

**Fixed-Price Additional Provisions
for Commercial Items
(for Orders placed under #2247625)**

The following clauses are incorporated herein:

1. FAR 52.244-6 Subcontracts for Commercial Items (April 2003)

- (a) *Definitions.* As used in this clause-
- "Commercial item" has the meaning contained in the clause at 52.202-1, Definitions.
- "Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Seller or subcontractor at any tier.
- (b) To the maximum extent practicable, Seller shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this contract.
- (c) (1) Seller shall insert the following clauses in subcontracts for commercial items:
- (i) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), Seller must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 - (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
 - (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (June 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).
- (2) While not required, Seller may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) Seller shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract

2. Definitive Prime Contract

Seller recognizes that Buyer's definitive contract with Buyer's customer may contain provisions different from or in addition to the provisions contained in this Order. Seller agrees to accept statutory requirements, executive orders or requirements of Federal Acquisition Regulation (FAR), NASA Federal Acquisition Regulation Supplement (NFS) or any other mandatory requirement subject to equitable adjustment to this Order as may be required, and to negotiate in good faith for the inclusion herein of any other changes or additional provisions in Buyer's definitive contract.

3. Clauses Incorporated by Reference

The following FAR and NFS clause(s) in effect on the date of this Order, except as otherwise notated, are incorporated herein by reference. In such FAR and NFS clauses, unless otherwise specifically stated, the term "Contractor" means Seller except in the term "Prime Contractor," "Subcontract" means Seller's subcontractor, "Contract" means this Order, except in the term "Prime Contract," and "Contracting Officer" means the Government Contracting Officer for the prime contract or authorized representatives.

- 52.211-15 Defense Priority and Allocation Requirements
(Applicable if this Order is for \$50,000 or more)
- 52.227-14 Rights in Data – General (JUN 1987) as modified by NASA FAR Supplement 18-52.227-14
(OCT 1995)
(Applicable if data will be produced, furnished, or acquired under this Order.)
- 52.227-16 Additional Data Requirements (JUN 1987)
(Applicable if technical data or computer software will be generated or delivered under this
Order.)
- 52.242-94 Administrative Leave (SEP 2008) (JSC Procurement Instruction)
- 1852.225-70 Export Licenses (FEB 2000) with Alternate I (FEB 2000)
- 1852.227-14 Rights in Data – General (JUN 1987)
(Applicable if data will be produced, furnished, or acquired under this contract, except
contracts for basic or applied research with universities or colleges.)
- 1852.227-86 Commercial Computer Software – Licensing (DEC 1987)
- 1852.237-70 Emergency Evacuation Procedures (DEC 1988)
(Applicable when Seller's personnel are located on-site in U. S. Government facilities.)
- 1852.246-73 Human Space Flight Item (MAR 1997)

**4. Security/Badging Requirements for Foreign National Visitors and Employees/
Representatives of Foreign Subcontractors (JSC 52.204-91) (MAR 2002)**

- (a) An employee of a domestic Johnson Space Center (JSC) subcontractor or its subcontractor who is not a U.S. citizen (foreign national) may not be admitted to the JSC site for purposes of performing work without special arrangements. In addition, all employees or representatives of a foreign JSC subcontractor/lower-tier subcontractor may not be admitted to the JSC site without special arrangements. For employees as described above, advance notice must be given to the Security Office of the host installation at least three weeks prior to the scheduled need for access to the site so that instructions on obtaining access may be provided.
- (b) All visit/badge requests for persons described in (a) above must be entered in the NASA Request for Request (RFR) and Foreign National Management System (NFMMS) for acceptance, review, concurrence, and approval purposes. When an authorized company official requests a JSC or White Sands Test Facility (WSTF) badge for site access, he/she is certifying that steps have been taken to ensure that its subcontractors or lower-tier subcontractor employees, visitors, or representatives will not be given access to export-controlled or classified information for which they are not authorized. These individuals shall serve as the Seller's representative(s) in certifying that all visit/badge request forms are processed in accordance with JSC and WSTF security and export control procedures. No foreign national, representative, or resident alien subcontractor/lower-tier subcontractor employee shall be granted access into JSC or WSTF until a completed RFR has been approved and processed through the NFMMS. Unescorted access will not be granted unless a favorable National Agency Check (NAC) has been completed by the JSC Security Office.
- (c) The Seller agrees that it will not employ for the performance of work onsite at JSC or WSTF any individuals who are not legally authorized to work in the United States. If the JSC or WSTF Industrial Security Specialist or the Buyer has reason to believe that any employee of the Seller may not be legally authorized to work in the United States and/or on the Order, the Seller may be required to furnish copies of Form I-9 (Employment Eligibility Verification), U.S. Department of Labor Application for Alien Employment Certification, and any other type of employment authorization document.

