

CUSTOMER CONTRACT REQUIREMENTS
(Crew Exploration Vehicle)
CUSTOMER CONTRACT 2595662

CUSTOMER CONTRACT REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31. If this contract is for the procurement of commercial items, as defined in FAR Part 2.101, see Section 3 below.

1. The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995). This clause applies only if this contract exceeds \$100,000.

52.203-7 Anti-Kickback Procedures (excluding subparagraph (c)(1)) (JUL 1995). This clause applies only if this contract exceeds \$100,000. Buyer may withhold sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract.

52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997). This clause applies only if this contract exceeds \$100,000. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold from sums owed Seller the amount of the reduction.

52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 2003). This clause applies only if this Contract exceeds \$100,000. Paragraph (c)(4) is modified to read as follows: "Seller will promptly submit any disclosure required (with written notice to Buyer) directly to the PCO for the prime contract." Buyer will identify the Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor.

52.211-15 Defense Priority and Allocation Requirements (SEP 1990). This clause is applicable if a priority rating is noted in this contract.

52.215-2 Audit and Records-Negotiation (JUN 1999). This clause applies only if this contract exceeds \$100,000 and (i) is cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these types, (ii) Seller was required to provide cost or pricing data, or (iii) Seller is required to furnish reports as discussed in paragraph (e) of the referenced clause.

52.215-10 Price Reduction For Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 and is not otherwise exempt. In paragraph (a)(3), insert "of this contract" after "price or cost." "Contracting Officer" shall mean "Contracting Officer or Buyer," "Government" shall mean "Government or Buyer," and "United States" shall mean "United States or Buyer."

52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000 and is not otherwise exempt. The certificate required by paragraph (b) of the

referenced clause shall be modified as follows: Delete “to the Contracting Officer or the Contracting Officer’s representative” and substitute in lieu thereof “The Boeing Company or any of its wholly owned subsidiaries.”

52.215-14 Integrity of Unit Prices (excluding subparagraph (b)) (OCT 1997), **Alternate I** (OCT 1997). This clause does not apply if this contract is for (i) \$100,000 or less, (ii) construction or architect-engineer services under FAR Part 36, (iii) utility services under FAR Part 41, (iv) services where supplies are not required, (v) commercial items or (vi) petroleum products.

52.215-15 Pension Adjustments and Asset Reversions (JAN 2004). This clause applies to this contract if it meets the requirements of FAR 15.408(g).

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (OCT 1997). This clause applies to this contract if it meets the requirements of FAR 15.408(j).

52.215-19 Notification of Ownership Changes (OCT 1997). This clause applies to this contract if it meets the requirements of FAR 15.408(k).

52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data-Modifications (OCT 1997), **Alternate II** (OCT 1997). This clause applies only if this contract exceeds the threshold set forth in FAR 15.403-4. The term “Contracting Officer” shall mean Buyer.

52.219-8 Utilization of Small Business Concerns (MAY 2004).

52.219-9 Small Business Subcontracting Plan (JAN 2002), **Alternate II** (OCT 2001). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. In paragraph (c), “Contracting Officer” shall mean Buyer.

52.222-1 Notice to Government of Labor Disputes (FEB 1997). “Contracting Officer” shall mean Buyer.

52.222-4 Contract Work Hours and Safety Standards Act-Overtime Compensation (SEP 2000). This clause applies only if this contract exceeds \$100,000. Buyer may withhold or recover from Seller the amount of any sums the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.

52.222-20 Walsh-Healy Public Contracts Act (DEC 1996). This clause applies only if this contract exceeds \$10,000.

52.222-21 Prohibition of Segregated Facilities (FEB 1999).

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other

Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998). This clause applies only if this contract exceeds \$10,000.

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001). This clause applies only if this contract exceeds \$25,000.

52.225-13 Restrictions on Certain Foreign Purchases (JAN 2004).

52.227-1 Authorization and Consent (JUL 1995), **Alternate I** (APR 1984).

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). A copy of each notice sent to the Government will be sent to Buyer's Authorized Procurement Representative. "Contracting Officer" shall mean Buyer. This clause applies only if this contract exceeds \$100,000.

52.227-9 Refund of Royalties (APR 1984). This clause applies only if the amount of royalties reported during negotiation of this contract exceeds \$250.

52.227-10 Filing of Patent Applications-Classified Subject Matter (APR 1984). This clause applies only if this contract will involve access to classified information.

52.227-11 Patent Rights-Retention by the Contractor (Short Form) (JUN 1997), **Alternate II** (JUN 1989) and **Alternate IV** (JUN 1989), as modified by **NASA FARs 1852.227-11**. This clause only applies if this contract is for experimental, developmental, or research work and Seller is a small business firm or domestic nonprofit organization.

