investigation is made available to NASA without restriction.

(End of Clause)

H.21 POST CERTIFICATION MISSION SUCCESS DETERMINATION

(a) Mission Success Criteria

(1) The Mission Success criteria will be defined on a per mission basis and agreed to by NASA and the Contractor during the Task Ordering process.

(2) NASA will provide the initial mission success criteria and specific percentages of the final payment earned for mission performance during the Task Ordering process. The final payment is defined in clause H.19, *Post Certification Mission Payments, Milestones and ATP Criteria*. Any revision to the criteria and payment percentage shall be agreed to at the Mission Certification Review (MCR). In the event that an agreement cannot be reached, the Contracting Officer will establish the criteria and payment percentage by the Flight Readiness Review. The revised criteria will be incorporated into a Task Order revision. The MCR shall include Contractor plans for providing data to confirm mission success as part of the post flight report.

(3) Mission Success Criteria will be established per the following guidelines:

(i) Criteria will consider the Contractor's mission capabilities.

(ii) Criteria will consider the Contractor's performance, independent of NASA's.

(iii) Criteria will consider ascent aborts or earlier than pre-launch planned End-Of-Mission timeframe, contingency spacecraft crew support, and inability to dock with the ISS.

(4) Definitions.

(i) Full Mission Success - meeting all primary objectives and secondary objectives;

(ii) Mission Failure – loss of one or more primary objectives, serious injury or fatality as defined in H.26, *Mishap Reporting*, or damage to the ISS;

(iii) Partial mission success – all primary mission objectives satisfied but loss of one or more secondary mission objectives.

(b) Mission Success Determination

(1) Mission Success Determination will be made using the mission success criteria and the corresponding data and parameters that are jointly agreed to by NASA and the Contractor.

(2) The Contractor shall submit the relevant data and parameters that provide the most accurate information on performance of the mission success criteria, at the Mission Integration Review (MIR). The types of data NASA would consider as relevant information include:

(i) Vehicle data that represents critical systems for all flight phases (such as ascent, approach, docking, mating, and entry).

(ii) Available launch and orbital vehicle data verifying **DRD 203 Vehicle Interface Definition Document (IDD)** environments.

(iii) Closeout photos both on the ground and on orbit documenting CTS configuration at launch and prior to landing per **DRD 214 Imagery and Associated Cataloging**.

(iv) Any supplemental data that may support the Contractor's performance.

(3) If there is data that the Contractor requests NASA to provide (on orbit attached telemetry, on orbit photos, etc.), the Contractor shall identify that prior to the MCR.

(c) Procedures

(1) The Contracting Officer determines unilaterally whether a mission is considered a Mission Success, Partial Mission Success, or a Failed Mission. For partial mission success, the percentage of the final payment earned is based on the agreed to mission success criteria defined in section (a)(2) of this clause. Within fifteen (15) calendar days from receipt of the preliminary **DRD 209 Post-Flight Assessment Report**, the Contracting Officer will either make the Mission Success determination or inform the Contractor of NASA's intent to partially withhold final payment in the event of Partial Mission success, or withhold final payment in the event of a Failed Mission. In the event of a failed mission determination, an additional 15% of the Post Certification Mission (PCM) price shall be applied as a credit to another PCM, other in-kind considerations determined by the parties, or be returned to the Government if it cannot be applied to a subsequent PCM at the Government's discretion. In the event of a Partial Mission Success or a Failed Mission determination, the rights and remedies contained in this Clause are in lieu of any rights and remedies in case of default applicable to this PCM only, including the rights and remedies in clause 52.249-8 *Default* (*Fixed-Price Supply and Service*) and clause E.2, *Inspection of Services and Research and Development Work - Fixed-Price (Aug 1996) (Proposed Deviation)*, paragraphs (g) and (h); FAR 52.232-32 (j) *Special terms regarding default*, and; NFS 1852.223-75 *Major Breach of Safety or Security* For all other activities under the contract not part of this PCM task order, the Government reserves the right to terminate the contract for default in accordance with FAR 52.249-8 *Default* (*Fixed-Price Supply and Service*). Remedies described in this paragraph are available at Launch. Launch is defined as the intentional ignition of the first-stage motor(s) of the launch vehicle intended to place or try to place a launch vehicle (which may or may not include any payload or crew) from Earth:

(i) in a suborbital trajectory;

(ii) in Earth orbit in outer space;

(iii) or otherwise in outer space.

(2) If NASA informs the Contractor it will partially withhold or withhold the final payment, NASA will utilize the final **DRD 209 Post-Flight Assessment** and findings from the Contractor's investigation board to complete the NASA assessment. The Contracting Officer shall submit a final determination of either Partial Mission Success or Failed Mission within one (1) week of the NASA assessment. Any stop work order issued during a Mishap Investigation Board (MIB) or similar Partial Mission Success/Failed Mission investigation shall not be subject to an equitable adjustment by either party as provided for under clause H.20(g).

(d) Final Payment for Final Mission Success Determination
The amount of final payment will be based on mission success determination per the agreed criteria and percentage of final payment.

(e) Acceptance
Final acceptance for any unsuccessful mission objectives of the crew transportation service will be accomplished following the Contracting Officer's mission success determination. The Contracting Officer will notify the Contractor in writing of both Mission Success Determination and Acceptance.

(End of Clause)

H.22 LIABILITY FOR THIRD PARTY CLAIMS

This contract clause applies to Third Party claims that arise out of the conduct of hazardous launch, on-orbit, reentry, landing, recovery, and rescue activities under this contract which are not subject to an FAA license pursuant to 51 U.S.C. Section 50901 *et seq*.. More specifically, this contract clause allocates between the Government and the Contractor the risk of Third Party claims for damage to or loss of property or personal injury or death arising from the burning, explosion, detonation, combustion or impact of a launch vehicle, its payloads, spacecraft, or any components thereof, from the time of preparation of a launch vehicle until landing and recovery.

(a) *Definitions.*

(1) Covered Activities: Any and all Hazardous Activities involved in the preparation of a launch vehicle for launch and conduct of the launch, when those activities take place at a launch site in the United States; any and all Hazardous Activities involved in on-orbit operations during transportation to, from or in proximity with the International Space Station (ISS); any and all Hazardous Activities involved in reentry of the spacecraft into the Earth's atmosphere; any and all Hazardous Activities involved in landing and recovery of the crew and spacecraft; and any and all Hazardous Activities involved in rescue operations.

(2) Damages:

(i) Bodily injury or death; or

(ii) Damage to or loss of any real or personal property;

(3) Hazardous Activities: any operation or other work activity that, without implementation of proper mitigations, has a high potential to result in loss of life, serious injury to personnel or public, or damage to property due to the burning, explosion, detonation, combustion or impact of a launch vehicle, its payloads, spacecraft, or any components thereof, from the time of launch until landing and recovery, or during rescue operations.

(4) Launch: The intentional ignition of the first-stage motor(s) of the launch vehicle intended to place or try to place a launch vehicle (which may or may not include any payload or crew) from Earth:

(i) in a suborbital trajectory;

(ii) in Earth orbit in outer space; or

(iii) otherwise in outer space.

(5) Launch Vehicle: a vehicle built to place a payload or human beings in outer space.

(6) Party or Parties: The Contractor or NASA, or both.

(7) Payload: All equipment that has been or will be integrated with the launch vehicle for transportation into Earth orbit or escape trajectories.

(8) Preparation of a Launch Vehicle: begins with the arrival of a launch vehicle or payload at a U.S. launch site, and entails critical steps preparatory to initiating launch.

(9) Reentry: The return or attempt to return a spacecraft and its payload and crew, if any, from Earth orbit or from outer space to Earth.

(10) Related Party:

(i) Any of the Parties' directors, officers, agents, or employees

(ii) Any of the Parties' Contractors, subcontractors, or suppliers at any tier involved directly or indirectly in the performance of this Contract

(iii) Any entity having any right, title or interest, whether through sale, lease or service arrangement or otherwise, directly or indirectly, in the payload, the launch vehicle, the spacecraft, or services related to launch, mission, landing, recovery or rescue operations.

A Related Party does not include Passengers and Commercial Cargo Customers, as defined in clause H.23 of this contract.

(11) Spacecraft: A vehicle built to operate in outer space which transports or plans to transport payloads or human beings to/from Earth orbit or escape trajectories.

(12) Third Party: Any person or entity other than the Government, the Contractor and Related Parties, but not including Passengers or Commercial Cargo Customers, as defined in clause H.23 of this contract.

