



Section 9 : GOVERNMENT CONTRACT REQUIREMENTS

CLAUSE 949 (09/20/01)
NAS15-10000
INTERNATIONAL SPACE STATION PROGRAM (ISS)
SCHEDULE I
GOVERNMENT CONTRACT REQUIREMENTS

(a) FAR CLAUSES

The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. Unless provided for elsewhere in this contract, only subparagraphs (22), (23), (24), and (38) of this paragraph (a) shall apply to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1. In all of the following clauses, unless otherwise indicated, "Government" and "Contracting Officer" shall mean Buyer, "Contractor" and "Offeror" shall mean Seller, and all reference to "disputes", the "disputes clause", or the "Contract Disputes Act" shall be references to the Disputes clause of the General Provisions of this contract.

(1) 52.203-3 Gratuities (APR 1984) [excluding subparagraph (c)(2)]. In paragraph (a), Government means United States of America Government or Buyer. In paragraphs (c) and (d), Government means Buyer.

(2) 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1985). This clause applies only if this contract exceeds \$100,000.

(3) 52.203-7 Anti-Kickback Procedures (Oct. 1988) [excluding subparagraph (c)(1)]. This clause applies only if this contract exceeds \$100,000. Buyer may withhold from sums owed Seller the amount of any kickback paid by Seller or its subcontractors at any tier if (a) the Contracting Officer so directs, or (b) the Contracting Officer has offset the amount of such kickback against money owed Buyer under the prime contract.

(4) 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (SEP 1990). This clause applies only if this contract exceeds \$100,000. If the Government reduces Buyer's price or fee for violations of the Act by Seller or its subcontractors at any tier, Buyer may withhold or recover from Seller the amount of the reduction.

(5) 52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Jan 1990) This clause applies only if this contract exceeds \$100,000.

(6) 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Jan 1990). This clause applies only if this contract exceeds \$100,000. Paragraph (c) (4) is modified to read as follows: "(c) (4) Seller will promptly submit any disclosure required (with written notice to Buyer) directly to the PCO for the prime contract. Buyer will identify the cognizant Government PCO at Seller's request. Each subcontractor certification will be retained in the subcontract file of the awarding contractor."

(7) 52.204-2 Security Requirements (APR 1984) (excluding any reference to the Changes clause of this contract). This clause applies only if access to classified information is required.

(8) 52.211-15 Defense Priority and Allocation Requirements (SEP 1990)

(9) 52.215-1 Examination of Records by Comptroller General (FEB 1993). This clause applies only if this contract exceeds \$25,000.

(10) 52.215-2 Audit -- Negotiation (FEB 1993). This clause applies only if this contract exceeds \$25,000.

(11) 52.215-10 Price Reduction for Defective Cost or Pricing Data (OCT 1997). This clause applies only if this contract exceeds \$550,000.

(12) 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997). This clause only applies only if this contract exceeds \$550,000.

(13) 52.215-26 Integrity of Unit Prices (Alternate I) (APR 1991) [excluding paragraph (c)]. This clause applies only if this contract exceeds \$100,000. Not applicable to service contracts that do not require delivery of supplies.

(14) 52.215-27 Termination of Defined Benefit Pension Plans (SEP 1989). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR part 31. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.

(15) 52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (JUL 1991). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause.

(16) 52.216-7 Allowable Cost and Payment (MAR 2000). This clause only applies if the contract is a cost reimbursement contract using GP4 as the general provisions. This clause never applies if the general provisions are GP1, GP2, or GP3.

(17) 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (OCT 1999). This clause applies only if this contract exceeds \$100,000. In accordance with FAR 19.708(a)(2), this clause does not apply to performance of the contract, together with all its subcontracts, entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(18) 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan (OCT 1999). This clause applies only if this contract exceeds \$500,000 and Seller is not a small business concern. In paragraph (c), "Contracting Officer" shall mean Buyer. In accordance with FAR 19.708(a)(2), this clause does not apply to performance of the contract, together with all its subcontracts, entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(19) 52.222-1 Notice to the Government of Labor Disputes (APR 1984).

