

STANDARD CONTRACT CLAUSES

ACTIVITIES ABROAD

Consultant should assure that activities carried on outside the U.S. are coordinated, as necessary, with appropriate Government authorities and that appropriate licenses, permits, or approvals are obtained prior to undertaking proposed activities.

ASSIGNMENT

Consultant shall not assign or transfer any interest in this Contract to another party without the written consent of both parties. Notwithstanding any assignment, whether or not consented to, Consultant shall remain liable for all obligations under this Contract.

CONFIDENTIALITY

In the course of performing the Work, SSI and Contractor may acquire information from the other that is confidential, proprietary, or non-public in nature ("confidential information"). Confidential information shall include, but not be limited to, financial, technical, design, and other information concerning the Work or SSI or Contractor, whether in written, oral, or electronic format, including all notes, analyses, or studies. Confidential information does not include any information that (a) has become generally available to the public other than as a result of disclosure by either party; (b) was available to either party on a non-confidential basis prior to its disclosure; (c) was discovered as a result of a valid court order or subpoena, or a valid request from a governmental authority; or (d) becomes available to either party on a non-confidential basis from a source other than SSI or Contractor, provided that the source of such information was not prohibited from disclosing the information to the party. Both parties agree to keep confidential information confidential and shall not, without prior, written permission of the appropriate party, disclose such information in any manner whatsoever.

CONSULTANT SERVICES

Payments to individuals for consultant services shall not exceed the daily equivalent of the then-current maximum rate paid to an Executive Schedule Level IV Federal employee (exclusive of indirect cost, travel, per diem, clerical services, and supplies). The 2004 daily rate is \$521.00. The most current rate is available at <http://www.nsf.gov/bfa/dga/policy/start.htm>.

DISPUTES; CHOICE OF LAW

- (a) Any claim or controversy arising out of or relating to this Contract shall be submitted to non-binding mediation prior to the filing of any legal action, the costs of mediation to be shared equally by the parties. The mediator shall be chosen by the parties; however, if the parties cannot agree, the mediator shall be appointed by the then current president of the Boulder County (Colorado) Bar Association and his/her selection shall be binding on the parties. Neither party may file suit against the other unless the mediator first certifies in writing that mediation efforts have failed and further efforts are unlikely to resolve the issues in dispute.
- (b) If any action is brought in a court by either party concerning the enforcement, interpretation, or construction of this Contract, the prevailing party shall be entitled to reasonable attorneys' fees, as well as costs, including expert witness fees, incurred in the prosecution or defense of such action.
- (c) This Contract shall be governed and interpreted under the laws of the State of Colorado. In the event that litigation arises out of or relates to this Contract, such litigation will be conducted in the District Court of Boulder County, Colorado.
- (d) If any provision of this Contract is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction, or by any regulatory agency having jurisdiction, such determination shall have no effect on the validity of any other provision of this Contract.

FEDERAL, STATE, AND LOCAL TAXES

Unless otherwise provided for in the Contract, the costs and payments established in this Contract include all applicable Federal, State, and local taxes and duties.

EQUAL OPPORTUNITY [FAR 52.222-26 – 4/84]

(The following Article is applicable unless this Contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees recruited outside the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Contract], the Consultant has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Consultant shall comply with FAR 52.222-26 during performance of this Contract. Upon request, the Consultant shall provide information necessary to determine the applicability of this Article.)

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

INDEMNIFICATION

- (a) Contractor agrees to indemnify and hold harmless SSI (and its board of directors, officers, and employees) from any liability, loss, injury, damage, claim, suit, cost, or expense, including court costs and attorney's fees, arising out of Contractor's performance of the Work under this Contract. SSI (its directors, officers, and employees) shall not be liable for any injuries or damages to any person, entity, or property in connection with Contractor's performance of the Work, except to the extent caused by the willful or negligent conduct of SSI.
- (b) With respect to activities undertaken under this Contract, Contractor agrees not to make any claim against NASA or the U.S. Government with respect to the injury or death of its employees or its subcontractor employees, or to the loss of its property or that of its subcontractors, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct. Contractor agrees to indemnify and hold harmless the U.S. Government and its contractors from any third-party claim, judgment, or cost arising from the injury to or death of any person, or for damage to or loss of any property, arising as a result of its possession or use of any U.S. Government property.

INFORMATION COLLECTION

Consultant shall not represent to respondents that information collection activities performed under this Contract are being performed for or in association with the National Science Foundation or any other Government agency without the specific written approval of such information collection plan or device by the Foundation. This requirement is not intended to preclude mention of NSF support of the project in response to an inquiry or acknowledgement of such support in any publication of this information.

