

**CUSTOMER CONTRACT REQUIREMENTS  
COMMERCIAL CREW DEVELOPMENT  
CUSTOMER CONTRACT NNJ10TA05S**

**CUSTOMER CONTRACT REQUIREMENTS**

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

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

**TBD NOTIFICATION OF DEBARMENT/SUSPENSION AND EXPORT DATA CONTROL (AUG 2009).** Seller shall provide immediate notice to Buyer in the event of being debarred suspended, or proposed for debarment by any Federal Agency during the performance of this contract.

(1) For the purpose of this clause,

(A) Foreign person is any person who is not a citizen of the or lawfully admitted to the for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;

(B) 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

(C) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

(2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

(3) 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.

(4) 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)).

**NNJ10TA05S COMMERCIAL CREW DEVELOPEMENT (CCDev) (MAR 2010).**

**ARTICLE 1. INTELLECTUAL PROPERTY AND DATA RIGHTS - RIGHTS IN DATA**

## A. General

(1) "Related Entity" as used in this Article, means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Seller that is assigned, tasked, or contracted with to perform specified NASA or Seller activities under this Agreement.

(2) "Data," as used in this Agreement, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, software and documentation thereof, and data comprising commercial and financial information.

(3) "Proprietary Data," as used in this Article, means Data embodying trade secrets or comprising commercial or financial information that is privileged or confidential.

(4) The Data rights set forth herein are applicable to employees of Seller and employees of any Related Entity of Seller. Seller shall ensure that its employees and employees of any Related Entity that perform Seller activities under this Agreement are aware of the obligations under this Article and that all such employees are bound to such obligations.

(5) Data exchanged between NASA, Boeing and Seller under this Agreement will be exchanged without restriction as to its disclosure, use, or duplication except as otherwise provided in this Article.

(6) No preexisting Proprietary Data will be exchanged between the Parties under this Agreement unless specifically authorized in this Article or in writing by the owner of the Proprietary Data.

(7) In the event that Data exchanged between NASA and XYZ include a restrictive notice that NASA or XYZ deems to be ambiguous or unauthorized, NASA or XYZ may inform the other Party of such condition. Notwithstanding such a notice, as long as such notice provides an indication that a restriction on use or disclosure was intended, the Party receiving such Data will treat the Data pursuant to the requirements of this clause unless otherwise directed in writing by the party providing such Data.

(8) Notwithstanding any restriction on use, disclosure, or reproduction of Data provided in this clause, the Parties will not be restricted in the use, disclosure, or reproduction of Data provided under this Agreement that: (a) is publicly available at the time of disclosure or thereafter becomes publicly available without breach of this Agreement; (b) is known to, in the possession of, or developed by the receiving Party independent of carrying out the receiving Party's responsibilities under this Agreement and independent of any disclosure of, or without reference to, Proprietary Data or otherwise protectable Data hereunder; (c) is received from a third party having the right to disclose such information without restriction; or (d) is required to be produced or released by the receiving Party pursuant to a court order or other legal requirement.

(9) If either NASA or XYZ believes that any of the events or conditions that remove restriction on the use, disclosure, or reproduction of the Data apply, NASA or XYZ will promptly notify the other Party of such belief prior to acting on such belief, and, in any event, will notify the other Party prior to an unrestricted use, disclosure, or reproduction of such Data.

(10) Disclaimer of Liability: Notwithstanding any restriction on use, disclosure, or reproduction of Data provided in this Article, NASA will not be restricted in, nor incur any liability for, the use, disclosure, or reproduction of any Data not identified with a suitable restrictive notice in accordance with paragraphs B and G of this Article or of any Data included in Data which XYZ has furnished, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(11) XYZ may use the following, or a similar, restrictive notice as required by paragraphs B and G of this Article. In addition to identifying Proprietary Data with such a restrictive notice, XYZ should mark each page containing Proprietary Data with the following, or a similar, legend: "PROPRIETARY DATA – use and disclose only in accordance with notice on title or cover page."