(20) 52.222-4 Contract Work Hours and Safety Standards Act -- Overtime Compensation (JUL 1995). This clause applies only if this contract exceeds \$100,000. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. In accordance with FAR 22.305(d), this clause does not apply to work performed solely within a foreign country or within a territory under United States jurisdiction other than a State, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331), American Samoa, Guam, Wake Island, and Johnston Island.

(21) 52.222-20 Walsh-Healey Public Contracts Act (DEC 1996). This clause applies only if this contract exceeds \$10,000. In accordance with FAR 22.604-2(a)(2), this clause does not apply to supplies manufactured outside the United States, Puerto Rico, or the Virgin Islands. In accordance with FAR 22.603, this clause does not apply to services.

(22) 52.222-26 Equal Opportunity (FEB 1999) [subparagraphs (b)(1) through (11) only.] In accordance with FAR 22.807(b)(2), this clause does not apply to work performed outside the United States by employees who were not recruited within the United States. In accordance with FAR 22.801, United States means the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

(23) 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1998). This clause applies only if this contract is for \$10,000 or more. In accordance with FAR 22.1308(a)(1)(i), this clause does not apply to work performed outside of the United States by employees recruited outside of the United States. United States includes the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

- (24) 52.222-36 Affirmative Action for Handicapped Workers (JUN 1998). This clause applies only if this contract exceeds \$10,000. In accordance with FAR 22.1408(a)(1), this clause does not apply to work performed outside the United States by employees recruited outside of the United States. United States includes the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.
- (25) 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1999). This clause applies only if this contract is for \$10,000 or more. In accordance with FAR 22.1308(a)(1)(i), this clause does not apply to work performed outside of the United States by employees recruited outside of the United States. United States includes the States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.
- (26) 52.223-14 Toxic Chemical Release Reporting (Oct 2000) [excluding paragraph (e)] This clause applies only if this contract exceeds \$100,000.
- (27) 52.225-10 Duty-Free Entry (APR 1984). This clause applies only if supplies are to be afforded duty-free entry or foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.
- (28) 52.227-1 Authorization and Consent (JUL 1995)
- (29) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). This clause applies only if this contract exceeds \$100,000. A copy of each notice sent to the Government will be sent to Buyer.
- (30) 52.227-14 Rights in Data -- General (JUN 1987), Alternates II and III -- As modified by NASA FAR Supplement 18-52.227-14. This clause applies only if data will be produced, furnished, or acquired under this contract.
- (31) 52.227-16 Additional Data Requirements (JUN 1987). This clause applies only if technical data or computer software will be generated or delivered under this contract.
- (32) 52.228-5 Insurance - Work on a Government Installation (JAN 1997). This clause applies only if this contract requires work on a Government installation.
- (33) 52.230-2 Cost Accounting Standards (APR 1998). (If the Seller is eligible for modified coverage, and desires to request modified coverage, the Seller should submit a certification to that effect.) This clause does not apply to small businesses, to educational institutions, or to United Kingdom contractors where the work is to be performed substantially in the United Kingdom.
- (34) 52-230-4 Consistency in Cost Accounting Practices (AUG 1992). This clause applies to United Kingdom contractors where the work is to be performed substantially in the United Kingdom.
- (35) 52.230-5 Cost Accounting Standards - Educational Institutions (APR 1988). This clause applies to educational institutions.
- (36) 52.230-6 Administration of Cost Accounting Standards (NOV 1999). This clause does not apply to small businesses or to United Kingdom contractors where the work is to be performed substantially in the United Kingdom.
- (37) 52.242-13 Bankruptcy (JUL 1995).
- (38) 52.244-5 Competition in Subcontracting (APR 1984) This clause applies only if this contract exceeds \$100,000.
- (39) 52.244-6 Subcontracts for Commercial Items and Commercial Components (OCT 1998)
- (40) 52.245-2 Government Property (Fixed-Price Contracts) (DEC 1989). If the contract is cost reimbursement utilizing GP4 or time-and-material or labor-hour utilizing GP3, then FAR 52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (JAN 1986) is substituted for this clause and paragraph (g) of FAR 52.245-5 is revised to read as follows:

(g) Risk of Loss. Seller, upon the delivery to it or acquisition by it of any Government property, assumes the risk of and shall be responsible for all loss thereof or damage thereto. When such property is no longer needed for the performance of this

contract, or at such other time as may be directed by Buyer pursuant to paragraph (i) of this clause, Seller shall return such property to Buyer or the Government, as applicable, in as good condition as when received, except for reasonable wear and tear, and except for such property as has been reasonably consumed in the performance of work hereunder.