(b) Required Insurance or Demonstration of Financial Capability for Liability to Third Parties

(1) The Contractor shall continue in effect or acquire insurance, or demonstrate financial capability to compensate, for claims by Third Parties for Damages arising in connection with the Covered Activities under this contract. The amount of the insurance or financial capability shall be the maximum amount available in the commercial marketplace at reasonable cost, but shall not exceed $500 million for each test flight or mission, subject to approval by the Contracting Officer.

(2) The Contractor shall provide acceptable evidence to the Contracting Officer of required insurance or financial capability no later than thirty (30) days prior to the beginning of the covered activities. The amount of required insurance or financial capability, and the terms and conditions for the insurance or financial capability, shall be subject to approval by the Contracting Officer. Once approved, insurance policies and terms and conditions for maintaining financial capability may not be modified or canceled without the prior, written approval of the Contracting Officer.

(3) Insurance policies shall name the United States Government and the Related Parties as additional insured parties. Insurance policies shall attach no later than the arrival of the launch vehicle at the launch site and shall remain in force for preparation of a launch vehicle until thirty (30) days after landing and recovery.

(4) The foregoing requirement does not preclude the Contractor from acquiring or continuing in effect any additional insurance to protect the interests of the Contractor, its Related Parties or customers.

(c) Third Party Claims in Excess of Required Insurance or Demonstrated Financial Capability

(1) NASA has determined that activities under this contract are conducted in performance of its functions, as specified in 51 U.S.C. Section 20112(a). As a result, once the Contractor or its insurers have paid out for Third Party claims up to the amount of insurance or financial capability under paragraph (b), NASA will consider any additional Third Party claims for Damages arising from Covered Activities in performance of this contract as claims against the United States under the authority of 51 U.S.C. Section 20113(m). Such claims must be presented to NASA within two (2) years after the incident out of which the claim arises.

(2) The Contractor or its insurers shall adjust, settle and pay meritorious and reasonable Third Party claims against the Contractor and its Related Parties for Damages arising from Covered Activities in performance of this contract up to the amount of insurance or financial capability required in paragraph (b). If a Third Party claim (or multiple Third Party claims resulting from a single event) exceeds the amount of insurance or financial capability required in paragraph (b), the Contractor shall provide timely written notification along with all documentation of the Third Party claim(s) to the Contracting Officer. To the extent NASA determines that such Third Party claim(s) is meritorious, reasonable, and the cumulative costs of

all such claims arising from a single incident is $25,000 or less, NASA shall reimburse the Contractor. To the extent NASA determines that such Third Party claim(s) is meritorious, reasonable, and the cumulative cost of all such claims arising from a single incident exceeds $25,000, NASA will forward the claim(s) to the Secretary of Treasury for certification and payment pursuant to 31 U.S.C. § 1304(a). The costs of the Third Party claim(s) are subject to the availability of funds and the usual tests for allowability. The total of costs to pay for Third Party claims resulting from a single event may be paid up to a limit of $1.5 billion (plus additional amounts necessary to reflect inflation occurring after January 1, 1989) above the payments made by the Contractor or its insurers for such claims. Payment(s) for a claim or cumulative claims arising from a single event the sum total of which exceed the Contractor's insurance or financial capability amount, may be made only if the Contractor has provided notice to the Government with the opportunity to participate or assist in the defense of the claim(s) or action. The NASA Administrator must approve any part of a settlement to be paid out of appropriations of the Government.

(3) In evaluating Third Party claims paid by the Contractor under this clause, NASA will consider such a claim to be meritorious unless the claim represents:

(i) Liabilities for which the Contractor is otherwise responsible under the express terms or conditions of the contract or a task order issued under this contract;

(ii) Liabilities for which the Contractor has failed to insure or has failed to maintain insurance or financial capability as required by the Contracting Officer;

(iii) Liabilities for which the Contractor has not reasonably adjusted, settled, or paid on a meritorious and reasonable basis;

(iv) Liabilities that result from willful misconduct, gross negligence, or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of:

(A) All or substantially all of the Contractor's business;

(B) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(C) A separate and complete major industrial operation in connection with the performance of this contract;

(v) Liabilities that arise from the willful misconduct or gross negligence of the Claimant or, in the case of a claim based on death, the claimant's estate;

(vi) Liabilities that arise from the conduct, negligence, or failure to act of Passengers, as defined in clause H.23 of this contract; or.

(vii) Liabilities that arise from Non-NASA Cargo or Payloads, as defined in clause H.23 of this contract.

(End of Clause)

H.23 NON-NASA PASSENGERS, CARGO AND PAYLOADS

This clause is applicable to CLIN 002 Post Certification Mission (PCM) task orders. The requirements of a specific PCM will be established by NASA in the task order in accordance with clause H.8, *Post Certification Mission Task Ordering Procedures (Applicable to CLIN 002).* If NASA determines, in its sole discretion, that its requirements can be met without using the full capacity of the CTS, NASA may notify the Contractor of the opportunity to propose to manifest a Passenger or non-NASA Cargo or Payload on a flight conducted under this contract as part of the task proposal process. NASA will only authorize manifesting a Passenger or non-NASA Cargo or Payload if it can be accommodated consistent with NASA's obligations to its International Partners under the Intergovernmental Agreement for the International Space Station (ISS), all applicable FAA regulations or requirements, and other applicable laws, regulations or requirements, without interference to NASA's mission or cost to NASA, and pursuant to the terms and conditions of the contract and the PCM task order.

(a) Definitions, for the purpose of this clause:

(1) NASA or NASA-sponsored crew: Personnel assigned by NASA to be transported between Earth and the ISS in the CTS.

(2) Contractor crew: Employees or subcontractors of the Contractor who perform activities in the course of employment directly relating to the operation of the CTS while on board the CTS.

(3) Passenger: Any person proposed by the Contractor to be transported on the CTS who is not NASA or NASA-sponsored crew, or Contractor crew.

(4) Non-NASA Cargo or Payload: Any property proposed by the Contractor to be flown or used on the CTS which is not the primary payload of a Post Certification Mission, nor required for certification of the CTS.

(5) Commercial Cargo Customer: Any person or entity that provides non-NASA cargo or payloads to the Contractor.

(b) NASA Unilateral Determination; NASA Right to Revoke; Costs.

The Contractor acknowledges and agrees that any decision to authorize the manifest of a Passenger(s) or non-NASA Cargo or Payload in response to a task order proposal shall be a unilateral determination at NASA's sole discretion. NASA retains the right to revoke its prior approval of a Passenger(s) or non-NASA Cargo or Payload at any time prior to launch of the Post Certification Mission. NASA shall not be responsible for any costs, liabilities or obligations incurred by the Contractor to manifest a Passenger(s) or non-NASA Cargo or Payload; NASA shall not be responsible for any costs, liabilities or obligations incurred by the Contractor should NASA revoke its prior approval of Passenger(s) or non-NASA Cargo or Payload.

If for any reason, the Contractor is unable to transport a Passenger(s), the Passenger(s) is not ready or available for the Post Certification Mission, there is insufficient time to complete Passenger

training for the Post Certification Mission before the launch date, or the Contractor is unable to meet applicable FAA or NASA requirements, the Contractor shall bear the cost of and be responsible for any related impacts or delays to the mission. If the Contractor is unable to provide the non-NASA cargo or payload for CTS integration, or there is insufficient time to complete a new mission analysis before the launch date, the Contractor shall bear the cost and shall be responsible for designing, fabricating, and installing a cargo or payload mass simulator in lieu of the non-NASA cargo or payload.

(c) Procedures.

If applicable, NASA will identify any opportunities to propose to manifest a Passenger or non-NASA cargo or payloads in the request for a task order proposal under clause H.8 (b). The Contractor shall propose at no cost to NASA the non-NASA mission requirements, if any, and price adjustment or other consideration to be received by NASA, to be included with the task order proposal for the Post Certification Mission. NASA may request task order proposals with and without Passengers or non-NASA Cargo or Payloads.

(1) Passengers.

(i) Task Order Proposal

For any task order proposal involving Passenger(s), the Contractor shall submit to NASA a detailed description of the purpose and activities of the Passenger(s), a training plan for the Passenger(s), plans for compliance with any FAA license requirements, the *ISS Medical Operations Requirements Document* (SSP 50260) and, as applicable, the *Medical Evaluation Document, Volumes A-C* (SSP 50667), the liability waiver required in paragraph (c)(1)(ii), and any additional documentation or analyses requested by NASA. The Contractor shall be responsible for the costs of and ensuring completion of all necessary training in accordance with FAA license requirements and NASA requirements, including all training required for the CTS and for the ISS, even if such training is provided by NASA.