### Proprietary Data Notice

These data herein include <enter as applicable: "Background Data" or "Data Produced by XYZ under a Space Act Agreement"> in accordance with the Data Rights provisions under Space Act Agreement <provide applicable identifying information> and embody Proprietary Data. In accordance with the Space Act Agreement, NASA will use reasonable efforts to maintain the data in confidence and limit use, disclosure, and reproduction by NASA and any Related Entity of NASA (under suitable protective conditions) in accordance with restrictions identified in the Space Act Agreement

## B. Data First Produced under this Agreement

(1) Data first produced in carrying out Seller's responsibilities under this Agreement, including but not limited to technical data related to inventions made under this Agreement, will be furnished to NASA through Boeing upon request and such Data will be disclosed and used by NASA and any Related Entity

of NASA (under suitable protective conditions) during the term of this Agreement only for evaluating Seller's performance under this Agreement. If Seller considers any such Data to be Proprietary Data, and such Data is identified with a suitable restrictive notice, NASA will use reasonable efforts to maintain the Data in confidence.

(2) Upon a successful completion of all milestones under this Agreement, NASA shall not assert rights in such Data or use such Data for any purpose except that NASA shall retain the right to: (1) maintain a copy of such Data for archival purposes; and (2) use or disclose such archived Data by or on behalf of NASA for Government purposes in the event the NASA determines that

(a) Such action is necessary because Seller, its assignee, or other successor has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of inventions, hardware, or software related to such Data;

(b) Such action is necessary because Seller, its assignee, or other successor, having achieved practical application of inventions, hardware, or software related to such Data, has failed to maintain practical application;

(c) Such action is necessary because Seller, its assignee, or other successor has discontinued making the benefits of inventions, hardware, or software related to such Data available to the public or to the Federal Government;

(d) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Seller, its assignee, or other successor; or

(e) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by Seller, its assignee, or successor.

In the event NASA determines that one of the circumstances listed in subparagraphs (a)–(e) above exists, Boeing shall provide written notification to the Seller. Upon mailing of such determination, Seller shall have thirty (30) days to respond by providing its objection to the determination as a dispute. In the event that Seller does not respond to Boeing in writing to NASA's determination, then such determination shall serve as a final agency decision for all purposes including judicial review.

(3) In the event Boeing terminates this Agreement, NASA shall have the right to use, reproduce, prepare derivative works, distribute to the public, perform publicly, display publicly, or disclose Data first produced by Seller in carrying out Seller's responsibilities under this Agreement by or on behalf of NASA for Government purposes.

(4) The parties will negotiate rights in Data in the event of termination for any other reason.

#### C. Data First Produced by NASA under this Agreement

(1) As to Data first produced by NASA (or any Related Entity of NASA) in carrying out NASA responsibilities under this Agreement that would be Proprietary Data if it had been obtained from Seller, such Data will be appropriately marked with a restrictive notice and maintained in confidence for the duration of this Agreement, with the express understanding that during the aforesaid restricted period such marked Data may be disclosed and used by NASA and any Related Entity of NASA (under suitable protective conditions) only for carrying out NASA responsibilities under this Agreement.

(2) Upon a successful completion by Seller, NASA shall not use such Data for any purpose except that NASA shall retain the right to: (1) maintain and reproduce copies of such Data for archival purposes; and (2) use or disclose such archived Data by or behalf of the NASA for Government purposes in the event the NASA determines that

(a) Such action is necessary because Seller, its assignee, or other successor has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of inventions, hardware, or software related to such Data;

(b) Such action is necessary because Seller, its assignee, or other successor, having achieved practical application of inventions, hardware, or software related to such Data, has failed to maintain practical application;

(c) Such action is necessary because Seller, its assignee, or other successor has discontinued making the benefits of inventions, hardware, or software related to such Data available to the public or to the Federal Government;

(d) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Seller, its assignee, or other successor; or

(e) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by Seller, its assignee, or successor.

In the event NASA determines that one of the circumstances listed in subparagraphs (a)–(e) above exists, NASA shall provide written notification through Boeing to the Seller. Upon mailing of such determination, Seller shall have thirty (30) days to respond by providing its objection to the determination as a dispute under the Article entitled "Dispute Resolution" of this Agreement. In the

event that Seller does not respond in writing to NASA's determination, then such determination shall serve as a final agency decision for all purposes including judicial review.

(3) In the event NASA or Boeing terminates this Agreement, NASA shall have the right to use, reproduce, prepare derivative works, distribute to the public, perform publicly, display publicly, or disclose Data first produced by NASA in carrying out NASA's responsibilities under this Agreement by or on behalf of NASA for Government purposes.

