

**TERMS AND CONDITIONS FOR THE PHASE A
CONCEPT STUDY (WITH BRIDGE OPTION) CONTRACT**

November 2001

INDEX OF CLAUSES FOR CONTRACT NAS5-TBD

SECTION B

- B.1 DELIVERABLE REQUIREMENTS AND DELIVERY SCHEDULE
- B.2 ESTIMATED COST INCREASES (GSFC 52.232-94) (SEP 1998)
- B.3 PAYMENT FOR OVERTIME PREMIUMS (52.222-2) (JUL 1990)
- B.4 ESTIMATED COST (1852.216-81) (DEC 1988)

SECTION C

- C.1 SCOPE OF WORK (GSFC 52.211-91) (FEB 1991)

SECTION D

NO CLAUSES INCLUDED

SECTION E

- E.1 INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (52.246-9) (APR 1984)

SECTION F

- F.1 F.O.B. DESTINATION (52.247-34) (NOV 1991)

SECTION G

- G.1 SUBMISSION OF VOUCHERS FOR PAYMENT (1852.216-87) (MAR 1998)
- G.2 NEW TECHNOLOGY (1852.227-70) (NOV 1998)
- G.3 DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT RIGHTS REPRESENTATIVE (1852.227-72) (JUL 1997)
- G.4 CONTRACTOR ACQUIRED PROPERTY—NASA CONDITIONS (GSFC 52.245-97) (SEP 1998)
- G.5 CONTRACTOR REQUESTS FOR GOVERNMENT-OWNED EQUIPMENT (1852.245-70) (JUL 1997)
- G.6 NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (1852.242-73) (JUL 2000)
- G.7 FINANCIAL MANAGEMENT REPORTING (GSFC 52.242-90) (FEB 2000)
- G.8 OPTION – FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (1852.245-73) (AUG 2001)

SECTION H

- H.1 SECTION H CLAUSES INCORPORATED BY REFERENCE
- H.2 OPTION 1 FOR THE BRIDGE PHASE

INDEX OF CLAUSES FOR CONTRACT NAS5-TBD

- H.3 OPTION 2 FOR THE BRIDGE PHASE
- H.4 ADVANCE AGREEMENT TO ADD PHASES B/C/D AND E
- H.5 LIMITATION OF FUTURE CONTRACTING (1852.209-71) (DEC 1998)
- H.6 SAFETY AND HEALTH (1852.223-70) (MAY 2001)
- H.7 MAJOR BREACH OF SAFETY OR SECURITY (1852.223-75) (MAY 2001)
- H.8 EXPORT LCENSES (1852.225-70) (FEB 2000)
- H.9 KEY PERSONNEL AND FACILITIES (1852.235-71) (MAR 1989)
- H.10 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFEROR
(GSFC 52.215-90) (NOV 1999)
- H.11 LIMITED RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION
(GSFC 52.203-91) (DEC 2000)

SECTION I

- I.1 LIST OF SECTION I CLAUSES INCORPORATED BY REFERENCE
- I.2 RIGHTS TO PROPOSAL DATA (52.227-23) (JUN 1987)
- I.3 LIMITATION ON WITHHOLDING OF PAYMENTS (52.232-9) (APR 1984)
- I.4 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (52.244-6)
(MAY 2001)
- I.5 CLAUSES INCORPORATED BY REFERENCE (52.252-2) (FEB 1998)
- I.6 AUTHORIZED DEVIATIONS IN CLAUSES (52.252-6) (APR 1984)
- I.7 COMPUTER GENERATED FORMS (52.253-1) (JAN 1991)
- I.8 SMALL BUSINESS SUBCONTRACTING REPORTING (1852.219-75) (MAY 1999)
- I.9 NASA 8 PERCENT GOAL (1852.219-76) (JUL 1997)
- I.10 MINIMUM INSURANCE COVERAGE (1852.228-75) (OCT 1988)
- I.11 CENTER FOR AEROSPACE INFORMATION-FINAL SCIENTIFIC AND TECHNICAL REPORTS
(1852.235-70) (JUL 2000)
- I.12 TITLE TO EQUIPMENT (1852.245-75) (MAR 1989)

INDEX OF CLAUSES FOR CONTRACT NAS5-TBD

SECTION J

J.1 LIST OF ATTACHMENTS (GSFC 52.211-101) (OCT 1988)

SECTION B OF CONTRACT NAS5-TBD

SUPPLIES OR SERVICES AND PRICES/COST

B.1 DELIVERABLE REQUIREMENTS AND DELIVERY SCHEDULE

The Contractor shall perform and/or deliver the following:

Item	Description	Quantity	Schedule
1	Phase A Concept Study Report in accordance Section J, Attachment A	1 original &* 25 copies	within 4 months after award
2	Option 1 – Bridge Phase Support in accordance with Clause H.2	As Required	For 2 months after exercise of option
3	Option 2 – Bridge Phase Support in accordance with Clause H.3	As Required	For 2 months after exercise of option
4	Monthly Financial Management Reports (533M) in accordance with Clauses G.6 and G.7	4	Monthly
5	Quarterly Financial Management Reports (533Q) in accordance with Clauses G.6 and G.7	4	Quarterly
6	Option – Report of NASA Property in the Custody of Contractors (NF 1018) in accordance with Clause G.8	2	Annually

* In addition to hard copy submissions, all the deliverable items specified above, shall be submitted in electronic format.