(ii) Liability and Insurance

The Contractor shall extend section (c) of clause H.5, NFS 1852.228-76 *Cross-Waiver Of Liability For International Space Station Activities (Oct 2012) (Deviation)*, to Passengers by requiring them to waive any and all claims against the entities listed in section (c)(1) of that clause, except that Passengers are not required to waive such claims against the Contractor unless the Contractor so requires. The Contractor shall inform Passengers that the entities listed in section (c)(1) have not waived any claims against Passengers. The Contractor shall obtain a written waiver of claims from the Passenger for all activities related to the mission, including acknowledgment by the Passenger that the entities listed in section (c)(1) have not waived any claims against Passengers, and shall provide such documentation to NASA for NASA's approval with the proposal to manifest the Passenger. The Contractor shall require Passengers to maintain insurance covering damage to or loss of any property or injury or death of any person on the ISS or in the CTS resulting from any action, negligence, or failure to act by the Passenger. The Contractor shall provide acceptable evidence to the Contracting Officer of required insurance no later than thirty (30) days prior to the launch on which the Passenger is manifested. The amount of required insurance and the terms and conditions for the policy or policies shall be subject to

review by the Contracting Officer. Once reviewed, the policy or policies may not be modified or canceled without the prior, written approval of the Contracting Officer.

(2) Non-NASA Cargo or Payloads

(i) Task Order Proposal

For any task order proposal involving a Non-NASA Cargo or Payload, the Contractor shall submit to NASA a description of the purpose of the Non-NASA Cargo or Payload, a detailed cargo or payload description, a cargo or payload compatibility assessment, plans for compliance with any FAA license requirements, the liability waiver required in paragraph (c)(2)(ii), and any additional documentation or analyses requested by NASA. The Contractor shall be responsible for the costs of and ensuring completion of all FAA license requirements and all NASA requirements for the CTS and for the ISS relating to the Non-NASA Cargo or Payload, even if the Contractor requires support from NASA.

(ii) Liability and Insurance.

The Contractor shall extend section (c) of clause H.5, NFS 1852.228-76 *Cross-Waiver Of Liability For International Space Station Activities (Oct 2012) (Deviation),* to Commercial Cargo Customers by requiring them to waive any and all claims against the entities listed in section (c)(1) of that clause, except that Commercial Cargo Customers are not required to waive such claims against the Contractor unless the Contractor so requires. The Contractor shall inform Commercial Cargo Customers that the entities listed in section (c)(1) have not waived any claims against Commercial Cargo Customers. The Contractor shall obtain a written waiver of claims from the Commercial Cargo Customer for all activities related to the mission, including acknowledgment by the Commercial Cargo Customer that the entities listed in section (c)(1) have not waived any claims against Commercial Cargo Customers, and shall provide such documentation to NASA for NASA's approval with the proposal to manifest the non-NASA cargo or payload. The Contractor shall require Commercial Cargo Customers to maintain insurance covering damage to or loss of any property or injury or death of any person on the ISS or in the CTS resulting from the flight of the non-NASA Cargo or Payload. The Contractor shall provide acceptable evidence to the Contracting Officer of required insurance no later than thirty (30) days prior to the launch on which the non-NASA Cargo or Payload is manifested. The amount of required insurance and the terms and conditions for the policy or policies shall be subject to review by the Contracting Officer. Once reviewed, the policy or policies may not be modified or canceled without the prior, written approval of the Contracting Officer.

(d) Delays

The launch and mission schedule will not be changed to accommodate Passengers or Non-NASA Cargo or Payloads, except at NASA's sole discretion. If NASA chooses to reschedule the launch or mission, NASA shall not be responsible for any costs, liabilities or obligations associated with rescheduling. The provisions of clause H.20, *Adjustments To Post Certification Mission Schedule,* do not apply to circumstances arising under this clause H.23 related to requested delays to accommodate Passengers or non-NASA Cargo or Payloads. If for any reason, the Contractor is unable to transport the Passenger(s) or Non-NASA Cargo or Payload, the Passenger(s) or Non-NASA Cargo or Payload are not ready or available in time for the Post Certification Mission,

the Contractor is unable to meet applicable FAA or NASA requirements, or there is insufficient time to complete Passenger training for the Post Certification Mission before the launch date, the Contractor shall bear all costs and be responsible for any related impacts or delays to the launch or mission. In no case shall NASA be liable for any costs or expenses incurred by Commercial Cargo Customers, Passengers or by the Contractor on behalf of its Commercial Cargo Customers or Passengers.

(End of Clause)

H.24 STATEMENT ON WAIVER OF RIGHTS TO INVENTIONS

The crew transportation systems certified and used under this contract will be commercially developed, and the developers may pursue other commercial uses of their systems outside of this contract. NASA has determined that the interest of the United States would be served by waiving to the Contractor, in accordance with 51 U.S.C. 20135(g), rights to inventions or class of inventions made by the Contractor in the performance of this contract. Therefore, upon petition submitted by the Contractor, as set forth in NFS 1852.227-70, *New Technology*, NASA will waive such rights to the Contractor.

(End of Clause)

H.25 SAE AS9100

The Contractor shall have a quality program that complies with International Organization for Standardization document SAE AS9100, *Quality Management Systems – Requirements for Aviation, Space and Defense Organizations* by the Certification Baseline Review.

(a) Third party certification is not required. However, if the Government has accepted the Contractor's SAE AS9100 certification and the Contractor subsequently changes registrars, loses its registration status, or is put on notice of losing its registration status, the Contractor shall notify the Contracting Officer within three days of receiving such notice from its registrar. The Contractor shall coordinate with any Certification Registrars or Databases, or Certifying Organizations to allow NASA access to certification documentation and audit information pertinent to this contract.

(b) If the Contractor is not SAE AS9100 certified, the Government will perform, or have a third party perform, an SAE AS9100 compliance audit no earlier than six (6) months after contract award. Compliance audits will normally be re-accomplished every thirty-six (36) months, but the Government may conduct annual surveillance audits. The Contractor shall support the audits as required.

(End of Clause)

H.26 MISHAP REPORTING

(a) Definitions, as used in this clause,

(1) NASA Personnel: any person employed by NASA, or other Government personnel performing services on behalf of NASA.

(2) NASA Operations: any activity or process that is under NASA direct control or includes major NASA involvement.

(3) NASA Mishap: is an unplanned event that results in at least one of the following:

(i) Injury to non-NASA personnel, caused by NASA operations.

(ii) Damage to public or private property (including foreign property) not under the ownership or control of the Contractor and/or its subcontractors under this contract, caused by NASA operations or NASA-funded development or research projects.

(iii) Damage to Property (including foreign property) under the ownership or control of the Contractor and/or its subcontractors under this contract, caused by NASA operations.

(iv) Occupational injury or occupational illness to NASA personnel.

(v) Mission failure of any Flight Test or PCM before the scheduled completion of the planned primary mission.

(vi) Destruction of, or damage to, NASA property or NASA equipment.

(4) Close Call: an event in which there is no injury, or only minor injury requiring first aid, and/or no equipment/property damage or minor equipment/property damage (less than $20,000), but which possesses a potential to cause a mishap.

(5) Exposure:

(i) Vulnerability of population, property, or other value system to a given activity or hazard; or

(ii) Other measure of the opportunity for failure or mishap events to occur.

(6) Lost Time Injury/Illness: a nonfatal traumatic injury that causes any loss of time from work beyond the day or shift it occurred; or a nonfatal nontraumatic illness/disease that causes disability at anytime.

(7) Mission Failure: a mishap of whatever intrinsic severity that prevents the achievement of the success criteria or objectives as identified in the applicable Flight Test Plan or determined by clause H.21 *Post Certification Mission Success Determination*.

(8) Serious Injury: any injury resulting from a mishap in which any one or more of the following apply:

(i) Requires hospitalization for more than forty-eight (48) hours, commencing within seven (7) days from the date the injury was received.

(ii) Results in a fracture of any bone (except simple fractures of fingers, toes, or nose).

(iii) Causes severe hemorrhages or nerve, muscle, or tendon damage.

(iv) Involves any internal organ.

(v) Involves second- or third-degree burns, or any burns affecting more than five (5) percent of the body surface.