(4) The parties will negotiate rights in Data in the event of termination for any other reason.

#### D. Publication of Results

(1) Recognizing that section 203 of the National Aeronautics and Space Act of 1958 (42 U.S.C. § 2473), as amended, requires NASA to provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof, and that the dissemination of the results of NASA activities is one of the considerations for this Agreement, NASA will coordinate through Boeing proposed publication of results with Seller in a manner that allows Seller a reasonable amount of time to review and comment on proposed publications.

(2) Consistent with other obligations in this Article, NASA agrees that it will not publish any results without first receiving permission from Seller.

#### E. Data Disclosing an Invention

In the event Data exchanged between Boeing and Seller discloses an invention for which patent protection is being considered, the furnishing party specifically identifies such Data, and the disclosure and use of such Data is not otherwise limited or restricted herein, the receiving party agrees to withhold such Data from public disclosure for a reasonable time (presumed to be 1 year unless mutually agreed otherwise) in order for patent protection to be obtained.

#### F. Data Subject to Export Control

Technical data, whether or not specifically identified or marked, that is subject to the export laws and regulations of the United States and that is provided to XYZ under this Agreement will be treated as such, and will not be further provided to any foreign persons or transmitted outside the United States without proper U.S. Government authorization, where required.

#### G. Background Data

(1) In the event Seller furnishes NASA with Data developed at private expense that existed prior to, or was produced outside of, this Agreement, and such Data embody Proprietary Data, and such Data is so identified with a suitable restrictive notice, NASA will use reasonable efforts to maintain the Data in confidence and such Data will be disclosed and used by NASA and any Related Entity of NASA (under suitable protective conditions) only for evaluating Seller's performance under this Agreement. Upon completion of activities under this Agreement, such Data will be disposed of as requested by Seller.

(2) At the time of execution of this Agreement, the Parties agree that the following Background Data embodies Proprietary Data that will be provided to NASA: <insert specific listing of data items or, if none, insert "None" or "Not Applicable">

#### H. Handling of Data

(1) In the performance of this Agreement, Seller and any Related Entity of Seller may have access to, be furnished with, or use the following categories of Data:

(a) Proprietary Data of third parties that the U.S. Government has agreed to handle under protective arrangements; and/or

(b) U.S. Government Data, the use and dissemination of which, the U.S. Government intends to control.

(2) Data provided by the U.S. Government under the Agreement

(a) The Parties agree that, during the term of this Agreement, Seller may request through Boeing from NASA, and NASA may provide, Proprietary Data of third parties, with the express understanding that seller will use and protect such Data in accordance with this Article.

(b) The Parties agree that, during the term of this Agreement, Seller may request from NASA, and NASA may provide, U.S. Government Data, with the express understanding that Seller will use and protect such U.S. Government Data in accordance with this Article.

(c) At the time of execution of this Agreement, the Parties agree that the following software and related Data will be provided to Seller under a separate Software Usage Agreement with the express understanding that Seller will use and protect such related Data in accordance with this Article: <insert name and NASA Case No. of the software; if none, insert "None" or "Not Applicable" >. Unless Seller has entered into a license, consistent with 37 C.F.R. Part 404, for software provided under this Agreement, upon completion of activities under this Agreement, such related Data will be disposed of as instructed by NASA. Note: From time to time during the term of this Agreement, Seller may request through Boeing from NASA, and NASA may provide, such software and related data.

(3) With respect to such Data specifically identified in this Agreement or specifically marked with a restrictive notice, Seller agrees to:

(a) Use, disclose, or reproduce such Data only to the extent necessary to perform the work required under this Agreement;

(b) Safeguard such Data from unauthorized use and disclosure;

(c) Allow access to such Data only to its employees and any Related Entity that require access for their performance under this Agreement;

(d) Except as otherwise indicated in (3)(c) above, preclude access and disclosure of such Data outside Seller's organization;

(e) Notify its employees who may require access to such Data about the obligations under this Article, and ensure any Related Entity performs the same functions with respect to its employees; and

(f) Return or dispose of such Data, as NASA may direct, when the Data is no longer needed for performance under this Agreement.

