

CUSTOMER CONTRACT REQUIREMENTS
PROP B
CUSTOMER CONTRACT HR0011-16-9-0005

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below.

1. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

Special Provisions - HR0011-16-9-0005 .

DEFINITIONS

Agreement: Purchase Contract

Computer Software: Means

- i. Computer programs that comprise a set of instruction, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations; and
- ii. Source code, Executable code, supporting binary libraries, documentation, flow charts and related material that would enable the software to be executed on another machine.
- iii. Computer Software does not include computer data bases or computer software documentation.

Covered Government Support Contractor: A contractor under a contract, the primary purpose of which is to furnish independent and impartial advise or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort.) provided that the contractor:

- i. Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and
- ii. Receives access to Technical Data or Computer Software for performance of a Government contract that contains the clause DFARS 252.227-7025, Limitations on the Use or Disclosure of Government – Furnished Information Marked with Restrictive Legends.

Data: Recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, software, maskworks and trade secrets. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions, included under Patent Rights.

Government Purpose Rights: Means the rights to –

- i. Use, modify, reproduce, release, perform, display, or disclose Technical Data and Computer Software within the Government without restriction; and
- ii. Release or disclose Technical Data or Computer Software outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclosure that data for United States Government purposes.

Invention: Any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

Know-How: All information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, Technical Data, specifications, devices, apparatus and machines.

Limited Rights: Means the rights to use, modify, reproduce, release, perform, display, or disclose Technical Data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the Technical Data outside the Government, use the Technical Data for manufacture, or authorize the Technical Data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is –

- i. Necessary for emergency repair and overhaul; or
- ii. A release or disclosure to –
 - a. A Covered Government Support Contractor in performance of its covered Government support contract for use, modification, reproduction, performance, display, or release or disclosure to a person authorized to receive Limited Rights Technical Data; or
 - b. A Government performing contractor (e.g. Software Quality Team (SQT) who has executed an associate contractor agreement with the Performer in support of Government software quality initiatives.
- iii. The recipient of the Technical Data is subject to a prohibition on the further reproduction, release, disclosure, or use of the Technical Data; and
- iv. The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

Made: Relates to any invention means the conception or first actual reduction to practice of such invention.

Performer: Buyer

Practical Application: 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 capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Program: Research and development being conducted by the Performer.

Restricted Rights: Restricted Rights apply only to noncommercial computer software and means the Government's rights to use, modify, or transfer software are restricted as follows:

- i. The Government may only make the minimum number of copies of the Computer Software required for safekeeping (archive), backup, modifications, or testing purposes.
- ii. The Government may modify the software, provided that use of the modified software is only as provided in (i) and that the modified software will not be released or disclosed, except for as provided elsewhere in this clause.
- iii. The Government will not transfer the software outside the Government, except to Covered Government Support Contractors in performance of its covered Government support contract or the SQT where such covered Government support contracts and/or the SQT contracts contain the clause at 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends, and only when the usage by the recipient is subject to the limitations in paragraphs (i) through (iii) of this clause, and when the Government notifies the party which has granted restricted rights that release or disclosure to particular contractors or subcontractors is made.

Software Quality Team (SQT): A Government contractor specifically focused on evaluation the Performer's software.

Subject Invention: Any Invention conceived or first actually reduced to practice in the performance of work under this Agreement.

Technology: Discoveries, innovations, Know-How and inventions, whether patentable or not, including Computer Software, recognized under U. S. Law as intellectual creations, to which rights of ownership accrue, including, but not limited to, patents, trade secrets, maskworks and copyrights developed under this Agreement.

Technical Data: Means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include Computer Software or data incidental to agreement administration, such as financial and/or management information.

PATENT RIGHTS

A. Allocation of Principal Rights

1. Unless the Seller shall have notified Government, thru Buyer, in accordance with subparagraph B.2 below, that the Seller does not intend to retain title, the Seller shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of this Article.
2. With respect to any subject invention in which the Seller retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world.