The Seller agrees to provide the information requested by JSC or WSTF Security Office in order to comply with NASA policy directives and guidelines related to foreign visits to NASA facilities so

that (1) the visitor/employee/representative may be allowed access to JSC or other NASA centers for performance of this contract, (2) required investigations can be conducted, and (3) required annual or revalidation reports can be submitted to NASA Headquarters. All requested information must be submitted to NASA Headquarters. All requested information must be submitted in a timely manner in accordance with instructions provided by JSC or any other center to be visited.

5. Identification of Employees (JSC 52.242-92) (MAR 2002)

At all times while on Government property, the Seller, lower-tier subcontractors, their employees, and agents shall wear badges which will be issued by the NASA Badging & Visitor Control Officer, located in Building 110 at the Johnson Space Center (JSC), or at the Main Gate at the White Sands Test Facility (WSTF). JSC employee badges will be issued only between the hours of 7:30 a.m. to 4 p.m., Monday through Thursday, and 7:30 a.m. to 12:00 p.m. on Friday. JSC visitor badges will be issued between the hours of 6 a.m. to 10 p.m., 7 days a week. WSTF employee badges will be issued only between the hours of 8 a.m. to 2 p.m., Monday through Friday. WSTF visitor badges will be issued on a 7-day-a-week, 24-hours-a-day basis. Resident aliens and foreign nationals/representatives shall be issued green foreign national badges.

Each individual who wears a badge shall be required to declare citizenship and personally sign for the badge. The Seller shall be held accountable for issued badges and all other related items and must assure that they are returned to the NASA Badging & Visitor Control Officers upon completion of work under the contract in accordance with the Security Management Directive (SMD) 500-15, "Security Termination Procedures." Failure to comply with the NASA subcontractor termination procedures upon completion of the work (e.g., return of badges, decals, keys, CAA cards, clearance terminations, JSC Public Key Infrastructure (PKI/special program deletions, etc.) may result in final payment being delayed.

6. JSC Hazardous Materials Use (JSC 52.223-92)(DEC 1999)

[Include in all contracts and purchase orders where hazardous materials will be or may be reasonably expected to be utilized onsite at JSC. This is a mandatory flowdown to subcontracts.]

- (a) This clause is JSC-unique, and the requirements are in addition to any U. S. Environmental Protection Agency, U. S. Occupational Safety and Health Administration, or other state or Federal regulations or statutes. Therefore, the following requirements do NOT supersede any statutory or regulatory requirements for any entity subject to this clause.
- (b) "Hazardous materials," for the purposes of this clause, consist of the following:
 - (1) Those materials defines as "highly hazardous chemicals" in Occupational Safety and Health Administration Process Safety Management Regulation, 29 Code of Federal Regulation 1010.119, without regard for quantity.
 - (2) Those "extremely hazardous substances" subject to emergency planning requirements in the Environmental Protection Agency Emergency Planning and Community Right-to-Know Regulation, 40 Code of Federal Regulation 355, Part 355, without regard for quantity.
 - (3) Those "hazardous substances" subject to the release notification requirements under Environmental Protection Agency's Emergency Planning and Community Right-to-Know Regulation 40 Code of Federal Regulation 302.4, without regard for quantity.
 - (4) Any radioisotope material or device that produces ionizing radiation.
 - (5) Any Class II, III, or IV laser as defined by the American National Standards Institute No. Z136.1 (1986)
 - (6) Any explosive or any pyrotechnics.
 - (7) Any pesticide.
- (c) Seller shall develop and maintain an inventory listing the identity and quantity of hazardous materials stored or used onsite at JSC for the performance of the Order.

- (d) Seller shall ensure that the proper training of its employees in the use and inherent hazards of these materials is accomplished prior to use.
- (e) Seller shall notify the JSC Occupational Health and Test Support Office (SD13) prior to any initial use or different application of these materials.
- (f) Seller shall use all hazardous materials properly and take all necessary precautions to ensure no harm is done to humans or the environment.
- (g) Seller shall insert the substance of this clause, including this Paragraph (g) with appropriate changes of designations of the parties, in subcontracts under which hazardous materials will be utilized, or may reasonably be expected to be utilized, onsite at JSC.
- (h) In the event Seller fails or refuses to comply with any aspect of this clause, such failure or refusal may be considered a material breach of this contract.

7. (Limited) Release of Contractor Confidential Business Information (CBI) (JSC 52.227-91) (MAY 2002)

- (a) NASA may find it necessary to release information submitted by the Seller pursuant to the provisions of this Order, to individuals not employed by NASA. Business information that would ordinarily be entitled to confidential treatment may be included in the information released to these individuals. Accordingly, by signature on this contract, the subcontractor hereby consents to a limited release of its Confidential Business Information (CBI).
- (b) Possible circumstances where the Agency may release Seller's CBI include the following:
 - (1) To other Agency contractor and subcontractors, and their employees tasked with assisting the Agency in handling and processing information and documents in the administration of Agency contracts, such as providing post-award audit support and specialized technical support to NASA.
 - (2) To NASA contractors, subcontractors, and their employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the Agency.
- (c) NASA recognizes its obligation to protect Seller from competitive harm that could result from the release of such information to a competitor. Except where otherwise provided by law, NASA will permit the limited release of CBI under subparagraphs (1) or (2) only pursuant to non-disclosure agreements signed by the assisting contractor or subcontractor, and their individual employees who may require access to the CBI to perform the assisting contract.
- (d) NASA's responsibilities under the Freedom of Information Act are not affected by this clause.
- (e) Seller agrees to include this clause, including this paragraph (e) in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of CBI by the subcontractor.