(End of Text)

B.2 ESTIMATED COST INCREASES (GSFC 52.232-94) (SEP 1998)

(a) The requirements of this clause are in conjunction with the Limitation of Cost clause or the Limitation of Funds clause of this contract.

(b) The Contractor shall notify the Contracting Officer in writing when the Contractor has reason to believe that the total cost for performance of this contract, exclusive of any fee, will be either greater or substantially less than the total estimated cost stated in this contract. Notification shall not be delayed pending preparation of a proposal.

(c) A proposal is required to support a request for an increase in the estimated cost of the contract. The proposal should be submitted as soon as possible after the above notification but no later than 115 days before the incurred costs are expected to exceed the estimated cost. This will allow adequate time for the Government to evaluate the proposal and to mutually establish any increase in estimated cost with the Contractor.

(d)(1) The proposal shall be submitted in the following format unless some other format is directed or approved by the Contracting Officer:

SECTION B OF CONTRACT NAS5-TBD

SUPPLIES OR SERVICES AND PRICES/COST

Incurred costs to date
Projected cost to completion
Total cost at completion
Current negotiated estimated cost
Requested increase in estimated cost

(2) The “projected cost to completion” shall consist of the following “other than cost or pricing data” unless the Contracting Officer requests or approves the submittal of a greater or lesser amount of information:

(i) Elements of cost with supporting detail for estimated direct labor hours, direct and indirect rates, materials and subcontracts, and other elements.

(ii) Supporting explanation for the increases and projections, sufficient for the Government to understand the reasons for the increased estimated cost.

(End of clause)

B.3 PAYMENT OF OVERTIME PREMIUMS (52.222-2) (JUL 1990)

(a) The use of overtime is authorized under this contract if the overtime premium cost does not exceed \$0 or the overtime premium is paid for work--

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature:

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting:

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances' and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise, or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall--

(1) Identify the work unit: e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

(End of clause)

SECTION B OF CONTRACT NAS5-TBD
SUPPLIES OR SERVICES AND PRICES/COST

B.4 ESTIMATED COST (1852.216-81) (DEC 1998)

The total estimated cost for complete performance of this contract is \$TBN. See FAR clause 52.216-11, Cost Contract--No Fee, of this contract.

(End of clause)

TBN = To Be Negotiated.

SECTION C OF CONTRACT NAS5-TBD

DESCRIPTIONS/SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE OF WORK (GSFC 52.211-91) (FEB 1991)

The Contractor shall provide the personnel, materials, and facilities necessary to perform a Phase A Concept Study and to furnish the items specified in Section B of this contract in accordance with the following attachments contained in Section J: (1) Attachment A – Statement of Work*.

(End of clause)

* SOW to be proposed.

SECTION D OF CONTRACT NAS5-TBD

PACKAGING AND MARKING

There are no clauses included in this section.

SECTION E OF CONTRACT NAS5-TBD

INSPECTION AND ACCEPTANCE

**E.1 INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (52.246-9)
(APR 1984)**

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(End of clause)

SECTION F OF CONTRACT NAS5-TBD

DELIVERIES OR PERFORMANCE

F.1 F.O.B. DESTINATION (52.247-34) (NOV 1991)

(a) The term "f.o.b. destination," as used in this clause, means--

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located, and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight". When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall--

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

SECTION G OF CONTRACT NAS5-TBD

CONTRACT ADMINISTRATION DATA

G.1 SUBMISSION OF VOUCHERS FOR PAYMENT (1852.216-87) (MAR 1998)

(a) The designated billing office for cost vouchers for purposes of the Prompt Payment clause of this contract is indicated below. Public vouchers for payment of costs shall include a reference to the number of this contract.

(b) (1) If the contractor is authorized to submit interim cost vouchers directly to the NASA paying office, the original voucher and one copy should be submitted to:

Cost and Commercial Accounts Department
Code 155
Goddard Space Flight Center
Greenbelt, Maryland 20771

(2) For any period that the Defense Contract Audit Agency has authorized the Contractor to submit interim cost vouchers directly to the Government paying office, interim vouchers are not required to be sent to the Auditor, and are considered to be provisionally approved for payment subject to final audit.

(3) Copies of vouchers should be submitted as may be directed by the Contracting Officer.

(c) If the contractor is not authorized to submit interim cost vouchers directly to the paying office as described in paragraph (b), the contractor shall prepare and submit vouchers as follows:

(1) One original and one copy Standard Form (SF)1034, SF 1035, or equivalent Contractor's attachment to the Auditor.

The mailing office address for submission of cost vouchers is as follows:

Offeror's cognizant DCAA office—To Be Proposed.

(2) (Reserved)

(3) The Contracting Officer may designate other recipients as required.