B. Invention Disclosure, Election of Title, and Filing of Patent Application

1. The Seller shall disclose each Subject Invention to Government, thru Buyer, within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to Government shall be in the form of a written report and shall identify the Agreement and circumstances under which the Invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the Invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted and/or accepted for publication at the time of disclosure.
2. If the Seller determines that it does not intend to retain title to any such Invention, the Seller shall notify Government, thru Buyer, in writing, within eight (8) months of disclosure to Government. However, in any case where publication, sale, or public use has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by Government through the Buyer to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.
3. The Seller may protect a Subject Invention to which it retains title either under applicable trade secret law or by filing for patent protection for such Subject Invention. If the Seller elects to file for patent protection, the Seller shall file its initial patent application on a subject invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Seller may elect to file patent applications in additional countries (including the European Patent Office and the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.
4. The Seller shall notify Government, thru Buyer, of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.
5. Requests for extension of the time for disclosure election, and filing, may be granted at Government's discretion after considering the circumstances of the Seller and the overall effect of the extension.
6. The Seller shall submit to Government, thru Buyer, annual listings of subject inventions. At the completion of the Agreement, the Seller shall submit a comprehensive listing of all subject inventions identified during the course of the Agreement and the current status of each.
7. For classified inventions, the Seller shall disclose the subject invention to Government in accordance with this Article and submit the documentation to the AO via appropriate channels.

C. Conditions When the Government May Obtain Title

Upon Government's written request, the Seller shall convey title to any subject invention to the Government thru Buyer, under any of the following conditions:

1. If the Seller fails to disclose or elects not to retain title to the subject invention within the times specified in Paragraph B of this Article; however, the Government may only request title within sixty (60) calendar days after learning of the failure of the Seller to disclose or elect within the specified times;
2. In those countries in which the Seller fails to file patent applications within the times specified in paragraph B of this Article; however, if the Seller has filed a patent application in a country after the times specified in paragraph B of this Article, but prior to its receipt of the written request by the Government through the Buyer, the Seller shall continue to retain title in that country; or
3. In any country in which the Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a subject invention.

D. Minimum Rights to the Seller and Protection of the Seller's Right to File

1. The Seller shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title. The Seller's license extends to its domestic (including Canada) subsidiaries and affiliates, if any, and includes the right to grant licenses of the same scope to the extent that the Seller was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of Government, except when transferred to the successor of that part of the business to which the subject invention pertains.

2. The Seller's domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Seller has achieved Practical Application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent the Seller, its licensees, or the subsidiaries or affiliates have failed to achieve Practical Application in that foreign country.

3. Before revocation or modification of the license, the Government through the Buyer shall furnish the Seller a written notice of its intention to revoke or modify the license, and the Seller shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

E. Action to Protect the Government's Interest

1. The Seller agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Seller elects to retain title, and (ii) convey title to the Government when requested under paragraph C of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.

2. The Seller agrees to require its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Seller each subject invention made under this Agreement in order that the Seller can comply with the disclosure provisions of paragraph B of this Article.

3. The Seller shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under Agreement No. HR0011-16-9- 0005, awarded by the Government. The Government has certain rights in the invention.

F. Lower Tier Agreements

The Seller shall include this Article, suitably modified, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

G. Reporting on Utilization of Subject Inventions

1. The Seller agrees to submit, during the term of the Agreement, an annual report on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Seller or its licensees or assignees. Such reports shall include the following information:

- a. The inventor(s) and the agreement under which the invention was made;
- b. Sufficient technical detail to convey a clear understanding of the invention; and
- c. Any publication, on sale (i.e., sale or offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication; and
- d. notify the Agreements Officer of the acceptance of any manuscript describing the invention for publication and of any on sale or public use.

The Seller also agrees to provide additional reports as may be requested by the Government in connection with any march-in proceedings undertaken by Government in accordance with Paragraph I of this Article. The Government agrees it shall not disclose such information to persons outside the Government without permission of the Seller, unless required by law.