#### I. Oral and visual information

If information that Seller considers to be Proprietary Data is disclosed orally or visually to NASA, NASA will have no duty to limit or restrict, and will not incur any liability for, any disclosure or use of such information unless (1) Seller orally informs NASA before initial disclosure that such information is considered to be Proprietary Data, and (2) Seller reduces such information to tangible, recorded form that is identified and marked with a suitable restrictive notice as required by paragraphs B and G above and furnishes the resulting Data to NASA within 10 calendar days after such oral or visual disclosure.

## ARTICLE 2. INTELLECTUAL PROPERTY AND DATA RIGHTS - INVENTION AND PATENT RIGHTS

### A. Definitions

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

(2) "Patent Representative" as used in this Article means the NASA Johnson Space Center Patent Counsel. Correspondence with the Patent Representative under this clause will be sent to the address below:

Patent Counsel  
NASA Johnson Space Center  
Mail Code AL  
2101 NASA Parkway  
Houston, TX 77058

(3) "Invention," as used in this Agreement, means any innovation or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(4) "Made," as used in relation to any invention, means the conception or first actual reduction to practice of such invention.

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

(6) "Related Entity" as used in this Article, means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Seller that is assigned, tasked, or contracted with to perform specified NASA or Seller activities under this Agreement.

## B. Allocation of principal rights

### (1) Presumption of title

(a) Any invention made under this Agreement shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) (42 U.S.C. § 2457(a)) of the National Aeronautics and Space Act of 1958 (hereinafter called "the Act"), and the above presumption shall be conclusive unless at the time of reporting such invention Seller submits to the Patent Representative a written statement, containing supporting details, demonstrating that the invention was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(b) Regardless of whether title to such an invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver as described in paragraph B.(3) and paragraph I, Seller may nevertheless file the statement described in paragraph B.(1)(a) of this Article. The Administrator (or his designee) will review the information furnished by Seller in any such statement and any other available information relating to the circumstances surrounding the making of the invention and will notify through Boeing Seller whether the Administrator has determined that the invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

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

### (3) Waiver of rights.

(a) The NASA Patent Waiver Regulations, 14 C.F.R. Part 1245, Subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for waiver of rights to any invention or class of inventions made or that may be made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

(b) NASA has determined that to stimulate and support the capability of a United States commercial provider to provide commercial crew space transportation services to the public and the Federal Government, the interest of the United States would be served by waiving to XYZ, in accordance with provisions of 14 C.F.R. Part 1245, Subpart 1, rights to inventions made by XYZ in the performance of work under this Agreement. Therefore, upon petition submitted by Seller through Boeing, as provided in 14 C.F.R. Part 1245, Subpart 1, either prior to execution of the Agreement or within 30 calendar days after execution of the Agreement, for advance waiver of rights to any or all of the inventions that may be made under this Agreement, NASA will waive such rights to Seller. If such a petition is not submitted, Seller may petition for waiver of rights to an identified invention within eight months of first disclosure of invention in accordance with paragraph E.(2) of this clause or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in paragraph I of this clause.

## C. Minimum rights reserved by the Government

(1) With respect to each Seller invention made under this Agreement for which a waiver of rights is applicable in accordance with 14 C.F.R. Part 1245, Subpart 1, the Government reserves:

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

(b) Such other March-in rights as given in Paragraph H below.

(2) NASA will not exercise the government purpose license reserved in paragraph C.(1)(a) during the term of this Agreement.

(3) Upon a successful completion by Seller of this order, NASA will refrain from exercising the government purpose license reserved in paragraph C.(1)(a) for a period of five (5) years following the expiration of this Agreement or until December 31, 2015, whichever is later.

(4) Nothing contained in this paragraph shall be considered to grant to the Government any rights with respect to any invention other than an invention made under this Agreement.

## D. Minimum rights to Seller

(1) Seller is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on an invention made by Seller under this Agreement and any resulting patent in which the Government acquires title, unless Seller fails to disclose such invention within the times

specified in paragraph E.(2) of this clause. Seller's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which Seller is a party and includes the right to grant sublicenses of the same scope to the extent Seller was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of the Administrator obtained through Boeing except when transferred to the successor of that part of Seller's business to which the invention pertains.