(9) Substantial Damage to property or equipment: damage or failure which adversely affects the structural strength, performance, or operational characteristics of the property or equipment, and which would normally require major repair or replacement of the affected component(s).

(b) The Contractor shall notify and promptly report to the Contracting Officer, or a designee, any of the following associated with any work performed under this Contract:

(1) Close Calls involving NASA personnel, NASA property, or NASA equipment.

(2) Exposures involving NASA personnel, NASA property, or NASA equipment, which could result in fatality; lost-time occupational injury; or occupational disease.

(3) NASA Mishaps, which result in serious injury; fatality; lost-time occupational injury; occupational disease; any environmental damage; any mission failure; or substantial damage to or loss of equipment or property damage of at least $50,000.

(c) The Contractor shall conduct a mishap investigation for any event that meets paragraph (b) requirements. The Contractor shall allow NASA participation in the investigation, and make all data and resulting reports available to NASA. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee.

(1) If the Contractor conducts a mishap investigation in the performance of activities not under this contract, but relevant to the CTS design, production and operations, the Contractor shall make available to NASA all data and resulting reports.

(d) The Contractor shall maintain the data of any mishap investigation referenced above for the term of this Contract plus three (3) years.

(e) NASA may investigate any NASA mishaps or close calls that involve NASA personnel, equipment, or property, that occur in the performance of this contract in accordance with

CCT-PLN-1010, *Mishap Preparedness and Contingency Plan for Commercial Crew Program*. The Contractor shall provide personnel support and data, as necessary, to support a NASA investigation.

(f) When applicable, the Contractor shall support a Commission appointed by the President per 51 U.S.C Section 70701 *et seq.*.

(End of Clause)

H.27 GOVERNMENT-INDUSTRY DATA EXCHANGE PROGRAM (GIDEP)

(a) Definitions, as used in this clause

(1) Close-loop reporting: providing a written response of no impact, no usage or impact with rationale at program milestone and readiness reviews or according to contract or other specified reporting times/events for each GIDEP Notice and NASA Advisory.

(2) GIDEP Notices: means "GIDEP Alerts, GIDEP Safe-Alerts, GIDEP Problem Advisories, and GIDEP Agency Action Notices." Life-cycle logistics should be addressed per contractual requirements identified by the Program/Project.

(b) The Contractor shall participate in the GIDEP in accordance with the requirements of the GIDEP Operations Manual (GIDEP SO300-BT-PRO-101) and the GIDEP Requirements Guide (SO300-BU-GYD-010), available from the GIDEP Operations Center, PO Box 8000, Corona, California 92878-8000.

(c) The Contractor shall review all GIDEP Notices and designated NASA Advisories to determine if they affect the Contractor's products/and or services provided to the Government.

(d) The Contractor shall respond by stating, in writing, whether or not each GIDEP Notice and NASA Advisory affects the Contractor's products and services provided to the Government. The Contractor is responsible for stating whether or not each GIDEP Notice and NASA Advisories affects the subcontractor's products and services provided to the Government.

(e) For GIDEP Notices and NASA Advisories that affect the Contractor's products and services provided to the Government, the Contractor shall take action to eliminate or mitigate any negative effect and inform the Government of such actions to ensure GIDEP Notices and NASA Advisories adhere to close-loop reporting.

(f) The Contractor shall generate applicable GIDEP Alerts in accordance with the requirements of GIDEP SO300-BT-PRO-101 and SO300-BU-GYD-010 whenever failed or nonconforming items, available to other buyers, are discovered during the course of the Contract.

(End of Clause)

H.28 ENVIRONMENTAL COMPLIANCE AND NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) DOCUMENTATION

(a) Environmental Compliance. The Contractor shall ensure that all operations, activities, equipment, and facilities under this contract are in compliance with all applicable Federal, state, and local environmental laws, statutes, regulations, and ordnances. Unless otherwise stated in this contract, the Contractor shall be solely responsible for compliance with aforementioned environmental requirements including environmental permits. The Contractor shall be considered an independent entity responsible for its own actions for the purposes of environmental compliance and permitting matters.

(b) National Environmental Policy Act (NEPA). Should Contractor activities trigger the need for NEPA documentation during the performance of the contract, the Contractor shall be responsible for complying with NPR 8580.1, *NASA National Environmental Policy Act Management Requirements*, and providing documentation and supporting rationale to NASA throughout the NEPA process, as required by the Contracting Officer.

(End of Clause)

H.29 ANOMALY INVESTIGATION AND CORRECTIVE ACTION

(a) For the purposes of this clause, an anomaly is an unexpected event, hardware or software damage, departure from established procedures or performance, or a deviation of system, subsystem, or hardware or software performance outside intended design or expected performance specification limits.

(b) For the purposes of this clause, data includes, but is not limited to data associated with areas of insight identified in CCT-PLN-1100, *Crew Transportation Plan,* Appendix C, *Insight Areas*, and data relevant to the Crew Transportation System (CTS) design, production and operations.

(c) The Contractor shall notify the Government of reportable CTS anomalies. For reportable anomalies that occur during the period prior to Flight Readiness Review (FRR) for the next mission of any affected CTS vehicle, notification shall be within thirty (30) days, but no later than at FRR. Anomalies that occur after FRR shall be reported to the Government, as soon as is practical. Reportable anomalies are those that:

(1) After resolution, negatively affect CTS certification, post certification performance, hazards, hazard controls, or verifications; or

(2) Are unexplained or could not be duplicated; or

(3) Occur during standard repairs or nominal processing tasks and indicate an unexpected trend in one or more CTS vehicles.

(d) The Contractor shall determine the scope of the investigation and shall conduct and control the investigation. The Government may designate representatives to observe and participate in the Contractor's investigation. The Contractor shall accommodate Government representation to the Contractor's investigation.

(e) The Contractor shall be responsible for identifying the cause(s) of the anomaly, and implementing corrective action(s). The Contractor shall provide the Government access to any findings and any proposed corrective actions. If the Contractor implements any changes to the CTS design that could negatively affect certification, post certification performance, hazards, controls, or verifications of the CTS, the Contractor shall notify the Government of the change.

(f) The Government may conduct its own investigation of any anomaly or failed mission. The Contractor shall provide personnel support and data, as necessary, to support a Government investigation.

(End of Clause)

H.30 HAZARDOUS OPERATIONS

(a) Definitions, as used in this clause

(1) Hazardous Operations: any operation or other work activity that, without implementation of proper mitigations, has a high potential to result in loss of life, serious injury to personnel or public, or damage to property due to the material or equipment involved or the nature of the operation/activity.

(2) Hazardous Flight Operations: any Hazardous Operations performed on this contract that affect the CTS or its elements; and occur between initiation of tanking of the CTS, and post-detanking or post-flight safing. Hazardous Flight Operations may be initiated by Government or Contractor Flight Crew, Government or Contractor Ground Controllers, Government or Contractor Closeout Crew, Government or Contractor Recovery Personnel, or software.

(3) Hazardous Ground Operations: any Hazardous Operations performed on this contract, other than Hazardous Flight Operations.

(b) All Hazardous Flight Operations conducted in the performance of this contract shall be reviewed and approved through the Commercial Crew Program and/or International Space Station Program safety review processes.

(c) All Hazardous Ground Operations under control of the Contractor or Subcontractor(s) in performance of this contract shall comply with all Federal, State, and Local requirements intended to mitigate risk to personnel, equipment, and property.

(End of Clause)

H.31 INTERIM PERFORMANCE-BASED MILESTONE PAYMENTS (APPLICABLE TO CLIN 001)

SubCLINS 001A and 001B listed in CLIN 001, *DDTE/Certification,* are delivery milestones (delivery items). For each delivery milestone, the Contractor may request interim-milestone financing payments in accordance with FAR 52.232-32, *Performance Based Payments.* Milestone events, schedule, price and acceptance criteria are identified in Attachment J-03, Appendix A, *Milestone Acceptance Criteria and Payment Schedule*. The sum of interim-milestone financing payments with each delivery item shall not exceed 90% of that delivery item price in accordance with FAR 32.1004(b)(2)(ii). Liquidation of performance-based financing payments will occur once the Government accepts each delivery item.

The ISS DCR associated with the delivery milestone (SubCLIN 001A) will be the DCR associated with the crewed flight test to ISS. The ISS DCR delivery milestone shall include all work under CLIN 001that occurs from contract start date through this milestone completion. The delivery payment for the Certification Review associated with the delivery milestone (SubCLIN 001B) will include all work under CLIN 001that occurs from this ISS DCR delivery milestone through the end of the DDTE/Certification.