52.227-14 Rights in Data-General (JUN 1987), **Alternate II** (JUN 1987), **Alternate III** (JUN 1987), **Alternate IV** (JUN 1987), as modified by **NASA FAR Supplement 1852.227-14 Rights in Data-General** (OCT 1995). This clause applies only if data will be produced, furnished or acquired under this contract.

52.228-5 Insurance-Work on a Government Installation (JAN 1997). Seller shall provide and maintain insurance as set forth in this contract.

52.230-6 Administration of Cost Accounting Standards (NOV 1999). Add "Buyer and the" before "Contracting Officer" in paragraph (f). This provision applies if Clause H001, H002 or H004 is included in this contract.

52.237-2 Protection of Government Buildings, Equipment, and Vegetation (APR 1984). This clause applies only if work will be performed on a Government installation. "Contracting Officer" shall mean Buyer.

52.242-15 Stop Work Order (AUG 1989), **Alternate I** (APR 1984). Change "90 days" and "30 days" to "100 days" and "20 days" respectively. The terms "Contracting Officer" and "Government" shall mean Buyer.

52.244-5 Competition in Subcontracting (DEC 1996).

52.244-6 Subcontracts for Commercial Items (DEC 2004).

52.245-2 Government Property (Fixed Price Contracts) (MAY 2004).

This clause is not applicable if this contract incorporates Form GP4. In paragraph (f), the first occurrence of the term "Government" shall mean "Government or Buyer."

52.245-18 Special Test Equipment (FEB 1993). Change "30 days" to "45 days" in paragraphs (b) and (c). The notice of intent to procure special test equipment required by this clause shall be forwarded to Buyer.

52.247-63 Preference for U.S.-Flag Air Carriers (JUN 2003). This clause only applies if this contract involves international air transportation.

52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels (APR 2003). In paragraph

(c)(2), “20” and “30” are changed to “10” and “20”, respectively.

52.248-1 Value Engineering (excluding subparagraph (f)) (FEB 2000). The term “Contracting Officer” means Buyer. This clause applies only if this contract is for \$100,000 or more. If a Value Engineering Change Proposal is accepted by the Government, Seller’s share will be 50% of the instant, concurrent and future contract net acquisition savings and collateral savings that Buyer receives from the Government. Seller’s negotiated share of the net acquisition savings and collateral savings shall not reduce the Government’s share of concurrent or future savings or collateral savings. Buyer’s payments to Seller under this clause are conditioned upon Buyer’s receipt of authorization for such payments from the Government.

2. NASA FAR Supplement Clauses. The following contract clauses are incorporated by reference from the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement (NASA FARs) and apply to the extent indicated. In all of the following clauses, “Contractor” means Seller. Unless otherwise provided, the clauses are those in effect as of the date of this contract.

1852.208-81 Restrictions on Printing and Duplicating (OCT 2001).

1852.219-74 Use of Rural Area Small Businesses (SEP 1990). This clause applies only if this contract offers subcontracting possibilities.

1852.219-75 Small Business Subcontracting Reporting (MAY 1999). This clause applies if FAR 52.219-9 is included in this contract.

1852.219-76 NASA 8 Percent Goal (JUL 1997). This clause applies only if Seller is not a small business.

1852.223-70 Safety and Health (Apr 2002). This clause applies only if this contract (i) exceeds \$1,000,000,

(ii) requires construction, repairs or alterations in excess of \$100,000, or (iii) regardless of dollar amount, involves the use of hazardous materials or operations.

1852.223-74 Drug-and Alcohol-Free Workforce (MAR 1996). This clause applies to Seller if an employee in a sensitive position performs work, except if this contract is for commercial items.

1852.225-70 Export Licenses (FEB 2000).

1852.227-14 Rights in Data-General (OCT 1995). This clause applies only if data will be produced, furnished, or acquired under this contract, except contracts for basic or applied research with universities or colleges.

1852.227-70 New Technology (MAY 2002). This clause only applies if this contract is for experimental, developmental, or research work and Seller is other than a small business firm or nonprofit organization.

1852.227-72 Designation of New Technology Representative and Patent Representative (JUL 1997) The following named representatives were designated by the Contracting Officer to administer the New Technology or Patent Rights clause:

[INSERT ADDRESS]

1852.227-86 Commercial Computer Software-Licensing (DEC 1987). This clause applies only if Seller’s software will be delivered to NASA under licensing.

1852.242-72 Observance of Legal Holidays (AUG 1992), **Alternate II** (SEP 1989). This clause applies only if this contract requires work on a Government installation.

1852.242-73 NASA Contractor Financial Management Reporting (NOV 2004). This clause applies only if this contract is a cost-type, price redetermination or FPI contract. "Contracting Officer" shall mean Buyer's Authorized Procurement Representative.