(2) Seller's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of such invention pursuant to an application for an exclusive license submitted in accordance with 37 C.F.R. Part 404, Licensing of Government Owned Inventions. This license will not be revoked in that field of use or the geographical areas in which Seller has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent XSeller its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, Seller will be provided a written notice through Boeing of the Administrator's intention to revoke or modify the license, and Seller will be allowed 30 calendar days (or such other time as may be authorized by the Administrator for good cause shown by Seller) after the notice to show cause why the license should not be revoked or modified.

#### E. Invention identification, disclosures, and reports

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

(2) Seller will disclose each such invention through Boeing to the Patent Representative within two months after the inventor discloses it in writing to Seller personnel responsible for the administration of this clause or, if earlier, within six months after Seller becomes aware that such an invention has been made, but in any event before any on sale, public use, or publication of such invention known to Seller. Seller shall use the NASA electronic New Technology Reporting system (eNTRe), accessible at <http://invention.nasa.gov>, to disclose inventions. The invention disclosure shall identify this Agreement and shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of any such invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NASA through Boeing, Seller will promptly notify NASA through Boeing of the acceptance of any manuscript describing such an invention for publication or of any on sale or public use planned by Seller for such invention.

(3) Seller shall furnish through Boeing the Patent Representative the following:

(a) Interim reports every 12 months (or such longer period as may be specified by the Patent Representative) from the date of the Agreement, listing inventions made under this Agreement during that period, and certifying that all such inventions have been disclosed (or that there are no such inventions) and that the procedures required by paragraph E.(2) of this clause have been followed.

(b) A final report, within three months after completion of the work, listing all inventions made under this Agreement or certifying that there were no such inventions, and listing all subcontracts or other agreements with a Related Entity containing a patent and invention rights clause (as required under paragraph G of this clause) or certifying that there were no such subcontracts or other agreements.

(c) Interim and final reports shall be submitted electronically at the eNTRe Web-site <http://invention.nasa.gov>.

(4) Seller agrees, upon written request of the Patent Representative, to furnish additional technical and other information available to Seller as is necessary for the preparation of a patent application on an invention made under this Agreement in which the Government retains title and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on such inventions and to establish the Government's rights in the inventions.

(5) Protection of reported inventions. When inventions made under this Agreement are reported

and disclosed to NASA in accordance with the provisions of this Article, NASA agrees to withhold such reports or disclosures from public access for a reasonable time (presumed to be 1 year unless otherwise mutually agreed) in order to facilitate the allocation and establishment of the invention and patent rights under these provisions.

F. Examination of records relating to inventions

(1) The Patent Representative or designee shall have the right to examine any books (including laboratory notebooks), records, and documents of Seller relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this Agreement to determine whether

(a) Any such inventions were made in performance of this Agreement;

(b) Seller has established and maintained the procedures required by paragraph E.(1) of this clause; and

(c) Seller and its inventors have complied with the procedures.

(2) If the Patent Representative learns of an unreported Seller invention that the Patent Representative believes may have been made under this Agreement, Seller may be required to disclose the invention to NASA for a determination of ownership rights.

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

G. Subcontracts or Other Agreements

(1)(a) Unless otherwise authorized or directed by the Patent Representative through Boeing, Seller shall include this Invention and Patent Rights Article (suitably modified to identify the parties) in any subcontract or other agreement with a Related Entity hereunder (regardless of tier) for the performance of experimental, developmental, or research work.

(b) In the Invention and Patent Rights Article included in any such subcontract or other agreement, the following (suitably modified to identify the parties) shall be substituted for paragraph B(3)(b):

As provided in 14 C.F.R. Part 1245, Subpart 1, [insert name of Related Entity] may petition, either prior to execution of the Agreement or within 30 calendar days after execution of the Agreement, for advance waiver of rights to any or all of the inventions that may be made under this Agreement. If such a petition is not submitted, or if after submission it is denied, [insert name of Related Entity] may petition for waiver of rights to an identified invention within eight months of first disclosure of invention in accordance with paragraph E.(2) of this Article or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in paragraph H of this Article.

(c) In the case of subcontracts or other agreements at any tier, NASA, the Related Entity, and Seller agree that the mutual obligations of the parties created by this Article constitute privity of contract between the Related Entity and NASA with respect to those matters covered by this Article.