(d) Public vouchers for payment of fee shall be prepared similarly to the procedures in paragraphs (b) or (c) of this clause, whichever is applicable, and be forwarded to the Contracting Officer.

This is the designated billing office for fee vouchers for purposes of the Prompt Payment clause of this contract.

(e) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate voucher for the amount withheld will be required before payment for that amount may be made.

(End of clause)

G.2 NEW TECHNOLOGY (1852.227-70) (NOV 1998)

(a) Definitions.

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

SECTION G OF CONTRACT NASS-TBD

CONTRACT ADMINISTRATION DATA

"Contract," as used in this clause, means any actual or proposed contract, agreement, understanding, or other arrangement, and includes any assignment, substitution of parties, or subcontract executed or entered into thereunder.

"Made," as used in this clause, means conception or first actual reduction to practice; provided, that in the case of a variety of plant, the date of determination (as defined in Section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of contract performance.

"Nonprofit organization," as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

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

"Reportable item," as used in this clause, means any invention, discovery, improvement, or innovation of the Contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

"Small business firm," as used in this clause means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used.)

"Subject invention," as used in this clause, means any reportable item which is or may be patentable or otherwise protectible under Title 35 of the United States Code, or any novel variety of plant that is or maybe protectible under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(b) Allocation of principal rights.

(1) Presumption of title.

(i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of Section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called "the Act"), and the above presumption shall be Contractor submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of Section 305(a) of the Act.

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

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

SECTION G OF CONTRACT NASS-TBD

CONTRACT ADMINISTRATION DATA

(3) Waiver of rights.

(i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of Section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR Section 1245, Subpart 1, have adopted the Presidential Memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR 1245, Subpart 1, Contractors may petition, either prior to execution of the contract or within 30 days after execution of the contract, for advance waiver of rights to any or all of the inventions that may be made under a contract. If such a petition is not submitted, or if after submission it is denied, the Contractor (or an employee inventor of the Contractor) may petition for waiver of rights to an identified subject invention within 8 months of first disclosure of invention pursuant to paragraph (e)(2) of this clause, or within such longer period as may be authorized in accordance with 14 CFR 1245.105.

(c) Minimum rights reserved by the Government.

(1) With respect to each subject invention for which a waiver of rights is applicable pursuant to 14 CFR Section 1245, Subpart 1, the Government reserves--

(i) An irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government pursuant to any treaty or agreement with the United States; and

(ii) Such other rights as set forth in 14 CFR 1245.107.

(2) Nothing contained in this paragraph © shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Contractor.

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government acquires title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

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

(3) Before revocation or modification of the license, the Contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal to the Administrator any decision concerning the revocation or modification of its license.

(e) Invention identification, disclosures, and reports.

SECTION G OF CONTRACT NASS-TBD

CONTRACT ADMINISTRATION DATA

(1) The Contractor shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Contractor personnel responsible for the administration of this New Technology clause within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor will disclose each reportable item to the Contracting Officer within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of this New Technology clause or, if earlier, within 6 months after the Contractor becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the reportable item was made and the inventor(s) or innovator(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Contractor for such invention.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees, upon written request of the Contracting Officer, to furnish additional technical and other information available to the Contractor as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Contractor agrees, subject to paragraph 27.302(I), of the Federal Acquisition Regulation (FAR), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether--

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintained the procedures required by paragraph (e)(1) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contract invention that the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

SECTION G OF CONTRACT NASS-TBD

CONTRACT ADMINISTRATION DATA

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

(g) Withholding of payment (this paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to--

(i) Establish, maintain, and follow effective procedures for identifying and disclosing reportable items pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any reportable items pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(I) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of reportable items required by paragraph (e)(2) of this clause, and an acceptable final report pursuant to paragraph (e)(3)(ii) of this clause.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

(1) Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall--

(i) Include this clause (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause at FAR 52.227-11 (suitably modified to identify the parties) in any subcontract hereunder (regardless of tier) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor--

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The subcontractor will retain all rights provided for the Contractor in the clause of subparagraph (1)(I) or (ii) of this clause, whichever is included in the subcontract, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

SECTION G OF CONTRACT NAS5-TBD

CONTRACT ADMINISTRATION DATA

(i) Preference for United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Administrator upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

G.3 DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE (1852.227-72) (JULY 1997)

(a) 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:

<u>Title</u>	<u>Office Code</u>	<u>Address (including zip code)</u>
New Technology	750.1	Goddard Space Flight Center Representative Greenbelt, MD 20771
Patent	750.2	Goddard Space Flight Center Representative Greenbelt, MD 20771

(b) 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 1827.305-370 of the NASA FAR Supplement.

(End of clause)

G.4 CONTRACTOR ACQUIRED PROPERTY—NASA CONDITIONS (GSFC 52.245-97) (SEP 1998)

NASA FAR Supplement 1845.502-70 establishes general and specific conditions that apply to this contract for various categories of contractor acquired property.

