

make appropriate arrangements to proceed with the Project as soon as possible.

(c) *Changed Conditions of Performance (Including Litigation)*. The Recipient agrees to notify the Government (NASA) immediately of any change in State or local law, conditions, or any other event that may significantly affect its ability to perform the Project in accordance with the terms of this Cooperative Agreement. In addition, the Recipient agrees to notify the Government (NASA) immediately of any decision pertaining to the Recipient's conduct of litigation that may affect the Government's interests in the Project or the Government's administration or enforcement of applicable Federal laws or regulations. Before the Recipient may name the Government as a party to litigation for any reason, the Recipient agrees to inform the Government; this proviso applies to any type of litigation whatsoever, in any forum.

(d) *No Government Obligations to Third Parties*. Absent the Government's express written consent, and notwithstanding any concurrence by the Government in or approval of the award of any Agreement of the Recipient (third party contract) or subcontract of the Recipient (third party subcontract) or the solicitation thereof, the Government shall not be subject to any obligations or liabilities to third party contractors or third party subcontractors or any other person(s).

[End of provision]

**§ 1274.940 Changes in recipient's membership.**

CHANGES IN RECIPIENT'S MEMBERSHIP

July 2002

The Recipient shall notify the cognizant Agreement Officer within seven (7) days of any change in the corporate membership (ownership) structure of the Recipient, including the addition or withdrawal of any of the Recipient's affiliated members (e.g., Consortium Member). If NASA reasonably determines that any change in the corporate membership (ownership) of Recipient will conflict with NASA's objectives for the Project or any statutory or regulatory restriction applicable to the agency, NASA may terminate this Agreement after giving the Agreement Recipient at least ninety (90) days prior written notice of such perceived conflict and a reasonable opportunity to cure such conflict.

[End of provision]

**§ 1274.941 Insurance and indemnification.**

The following provision is applicable to all cooperative agreements with

commercial firms that involve programs or projects that are subject to Section 431 of Public Law 105-276, which addresses insurance for, or indemnification of, developers of experimental aerospace vehicles.

INSURANCE AND INDEMNIFICATION

July 2002

(a) *General*. The Recipient has applied, under the provisions of Section 431 of Public Law 105-276 (Section 431), for indemnification by the Government against certain third party damage claims that might arise under the Agreement. Under Section 431, a necessary prerequisite to, and consideration for, the Government's granting such indemnification is the Recipient's obtaining insurance against an initial increment of such damages arising from certain third party claims. This provision sets forth the requirements for this insurance prerequisite to a Government grant of indemnification.

(b) *Definitions*. The definitions at 14 CFR 1266, Cross-Waivers and Indemnification, apply to this provision.

(c) *Insurance*. The Recipient shall obtain, as part of its financial contribution, insurance that meets the following parameters:

(1) The insurance policy or policies shall insure against damages incurred by third parties arising from covered activities;

(2) The amount of insurance applicable to each launch shall be [Amount to be inserted by the contracting officer]. The Government may subsequently increase the amount of insurance the Recipient is required to maintain to qualify for indemnification, for one or more launches, and the Recipient shall pay the additional cost of such increases from its financial contribution; and

(3) The insurance policy or policies shall name the parties and their related entities, and the employees of the parties and their related entities, as named insureds.

Nothing in this provision precludes the Recipient from obtaining, at no cost to the Government, such other insurance as the Recipient determines advisable to protect its business interests.

(d) *Proof of Insurance*. The Recipient shall provide proof of insurance that meets the parameters in paragraph (c) of this provision and that is acceptable to the Agreement Officer:

(1) Within 30/60 days after the execution of the modification adding this provision to the Agreement;

(2) No later than 30 days before each launch; and

(3) Within 7 days after a request by the Agreement Officer.

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Moreover, the Recipient shall promptly notify the Agreement Officer of any termination, or of any change to the terms or conditions of an insurance policy or policies for which proof of insurance was provided.

(e) *Notification of Claims.* The Recipient shall—

(1) Promptly notify the Agreement Officer of any third party claim or suit against the Recipient, one of its related entities, any employee of the Recipient or its related entities, or any insurer of the Recipient for damages resulting from covered activities;

(2) Furnish evidence or proof of any such claim, suit or damages, in the form required by NASA; and

(3) Immediately furnish to NASA, or its designee, copies of all information received by the Recipient, or by any related entity, employee or insurer that is pertinent to such claim, suit or damages.

(f) *NASA Concurrence in Settlements.* NASA shall concur or not concur in each settlement of a third party claim by the Recipient’s insurer(s). For purposes of determining the amount of indemnification under this cooperative agreement. Adjudicated claims shall be deemed concurred in by NASA.

[End of provision]

**§ 1274.942 Export licenses.**

EXPORT LICENSES

July 2002

(a) The Recipient shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR parts 730 through 799, in the performance of this Cooperative Agreement. In the absence of available license exemptions/exceptions, the Recipient shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Recipient shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this Cooperative Agreement, including instances where the work is to be performed on-site at [insert name of NASA installation], where the foreign person will have access to export-controlled technical data or software.

(c) The Recipient shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Recipient shall be responsible for ensuring that the requirements of this provision apply to its subcontractors.

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(e) The Recipient may request, in writing, that the Agreement Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Agreement Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.

[End of provision]

**§ 1274.943 Investigation of research misconduct.**

INVESTIGATION OF RESEARCH MISCONDUCT

May 2005

Recipients of this cooperative agreement are subject to the requirements of 14 CFR part 1275, “Investigation of Research Misconduct.”

[End of provision]

[70 FR 28809, May 19, 2005]

APPENDIX TO PART 1274—LISTING OF EXHIBITS

EXHIBIT A TO PART 1274—CONTRACT PROVISIONS

All contracts awarded by a recipient, including small purchases, shall contain the following provisions if applicable:

1. Equal Employment Opportunity—All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

2. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts in excess of \$50,000 for construction or repair awarded by Recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each recipient or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to NASA.