INSURANCE AND LIABILITY

- (a) Through either a commercial insurance carrier or reasonable self-insurance mechanism, Consultant agrees to maintain adequate and appropriate types and amounts of insurance, including, but not limited to, insurance for worker's compensation, comprehensive general liability insurance, and employer's liability insurance.
- (b) Each party agrees to be responsible for any and all claims that result from its performance or failure to perform its duties.

NO JOINT VENTURE

- (a) Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to act toward third persons or the public in any manner that would indicate any such relationship.
- (b) In the performance of this Contract, Consultant shall be deemed to be and shall be an independent contractor and shall not be entitled to any benefits applicable to employees of SSI.

NONDISCRIMINATION

- (a) Consultant acknowledges that Federal financial assistance will be provided in connection with this Contract. By accepting this Contract, Consultant certifies that it is in compliance with the following Federal statutes prohibiting discrimination. Consultant also assures SSI that its performance and actions under the Contract will continue to be in accordance with these statutes and any applicable implementing regulations:
 - (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d)(1)), which prohibits discrimination on the basis of race, color, or national origin;

- (2) Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et. seq.*), which prohibits discrimination on the basis of sex;
 - (3) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), which prohibits discrimination against otherwise qualified persons on the basis of disability;
 - (4) The Age Discrimination Act of 1975 (42 U.S.C. § 6101), which prohibits discrimination on the basis of age; and
 - (5) The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101), which addresses discrimination against individuals with disabilities.
- (b) Unless otherwise exempt by applicable federal statute or regulation, Consultant shall include a provision identical to this clause in every contract or purchase order entered into with third parties in connection with this Contract, so that these terms and conditions shall be binding upon such contractor or vendor.

NOTICE TO SSI OF LABOR DISPUTES [FAR 52.222-1 – 2/97]

- (a) If the Consultant has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice to SSI. The initial notice shall include the following:
- (1) Identification of parts/materials, etc., which are or may be affected;
 - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower-tier subcontractor, advise as to potential alternate sources;
 - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
 - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
 - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
 - (6) Manufacturer/Subcontractor and union data to include:
 - (A) Name, address and telephone numbers of the manufacturer/subcontractor representative and Industrial Relations Representative to be contacted for further information;
 - (B) Union's name and local lodge number, if known. If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.
- (b) Consultant agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher-tier subcontractor or SSI, as the case may be, concerning the dispute.

PUBLICATIONS AND ACKNOWLEDGEMENT OF SUPPORT

- (a) Consultant may not publish results of the Work without prior, written approval from SSI.
- (b) If approval is obtained for publication, Consultant must submit two (2) review copies of materials intended for publication to SSI prior to publication. Consultant agrees to give SSI's review comments serious consideration prior to publishing, and acknowledge SSI and NASA support in any publication (including World Wide Web pages) in the following terms: "The material is based upon work supported by the National Aeronautics and Space Administration under Grant No. [enter numerals]. The work was also assisted and supported by the Space Science Institute, which was the recipient of the grant." All materials, except scientific articles or papers published in scientific journals, must also contain the following disclaimer: "Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of NASA or the Space Science Institute."

RECORDS AND AUDITS

- (a) *Financial records.* Consultant agrees to maintain adequate financial records in accordance with generally accepted accounting practices. To substantiate costs, any transaction document(s) must clearly describe the nature of each expense, as authorized in the approved budget and/or terms of this Contract.

- (b) *Record retention.* Consultant agrees to retain all records related to the Contract and make them available for examination by SSI, NASA, or the Comptroller General of the United States, or their duly authorized representatives for a period of three (3) years from the date of submission of the final invoice and/or the completion or settlement date resulting from early termination of the Contract; or, if any litigation, claim, or audit related to the Contract is started before the expiration of the three (3) year period, then Consultant shall retain the records until such matter is resolved.
- (c) *Audit.* Consultant acknowledges that non-federal entities receiving Federal assistance in the form of grants and awards are subject to various statutory and regulatory requirements, including OMB Circulars A-88, A-102, A-110, A-133, and the Federal Acquisition Regulations. Consultant agrees to permit auditors to have access to any records and financial statements necessary to comply with federal requirements. Consultant agrees to provide SSI with a copy of any audit report(s) issued within thirty (30) days of issuance.

RIGHTS IN DATA

Unless otherwise agreed in any referenced document, any materials, including copyrightable works, that Consultant delivers under this Contract shall be the exclusive property of SSI. Such materials and works shall include, but are not limited to, any computer software, research, writing, reports, studies, data, photographs, negatives, artwork, or drawings. SSI's ownership of such materials and works shall include, without limitation, the rights to copy, publish, display, transfer, license, prepare derivative works, or otherwise use the works in any manner it deems appropriate.