(End of clause)

SECTION G OF CONTRACT NAS5-TBD

CONTRACT ADMINISTRATION DATA

G.5 CONTRACTOR REQUESTS FOR GOVERNMENT-OWNED EQUIPMENT (1852.245-70) (JUL 1997)

(a) "Equipment," as used in this clause, means commercially available items capable of stand-alone use, including those to be acquired for incorporation into special test equipment or special tooling.

(b)(1) Upon determination of need for any Government-owned equipment item for performance of this contract, the contractor shall provide to the contracting officer a written request justifying the need for the equipment and the reasons why contractor-owned property cannot be used, citing the applicable FAR or contract authority for use of Government-owned equipment. Equipment being acquired as a deliverable end item listed in the contract or as a component for incorporation into a deliverable end item listed in the contract is exempt from this requirement.

(2) The contractor's request shall include a description of the item in sufficient detail to enable the Government to screen its inventories for available equipment or to purchase equipment. For this purpose, the contractor shall (i) prepare a separate DD Form 1419, DOD Industrial Plant Equipment Requisition, or equivalent format, for each item requested and (ii) forward it through the contracting officer to the Industrial Property Officer at the cognizant NASA installation at least 30 days in advance of the date the contractor intends to acquire the item. Multiple units of identical items may be requested on a single form. Instructions for preparing the DD Form 1419 are contained in NASA FAR Supplement 1845.7102. If a certificate of nonavailability is not received within that period, the contractor may proceed to acquire the item, subject to having obtained contracting officer consent, if required, and having complied with any other applicable provisions of this contract.

(c) Contractors who are authorized to conduct their own screening using the NASA Equipment Management System (NEMS) and other Government sources of excess property shall provide the evidence of screening results with their request for contracting officer consent. Requests to purchase based on unsuitability of items found shall include rationale for the determined unsuitability.

(End of clause)

G.6 NASA CONTRACTOR FINANCIAL MANAGEMENT REPORTING (1852.242-73) (JUL 2000)

(a) The Contractor shall submit NASA Contractor Financial Management Reports on NASA Forms 533 in accordance with the instructions in NASA Procedures and Guidelines (NPG) 9501.2, NASA Contractor Financial Management Reporting, and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall correlate with technical and schedule reporting, shall be set forth in the Schedule. Contractor implementation of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category and give due regard to the Contractor's established financial management information system.

(b) Lower level detail used by the Contractor for its own management purposes to validate information provided to NASA shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule or as designated in writing by the Contractor Officer. Upon completion and acceptance by NASA of all contract line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only, report only when changes in actual cost incur, or suspend reporting altogether.

(d) The Contractor shall ensure that its Form 533 reports include accurate subcontractor cost data, in the proper reporting categories, for the reporting period.

SECTION G OF CONTRACT NAS5-TBD

CONTRACT ADMINISTRATION DATA

(e) If during the performance of this contract NASA requires a change in the information or reporting requirements specified in the Schedule, or as provided for in paragraph (a) or (c) of this clause, the Contracting Officer shall effect that change in accordance with the Changes clause of this contract.

(End of clause)

G.7 FINANCIAL MANAGEMENT REPORTING (GSFC 52.242-90) (FEB 2000)

(a) Requirements. This clause provides the supplemental instructions referred to in NASA FAR Supplement (NFS) clause 1852.242-73. The NFS clause and NASA Procedures and Guidelines (NPG) 9501.2C, "NASA Contractor Financial Management Reporting", establish report due dates and all other financial management reporting requirements. NPG 9501.2C permits withholding of payment for noncompliance.

(b) Supplemental instructions. (1) Monthly (NF 533M) reports are required. Quarterly (NF 533Q) reports are also required. One copy shall be provided to each of the following:

Contracting Officer, Code 214.1
Contracting Officer's Technical Representative, Code 443
Resources Analyst, Code 443
Administrative Contracting Officer (if delegated)

(2) The reporting structure shall be in accordance with the following:

Direct Labor Hours

Direct Labor Workyears

Direct Labor Cost (Calculated based on Direct Labor Hours)

Fringe Benefit Costs

Overhead

Materials

Materials Overhead

Other Direct Costs

Local Travel

Non-Local Travel

Subcontracts

Other (Specify)

G&A Expense

Cost of Money (if proposed)

Total Cost

SECTION G OF CONTRACT NAS5-TBD

CONTRACT ADMINISTRATION DATA

The above structure shall be used and separate 533M and 533Q reports shall be provided to report cost for the basic effort, each separate option effort (if exercised), and a summary of the total contract cost (i.e., the basic effort and all exercised options efforts).

(c) Web sites. (1)NPG 9501.2C, "NASA Contractor Financial Management Reporting":

http://nodis.hq.nasa.gov/Library/Directives/NASA-WIDE/Procedures/Financial_Management/contents.html

(2) NF 533 Tutorial: (for training purposes only)

<http://genesis.gsfc.nasa.gov/nf533.htm>

(End of clause)

G.8 OPTION—FINANCIAL REPORTING OF NASA PROPERTY IN THE CUSTODY OF CONTRACTORS (1852.245-73) (AUG 2001)

(a) The Contractor shall submit annually a NASA Form (NF) 1018, NASA Property in the Custody of Contractors, in accordance with the provisions of 1845.505-14, the instructions on the form, subpart 1845.71, and any supplemental instructions for the current reporting period issued by NASA.