1852.245-73 Financial Reporting of NASA Property in the Custody of Contractors (OCT 2003). Seller will submit annual reports to Buyer no later than October 15.

1852.246-73 Human Space Flight Item (MAR 1997).

3. **Commercial Items.** If goods or services being procured under this contract are for commercial items and Clause H203 is set forth in the purchase contract, the foregoing Government clauses in Sections 1 and 2 above are deleted and the following FAR and NASA FARS clauses are inserted in lieu thereof:

52.219-8 Utilization of Small Business Concerns (MAY 2004). Include in all subcontracts that offer further subcontracting opportunities. If a subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), Seller and any lower-tier subcontractor must include FAR 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (APR 2002).

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Handicapped Workers (JUN 1998). This clause applies only if this contract exceeds \$10,000.

52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004). This clause applies only if this contract exceeds \$100,000.

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003). This clause only applies if (i) this contract is a contract for ocean transportation services or a construction contract or (ii) the supplies being transported are (a) items Buyer is reselling or distributing to the Government without adding value or (b) shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

4. **Cost Accounting Standards.**

- A. (Applicable if this contract incorporates clause H001). The version of **FAR 52.230-2, Cost Accounting Standards**, incorporated by clause H001 is the version dated April 1998.
- B. (Applicable if this contract incorporates clause H002). The version of **FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices**, incorporated by clause H002 is the version dated April 1998.
- C. (Applicable if this contract incorporates clause H003). The version of **FAR 52.230-4, Consistency in Cost Accounting Practices**, incorporated by clause H003 is the version dated August 1992.
- D. (Applicable if this contract incorporates clause H004). The version of **FAR 52.230-5, Cost Accounting Standards—Educational Institution**, incorporated by clause H004 is the version dated April 1998.

5. **Prime Contract Special Provisions.** The following prime contract special provisions apply to this contract:

A. Limited Release of Contractor Confidential Business Information.

(a) NASA may find it necessary to release information submitted by Seller, either in response to this solicitation or pursuant to the provisions of this contract, to individuals not employed by NASA. Business information that would ordinarily be entitled to confidential treatment may be included in the information released to these individuals. Accordingly, by submission of this proposal, or signature on this contract or other contracts, Seller hereby consents to a limited release of its confidential business information (CBI).

(b) Possible circumstances where the Agency may release Seller's CBI include, but are not limited to, the following:

(1) To other Agency contractors and subcontractors, and their employees tasked with assisting the Agency in handling and processing information and documents in the evaluation, the award or the administration of Agency contracts, such as providing both pre-award and post award audit support and specialized technical support to NASA's technical evaluation panels;

(2) To NASA contractors and subcontractors, and their employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the Agency.

(c) NASA recognizes its obligation to protect Seller from competitive harm that could result from the release of such information to a competitor. Except where otherwise provided by law, NASA will permit the limited release of CBI under subparagraphs (1) or (2) only pursuant to non-disclosure agreements signed by the assisting contractor or subcontractor, and their individual employees who may require access to the CBI to perform the assisting contract.

(d) NASA's responsibilities under the Freedom of Information Act are not affected by this clause.

(e) Seller agrees to include this clause, including this paragraph (e), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

B. Patent Rights.

This contract includes the Patent Rights-Retention by the Contractor Clause (FAR 52.227-11) (Alt. II and IV), as modified by NASA FARS 1852.227-11, and the New Technology Clause (NASA FARS 1852.227-70). It is anticipated that Seller may have Seller background inventions that could be applied to contract research and incorporated into deliverables under the contract. The Government may need rights to use such Seller background inventions in order to practice technologies produced under this contract in other Government contracts. Thus, Contracting Officer permission is required before Seller background inventions may be included in contract deliverables. To the extent a Seller background invention has been federally funded, the Government will receive its government-purpose license rights to practice the background invention. Where there is no federal funding of the background invention, Seller will identify to the Contracting Officer the rights that it proposes to grant the Government to use such invention in other Government contracts. The Government shall receive a government-purpose license to practice any contractor background invention where such Contracting Officer permission is not obtained prior to incorporating its background inventions into Seller work. **This clause or a clause substantially the same shall be included in all subcontracts at any tier.**

C. Foreign Nationals -Foreign Sources.

(a) For the purposes of this clause,

(1) Foreign nationals are those persons not citizens of, not nationals of, or resident/immigrant aliens to, the United States;

(2) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent,

representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and

(3) Foreign sources are those sources (vendors, subcontractors, and suppliers) not owned and controlled by citizens or immigrant aliens of the United States.