2. All required reporting shall be accomplished, to the extent possible, using the i-Edison reporting website: <https://s->

edison.info.nih.gov/iEdison/. To the extent any such reporting cannot be carried out by use of i-Edison, reports and communications shall be submitted to the Agreements Officer and Administrative Agreements Officer.

H. Preference for American Industry

Notwithstanding any other provision of this clause, the Seller agrees that it shall not grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention shall be manufactured substantially in the United States. However, in individual cases, the requirements for such an agreement may be waived by the Government upon a showing by the Seller 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.

I. March-in Rights

The Seller agrees that, with respect to any subject invention in which it has retained title, the Government, through the Buyer has the right to require the Seller, an assignee, or exclusive licensee of a subject invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Seller, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Government determines that:

1. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller; assignee, or their licensees;
2. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Seller, assignee, or licensees; or
3. Such action is necessary because the agreement required by paragraph (H) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such Agreement.

J. Authorization and Consent

The Government authorizes and consents to all use and manufacture of any Invention described in and covered by a United States patent in the performance of this Agreement or any subcontract under this Agreement at any tier.

ARTICLE VIII: DATA RIGHTS

A. Allocation of Principal Rights

The Parties agree that in consideration for Government funding, the Seller intends to reduce to Practical Application items, components and processes developed under this Agreement

1. With respect to Technical Data and Computer Software delivered under this Agreement related to the Program, the Government shall receive Government Purpose Rights, as defined in Article I, paragraph B, except for those items identified in the Seller's Data Assertions List that will be delivered with Limited or Restricted rights.
2. With respect to all Technical Data and Computer Software listed in Seller's Data Assertions List with a basis for assertion as "developed exclusively at private expense" that will be delivered under this Agreement, the Government shall receive Limited Rights or Restricted Rights, as defined herein, unless it can be shown that another license right had been previously negotiated for Technical Data or Computer Software under another Government agreement or contract. This technical data and computer software, previously developed exclusively at private expense and to be furnished to the Government with Limited or Restricted Rights in support of all of the deliverables required hereunder, may be furnished as an addendum to a report or in separate reports at the Seller's discretion and marked in accordance with instructions under paragraph B of Article VIII: Data Rights.
3. Notwithstanding the provision in A.5, the Seller agrees, with respect to technical data and computer software delivered under this Agreement, the Government may, within one (1) year after completion or termination of this Agreement, whichever comes first, require delivery of technical data and computer software previously delivered under this agreement, including those items developed exclusively at private expense and listed in Seller's Data Assertions List, and receive Limited or Restricted Rights. The Government will compensate the Seller for converting the technical data and computer software into the prescribed form and for reproduction and delivery of all technical data and computer software necessary to achieve practical application.
4. Seller's Data Assertions List is incorporated into this Agreement and lists Technical Data And Computer Software

that was developed by the Seller or its subcontractors/suppliers, and the Seller or its subcontractors/suppliers assertions should be furnished to the Government with restrictions on use, release or disclosure.

5. March-In Rights

a. In the event the Government chooses to exercise its March-in Rights, as defined in Patent Rights of this Agreement, the Seller agrees, upon written request from the Government, to deliver at no additional cost to the Government (except for any formatting, reproduction and delivery costs which shall be reimbursed by the Government), all Technical Data and Computer Software necessary to achieve Practical Application of the Subject Invention subject to the exercise of such March-In Rights within sixty (60) calendar days from the date of the written request. The Government shall retain Government Purpose Rights, as defined in Article I, Section B of this Agreement, to this delivered Technical Data and Computer Software, unless such Technical Data and Computer Software is subject to Limited or Restricted Rights under this Agreement, in that case, the Seller agrees to negotiate a no cost license in the Technical Data and Computer Software which is sufficient for the Government to achieve practical application of a subject invention.

b. To facilitate any potential deliveries, the Seller agrees to retain and maintain in good condition until 2 years after completion or termination of this Agreement, all Technical Data and Computer Software necessary to achieve Practical Application of any subject invention as defined in Article I, Section B of this Agreement.