(b)(1) Subcontractor use of NF 1018 is not required by this clause; however, the Contractor shall include data on property in the possession of subcontractors in the annual NF 1018.

(2) The Contractor shall mail the original signed NF 1018 directly to the Goddard Space Flight Center (GSFC), General Accounting Department, Property and Reporting Team, Code 157, Greenbelt, MD 20771, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(3) One copy shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address:

Goddard Space Flight Center, Property Management Branch, Code 235, Greenbelt, MD 20771--unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c) The annual reporting period shall be from October 1 of each year through September 30 of the following year. The report shall be submitted in time to be received by October 31. The information contained in these reports is entered into the NASA accounting system to reflect current asset values for agency financial statement purposes. Therefore, it is essential that required reports be received no later than October 31. The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding \$25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with 1845.505-14 and any supplemental instructions for the current reporting period issued by NASA. Such reserve shall be withheld until the Contracting Officer has determined that the required reports have been received by NASA. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(d) A final report shall be submitted within 30 days after disposition of all property subject to reporting when the contract performance period is complete in accordance with (b)(1) through (3) of this clause.

(End of clause)

SECTION H OF CONTRACT NAS5-TBD
SPECIAL CONTRACT REQUIREMENTS

H.1 SECTION H CLAUSES INCORPORATED BY REFERENCE

(1852.204-74) CENTRAL CONTRACTOR REGISTRATION (AUG 2000)

H.2 OPTION 1 FOR THE BRIDGE PHASE

The Government may unilaterally extend the term of this contract for the performance of the bridge phase by the Contracting Officer giving written notice to the Contractor in the form of a modification to the contract within four months from the effective date of the contract. The bridge phase will cover a two- month period of initial definition activities at an estimated cost not-to-exceed \$600,000.

(End of text)

H.3 OPTION 2 FOR THE BRIDGE PHASE

The Government may unilaterally extend the term of this contract for the performance of the bridge phase by the Contracting Officer giving written notice to the Contractor in the form of a modification to the contract within two months from the execution of Option 1 of the contract. The bridge phase will cover a two-month period of continued definition activities at an estimated cost not-to-exceed \$1,700,000.

(End of text)

H.4 ADVANCE AGREEMENT TO ADD PHASES B/C/D AND E

At the time of award, the contract requires the concept study for Phase A only. As part of the Phase A effort, the Contractor shall prepare and deliver a concept study report with updated information for the definition, design, development, and mission operations and data analysis (Phases B through E), in accordance with the contract requirements.

This clause recognizes the authority established in the Announcement of Opportunity (AO) for Phases B/C/D and E. If the concept study is deemed acceptable, the terms and conditions for Phases B through E will be negotiated and a supplemental agreement shall be executed which represents an equitable adjustment to the estimated cost, deliverable items and delivery schedules, and other affected terms of the contract for inclusion of Phases B through E.

(End of Text)

H.5 LIMITATION OF FUTURE CONTRACTING (1852.209-71) (DEC 1998)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5-Organizational Conflicts of Interest.

(b) The nature of this conflict is that the Government plans to have the contractor assist it in the preparation of requirements documents in support of an upcoming solicitation for flight qualified, packaged focal plane assemblies.

(c) The restrictions upon future contracting are as follows:

SECTION H OF CONTRACT NASS5-TBD
SPECIAL CONTRACT REQUIREMENTS

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing NASA contract. This restriction shall remain in effect for a reasonable time as agreed to by the Contracting Officer and the Contractor sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). NASA shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not use them to compete with those other companies.

(End of clause)

H.6 SAFETY AND HEALTH (1852.223-70) (MAY 2001)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) the public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contractor shall immediately notify and promptly report to the Contracting Officer or a designee any accident, incident, or exposure resulting in fatality, lost-time occupational injury, occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule; or property loss of \$25,000 or more, or Close Call (a situation or occurrence with no injury, no damage or only minor damage (less than \$1,000) but possesses the potential to cause any type mishap, or any injury, damage, or negative mission impact) that may be of immediate interest to NASA, arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(e) The Contractor shall investigate all work-related incidents, accidents, and Close Calls, to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

SECTION H OF CONTRACT NASS-TBD
SPECIAL CONTRACT REQUIREMENTS

(f)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (f)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(g) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (g) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that -

(1) Amount to \$1,000,000 or more (unless the Contracting Officer makes a written determination, after consultation with installation safety and health representatives, that this is not required);

(2) Require construction, repair, or alteration in excess of \$25,000; or

(3) Regardless of dollar amount, involve the use of hazardous materials or operations.

(h) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and occupational health measures under this clause.

(i) The contractor shall continually update the safety and health plan when necessary. In particular, the Contractor shall furnish a list of all hazardous operations to be performed, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence--

(1) Written hazardous operating procedures for all hazardous operations; and/or

(2) Qualification standards for personnel involved in hazardous operations.