In this clause, the term "Government-furnished property" shall include both Boeing furnished and Government-furnished property and all references to title passing to or vesting in the Government shall refer to the United States of America Government. The date of this contract is October 1993. References to an approved program or system shall be references to a United States of America Government approved program or system. Contracting Officer shall mean Boeing's Authorized Purchasing Representative and Government shall mean Boeing except as stated above.

(41) 52.245-18 Special Test Equipment (FEB 1993). Wherever "30 days" appears in this clause, substitute "75 days." The following provision is added to the end of paragraph (b) of the clause:

"Notification required by this clause shall contain the following information for each item of special test equipment or components thereof:

A list of alternate items that could be used;
Estimated cost;
Function;
Technical justification for this item; and
Date item is required.

If required date is within seventy-five (75) days of the date of the notification, give reason for the late notice."

Notwithstanding paragraph (c) of the referenced clause, Seller shall not buy or make any item of special test equipment without Buyer's prior written consent.

(42) 52.246-23 Limitation of Liability (FEB 1997). This clause applies only if this contract exceeds \$100,000 and requires the delivery of supplies.

(43) 52.246-25 Limitation of Liability -- Services (APR 1984). This clause applies only if this contract exceeds \$100,000 and requires delivery of services.

(44) 52.247-63 Preference for U.S. - Flag Air Carriers (APR 1984). This clause applies only if this contract may involve international air transportation. In accordance with paragraph (b) of this clause, this clause only applies if a U.S.-flag air carrier is available. Rules for availability are stated in FAR 47.403-1 and summarized here: For trips to and from the US, a foreign-flag air carrier can be used if using the foreign-flag air carrier saves 24 or more hours of travel time. For trips outside of the US, a foreign-flag air carrier can be used if using the foreign flag air carrier eliminates two or more aircraft changes in route or saves 6 or more hours of travel time or, for trips of three hours or less, saves half or more of the travel time.

(45) 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (ALT I) (APR 1984). In accordance with FAR 47.504(a), this clause does not apply to shipments aboard vessels of the Panama Canal Commission or as required or authorized by law or treaty.

(46) 52.248-1 Value Engineering (MAR 1989) [excluding subparagraph (f)]. This clause applies only if this contract is for \$100,000 or more. If a Value Engineering Change Proposal is accepted by the Government, Seller's share will be 50% of the instant, concurrent and future contract net acquisition savings and collateral savings that Buyer receives from the Government. Seller's negotiated share of net acquisition savings or collateral savings shall not reduce the Government's share of concurrent or future savings or collateral savings. Buyer's payments to Seller under this clause are conditioned upon Buyer's receipt of authorization for such payments from the Government.

(b) NASA FAR SUPPLEMENT CLAUSES

The following contract clauses are incorporated by reference from the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement and apply to the extent indicated. Unless provided for elsewhere in this contract, only subparagraphs (8), (10) and

(12) of this paragraph (b) shall apply to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1. In all of the following clauses, unless otherwise indicated, "Government" and "Contracting Officer" shall mean Buyer, and "Contractor" and "Offeror" shall mean Seller, and all reference to "disputes", the "disputes clause", or the "Contract Disputes Act" shall be references to the Disputes clause of the General Provisions of this contract.

(1) 18-52.204-76 Security Requirements for Unclassified Automated Information Resources (JUL 2000)

(2) 18-52.242-73 NASA Contractor Financial Management Reporting (DEC 1988) Applies to Contracts of any value when implementing language is included in the contract.