(b) Nothing in this clause is intended to waive any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(c) Seller acknowledges that equipment and technical data generated or delivered in the performance of this contract is controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128, and require an export license before assigning any foreign national to perform work under this contract or before granting access to foreign nationals to any equipment and technical data generated or delivered in performance of this contract (see 22 CFR Section 125). Seller agrees to notify and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign nationals or their representatives. This notification will include the name and country of origin of the foreign national or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign national is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

D. Export Controlled Data Restrictions.

- (a) For the purpose of this clause,
- (1) Foreign person is any person who is not a citizen of the U.S. or lawfully admitted to the U.S. for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;
 - (2) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and
 - (3) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.
- (b) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.
- (c) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.
- (d) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

H.21 Management and Protection of Data.

- (a) In the performance of this contract it is anticipated that the Contractor may have access to, be furnished, use, or generate the following types of data (recorded information):
- (1) data submitted to the government with limited rights or restricted rights notices;
 - (2) data of third parties which the Government has agreed to handle under protective arrangements; and
 - (3) data generated by or on behalf of the Government which the Government intends to control the use and dissemination thereof.
- (b) In order to provide management appropriate for protecting the interests of the Government and other owners of such data, the Contractor agrees with respect to data in category (a)(1) above, and with respect to any data in categories (a)(2) and (a)(3) when so identified by the Contracting Officer, to:
- (1) use and disclose such data only to the extent necessary to perform the work required under this contract, with particular emphasis on restricting disclosure of the data to those persons who have a definite need for the data in order to perform work under this contract;
 - (2) not reproduce the data unless reproduction of the data is specifically permitted elsewhere in the contract or by the Contracting Officer;
 - (3) refrain from disclosing the data to third parties without the written consent of the Contracting Officer; and
 - (4) return or deliver the data including all copies thereof to the Contracting Officer or his designed recipient when requested by the Contracting Officer.

H. 24 Potential Organizational Conflict of Interest Pertaining to Advance Development Efforts.

Certain Crew Exploration Vehicle (CEV) Advance Development work related to this contract but under separate contract will commence during the CEV Phase 1 period. These Advance Development contracts and CEV Phase 1 will be performed concurrently. Certain limited information delivered to or generated by the Government will be exchanged between the CEV Phase 1 and CEV Advance Development contractors.

To the extent that the work under this contract requires access to Limited Rights Data, Restricted Computer Software, Confidential Business Information or Government Sensitive Information (“Sensitive Information” see Clause H.21(a)) and as long as these data remain proprietary, confidential or sensitive, the contractor shall protect these data from unauthorized use and disclosure and agrees not to use such information to compete with those other companies. Government test data and analysis pertaining to products of other vendors under separate Advance Development contracts may be furnished under this contract as required to conduct trade studies and to provide feedback on ability to integrate these products into the CEV. The Contractor shall protect this Sensitive Information from unauthorized use and disclosure and agrees not to use it to compete with the companies the products of which the Government test data and analysis pertain. The Contractor agrees to negotiate separate non-disclosure agreements with companies furnishing Sensitive Information as may be requested by those companies.

In addition, NASA may use data derived from the CEV Phase 1 trade studies in the evaluation of CEV Advance Development work. As such, CEV Phase 1 trade studies produced under this contract are hereby designated as Government Sensitive Information subject to the non-disclosure and protection requirements of the H.21 clause.

In order to mitigate the potential conflict of interests identified above, the Contractor agrees to establish a firewall plan with the following components:

- (1) Strict segregation of all personnel having access to Sensitive Information including but not limited to CEV Phase 1 trade studies and information provided under this contract, from participation on all competitive CEV Advance Development proposal activities involving that data, except when a phases selection type acquisition is being conducted. In the case of a phases selection type of acquisition (e.g., advance development procurement for the Thermal Protection System), strict segregation of all personnel having access to Sensitive Information, including but not limited to CEV Phase 1 trade studies and information provided under this contract, is required for all proposal contract performance activities.
- (2) Identification by name of those individuals who have been segregated for purposes of accessing Sensitive Information under CEV Phase 1. The Contractor shall be required to keep this list current and make this list available to all those authorized to access the data. Disclosure of Sensitive Information to non-Government individuals not on this list is strictly prohibited. It is emphasized that individuals on this list shall be employees with a “need to know”.
- (3) Training of segregated personnel regarding organizational conflicts of interest, including: mitigation, firewalls, and management and protection of data.
- (4) A requirement for personnel having access to Sensitive Information under CEV Phase 1 to sign an agreement that indicates their understanding of their responsibilities and agreement to comply with the firewall plan and company policy regarding the protection of information, as well as the ramifications for violation of those responsibilities.

An Organizational Conflict of interest mitigation plan shall be submitted to the Government for approval with 30 days of the effective date of this clause.

This clause shall be included in all subcontracts subject to any conflict of interest in performance of this contract.