B. Marking of Data

1. Pursuant to paragraph A above, all Technical Data, Computer Software, reports, and other deliverables delivered under this Agreement shall be marked with "Government Purpose Rights" and the following legend:

GOVERNMENT PURPOSE RIGHTS

Seller Name: Seller Name Seller Address: Seller Address

"The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted in accordance with this Agreement and HR0011-16-9-0005. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings."

2. Supporting technical data and computer software developed exclusively at private expense and to be furnished to the Government with Limited or Restricted Rights, as specified in the Seller's Data Assertions List to this Agreement, in support of the above deliverables, may be furnished within a report, as an addendum to a report, or in separate reports at the Seller's discretion and marked as follows:

a. Limited rights markings. Technical Data delivered or otherwise furnished to the Government with Limited Rights shall be marked with the following legend:

LIMITED RIGHTS

Seller Name: Seller Name Seller Address: Seller Address

"The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted in accordance with this Agreement and HR0011-16-9-0005. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Seller."

b. Restricted rights markings: Computer Software delivered or otherwise furnished to the Government with Restricted Rights shall be marked with the following legend:

RESTRICTED RIGHTS

Seller Name: Seller Name Seller Address: Seller Address

"The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted in accordance with this Agreement and HR0011-16-9-0005. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software, must

promptly notify the above named Seller."

C. Lower Tier Agreements

The Seller shall include sufficient terms in its subcontracts or lower tier agreements, regardless of the tier, issued in support of this Agreement to provide the Government with the rights in Technical Data and Computer Software specified in this Article and in the Seller's Data Assertions List for experimental, developmental, or research work.

ARTICLE IX: FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect during the term of the Agreement and for Five (5) years thereafter.

A. General

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the National Industrial Security Program Operating Manual (NISPOM) (DoD 5220.22-M) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.)

B. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

The Seller will not sell or transfer any of the technology developed as a result of this program agreement to foreign firms or institutions.

C. Lower Tier Agreements

The Seller shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

ARTICLE XIV:

(a) Definitions. As used in this clause-

(1) "Aircraft," unless otherwise provided in the agreement Schedule, means

- (i) Aircraft to be delivered to the Government under this agreement (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing or a wing is attached to a fuselage of the aircraft;
- (ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Seller under this agreement, including all Government property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement;
- (iii) Aircraft furnished by the Seller under this agreement (either before or after Government acceptance); or
- (iv) Conventional winged aircraft, as well as helicopters, vertical take-off or landing aircraft, lighter-than-air airships, unmanned aerial vehicles, or other nonconventional aircraft specified in this agreement.

(2) "Seller's managerial personnel" means the Seller's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of-

- (i) All, or substantially all, of the Seller's business;
- (ii) All, or substantially all, of the Seller's operation at any one plant or separate location; or
- (iii) A separate and complete major industrial operation.

(3) "Seller's premises" means those premises, including subcontractors' premises, designated in the Schedule or in writing by the Agreements Officer, and any other place the aircraft is moved for safeguarding.

(4) "Flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this agreement, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Agreements Officer.