(3) 18-52.219-74 Use of Rural Area Small Businesses (SEP 1990). This clause applies only if this contract offers subcontracting possibilities. In accordance with NASA FAR Supplement 1819.7103, this clause does not apply to work that, together with all subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

(4) 18-52.219-75 Small Business and Small Disadvantaged Business Subcontracting Reporting (SEP 1992). This clause applies only if this contract exceeds \$500,000 and Seller is not a Small Business concern. In accordance with NASA FAR Supplement 1819.708-70 and FAR 19.708(a)(2), this clause does not apply to performance of the contract, together with all its subcontracts, entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) 18-52.219-76 NASA Small Disadvantaged Business Subcontracting Goal (JUL 1991) This clause applies only if this contract exceeds \$500,000 and Seller is not a Small Business Concern. In accordance with NASA FAR Supplement 1819.7003, this clause does not apply when the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

(6) 18-52.223-70 Safety and Health (SEP 1993). This clause applies only if this contract exceeds \$1,000,000; requires construction, repairs, or alteration in excess of \$25,000; or involves the use of hazardous materials or operations.

(7) 18-52.223-71 Frequency Authorization (DEC 1988). This clause applies only if this contract requires the development, production, testing, or operation of a device for which a radio frequency authorization is required.

(8) 18-52.227-14 Rights in Data - General (JUN 1987) This clause applies only if data will be produced, furnished, or acquired under this contract, except contracts for basic or applied research with universities or colleges.

(9) 18-52.227-70 New Technology (APR 1988). This clause applies only if experimental, developmental, research, design, or engineering work is to be performed by other than a small business firm or a non-profit organization.

(10) 18-52.227-86 Commercial Computer Software Licensing (DEC 1987). This clause only applies if technical data or computer software will be generated or delivered.

(11) 18-52.228-75 Minimum Insurance Coverage (OCT 1988). This clause applies only if this contract requires work on a Government installation.

(12) 18-228-76 Cross Waiver of Liability for Space Station Activities (SEP 1993). For the purposes of NASA clause 18-52.228-76 "Cross-Waiver of Liability for Space Station Activities", Russia shall be considered a "Partner State" even though they have not yet signed the International Governmental Agreement (IGA) since Russia has agreed to a Space Station cross-waiver of liability under the Interim Agreement for Space Station between the United States and Russia, dated June 23, 1994. This clause applies only if this contract exceeds \$100,000.

(13) 18-52.244-70 Geographic Participation in the Aerospace Program (APR 1985). This clause applies only if this contract is for \$100,000 or more.

(14) 18-52.245-70 Acquisition of Centrally Reportable Equipment (MAR 1989) [excluding paragraph (b)(3)]. This clause applies

only if Government-owned property will be acquired or used in performance of this contract. Seller will report to Buyer all Centrally Reportable Equipment (CRE) in accordance with the terms of this clause. A listing of all equipment, including CRE items, CRE type items costing less than \$1,000.00, all development items, no matter what the value, and Special Tooling will be provided to Buyer on 10 October of each year in conjunction with the NF 1018 report per Paragraph (h)(3) hereunder. The listing will exclude completed end item deliverables under the contract, leased items, and any software/manuals. Seller will ensure that these requirements are included in all lower-tier subcontracts.

(c) MANNED SPACE FLIGHT ITEM (JFS 18-52.246-73) (OCT 1986)

The Supplier shall include the following statement in all subcontracts and purchase orders placed by it in support of this contract, without exception as to amount or subcontract level:

"FOR USE IN HUMAN SPACE FLIGHT; MATERIALS, MANUFACTURING, AND WORKMANSHIP OF HIGHEST QUALITY STANDARDS ARE ESSENTIAL TO ASTRONAUT SAFETY.

IF YOU ARE ABLE TO SUPPLY THE DESIRED ITEM WITH A HIGHER QUALITY THAN THAT OF THE ITEMS SPECIFIED OR PROPOSED, YOU ARE REQUESTED TO BRING THIS FACT TO THE IMMEDIATE ATTENTION OF THE PURCHASER."

(d) DESIGNATION OF NEW TECHNOLOGY AND PATENT REPRESENTATIVE (NFS 18-52.227-72) (APR 1984)

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

Title	Office Code	Address (Including Zipcode)
New Technology Representative	IC4	NASA, Lyndon B. Johnson Space Center Technology Utilization Officer Houston TX 77058
Patent Representative	HA	NASA, Lyndon B. Johnson Space Center Patent Counsel Houston TX 77058

(2) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquiries or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any subcontract hereunder requiring a "New Technology" clause or "Patent Rights - Retention by the Contractor (Short Form)" clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 18-27.375-3 of the NASA FAR Supplement.