The Contracting Officer will unilaterally determine the Contractor's successful accomplishment of each milestone event. The Contracting Officer's determination of milestone accomplishment will be based on the criteria listed in Attachment J-03, Appendix A, *Milestone Acceptance Criteria and Payment Schedule*, as well as the Contractor's compliance with the terms of the contract, including performance of PWS and deliverable requirements. The delivery-milestone payments are not financing payments and unlike interim-milestone payments, once made, are not subject to repayment by the Contractor if the conditions defined in FAR 52.232-32 (j), *Special terms regarding default*, apply.

Generally, milestone payment will be paid in succession. All preceding payment events shall be successfully accomplished before payment will be made for the next payment event, unless the prior written consent of the Contracting Officer is obtained.

(End of Clause)

H.32 SUBCONTRACTING WITH RUSSIAN ENTITIES FOR GOODS OR SERVICES

(a) Definitions: In this clause:

(1) The term "Russian entities" means:

(i) Russian persons, or

(ii) Entities created under Russian law or owned, in whole or in part, by Russian persons or companies including, but not limited to, the following:

(A) The Russian Federal Space Agency (Roscosmos),

(B) Any organization or entity under the jurisdiction or control of Roscosmos, or

(C) Any other organization, entity or element of the Government of the Russian Federation.

(2) The term "extraordinary payments" means payments in cash or in kind made or to be made by the United States Government prior to December 31, 2020, for work to be performed or services to be rendered prior to that date necessary to meet United States obligations under the Agreement Concerning Cooperation on the Civil International Space Station, with annex, signed at Washington January 29, 1998, and entered into force March 27, 2001, or any protocol, agreement, memorandum of understanding, or contract related thereto.

(b) This clause implements the reporting requirement in section 6(i) of the Iran, North Korea, and Syria Nonproliferation Act, as amended (INKSNA). This clause also implements section 6(a) and the exception in section 7(1)(B) of INKSNA that is applicable through December 31, 2020. NASA has applied the restrictions in INKSNA to include funding of Russian entities via U.S. Contractors.

(c) (1) The Contractor shall not subcontract with Russian entities without first receiving written approval from the Contracting Officer. In order to obtain this written approval to subcontract with any Russian entity as defined in paragraphs (a), the Contractor shall provide the Contracting Officer with the following information related to each planned new subcontract and any change to an existing subcontract with entities that fit the description in paragraph (a):

(i) A detailed description of the subcontracting entity, including its name, address, and a point of contact, as well as a detailed description of the proposed subcontract including the specific purpose of payments that will made under the subcontract.

(ii) The Contractor shall provide certification that the subcontracting entity is not, at the date of the subcontract approval request, on any of the lists of proscribed denied parties, specially designated nationals and entities of concern found at:

BIS's Listing of Entities of Concern (see http://www.access.gpo.gov/bis/ear/pdf/744spir.pdf)

BIS's List of Denied Parties (see http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list)

OFAC's List of Specially Designated Nationals (Adobe® PDF format) (see http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/unverified-list)

List of Unverified Persons in Foreign Countries (see http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/unverified-list)

State Department's List of Parties Statutorily Debarred for Arms Export Control Act Convictions (see http://pmddtc.state.gov/compliance/debar.html)

State Department's Lists of Proliferating Entities (see http://www.state.gov/t/isn/c15231.htm)

(2) Unless relief is granted by the Contracting Officer, the information necessary to obtain approval to subcontract shall be provided to the Contracting Officer thirty (30) business days prior to executing any planned subcontract with entities defined in paragraph (a).

(d) After receiving approval to subcontract, the Contractor shall provide the Contracting Officer with a report every six (6) months that documents the individual payments made to an entity in paragraph (a). The reports are due on July 15th and January 15th. The July 15th report shall document all of the individual payments made from the previous January through June. The January 15th report shall document all of the individual payments made from the previous July through December. The content of the report shall provide the following information for each time a payment is made to an entity in paragraph (a):

(1) The name of the entity

(2) The subcontract number

(3) The amount of the payment

(4) The date of the payment

(e) The Contracting Officer may direct the Contractor to provide additional information for any other prospective or existing subcontract at any tier. The Contracting Officer may direct the Contractor to terminate for the convenience of the Government any subcontract at any tier with an entity defined in paragraph (a), subject to an equitable adjustment.

(f) All work subcontracted to the Russian Federal Space Agency, any organization or entity under the jurisdiction or control of the Russian Federal Space Agency, or any other organization, entity or element of the Government of the Russian Federation must be completed on or before December 31, 2020. No payments for such work may be made by the Contractor to the subcontractor, or by NASA to the Contractor, after December 31, 2020. The Contractor is responsible for ensuring the completion of and payment for such subcontracted work in sufficient time to enable payment by NASA to the Contractor on or before December 31, 2020.

(g) The Contractor shall include the substance of this clause in all its subcontracts, and shall require such inclusion in all other subcontracts of any tier. The Contractor shall be responsible to obtain written approval from the Contracting Officer to enter into any tier subcontract that involves entities defined in paragraph (a).

(h) Performance of this contract after December 31, 2020 may be subject to prohibitions on payments to Russian entities under INKSNA.

(End of Clause)

SECTION I. CONTRACT CLAUSES

I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

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. Also, the full text of a clause may be accessed electronically at this/these address(es):

For Federal Acquisition Regulation (FAR) clauses, see
https://www.acquisition.gov/far/

For NASA FAR Supplement (NFS) clauses, see
http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm

(End of Clause)

I.2 CLAUSES INCORPORATED BY REFERENCE -- SECTION I

Clause(s) at the beginning of this Section are incorporated by reference, with the same force and effect as if they were given in full text. Clauses incorporated by reference which require a fill-in by the Government include the text of the affected paragraph(s) only. This does not limit the clause to the affected paragraph(s). The Contractor is responsible for understanding and complying with the entire clause. The full text of the clause is available at the addresses contained in clause I.1 52.252-2, *Clauses Incorporated by Reference*, of this contract.

52.202-1 DEFINITIONS. (JUL 2012)

52.203-3 GRATUITIES. (APR 1984)

52.203-5 COVENANT AGAINST CONTINGENT FEES. (APR 1984)

52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT. (SEP 2006)

52.203-7 ANTI-KICKBACK PROCEDURES. (OCT 2010)

52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)

52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY. (JAN 1997)

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (OCT 2010)

52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT. (APR 2010)

52.203-14 DISPLAY OF HOTLINE POSTER(S). (DEC 2007)
[NASA Office of Inspector General, Code W, Washington, DC, 20546-0001, (202) 358-1220. http://oig.nasa.gov/hotline.html]

52.204-2 SECURITY REQUIREMENTS. (AUG 1996)

52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER. (MAY 2011)

52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL. (JAN 2011)

52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS. (JUL 2013)

52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (JUL 2013)

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT. (AUG 2013)

52.210-1 MARKET RESEARCH. (APR 2011)

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS. (APR 2008)

52.215-2 AUDIT AND RECORDS - NEGOTIATION. (OCT 2010)

52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA – MODIFICATIONS. (AUG 2011)

52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS. (OCT 2010)

52.215-8 ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT. (OCT 1997)

52.217-8 OPTION TO EXTEND SERVICES. (NOV 1999)
[the sixty (60) days prior to completion of the last required milestone or delivery date].

52.219-4 NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS. (JAN 2011)

52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS. (JUL 2013)

52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN. (Deviation per PIC 13-06 (www.hq.nasa.gov/office/procurement/regs/pic.html)) – ALTERNATE II (OCT 2001)

52.219-16 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN. (JAN 1999)

52.219-28 POST-AWARD SMALL BUSINESS PROGRAM REREPRESENTATION. (JUL 2013)

The Contractor represents that it ___ is, ___ is not a small business concern under NAICS Code 336414 assigned to contract number TBD. (*Contractor to sign and date and insert authorized signer's name and title)*.