- (i) For land based aircraft, "flight" begins with the taxi roll from a flight line on the Seller's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Seller's premises.
 - (ii) For seaplanes, "flight" begins with the launching from a ramp on the Seller's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Seller's premises.
 - (iii) For helicopters, "flight" begins upon engagement of the rotors for the purpose of take-off from the Seller's premises and continues until the aircraft has returned to the ground on the Seller's premises and the rotors are disengaged.
 - (iv) For vertical take-off or landing aircraft, "flight" begins upon disengagement from any launching platform or device on the Seller's premises and continues until the aircraft has been engaged to any launching platform or device on the Seller's premises.
 - (v) All aircraft off the Seller's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of this agreement, or landings approved in writing by the Agreements Officer.
- (5) "Flight crew member" means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Seller. It also includes any pilot or operator of an unmanned aerial vehicle. If required, a defense systems operator may also be assigned as a flight crew member.
- (6) "In the open" means located wholly outside of buildings on the Seller's premises or other places described in the Schedule as being "in the open." Government furnished aircraft shall be considered to be located "in the open" at all times while in the Seller's possession, care, custody, or control.
- (7) "Operation" means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.
- (b) Combined regulation/instruction. The Seller shall be bound by the operating procedures contained in the combined regulation/instruction entitled "Seller's Flight and Ground Operations" (Air Force Instruction 10-220, Army Regulation 95-20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M 13020.3, and Defense Contract Management Agency Instruction 8210.1) in effect on the date of agreement award.
- (c) Government as self-insurer. Subject to the conditions in paragraph (d) of this clause, the Government self-insures and assumes the risk of damage to, or loss or destruction of aircraft "in the open," during "operation," and in "flight," except as may be specifically provided in the Schedule as an exception to this clause. The Seller shall not be liable to the Government for such damage, loss, or destruction beyond the Seller's share of loss amount under the Government's self-insurance.
- (d) Conditions for Government's self-insurance. The Government's assumption of risk for aircraft in the open shall continue unless the Agreements Officer finds that the Seller has failed to comply with paragraph (b) of this clause, or that the aircraft is in the open under unreasonable conditions, and the Seller fails to take prompt corrective action.
- (1) The Agreements Officer, when finding that the Seller has failed to comply with paragraph (b) of this clause or that the aircraft is in the open under unreasonable conditions, shall notify the Seller in writing and shall require the Seller to make corrections within a reasonable time.
 - (2) Upon receipt of the notice, the Seller shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable.
 - (i) If the Agreements Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the agreement price for any additional costs incurred in correcting the conditions.
 - (ii) Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this agreement.
 - (3) If the Agreements Officer finds that the Seller failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Agreements Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 a.m. on the fifteenth day following the day the written notice is received by the Seller.
 - (i) If the Agreements Officer later determines that the Seller acted promptly to correct the cited conditions or that the time taken by the Seller was not unreasonable, an equitable adjustment shall be made in the agreement price

for any additional costs incurred as a result of termination of the Government's assumption of risk.

(ii) Any dispute as to the timeliness of the Seller's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this agreement.

(4) If the Government terminates its assumption of risk pursuant to the terms of this clause-

(i) The Seller shall thereafter assume the entire risk for damage, loss, or destruction of, the affected aircraft;

(ii) Any costs incurred by the Seller (including the costs of the Seller's self-insurance, insurance premiums paid to insure the Seller's assumption of risk, deductibles associated with such purchased insurance, etc.) to mitigate its assumption of risk are unallowable costs; and

(iii) The liability provisions of the Government Property clause of this agreement are not applicable to the affected aircraft.

(5) The Seller shall promptly notify the Agreements Officer when unreasonable conditions have been corrected.

(i) If, upon receipt of the Seller's notice of the correction of the unreasonable conditions. The Government elects to again assume the risk of loss and relieve the Seller of its liability for damage, loss, or destruction of the aircraft, the Agreements Officer will notify the Seller of the Agreements Officer's decision to resume the Government's risk of loss. The Seller shall be entitled to an equitable adjustment in the agreement price for any insurance costs extending from the end of the third working day after the Government's receipt of the Seller notice of correction until the Seller is notified that the Government will resume the risk of loss.

(ii) If the Government does not again assume the risk of loss and the unreasonable conditions have been corrected, the Seller shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day after the Government's receipt of the Seller's notice of correction.

(6) The Government's termination of its assumption of risk of loss does not relieve the Seller of its obligation to comply with all other provisions of this clause, including the combined regulation/instruction entitled "Seller's Flight and Ground Operations."

(e) Exclusions from the Government's assumption of risk. The Government's assumption of risk shall not extend to damage, loss, or destruction of aircraft which-

(1) Results from failure of the Seller, due to willful misconduct or lack of good faith of any of the Seller's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice, including oversight of subcontractor's program.