(e) HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (ALTERNATE I) (NOV 1991)

This clause applies only if hazardous or toxic materials or chemicals are to be delivered under this contract.

(1) "Hazardous material", as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(2) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

(3) The apparently successful offeror, by acceptance of the contract, certifies that the list in paragraph (b) of this clause is complete. This list must be updated during performance of the contract whenever the Contractor determines that any other material to be

delivered under this contract is hazardous.

(4) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(5) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause or the certification submitted under paragraph (c) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(6) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(7) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(8) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(A) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(B) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(C) The Government is not precluded from using similar or identical data acquired from other sources.

(9) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(A) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document that accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(B) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

(f) FINANCIAL REPORTING OF GOVERNMENT-OWNED/CONTRACTOR-HELD PROPERTY (July 1994)

This clause applies to cost reimbursement, time and material, or labor contracts only. Specific implementing instructions will be provided by Buyer.

(1) Report of Government-Owned/Contractor-Held Property, in accordance with 1845.505-14 and the instructions on the form and in section 1845.7101 of the NASA FAR Supplement, except that the reporting of space hardware shall be required only as directed in clause 1852.245-78, Space Hardware Reporting, of this contract, if applicable.

(2) The Seller shall submit annually the original and three copies of NASA form 1018 shall be sent to the Buyer at the Boeing location issuing this contract.

(3) The annual reporting period shall be from October 1 of each year to September 30 of the following year. The report shall be submitted by October 31.

(g) EXPORT OF TECHNICAL DATA, COMPUTER SOFTWARE, OR HARDWARE IN THE CONDUCT OF SPACE STATION RELATED ACTIVITIES

This clause applies under the conditions specified in paragraph 5.

(1) During the conduct of Space Station related activities, including Shuttle/Mir activities, NASA may have a need to deliver, disclose, or transfer to a foreign entity or person ("export") technical data, computer software, or hardware developed, used, or required to be delivered by the Contractor in the performance of this contract. When such a need arises, NASA or the Buyer may exercise the applicable exemptions, general licenses, existing NASA export licenses or other approvals available to a Federal agency under the U.S. export control laws, and may effect the export of such technical data, computer software, or hardware for NASA or the Buyer by direction to the Seller.

(2) When directed in writing by the Contracting Officer, or designated representative, or the Buyer's Authorized Purchasing Representative, the Seller, acting as an agent of NASA for the purposes of export control, shall export on behalf of NASA specifically identified technical data, computer software, or hardware to a named foreign entity or person, in the manner and under the conditions provided for in the direction.

(3) Any export made in accordance with this clause shall be limited to only that technical data, computer software, and hardware which NASA or the Buyer's Authorized Purchasing Representative specifically identifies and authorizes the Seller to export, in the manner and under the conditions provided in the authorization. All other exports of technical data, computer software and hardware by the Contractor, whether related to the performance of this contract or otherwise, are subject to the applicable requirements of the U.S. export control laws and regulations.

(4) Nothing contained in this clause shall affect the protection or allocation of rights to technical data or computer software between Buyer and Seller or any Seller lower tier subcontractors as provided for in this subcontract or subcontract hereunder; nor shall this clause imply any license or affect the scope of any license otherwise granted to the Government or the Buyer or the recipient of the transferred or disclosed technical data or computer software.

(5) The Seller agrees to include this clause in all subcontracts at any tier (suitably modified to reflect the relationship of the parties), the performance of which may require the development, delivery, or use of technical data, computer software, or hardware. If there is any question as to such a need by the Seller or a prospective lower tier subcontractor, the Seller shall promptly notify the Buyer's Authorized Purchasing Representative, and not proceed with subcontract award without further instruction.

(6) When this clause is included in a subcontract, the Buyer and Seller agree that any direction given by the Contracting Officer or designated representative or by the Buyer's Authorized Representative to the Seller under this clause will be given by the Seller to a Seller lower tier subcontractor when required to effect the export for NASA in accordance with this clause.