End of clause)

H.7 MAJOR BREACH OF SAFETY OR SECURITY (1852.223-75) (MAY 2001)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) the public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on

the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by the Occupational Health and Safety Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any

SECTION H OF CONTRACT NASS-TBD

SPECIAL CONTRACT REQUIREMENTS

of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than \$250,000 to the Government; or theft.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

(End of clause)

H.8 EXPORT LICENSES (1852.225-70) (FEB 2000)

(a) The Contractor 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 contract. In the absence of available license exemptions/exceptions, the Contractor 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 Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at any Government installation, where the foreign person will have access to export-controlled technical data or software.

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

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

H.9 KEY PERSONNEL AND FACILITIES (1852.235-71) (MAR 1989)

(a) The personnel and/or facilities listed below (or specified in the contract Schedule) are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel or facilities, the Contractor shall (1) notify the Contracting Officer reasonably in advance and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract.

(b) The Contractor shall make no diversion without the Contracting Officer's written consent; provided, that the Contracting Officer may ratify in writing the change, and that ratification shall constitute Contracting Officer's consent required by this clause.

(c) The list of personnel and/or facilities (shown below or as specified in the contract Schedule) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel and/or facilities.

To Be Proposed.

(End of clause)

SECTION H OF CONTRACT NAS5-TBD
SPECIAL CONTRACT REQUIREMENTS

**H.10 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFEROR
(GSFC 52.215-90) (NOV 1999)**

In accordance with FAR 15.204-1(b), the completed and submitted Section K, "Representations, Certifications, and other Statements of Offeror", are incorporated by reference in this resulting contract.

(End of clause)

**H.11 LIMITED RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION
(GSFC 52.203-91) (DEC 2000)**

(a) NASA may find it necessary to release information submitted by the Contractor, either in response to this solicitation or pursuant to the provisions of this contract, 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 submission of this proposal, or signature on this contract or other contracts, the Contractor hereby consents to a limited release of its confidential business information (CBI).

(b) Possible circumstances where the Agency may release the Contractor's CBI include, but are not limited to, the following:

(1) To other Agency contractors and subcontractors, and their employees tasked with assisting the Agency in handling and processing information and documents in the evaluation, the award or the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to NASA's technical evaluation panels;

(2) To NASA contractors and 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 the contractor 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) The Contractor 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 confidential business information by the subcontractor.

(End of clause)

SECTION I OF CONTRACT NAS5-TBD

CONTRACT CLAUSES

I.1 LIST OF SECTION I CLAUSES INCORPORATED BY REFERENCE

The following clauses are incorporated by reference in accordance with Federal Acquisition Regulation (FAR) 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998):

(52.202-1)	DEFINITIONS (MAY 2001)
(52.203-3)	GRATUITIES (APR 1984)
(52.203-5)	COVENANT AGAINST CONTINGENT FEES (APR 1984)
(52.203-6)	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)
(52.203-7)	ANTI-KICKBACK PROCEDURES (JUL 1995)
(52.203-8)	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
(52.203-10)	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
(52.203-12)	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)
(52.204-4)	PRINTED OR COPIED DOUBLE SIDED ON RECYCLED PAPER (AUG 2000)
(52.209-6)	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARDED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)
(52.211-15)	DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (SEP 1990)
(52.215-2)	AUDIT AND RECORDS—NEGOTIATION (JUN 1999)—ALTERNATE II (APR 1998)
(52.215-8)	ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT (OCT 1997)
(52.215-11)	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA – MODIFICATION (OCT 1997)
(52.215-13)	SUBCONTRACTOR COST OR PRICING DATA – MODIFICATIONS (OCT 1997)
(52.215-14)	INTEGRITY OF UNIT PRICES (OCT 1997)
(52.215-15)	PENSION ADJUSTMENTS AND ASSET REVERSIONS (DEC 1998)
(52.215-17)	WAIVER OF FACILITY CAPITAL COST OF MONEY (OCT 1997)
(52.215-18)	REVISION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)
(52.215-19)	NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)
(52.215-21)	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA – MODIFICATIONS (OCT 1997)
(52.216-7)	ALLOWABLE COST AND PAYMENT (MAR 2000) paragraph a is modified to read “Subpart 31.3” where “Subpart 31.2” appears
(52.216-11)	COST CONTRACT–NO FEE (APR 1984)—ALTERNATE I (APR 1984)
(52.219-8)	UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2000)
(52.219-9)	SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000)
(52.222-1)	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
(52.222-3)	CONVICT LABOR (AUG 1996)
(52.222-21)	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)
(52.222-26)	EQUAL OPPORTUNITY (FEB 1999)
(52.222-35)	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)
(52.222-37)	EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)
(52.223-6)	DRUG FREE WORKPLACE (MAY 2001)
(52.223-14)	TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