8. Subcontracting with Russian Entities for Goods or Services

- (a) The Seller shall not subcontract with
 - (1) the Russian Aviation and Space Agency (Rosaviakosmos),
 - (2) any organization or entity under the jurisdiction or control of Rosaviakosmos, or
 - (3) any other organization, entity, or element of the Government of the Russian Federation.
- (b) "Organization or entity under the jurisdiction or control of Rosaviakosmos" means an organization or entity that
 - (1) was made part of the Russian Space Agency upon its establishment on February 25, 1992;
 - (2) was transferred to the Russian Space Agency by decree of the Russian Government on July 25, 1994, or May 12, 1998;

- (3) was or is transferred to the Russian Aviation and Space Agency or Russian Space Agency by decree of the Russian Government at any other time before, on, or after March 14, 2000; or
- (4) is a joint stock company in which the Russian Aviation and Space Agency or Russian Space Agency has at any time held controlling interest.
- (c) The Seller shall obtain the Buyer's permission to subcontract with any Russian entity or with any other entity performing any part of the contract in the Russian Federation. The Seller shall support such a request with facts (and, if requested, supporting the documentation) sufficient to establish to the Buyer's satisfaction that the entity with which the Seller seeks permission to subcontract is not an entity described in paragraphs (a) and (b).
- (d) The Buyer may direct the Seller to provide the information required under paragraph (c) for any other prospective or existing subcontract at any tier. The Buyer may direct the Subcontractor to terminate for convenience of the government any subcontract at any tier with an entity described in paragraphs (a) and (b), subject to an equitable adjustment.
- (e) The Seller shall include the substance of this clause in all its subcontracts, and shall require such inclusion in all other subcontracts of any tier.

9. Observance of Legal Holidays (1852.242-72) (Aug 1992)

- a) The on-site Government personnel observe the following holidays:

- New Year's Day
- Labor Day
- Martin Luther King Jr.'s Birthday
- Columbus Day
- President's Day
- Veterans Day
- Memorial Day
- Thanksgiving Day
- Independence Day
- Christmas Day

- b) United Space Alliance personnel observe the following holidays:

- New Year's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Friday following Thanksgiving Day
- Christmas Eve and Christmas Day
- Four days between Christmas Day and New Years Day

Any other day designated by Federal statute, Executive order, or the President's proclamation.

When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not by itself be cause for an additional period of performance or entitlement of compensation except as set forth within the Subcontract.

10. Administrative Leave (JSC 52.242-94) (Sep 2008)

[Applicable in services contracts where performance will be performed either on-site at JSC or within 10 miles of JSC, and when it is desired that administrative leave be granted Seller personnel in special circumstances,

such as inclement weather or potentially hazardous conditions. Please note that paragraph (b) of this Clause requires the negotiation of an advance agreement by the parties in some circumstances.]

(a) When the NASA installation grants administrative leave to its Government employees (e.g., as a result of inclement weather, potentially hazardous conditions, or other special circumstances), the following personnel should also be dismissed upon notification of a center closure provided by the Contracting Officer:

1. Seller personnel working on-site; and
2. Seller personnel dedicated to the Contract effort who are
 - A. working off-site within 10 miles of JSC; and
 - B. unable to perform their Contract duties at their off-site location because their normal place of business has been or is expected to be negatively impacted by an emergency situation (e.g. has sustained damage, has been evacuated, etc.).

However, Seller shall provide sufficient on-site personnel to perform round-the-clock requirements of critical work already in process, unless otherwise instructed by Buyer or authorized representative.

(b) Administrative leave granted under this clause shall be subject to modification or termination by Buyer and in all instances shall be subject to the availability of funds. The cost of salaries and wages to Seller for the period of any such excused absence shall be a reimbursable item of cost under this Contract for effected employees in accordance with Seller's established accounting policy.

1. If a labor hour-based Contract, administrative leave granted under this clause shall be accounted for consistent with productive hours under this Contract for employees in accordance with Seller's established accounting policy.
2. For fixed price Contracts based on other than labor hours for deliverables, Buyer and Seller shall as a precondition to any reimbursement negotiate an advanced agreement to determine the appropriate method in which to grant administrative leave under this clause.
3. All invoices requesting payment under this clause under a cost reimbursable Contract shall be prepared in accordance with contractor's established accounting procedures. All invoices requesting payment under a labor hour or fixed price Contract shall be marked as "Administrative Leave in accordance with 52.242-94, Administrative Leave." All such invoices paid will be subject to review, audit, and revision when routine operations re-commence.

(c) Seller shall include this clause in all services subcontracts that include personnel in the categories described in (a) above.