(h) PACKAGING AND MARKING (NFS 18-52.210-75) (SEP 1990) (ALTERNATE II) (SEP 1990)

This clause is applicable only if this contract states that the requirements of NHB 6000 are applicable. If NHB 6000, is applicable, and there are exceptions to be listed as stated in paragraph 1, these exceptions will be set out elsewhere in this subcontract.

(1) The Contractor shall pack and mark all hardware deliverable under this contract in accordance with the provisions of NASA Handbook (NHB) 6000.1, Requirements for Packaging, Handling, and Transportation, and/or MIL-STD-2073-1 and MIL-STD 2073-2, as applicable, except as noted below:

Applicability of the above requirements to each deliverable is addressed within the ISSA Packaging, Handling, Storage, and Transportation Plan (D684-10041-1-6).

(2) The Contractor shall pack potentially hazardous items in accordance with paragraph 204 of NHB 6000.1.

(3) The Contractor shall develop packaging, handling, and transportation records, if required, from engineering and packaging data. The Contracting Officer's technical representative is the approving official of the records and special packaging data under paragraph 302 of NHB 6000.1.

(4) The Contractor's packaging specifications or procedures may be utilized if they are (a) not in conflict with cited Government specifications and (b) approved in writing by the Contracting Officer. In the event of any conflict between Government and Contractor specifications or procedures, the Government documents cited in this clause shall take precedence.

(5) The Contractor shall place identical requirements on all subcontracts.

(6) The following items to be furnished under this contract are for space flight use:

See Attachment J-5, Deliverable Items List, Column F entitled Hardware Type for items marked as "FLT"

(7) All markings for space flight items shall be blue in color. All shipping containers, shipping documents, and purchasing documents for these items shall be marked "ITEMS FOR SPACE FLIGHT USE."

(8) The Contractor shall prominently display a NASA Critical Space Item Label on the exterior of all Class I, Class II, and Class III interim packages and exterior shipping containers to alert all shipping and handling personnel to the criticality of the item in accordance with paragraph 303 of NHB 6000.1

(i) PROVISIONS APPLICABLE TO NASA CENTERS

If this contract calls for work on a specific NASA facility or facilities clauses applicable to that facility or facilities will be listed in an attachment to this contract.

(j) PRICING OF COMMON ITEMS TO INTERNATIONAL PARTNERS

This clause applies only when Buyer provides implementing instructions.

(1) The Government has entered into agreements with International Partners (IP) which contemplates that certain space station "common items," previously intended to be procured by NASA, will now be acquired directly by the contractors of these organizations from the United States development contractor. These agreements provide, among other things, that NASA will take the necessary contractual steps to enable that common items can be procured by International Partner contractors for Space Station use, and to ensure that the recurring cost to such contractors consistent with the cost basis paid by NASA. The common items subject to this clause are found in Appendix J-11.

(2) In order to carry out the intent of the above, the contractor agrees as follows:

(A) If a Product Group is requested by an IP contractor to submit a proposal for any of the common items identified, the Product Group agrees to estimate such items to such contractor consistent with the recurring costs estimated for such items in the NASA Space Station contract (NAS15-10000); provided, however, that if there are differences in the circumstances under which the items are being priced to the contractor (e.g., greater or lesser quantities, configuration changes, alternative business relationships, variances in schedule requirements, break in production, actual price experience, etc.), the Product Group's estimate of the items may vary to the extent of such different circumstances. For the purposes of establishing a pricing baseline, Boeing, the Product Groups, and the Government anticipate reaching an agreement on cost estimates for the common items listed in Attachment J-11 no later than 90 days after definitization of the prime contract. Appendix J-11 shall be modified to include the agreed-upon cost estimates.

(B) Each proposal provided to an International Partner contractor for common items shall include a reference to the base target cost identified in Appendix J-11 as well as an explanation of any differences from the base target cost.

(C) Boeing and the Product Groups agree to negotiate in good faith with any International Partner contractors desiring to

buy common items as identified in Attachment J-11, and to do so in a manner consistent with the terms of this clause.

(3) Boeing agrees to insert the substance of this clause in all subcontracts negotiated between Boeing and a Product Group that is furnishing to Boeing one or more of the common items identified in Attachment J-11. The Product Groups will flow this clause to lower tier subcontracts to the extent practical and possible. This clause has no application to contracts between Product Groups and IP contractors entered into prior to the effective date of this contract.