SECTION I OF CONTRACT NAS5-TBD

CONTRACT CLAUSES

- (52.225-1) BUY AMERICAN ACT—BALANCE OF PAYMENTS PROGRAM (FEB 2000)
- (52.225-13) RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2000)
- (52.227-1) AUTHORIZATION AND CONSENT (JUL 1995)—ALTERNATE I (APR 1984)
- (52.227-2) NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)
- (52.227-11) PATENT RIGHTS—RETENTION BY CONTRACTOR (SHORT FORM) (JUN 1997) as modified by NASA FAR Supplement 1852.227-11
- (52.228-7) INSURANCE—LIABILITY TO THIRD PERSONS (MAR 1996)
- (52.227-14) RIGHTS IN DATA-GENERAL (JUN 1987)—ALTERNATE IV (JUN 1987)
- (52.227-16) ADDITIONAL DATA REQUIREMENTS (JUN 1987)
- (52.230-5) COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTION (APR 1998)
- (52.230-6) ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)
- (52.232-20) LIMITATION OF COST (APR 1984)
- (52.232-23) ASSIGNMENT OF CLAIMS (JAN 1986)
- (52.232-25) PROMPT PAYMENT (MAY 2001) (b)(2), second sentence shall have a 30-day period for any financing payments.
- (52.232-34) PAYMENT BY ELECTRONIC FUNDS TRANSFER—OTHER THAN CENTRAL CONTRACTOR REGISTRATION (MAY 1999) [paragraph (b)(1) fill-in (hereafter: “designated office”—Cost and Commercial Accounts Department, Code 155, NASA/Goddard Space Flight Center, Greenbelt, MD 20771, FAX 301-286-1748, no later than concurrent with the first request for payment.]
- (52.233-1) DISPUTES (DEC 1998)—ALTERNATE I (DEC 1991)
- (52.233-3) PROTEST AFTER AWARD (AUG 1996)—ALTERNATE I (JUN 1985)
- (52.242-1) NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)
- (52.242-3) PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)
- (52.242-4) CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)
- (52.242-13) BANKRUPTCY (JUL 1995)
- (52.243-2) CHANGES—COST-REIMBURSEMENT (AUG 1987)—ALTERNATE V (APR 1984)
- (52.244-2) SUBCONTRACTS (AUG 1998)—ALTERNATE I (AUG 1998) [paragraph (e) is “Professional and consultant costs as defined at FAR 31.205-33” and paragraph (k) is “None”]
- (52.244-5) COMPETITION IN SUBCONTRACTING (DEC 1996)
- (52.245-5) GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS) (JAN 1986) (DEVIATION) (JUL 1995)—ALTERNATE I (JUL 1985)—(g)(5) of the clause shall read as follows: “The contractor shall notify the contracting officer upon loss or destruction of, or damage to, Government property provided under this contract, with the exception of low value property for which loss, damage, or destruction is reported at contract termination, completion, or when needed for continued performance. The Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—“. The balance of (g)(5) is unchanged.
- (52.247-1) COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)
- (52.249-5) TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (SEP 1996)
- (1852.204-76) SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JUL 2001) – Insert in Paragraph (b) is “90 days”

SECTION I OF CONTRACT NAS5-TBD

CONTRACT CLAUSES

- (1852.215-84) OMBUDSMAN (JUN 2000) The installation Ombudsman is William F. Townsend, Goddard Space Flight Center, Mailstop 100, Greenbelt, MD 20771, Business Phone: 301-286-5066, Fax: 301-286-1714, E-Mail address: William.F.Townsend.1@gsfc.nasa.gov
- (1852.216-89) ASSIGNMENT AND RELEASE FORMS (JUL 1997)

(End of By Reference Section)

I.2 RIGHTS TO PROPOSAL DATA (52.227-23) (TECHNICAL) (JUN 1987)

Except for data contained on pages TBN, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated TBD, upon which this contract is based.

(End of Clause)

I.3 LIMITATION ON WITHHOLDING OF PAYMENTS (52.232-9) (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; provided, that this limitation shall not apply to--

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(End of clause)

I.4 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (52.244-6) (MAY 2001)

(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 Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The following clauses shall be flowed down to 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 subcontractor (except contracts to small business

SECTION I OF CONTRACT NAS5-TBD

CONTRACT CLAUSES

concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (FEB 1999)(E.O. 11246).

(iii) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998)(38 U.S.C. 4212(a)).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998)(29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUN 2000)(46 U.S.C. Appx 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

I.5 CLAUSES INCORPORATED BY REFERENCE (52.252-2) (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

Federal Acquisition Regulation (FAR) clauses:

<http://www.arnet.gov/far/>

NASA FAR Supplement (NFS) clauses:

<http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>

(End of clause)

I.6 AUTHORIZED DEVIATIONS IN CLAUSES (52.252-6) (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any NASA FAR Supplement Regulation (48 CFR Chapter 18) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

I.7 COMPUTER GENERATED FORMS (52.253-1) (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the

SECTION I OF CONTRACT NAS5-TBD

CONTRACT CLAUSES

name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

I.8 SMALL BUSINESS SUBCONTRACTING REPORTING (1852.219-75) (MAY 1999)

(a) The Contractor shall submit the Summary Subcontract Report (Standard Form (SF) 295) semiannually for the reporting periods specified in block 4 of the form. All other instructions for SF 295 remain in effect.

(b) The Contractor shall include this clause in all subcontracts that include the clause at FAR 52.219-9.