52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES. (FEB 1997)

52.222-3 CONVICT LABOR. (JUN 2003)

52.222-21 PROHIBITION OF SEGREGATED FACILITIES. (FEB 1999)

52.222-26 EQUAL OPPORTUNITY. (MAR 2007)

52.222-35 EQUAL OPPORTUNITY FOR VETERANS. (SEP 2010)

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES. (OCT 2010)

52.222-37 EMPLOYMENT REPORTS ON VETERANS. (SEP 2010)

52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT. (DEC 2010)

52.222-50 COMBATING TRAFFICKING IN PERSONS. (FEB 2009)

52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION. (AUG 2013)

52.223-6 DRUG-FREE WORKPLACE. (MAY 2001)

52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING. (AUG 2011)

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES. (JUN 2008)

52.227-1 AUTHORIZATION AND CONSENT. (DEC 2007)

52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (DEC 2007)

52.227-3 PATENT INDEMNITY. (APR 1984)

52.227-16 ADDITIONAL DATA REQUIREMENTS. (JUN 1987)

52.229-3 FEDERAL, STATE, AND LOCAL TAXES. (FEB 2013)

52.232-1 PAYMENTS. (APR 1984) (Applicable to CLIN 002 and any appropriate task orders per CLIN 003)

52.232-2 PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS. (APR 1984) (Applicable to CLIN 001 and any appropriate task orders per CLIN 003)

52.232-8 DISCOUNTS FOR PROMPT PAYMENT. (FEB 2002)

52.232-9 LIMITATION ON WITHHOLDING OF PAYMENTS. (APR 1984)

52.232-11 EXTRAS. (APR 1984)

52.232-17 INTEREST. (OCT 2010)

52.232-18 AVAILABILITY OF FUNDS. (APR 1984)

52.232-23 ASSIGNMENT OF CLAIMS. (JAN 1986)

52.232-25 PROMPT PAYMENT. (JUL 2013)

52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER- SYSTEM FOR AWARD MANAGEMENT. (JUL 2013)

52.233-1 DISPUTES. (JUL 2002) - ALTERNATE I (DEC 1991)

52.233-3 PROTEST AFTER AWARD. (AUG 1996)

52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM. (OCT 2004)

52.242-13 BANKRUPTCY. (JUL 1995)

52.243-1 CHANGES - FIXED-PRICE. (AUG 1987) - ALTERNATE I (APR 1984) (Applicable to CLIN 002 and any appropriate task orders per CLIN 003)

52.243-1 CHANGES - FIXED-PRICE. (AUG 1987) - ALTERNATE V (APR 1984) (Applicable to CLIN 001 and any appropriate task orders per CLIN 003)

52.243-7 NOTIFICATION OF CHANGES. (APR 1984)
Fill in (b) seven (7) calendar days
Fill in (d) seven (7) calendar days

52.244-2 SUBCONTRACTS. (OCT 2010)

52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS. (JUL 2013)

52.245-1 GOVERNMENT PROPERTY. (APR 2012) -- Alternate I (APR 2012)

52.245-9 USE AND CHARGES. (APR 2012)

52.246-25 LIMITATION OF LIABILITY - SERVICES. (FEB 1997)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE). (APRIL 2012)

52.253-1 COMPUTER GENERATED FORMS. (JAN 1991)

NFS 1852.203-70 DISPLAY OF INSPECTOR GENERAL HOTLINE POSTERS. (JUN 2001)

NFS 1852.204-76 SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JAN 2011)

NFS 1852.209-72 COMPOSITION OF THE CONTRACTOR. (DEC 1988)

NFS 1852.219-74 USE OF RURAL AREA SMALL BUSINESSES. (SEP 1990)

NFS 1852.219-76 NASA 8 PERCENT GOAL. (JUL 1997)

NFS 1852.219-77 NASA MENTOR-PROTEGE PROGRAM. (MAY 2009)

NFS 1852.243-71 SHARED SAVINGS. (MAR 1997)

NFS 1852.235-70 CENTER FOR AEROSPACE INFORMATION. (DEC 2006)

(End of Clause)

I.3 52.209-9 UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (JUL 2013)

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by

posting the required information in the System for Award Management database via *https://www.acquisition.gov*.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consist of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for--

(i) Past performance reviews required by subpart 42.15;

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor's record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The Contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

(d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of Clause)

I.4 52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA – MODIFICATIONS. (OCT 2010) (This Clause Is Applicable To The Extent That Only Subcontractors Are Required To Submit Certified Cost Or Pricing Data)

(a) *Exceptions from certified cost or pricing data.*

(1) In lieu of submitting certified cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable –

(i) *Identification of the law or regulation establishing the price offered*. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Information on modifications of contracts or subcontracts for commercial items.*

(A) If --

(1) The original contract or subcontract was granted an exception from certified cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include –

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

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

(b) *Requirements for certified cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instruction contained in Table 15-2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15-2 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(End of Clause)

I.5 52.215-21 REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA - MODIFICATIONS. (OCT 2010) - Alternate IV (OCT 2010) (This Clause Is Not Applicable To Subcontractors)

(a) Submission of certified cost or pricing data is not required.

(b) Provide information described below: [If required by the Government, the Contractor(s) shall submit *Data Other than Certified Cost or Pricing Data* as defined in Clause G.9, *Requirements for Data Other than Certified Cost or Pricing Data* to permit an adequate evaluation of the proposed price in accordance with 15.403-3.]

(End of Clause)

I.6 52.216-18 ORDERING (OCT 1995) (Applicable to IDIQ CLINs 002 and 003)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued up to 5-years from the effective date of the contract.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of Clause)

I.7 52.216-19 ORDER LIMITATIONS (OCT 1995) (Applicable to IDIQ CLINs 002 and 003)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than

(a) One (1) Post Certification Mission, pursuant to CLIN 002 or

(b) A Special Studies Task order valued at $5,000, pursuant to CLIN 003, or

The Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor

(1) Any order for a single item in excess of [redacted] (b) (4)

(2) Any order for a combination of items in excess of [redacted] (b) (4) or

(3) A series of orders from the same ordering office within 10 days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 15 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of Clause)

I.8 52.216-22 INDEFINITE QUANTITY (OCT 1995) (Applicable to IDIQ CLINs 002 and 003)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract three years after the end of the ordering period.

(End of Clause)

I.9 52.227-11 PATENT RIGHTS--OWNERSHIP BY THE CONTRACTOR. (DEC 2007) / AS MODIFIED PER 1852.227-11 PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM).

(a) As used in this clause -
"Invention" means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq*.)

"Made" means –

(1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

"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.

"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.

"Subject invention" means any invention of the Contractor made in the performance of work under this contract.

(b) Contractor's rights.

(1) Ownership. The Contractor may retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) License.

(i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only

with the written approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(ii) The Contractor's license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in a particular country in accordance with the procedures in FAR 27.302(i)(2) and 27.304-1(f).

(c) Contractor's obligations.

(1) The Contractor shall disclose in writing each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure shall identify the inventor(s) and this contract under which the subject invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale (i.e., sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file either a provisional or a nonprovisional patent application or a Plant Variety Protection Application on an elected subject invention within 1 year after election. However, in any case where a publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Contractor shall file the application prior to the end of that statutory period. If the Contractor files a provisional application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. The Contractor shall file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (c)(2), and (c)(3) of this clause.

(5) The Contractor may use whatever format is convenient to disclose subject inventions required in subparagraph (c) (1). NASA prefers that the Contractor use either the electronic or paper version of NASA Form 1679, *Disclosure of Invention and New Technology (Including Software)* to disclose subject inventions. Both the electronic and paper versions of NASA Form

1679 may be accessed at the electronic New Technology Reporting Web site http://invention.nasa.gov.

(d) Government's rights –

(1) Ownership. The Contractor shall assign to the agency, on written request, title to any subject invention –

(i) If the Contractor fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the Contractor's failure to disclose or elect within the specified times.

(ii) 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 agency, the Contractor shall continue to retain ownership in that country.

(iii) 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.

(2) License. If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(e) Contractor action to protect the Government's interest.

(1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to –

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that subject invention in any country.

(2) The Contractor shall 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 the Contractor's format, each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) 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. The disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall

instruct such employees, through employee agreements or other suitable educational programs, as to 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 shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, 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 or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in the invention."

(5) The Contractor shall provide the Contracting Officer the following:

(i) A listing every 12 months (or such longer period as the Contracting Officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a coinventor.

(f) Reporting on utilization of subject inventions. The Contractor shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information as the agency may reasonably specify. The Contractor also shall 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 (h) of this clause. The Contractor also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by 35 U.S.C. 202(c)(5), the agency will not disclose that information to persons outside the Government without the Contractor's permission.