(k) EXPENDABLE LAUNCH SYSTEMS (ELS) TERMS AND CONDITIONS GUIDE CLAUSES

The following Expendable Launch Systems (ELS) Terms and Conditions Guide Clauses are incorporated into this contract with full force and effect, as if set out in full text. These clauses may be viewed or printed at <http://www.boeing.com/companyoffices/doingbiz/tscs/homea.htm>. If Seller does not have access to the world wide web, Buyer will provide a copy of these clauses upon request.

(1) 307. Cost and Pricing Data (10/1/96) [excluding paragraph (a)]. In subparagraph (b) (3), the clauses FAR 52.215-10(a) (OCT 1997) and FAR 52.215-11(b) (OCT 1997) are added to the listed FAR clauses. In subparagraph (b) (5), the clauses FAR 52.215-10(c) (OCT 1997) and FAR 52.215-11(d) (OCT 1997) are added to the listed FAR clause. This clause applies only if this contract exceeds \$550,000. This clause does not apply to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1.

(2) 308. Cost and Pricing Data - Modifications (10/1/96) [excluding paragraph (a)]. In subparagraph (b)(1), \$500,000 is changed to \$550,000. In subparagraph (b) (3), the clauses FAR 52.215-10(a) (OCT 1997) and FAR 52.215-11(b) (OCT 1997) are added to the listed FAR clauses. In subparagraph (b) (5), the clauses FAR 52.215-10(c) (OCT 1997) and FAR 52.215-11(d) (OCT 1997) are added to the listed FAR clause. This clause applies only if this contract exceeds \$550,000. This clause does not apply to any portion of this contract that is for commercial items or commercial components, as those terms are defined at FAR 52.202-1.

(3) 316. Audit Rights(10/1/96). The following paragraphs (e) and (f) are added to this clause:

(e) In all cases where an audit of the Seller's financial books or records is allowed, that audit will be conducted by the United States of America Government if the United States of America Government is willing and able to do so within the required time. In the event that the United States of America Government is unwilling or unable to conduct an audit within what Buyer judges to be the required time, Seller shall promptly, upon Buyer's request, provide Buyer a list of independent auditing firms acceptable to Seller, including the independent auditing firm which is Seller's independent outside auditor. The independent auditing firm selected by Buyer from such list will be allowed to examine Seller's pertinent books and records.

(f) Each independent auditing firm's report shall be releasable to Buyer and shall be in sufficient detail to evaluate the Seller's claimed costs per the Federal Acquisition Regulation and NASA Federal Acquisition Regulation Supplement. Prior to release of the report to Buyer, Seller may examine the report to extract Proprietary or Confidential information which is not necessary to evaluate the Seller's claimed costs per the Federal Acquisition Regulation and NASA Federal Acquisition Regulation Supplement. In the event any direct labor rate, overhead rate, G&A rate, FCCM factors, or any other rate or factor is DCAA approved or DCAA recommended, the independent audit firm will accept that rate or factor without further audit and shall not include any support information concerning that rate or factor in the report. However, the audit report shall include whether that rate or factor is being used and properly applied.

The following Expendable Launch Systems (ELS) Terms and Conditions Guide Clauses will be disregarded if they are printed on the purchase order or otherwise incorporated into the contract. The correct clauses on these subjects appear in this clause 949.

(1) 150, Notice of Intent to Furnish Precious Metals as Government-Furnished Material

(2) 305, Cost and Pricing Data

(3) 306, Cost and Pricing Data - Modifications

(4) 309, Cost Accounting Standards

- (5) 310, Disclosure and Consistency of Cost Accounting Practices
- (6) 320, New Technology
- (7) 321, Patent Rights - Acquisition by the Government
- (8) 322, Patent Rights - Retention by the Contractor (Long Form)
- (9) 323, Patent Rights - Retention by the Contractor (Short Form)
- (10) 332, Restrictive Markings on Technical Data - Responsible Employee
- (11) 383, Cost Accounting Standards
- (12) 384, Disclosure and Consistency of Cost Accounting Practices
- (13) 387, Interparty Waiver of Liability