(2) In the event of a refusal by a prospective Related Entity to accept such a clause, Seller:

(a) Shall promptly submit a written notice through Boeing to the Patent Representative setting forth the prospective Related Entity's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(b) Shall not proceed with such subcontract or other agreement without the written authorization of the Patent Representative.

(3) Seller shall promptly notify the Patent Representative in writing upon the award of any subcontract or other agreement with a Related Entity (at any tier) containing an invention and patent rights clause by identifying the Related Entity, the applicable invention and patent rights clause, the work to be performed under the subcontract or other agreement, and the dates of award and estimated completion. Upon request of the Patent Representative, Seller shall furnish a copy of such subcontract or other agreement, and, no more frequently than annually, a listing of the subcontracts or other agreements that have been awarded.

(4) In recognition of Seller's substantial contribution of funds, facilities and/or equipment to the work performed under this Agreement, Seller is authorized, subject to the rights of NASA set forth elsewhere in this Article, to:

(a) Acquire by negotiation and mutual agreement rights to an invention made under this Agreement by a Related Entity as Seller may deem necessary to obtaining and maintaining of private support; and



(b) Request, in the event of an inability to reach agreement pursuant to paragraph G. (4)(a) of this Article, that NASA request that such rights for Seller be included as an additional reservation in a waiver granted pursuant to 14 CFR Part 1245, Subpart 1. Any such requests to NASA should be prepared in consideration of the following guidance and submitted to the Patent Representative. Notwithstanding paragraph B.(3)(b) of this Article, the Related Entity should be advised that unless it requests a waiver of title pursuant to the NASA Patent Waiver Regulations (14 C.F.R. Part 1245, Subpart 1), NASA will acquire title to inventions made under this Agreement. If a waiver is not requested or granted, Seller may request a license from NASA consistent with the requirements of 37 CFR Part 404. A Related Entity requesting a waiver must follow the procedures set forth in paragraph I of this Article.

#### H. March-in rights

(1) Seller agrees that, with respect to any invention made under this Agreement in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require Seller, or an assignee or exclusive licensee of such an invention, to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if Seller, its assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that

(a) Such action is necessary because Seller, assignee, or exclusive licensee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of such invention in such field of use;

(b) Such action is necessary because Seller, assignee, or exclusive licensee, having achieved practical application of such invention, has failed to maintain practical application of such invention in such field of use;

(c) Such action is necessary because XYZ, assignee, or exclusive licensee has discontinued making the benefits of such invention available to the public or to the Federal Government;

(d) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Seller, assignee, or exclusive licensee; or

(e) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by XYZ, assignee, or exclusive licensee.

#### I. Requests for Waiver of Rights

(1) In accordance with the NASA Patent Waiver Regulations, 14 C.F.R. Part 1245, Subpart 1, waiver of rights to any or all inventions made or that may be made under this Agreement may be requested at different time periods. Advance waiver of rights to any or all such inventions may be requested prior to the execution of the Agreement, or within 30 calendar days after execution thereof. In addition, waiver of rights to an identified invention made and reported under this Agreement may be requested, even though a request for an advance waiver was not previously requested or, if previously requested, was not granted.

(2) Each request for waiver of rights shall be by petition to the Administrator and shall include an identification of the petitioner; place of business and address; if petitioner is represented by counsel, the name, address, and telephone number of the counsel; the signature of the petitioner or authorized representative; and the date of signature. No specific forms need be used, but the request should contain a positive statement that waiver of rights is being requested under the NASA Patent Waiver Regulations; a clear indication of whether the request is for an advance waiver or for a waiver of rights for an individual identified invention; whether foreign rights are also requested and, if so, for which countries, and a citation of the specific section(s) of the regulations under which such rights are requested; and the name, address, and telephone number of the party with whom to communicate when the request is acted upon.

(3) All petitions for waiver, whether advanced or individual petitions, will be submitted to the Patent Representative designated in this Article.