(2) Is sustained during flight if either the flight or the flight crew members have not been approved in advance of any flight writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation/instruction entitled "Seller's Flight and Ground Operations";

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) Is covered by insurance;

(5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice, e.g., a known condition or design defect, in the property); or

(6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Seller, but for the Government's assumption of risk.

(f) Seller's share of loss and Seller's deductible under the Government's self insurance.

(1) The Seller assumes the risk of loss and shall be responsible for the Seller's share of loss under the Government's self-insurance. That share is the lesser of-

(i) The first \$100,000 of loss or damage to aircraft in the open, during operation, or in flight resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence

of Government personnel; or

(ii) Twenty percent of the price or estimated cost of this agreement.

(2) If the Government elects to require that the aircraft be replaced or restored by the Seller to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph U) of this clause shall not include the dollar amount of the risk assumed by the Seller.

(3) In the event the Government does not elect repair or replacement, the Seller agrees to credit the agreement price or pay the Government, as directed by the Agreements Officer, the lesser of-

(i) \$100,000;

(ii) Twenty percent of the price or estimated cost of this agreement; or

(iii) The amount of the loss.

(4) For task order and delivery order contracts, the Seller's share of the loss shall be the lesser of \$100,000 or twenty percent of the combined total price or total estimated cost of those orders issued to date to which the clause applies.

(5) The costs incurred by the Seller for its share of the loss and for insuring against that loss are unallowable costs, including but not limited to--

(i) The Seller's share of loss under the Government's self-insurance;

(ii) The costs of the Seller's self-insurance;

(iii) The deductible for any Seller- purchased insurance;

(iv) Insurance premiums paid for Seller- purchased insurance; and

(v) Costs associated with determining, litigating, and defending against the Seller's liability.

(g) Subcontractor possession or control. The Seller shall not be relieved from liability for damage, loss, or destruction of aircraft while such aircraft is in the possession or control of its subcontractors, except to the extent that the subcontract, with the written approval of the Agreements Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this agreement.

(h) Seller's exclusion of insurance costs. The Seller warrants that the agreement price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government including the Seller's share of loss in this clause, even if the assumption may be terminated for aircraft in the open.

(i) Procedures in the event of loss.

(1) In the event of damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Seller shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft and to put all aircraft in the best possible order. Except in cases covered by paragraph (f)(2) of this clause, the Seller shall furnish to the Agreements Officer a statement of-

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and (iv) The insurance, if any, covering the interest in commingled property.

(2) The Agreements Officer will make an equitable adjustment for expenditures made by the Seller in performing the obligations under this paragraph.

(j) Loss prior to delivery.

(1) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either-

(i) Require that the aircraft be replaced or restored by the Seller to the condition immediately prior to the

damage, in which event the Agreements Officer will make an equitable adjustment in the agreement price and the time for agreement performance; or

(ii) Terminate this agreement with respect to the aircraft. Notwithstanding the provisions in any other termination clause under this agreement, in the event of termination, the Seller shall be paid the agreement price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amount the Agreements Officer determines-

(A) It would have cost the Seller to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and

(B) Would be the value of the damaged aircraft or any salvage retained

(2) The Agreements Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Seller, a further equitable adjustment will be made in the amount due the Seller. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause.

(k) Reimbursement from a third party. In the event the Seller is reimbursed or compensated by a third party for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Seller shall equitably reimburse the Government. The Seller shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Agreements Officer or authorized representative, the Seller shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation) in obtaining recovery.

(l) Government acceptance of liability. To the extent the Government has accepted such liability under other provisions of this agreement, the Seller shall not be reimbursed for liability to third persons for loss or damage to property or for death or bodily injury caused by aircraft during flight unless the flight crew members previously have been approved for this flight in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled "Seller's Flight and Ground Operations".

(m) Subcontracts. The Seller shall incorporate the requirements of this clause, including this paragraph (m), in all subcontracts.