(g) Preference for United States industry. Notwithstanding any other provision of this clause, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell

any subject invention in the United States unless the person agrees that any products 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 an agreement may be waived by the 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.

(h) March-in rights. The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of contract award.

(i) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it shall –

(1) Not assign rights to a subject invention in the United States without the written approval of the agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided, that the assignee shall be subject to the same provisions as the Contractor;

(2) Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if 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) Use 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 for the support of scientific research or education; and

(4) Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if the Contractor determines that the small business concern 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 concerns; provided, that the Contractor is also satisfied that the small business concern 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.

(5) Allow the Secretary of Commerce to review the Contractor's licensing program and decisions regarding small business applicants, and 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 paragraph (i)(4) of this clause.

(j) Communications. The Contractor shall contact the Contracting Officer for any communications regarding this clause.

(k) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (k), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.

(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) At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(4) In subcontracts, at any tier, the agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to the matters covered by the 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 (h) of this clause.

(End of Clause)

I.10 52.227-14 RIGHTS IN DATA – GENERAL, (DEC 2007) (Deviation) / ALTERNATE I, (DEC 2007) (Deviation) / ALTERNATE II, (DEC 2007) (Deviation) / ALTERNATE III (DEC 2007) (Deviation) / AS MODIFIED PER 1852.227-14 RIGHTS IN DATA - GENERAL

(a) *Definitions*. As used in this clause—

"Computer database" or "database" means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

"Computer software"—

(1) Means

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

"Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

"Government purpose" means any activity in which the United States Government is a party, including, but not limited to, cooperative activities with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement.

“Government purpose rights” means the rights to (i) Use, modify, reproduce, manufacture, release, perform, display, or disclose data within the Government without restriction; and (ii) Release or disclose data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, manufacture, release, perform, display, or disclose that data for United States Government purposes.

“Limited rights” means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

“Limited rights data” means data, other than computer software, developed wholly or in part at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

“Restricted computer software” means computer software developed wholly or in part at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“Restricted rights,” as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) 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.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

“Unlimited rights” means the rights 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, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract exclusively at Government expense;

(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) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) 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;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(3) There shall be a presumption that modifications to data identified in FAR 52.227-15 comprise limited rights data or restricted computer software.

(4) Data delivered under this contract, in which the Government previously obtained less than limited or restricted rights, as defined in paragraph (g) of this clause, pursuant to the terms of another contract or agreement, comprises limited rights data or restricted computer software under this contract.

(5) In the event this contract is terminated for default, the Government shall have Government purpose rights in all data first produced, and all software first developed, wholly or in part at private expense in performance of this contract.

(c) Copyright—

(1) Data first produced in the performance of this contract.

(i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright 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 assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, 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 on 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 (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the 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 unless the Contractor—

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) (i) The Contractor agrees not to establish claim to copyright, publish or release to others any computer software first produced in the performance of this contract without the Contracting Officer's prior written permission.

(ii) If the Government desires to obtain copyright in computer software first produced in the performance of this contract and permission has not been granted as set forth in paragraph (d)(3)(i) of this clause, the Contracting Officer may direct the Contractor to assert, or authorize the assertion of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(iii) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert".

(4) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* 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—

(1) As prohibited by Federal law or regulation (*e.g.*, export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise 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 paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the 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, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time 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 Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will 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 will 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 will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will 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 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) 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 is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, 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 any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor—

(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 proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data 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) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall—

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) Notwithstanding paragraph (g)(1) of this clause, the contract 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 that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the Contractor shall affix the following "Limited Rights Notice" to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

Limited Rights Notice (Dec 2007) (Deviation)

(a) These data are submitted with limited rights under Government Contract No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government to support service contractors and/or pursuant to agreements and contracts related to the International Space Station; provided that the Government makes such disclosure subject to prohibition against further use and disclosure.

(b) In the event this contract is terminated for Contractor default, the Government shall have Government purpose rights in all data first produced wholly or in part at private expense in performance of this contract.

(c) This notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

(4) (i) Notwithstanding paragraph (g)(1) of this clause, the contract 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 that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the Contractor shall affix the following "Restricted Rights Notice" to the computer software and the Government will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

Restricted Rights Notice (Dec 2007) (Deviation)

(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 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 with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(2) Used or copied for use with 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, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(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) In the event this contract is terminated for Contractor default, the Government shall have Government purpose rights in all computer software first developed wholly or in part at private expense in performance of this contract.

(f) 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 instead:

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 licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(h) *Subcontracting.* The Contractor shall 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 those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights.* 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 except as specifically set forth in paragraph (b) of this clause.

(End of Clause)

I.11 52.232-32 PERFORMANCE-BASED PAYMENTS (APR 2012) (Deviation), (Applicable to Interim Performance-Based Payments Events)

(a) *Amount of payments and limitations on payments*. Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) *Contractor request for performance-based payment*. The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) *Approval and payment of requests*.

(1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the 15th day after receipt of the request for performance-based payment by the designated payment office. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not

begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) *Liquidation of performance-based payments*.

(1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) *Reduction or suspension of performance-based payments*. The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's -

(i) Failure to make progress; or

(ii) Unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) *Reserved.*

(g) *Risk of loss*. Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is lost (see 45.101), the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is

part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) *Records and controls*. The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) *Reports and Government access*. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) *Special terms regarding default*. If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) *Reservation of rights*.

(1) No payment or vesting of title under this clause shall -

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause -

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) *Content of Contractor's request for performance-based payment*. The Contractor's request for performance-based payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for performance-based payment;

(3) The contract number and/or other identifier of the contract or order under which the request

is made;

(4) Such information and documentation as is required by the contract's description of the basis for payment; and

(5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) *Content of Contractor's certification*. As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that -

(1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;

(2) (Except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

(3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;

(4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____; and

(5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(End of Clause)

I.12 52.232-99 PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (AUG 2012) (DEVIATION)

This clause implements the temporary policy provided by OMB Policy Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors, dated July 11, 2012.

(a) Upon receipt of accelerated payments from the Government, the Contractor is required to make accelerated payments to small business subcontractors to the maximum extent practicable after receipt of a proper invoice and all proper documentation from the small business

subcontractor.

(b) Include the substance of this clause, including this paragraph (b), in all subcontracts with small business concerns.

(c) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(End of Clause)

I.13 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984) (Applicable To CLIN 002 And Any Appropriate Task Orders Per CLIN 003) (DEVIATION)

(a) (1) The Government may, subject to paragraphs (c) and (d) and (i) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to --

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services limited to $200 million for all task orders ordered and not accepted under CLIN 002 and CLIN 003. The $200 million is a cumulative total to include any excess re-procurement costs assessed under FAR 52.249-9, *Default (Fixed-Price Research and Development)* as modified within this contract. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

(1) acts of God or of the public enemy,

(2) acts of the Government in either its sovereign or contractual capacity,

(3) fires,

(4) floods,

(5) epidemics,

(6) quarantine restrictions,

(7) strikes,

(8) freight embargoes, and

(9) unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any

(1) completed supplies, and

(2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as “manufacturing materials” in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract.

Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(i) The rights and remedies of the Government under this clause are superseded by the conditions in clause H.21 *Post Certification Mission Success Determination*, specific to the Post Certification Mission (PCM) flights that end in a mission failure or partial mission success. A mission failure or partial mission success determination pursuant to clause H.21for a PCM shall not be the basis for a default termination for that PCM task order under this clause. For all other activities under the contract not part of this PCM task order, the Government reserves the right to terminate the contract for default.

(End of Clause)

I.14 52.249-9 DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT) (APR 1984) (Applicable To CLIN 001 And Any Appropriate Task Orders Per CLIN 003) (DEVIATION)

(a) (1) The Government may, subject to paragraphs (c) and (d) of this clause, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to --

(i) Perform the work under the contract within the time specified in this contract or any extension;

(ii) Prosecute the work so as to endanger performance of this contract (but see subparagraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (iii) of this clause may be exercised if the Contractor does not cure such failure within 10 days (or more, if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, work similar to the work terminated, and the Contractor will be liable to the Government for any excess costs for the similar work limited to 200 million dollars, for work under CLIN 001 and for all task orders ordered and not accepted under CLIN 003. The 200 million dollars is a cumulative total to include any excess re-procurement costs assessed under FAR 52.249-8, *Default (Fixed-Price Supply and Service)* as modified within this contract. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

(1) acts of God or of the public enemy,

(2) acts of the Government in either its sovereign or contractual capacity,

(3) fires,

(4) floods,

(5) epidemics,

(6) quarantine restrictions,

(7) strikes,

(8) freight embargoes, and

(9) unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule or other performance requirements.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any

(1) completed or partially completed work not previously delivered to, and accepted by, the Government and

(2) other property, including contract rights, specifically produced or acquired for the terminated portion of this contract.

Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the Contracting Officer for

(1) completed work for which no separate price is stated,

(2) partially completed work,

(3) other property described above that it accepts, and

(4) the protection and preservation of the property.

Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss from outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of Clause)

I.15 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any NFS (48 CFR Chapter 18) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of Clause)

I.16 NFS 1852.215-84 OMBUDSMAN. (NOV 2011) -- Alternate I (JUN 2000)

(a) 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.

(b) If resolution cannot be made by the contracting officer, interested parties may contact the installation ombudsman, whose name, address, telephone number, facsimile number, and email address may be found at: http://prod.nais.nasa.gov/pub/pub_library/Omb.html. Concerns, issues, disagreements, and recommendations which cannot be resolved at the installation may be referred to the Agency ombudsman identified at the above URL. 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.

(c) If this is a task or delivery order contract, the ombudsman shall review complaints from Contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures of the contract.

(End of Clause)

I.17 NFS 1852.225-71 RESTRICTION ON FUNDING ACTIVITY WITH CHINA (FEB 2012)

(a) Definition - "China" or "Chinese-owned company" means the People's Republic of China, any company owned by the People's Republic of China or any company incorporated under the laws of the People's Republic of China.

(b) Public Laws 112-10, Section 1340(a) and 112-55, Section 539, restrict NASA from contracting to participate, collaborate, coordinate bilaterally in any way with China or a Chinese-owned company using funds appropriated on or after April 25, 2011. Contracts for commercial and non developmental items are exempted from the prohibition because they constitute purchase of goods or services that would not involve participation, collaboration, or coordination between the parties.

(c) This contract may use restricted funding that was appropriated on or after April 25, 2011. The Contractor shall not contract with China or Chinese-owned companies for any effort related to this contract except for acquisition of commercial and non-developmental items. If the Contractor anticipates making an award to China or Chinese-owned companies, the Contractor must contact the contracting officer to determine if funding on this contract can be used for that purpose.

(d) Subcontracts - The Contractor shall include the substance of this clause in all subcontracts made hereunder.

(End of Clause)

I.18 NFS 1852.237-72 ACCESS TO SENSITIVE INFORMATION (JUN 2005)

(a) As used in this clause, “sensitive information”' refers to information that a Contractor has developed at private expense, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged.

(b) To assist NASA in accomplishing management activities and administrative functions, the Contractor shall provide the services specified elsewhere in this contract.

(c) If performing this contract entails access to sensitive information, as defined above, the Contractor agrees to--

(1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this contract, and not to improve its own competitive position in another procurement.

(2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(3) Allow access to sensitive information only to those employees that need it to perform services under this contract.

(4) Preclude access and disclosure of sensitive information to persons and entities outside of the Contractor's organization.

(5) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this contract and to safeguard it from unauthorized use and disclosure.

(6) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(7) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(d) The Contractor will comply with all procedures and obligations specified in its Organizational Conflicts of Interest Avoidance Plan, which this contract incorporates as a compliance document.

(e) The nature of the work on this contract may subject the Contractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this contract establishes a high standard of accountability and trust, the Government will carefully review the Contractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this contract for default, or in debarment of the Contractor for serious misconduct affecting present responsibility as a Government Contractor.

(f) The Contractor shall include the substance of this clause, including this paragraph (f), suitably modified to reflect the relationship of the parties, in all subcontracts that may involve access to sensitive information

(End of Clause)

I.19 NFS 1852.237-73 RELEASE OF SENSITIVE INFORMATION (JUN 2005)

(a) As used in this clause, "Sensitive information" refers to information, not currently in the public domain, that the Contractor has developed at private expense, that may embody trade secrets or commercial or financial information, and that may be sensitive or privileged.

(b) In accomplishing management activities and administrative functions, NASA relies heavily on the support of various service providers. To support NASA activities and functions, these service providers, as well as their subcontractors and their individual employees, may need access to sensitive information submitted by the Contractor under this contract. By submitting this proposal or performing this contract, the Contractor agrees that NASA may release to its service providers, their subcontractors, and their individual employees, sensitive information submitted during the course of this procurement, subject to the enumerated protections mandated by the clause at 1852.237-72, *Access to Sensitive Information*.

(c) (1) The Contractor shall identify any sensitive information submitted in support of this proposal or in performing this contract. For purposes of identifying sensitive information, the Contractor may, in addition to any other notice or legend otherwise required, use a notice similar to the following:

Mark the title page with the following legend:

This proposal or document includes sensitive information that NASA shall not disclose outside the Agency and its service providers that support management activities and administrative functions. To gain access to this sensitive information, a service provider's contract must contain the clause at NFS 1852.237-72, *Access to Sensitive Information*. Consistent with this clause, the service provider shall not duplicate, use, or disclose the information in whole or in part for any purpose other than to perform the services specified in its contract. This restriction does not limit the Government's right to use this information if it is obtained from another source without restriction. The information subject to this restriction is contained in pages [*insert page numbers or other identification of pages*]. Mark each page of sensitive information the Contractor wishes to restrict with the following legend:

Use or disclosure of sensitive information contained on this page is subject to the restriction on the title page of this proposal or document.

(2) The Contracting Officer shall evaluate the facts supporting any claim that particular information is "sensitive." This evaluation shall consider the time and resources necessary to protect the information in accordance with the detailed safeguards mandated by the clause at 1852.237-72, *Access to Sensitive Information*. However, unless the Contracting Officer decides, with the advice of Center counsel, that reasonable grounds exist to challenge the Contractor's claim that particular information is sensitive, NASA and its service providers and their employees shall comply with all of the safeguards contained in paragraph (d) of this clause.

(d) To receive access to sensitive information needed to assist NASA in accomplishing management activities and administrative functions, the service provider must be operating under

a contract that contains the clause at 1852.237-72, *Access to Sensitive Information*. This clause obligates the service provider to do the following:

(1) Comply with all specified procedures and obligations, including the Organizational Conflicts of Interest Avoidance Plan, which the contract has incorporated as a compliance document.

(2) Utilize any sensitive information coming into its possession only for the purpose of performing the services specified in its contract.

(3) Safeguard sensitive information coming into its possession from unauthorized use and disclosure.

(4) Allow access to sensitive information only to those employees that need it to perform services under its contract.

(5) Preclude access and disclosure of sensitive information to persons and entities outside of the service provider's organization.

(6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in its contract and to safeguard it from unauthorized use and disclosure.

(7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this contract.

(8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, report any breaches to the Contracting Officer, and implement any necessary corrective actions.

(e) When the service provider will have primary responsibility for operating an information technology system for NASA that contains sensitive information, the service provider's contract shall include the clause at 1852.204-76, *Security Requirements for Unclassified Information Technology Resources*. The Security Requirements clause requires the service provider to implement an Information Technology Security Plan to protect information processed, stored, or transmitted from unauthorized access, alteration, disclosure, or use. Service provider personnel requiring privileged access or limited privileged access to these information technology systems are subject to screening using the standard National Agency Check (NAC) forms appropriate to the level of risk for adverse impact to NASA missions. The Contracting Officer may allow the service provider to conduct its own screening, provided the service provider employs substantially equivalent screening procedures.

(f) This clause does not affect NASA's responsibilities under the Freedom of Information Act.

(g) The Contractor shall insert this clause, including this paragraph (g), suitably modified to reflect

the relationship of the parties, in all subcontracts that may require the furnishing of sensitive information.

(End of Clause)

J.1 LIST OF ATTACHMENTS

The following documents are attached hereto and made a part of this contract:

Attachment	Document Revision Date
Attachment J-01, Integrated Crew Transportation System Requirements	July 7, 2014
Attachment J-02, Data Requirement Deliverables (DRDs)	July 7, 2014
Attachment J-03, Contract Performance Work Statement (PWS)	July 7, 2014
Attachment J-03, Appendix A, Milestone Acceptance Criteria and Payment Schedule	July 7, 2014
Attachment J-04, Small Business Subcontracting Plan	July 7, 2014
Attachment J-05, Glossary and Acronym List	July 7, 2014
Attachment J-06, Personal Identity Verification (PIV) Card Issuance Procedure	July 7, 2014

(End of Clause)