(l) GENERAL PROVISIONS MODIFICATIONS

(1) In the event THE BOEING COMPANY GENERAL PROVISIONS (Fixed Price Contract) GP1 (02/01/2001) Form D0 6000 6000 (01 FEB 2001) is part of this contract, the following articles are deleted:

25. UTILIZATION OF SMALL BUSINESS CONCERNS

(2) In the event THE BOEING COMPANY GENERAL PROVISIONS (Fixed Price Services Contract) GP2 (02/01/2001) Form D0 6000 6002 (01 FEB 2001) is part of this contract, the following articles are deleted:

15. BUYER'S PROPERTY

24. UTILIZATION OF SMALL BUSINESS CONCERNS

(3) In the event THE BOEING COMPANY GENERAL PROVISIONS (Labor Hour/Time & Material Contract) GP3 (02/01/2001) Form D0 6000 6003 (01 FEB 2001) is part of this contract, the following articles are deleted:

36. UTILIZATION OF SMALL BUSINESS CONCERNS

(4) In the event THE BOEING COMPANY GENERAL PROVISIONS (Cost Reimbursement Contract Under Government Prime Contract) GP4 (02/01/2001) Form D0 6000 6004 (01 FEB 2001) is part of this contract, the following articles are deleted:

27. UTILIZATION OF SMALL BUSINESS CONCERNS

(m) SPECIAL PROVISIONS MODIFICATIONS

(1) In the event clause 862. Additional General Provisions (Fixed Price Contract). (2/26/01) is part of the contract, the following articles are deleted:

4. PRECEDENCE

12. OWNERSHIP OF INTELLECTUAL PROPERTY

13. RIGHTS IN SOFTWARE AND DOCUMENTATION

(2) In the event clause 863. Additional General Provisions (Fixed Price Services Contract). (2/26/01) is part of the contract, the following articles are deleted:

4. PRECEDENCE

5. SUBCONTRACTING [paragraph (b) only is deleted; paragraph (a) remains in the contract]

9. CONCURRENT CONTRACTS

(3) In the event clause 864. Additional General Provisions (Labor Hour/Time and Material Contract). (2/26/01) is part of the contract, the following articles are deleted:

4. PRECEDENCE

7. SUBCONTRACTING [paragraph (B) only is deleted; paragraphs (A) and (C) remain in the contract]

11. CONCURRENT CONTRACTS

(4) In the event clause 865. Additional General Provisions (Cost Reimbursement Contract Under Government Prime Contract) (2/26/01) is part of the contract, the following articles are deleted:

4. PRECEDENCE

13. OWNERSHIP OF INTELLECTUAL PROPERTY

14. RIGHTS IN SOFTWARE AND DOCUMENTATION

(n) BOEING CORPORATE CREDIT OFFICE INFORMATION. This clause applies only if this contract exceeds \$250,000.

If requested, supplier shall provide financial data, on a quarterly basis, or as requested to the Boeing Credit Office for credit and financial condition reviews. Said data shall include but not be limited to balance sheets, schedule of accounts payable and receivable, major lines of credit, creditors, income statements (profit and loss), cash flow statements, firm backlog, and headcount. Copies of such data are to be made available within 72 hours of any written request by Boeing. All such information shall be treated as confidential in accordance with Boeing Procedure IB-ACG-200, Information Protection.

(o) PRECEDENCE

(1) If the various parts of this contract are inconsistent, the following order of precedence will apply: (i) terms and conditions on the face of the purchase order, contract, or agreement, (ii) this clause 949, (iii) special terms and conditions not listed elsewhere, (iv) Clause 862, 863, 864, or 865; (iii) General Provisions GP1, GP2, GP3, or GP4, (v) Buyer or NASA drafted or controlled drawings and specifications; (v) Boeing Quality System documents, (vi) all other Buyer or NASA drafted or controlled documents incorporated in this contract by reference, and lastly, with lowest precedence, (vii) all other documents incorporated in this contract by reference.

(2) Buyer's drawings and specifications will prevail over any subsidiary documents referenced therein. Seller will not use any specification in lieu of those contained in this contract without the written consent of Buyer's Authorized Procurement Representative.

(3) Seller should promptly bring any perceived inconsistency in this contract to the attention of Buyer's Authorized Purchasing Representative, even if that inconsistency can be resolved through the use of this clause.