SITE VISITS

NSF, SSI, and their authorized representatives have the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide technical assistance as may be required. If any site visit is made by NSF or SSI on the Consultant's premises, Consultant shall provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner that will not unduly delay the work.

TERMINATION

- (a) *For convenience.* SSI may terminate this Contract for convenience upon providing Contractor with written notice. Upon receipt of such notice, Contractor agrees to make no further commitments under the Contract, and to take all reasonable actions to cancel outstanding obligations. If SSI cancels for convenience, the total cost of the Contract at the time of termination shall be informally negotiated between the parties. If no informal agreement is reached within seven (7) days, then the mediation procedures established in the Disputes clause shall apply. In no event may the amount paid upon termination exceed the amount of the Contract.
- (b) *For default/cause.*
 1. If Contractor fails to perform as agreed in this Contract, then SSI may terminate this Contract, in whole or in part, by providing Contractor with written notice of default that specifies Contractor's failures. If the Contract amount exceeds \$25,000, and the default is one that could be reasonably cured, then Contractor shall have ten days from receipt of such notice to cure the default, or more, if authorized by SSI.
 2. Once Contractor receives a notice of default, if it is determined that Contractor was not in default, or that the failure to perform arose from causes beyond Contractor's control and without its fault or negligence, then the termination by SSI shall be deemed to be one for convenience rather than default, and the effects of termination for default set forth below shall not apply. Examples of causes that shall be deemed beyond a party's control are catastrophic events, such as fires or floods, and the acts of third parties, such as strikes and freight embargoes.
 3. If this Contract or any part of it is terminated for default, then the following provisions shall apply: (1) Contractor shall be liable to SSI for any actual damages incurred as a result of the default. (2) SSI may acquire, at its discretion, goods or services similar to those terminated, and Contractor shall be liable to SSI for the excess costs above the Contract amount incurred to procure such goods or services. (3) SSI may require Contractor to transfer title and deliver to it any completed portion of any products or materials specified in this Contract, and to protect and preserve property in Contractor's possession in which SSI has an interest. (4) SSI shall pay the amounts agreed to for the completed portion of products delivered and accepted, or for services performed. Both parties shall agree on the amount of payment for products delivered or services performed, and for the preservation of property. SSI may withhold from these amounts any sum that SSI determines is necessary to protect it against loss from outstanding amounts or damages

owed by Contractor, or any outstanding claims against Contractor, including, without limitation, liens. (5) The rights and remedies under this Contract shall be in addition to any other rights provided under law, such as the Uniform Commercial Code, or under this Contract and any referenced documents.

USE OF NAME

Neither Consultant nor SSI shall use this Contract, or the other party's name, or that of any member of the other party's staff, for publicity or advertising purposes without prior written approval of the other party. This restriction shall not include internal documents available to the public that identify the existence of the Contract.

USE OF U.S.-FLAG AIR CARRIERS

Consultant shall comply with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 1517), as implemented in the guidelines issued by the Comptroller General in decision B-138942, dated June 17, 1975, as amended on March 31, 1981.

WARRANTY

- (a) Notwithstanding SSI's inspection and acceptance of any supplies furnished under this Contract, Consultant warrants that all of the supplies that it furnishes under this Contract:
- (1) Are of a quality to pass without objection in the applicable trade under the Contract description;
 - (1) Are fit for the ordinary purposes for which they are used;
 - (2) Are within the variations permitted by the Contract, and are of an even kind, quality, and quantity within each unit and among all units; and
 - (3) Are adequately contained, packaged, and marked as the Contract may require.
- (b) When the return, correction, or replacement of any supplies is required, Consultant shall be responsible for the supplies while in transit, and for the transportation charges and costs. Any supplies or parts that are corrected or furnished in replacement under this clause shall also be subject to the terms of this clause to the same extent as the supplies that were initially delivered. If the Exhibits to this Contract do not contain a specific time period for the warranty provided in this clause, then the warranty herein shall be deemed to be for the same period for which Consultant customarily warrants these supplies for its commercial customers.
- (c) Consultant shall provide SSI with a copy of the standard warranty which it normally offers on the commercial products that are deliverable under this Contract. Such warranty shall be deemed to be incorporated by reference and SSI shall be entitled to all rights under such warranty in addition to the provisions of this clause. However, such standard warranty shall not be construed as limiting SSI's rights under this clause.