(End of clause)

I.9 NASA 8 PERCENT GOAL (1852.219-76) (JUL 1997)

(a) Definitions.

“Historically Black Colleges or University”, as used in this clause means an institution determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“Minority institutions”, as used in this clause, means an institution of higher education meeting the requirements of section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which for the purposes of this clause includes a Hispanic-serving institution of higher education as defined in section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)).

“Small disadvantaged business concern”, as used in this clause, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124.

“Women-owned small business concern”, as used in this clause, means a small business concern (1) which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the

SECTION I OF CONTRACT NAS5-TBD

CONTRACT CLAUSES

stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more women.

(b) The NASA Administrator is required by statute to establish annually a goal to make available to small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns, at least 8 percent of NASA's procurement dollars under prime contracts or subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained.

(c) The contractor hereby agrees to assist NASA in achieving this goal by using its best efforts to award subcontracts to such entities to the fullest extent consistent with efficient contract performance.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small disadvantaged business concerns, Historically Black Colleges and Universities, minority institutions, and women-owned small business concerns.

(End of clause)

I.10 MINIMUM INSURANCE COVERAGE (1852.228-75) (OCT 1988)

The Contractor shall obtain and maintain insurance coverage as follows for the performance of this contract:

(a) Worker's compensation and employer's liability insurance as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The employer's liability coverage shall be at least \$100,000, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.

(b) Comprehensive general (bodily injury) liability insurance of at least \$500,000 per occurrence.

(c) Motor vehicle liability insurance written on the comprehensive form of policy which provides for bodily injury and property damage liability covering the operation of all motor vehicles used in connection with performing the contract. Policies covering motor vehicles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury liability and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) Comprehensive general and motor vehicle liability policies shall contain a provision worded as follows:

"The insurance company waives any right of subrogation against the United States of America which may arise by reason of any payment under the policy."

(e) When aircraft are used in connection with performing the contract, aircraft public and passenger liability insurance of at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of clause)

SECTION I OF CONTRACT NAS5-TBD

CONTRACT CLAUSES

I.11 CENTER FOR AEROSPACE INFORMATION—FINAL SCIENTIFIC AND TECHNICAL REPORTS (1852.235-70) (JUL 2000)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) (<http://www.sti.nasa.gov>) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a central NASA repository of research information, which may enhance contract performance. The address is set out in paragraph (d) of this clause.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) In addition to the final report, as defined at 1827.406-70(a)(3), submitted to the contracting officer, a reproducible copy and a printed or reproduced copy of the final report or data shall be concurrently submitted to:

Center for AeroSpace Information (CASI)
Attn: Document Processing Section
7121 Standard Drive
Hanover, Maryland 21076-1320
Phone: 301-621-0390
FAX: 301-621-0134

(d) The last page of the final report submitted to CASI shall be a completed Standard Form (SF) 298, Report Documentation Page. In addition to the copy of the final report, the contractor shall provide, to CASI, a copy of the letter transmitting the final report to NASA for its Document Availability Authorization (DAA) review.

(e) The contractor shall not release the final report, outside of NASA, until the DAA review has been completed by NASA and availability of the report has been determined.

(End of clause)

I.12 TITLE TO EQUIPMENT (1852.245-75) (MAR 1989)

(a) In accordance with the FAR 52.245 Government Property clause of this contract, title to equipment and other tangible personal property acquired by the Contractor with funds provided for conducting research under this contract and having an acquisition cost less than \$5000 shall vest in the Contractor upon acquisition, provided that the Contractor has complied with the requirements of the FAR 52.245 Government Property clause.

(b) Upon completion or termination of this contract, the Contractor shall submit to the Contracting Officer a list of all equipment with an acquisition cost of \$5000 or more acquired under the contract during the contract period. The list shall include a description, manufacturer and model number, date acquired, cost, and condition information, and shall be submitted within 30 calendar days after completion or termination of the contract, in accordance with Federal Acquisition Regulation subsection 45.606-5.

(c) Title to the property specified in paragraph (b) above vests in the Contractor, but the Government retains the right to direct transfer of title to property specified in paragraph (b) above to the Government or to a third party within 180 calendar days after completion or termination of the contract. Such transfer shall not be the basis for any claim by the Contractor.

SECTION I OF CONTRACT NAS5-TBD

CONTRACT CLAUSES

(d) Title to all Government-furnished property remains vested with the Government (see the FAR 52.245 Government Property clause).

(e) Title to the contractor-acquired property listed below shall vest with the Government.

NONE

(End of clause)

SECTION J OF CONTRACT NAS5-TBD

LIST OF ATTACHMENTS

J.1 LIST OF ATTACHMENTS (GSFC 52.211-101) (OCT 1988)

The following attachments constitute part of this contract:

<u>Attachment</u>	<u>Description</u>	<u>Date</u>	<u>No. of Pages</u>
A	Statement of Work	TBP	TBP
B	Guidelines and Criteria for NIRC Phase A Study Report Preparation	November 16, 2001	36

(End of clause)

TBP=To Be Proposed