(4) A Petition submitted in advance of this Agreement will be forwarded by the Patent Representative to the Inventions and Contributions Board. The Board will consider the petition and where the Board makes the findings to support the waiver, the Board will recommend to the Administrator that waiver be granted, and will notify the petitioner and the Patent Representative of the Administrator's determination. The Patent Representative will be informed by the Board whenever there is insufficient time or information to permit a decision to be made on an advance waiver without unduly delaying the execution of the Agreement. In the event a request for an advance waiver is not

granted or is not decided upon before execution of the Agreement, the petitioner will be so notified by the Patent Representative. All other petitions will be processed by the Patent Representative and forwarded to the Board. The Board shall notify the petitioner of its action and if waiver is granted, the conditions, reservations, and obligations thereof will be included in the Instrument of Waiver. Whenever the Board notifies a petitioner of a recommendation adverse to, or different from, the waiver requested, the petitioner may request reconsideration under procedures set forth in the NASA Patent Waiver Regulations.

#### ARTICLE 3: LIABILITY OF RISK OF LOSS

A. Seller hereby waives any claims against NASA, its employees, its related entities, (including, but not limited to, contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors and subcontractors, at any tier) and employees of NASA's related entities for any injury to, or death of, Seller employees or the employees of Seller's related entities, or for damage to, or loss of, Seller's property or the property of its related entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

B. Seller further agrees to extend this unilateral waiver to its related entities by requiring them, by contract or otherwise, to waive all claims against Boeing, NASA, its related entities, and employees of NASA and employees of NASA's related entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement.

#### ARTICLE 4. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

Seller or its contractors/partners shall not use any funds provided under this Agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

#### ARTICLE 5: DISCLAIMER OF WARRANTY

Goods (e.g., equipment, facilities, technical information, data, and prototypes) and services, if provided by NASA or Boeing under this Agreement, are provided "as is" and no warranty related to availability, title, or suitability for any particular use, nor any implied warranty of merchantability or fitness for a particular purpose, is provided under this Agreement. NASA or Boeing makes no express or implied warranty as to any intellectual property, generated information, or product made or developed under this Agreement, or that the goods, services, materials, products, processes, information, or data to be furnished hereunder will accomplish intended results or are safe for any purpose including the intended purpose. Neither NASA nor its contractors shall be liable for special, consequential, indirect, or incidental damages attributed to such goods, services, materials, products, processes, information, or data furnished under this Agreement.

#### ARTICLE 6: LIMITATIONS ON ACTIVITIES WITH RUSSIAN ENTITIES FOR GOODS OR SERVICES

A. SELLER shall not provide funding received under this Agreement in connection with any transaction to purchase goods or services with Russian entities without first receiving written approval through Boeing from the NASA Administrative Contact. In order to obtain this written approval to engage in such transactions with any Russian entity, Seller shall provide through Boeing the NASA Administrative Contact with the following information related to each planned transaction:

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

(2) Seller shall provide certification that the Russian entity is not on any of the denied parties, specially designated nationals and entities of concern, lists found at:

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

BIS's List of Denied Parties: <http://www.bis.doc.gov/dpl/default.shtm>

OFAC's List of Specially Designated Nationals: <http://www.ustreas.gov/offices/enforcement/ofac/sdn/>

List of Unverified Persons in Foreign Countries:

[http://www.bis.doc.gov/enforcement/unverifiedlist/unverified\\_parties.html](http://www.bis.doc.gov/enforcement/unverifiedlist/unverified_parties.html)

State Department's List of Parties Statutorily Debarred for Arm Export Control Act Convictions:

<http://www.pmdtc.state.gov/compliance/debar.html>

State Department's List of Proliferating Entities: <http://www.state.gov/t/isn/c15231.htm>

B. Unless otherwise agreed by the NASA Administrative Contact, the information necessary to seek approval to enter into any transaction shall be provided to the NASA Administrative Contact 30 calendar days prior to entering into such transaction with any Russian entities.

C. After receiving approval to enter into a requested transaction, Seller shall provide the NASA Administrative Contact with a report not later than 10 calendar days after the end of each calendar quarter which documents the individual payments made to such Russian entity. Such report shall meet the requirements of and include the information required under Article 5, Section (4), Financial Records and Reports.

D. For the purpose of this Article, the term "Russian entities" includes the following:

(1) Russian persons, or

(2) Entities created under Russian law (including any organization, entity, or element of the Government of the Russian Federation) or owned, in whole or in part, by Russian persons or companies.

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