

§ 1274.938

copy of "level 1" data whose cost to replace exceeds one million dollars.

(iii) IT-3—Individuals having privileged access or limited privileged access to systems whose misuse can cause significant adverse impact to NASA missions. These systems include, for example, those that interconnect with a NASA network in a way that exceeds access by the general public, such as bypassing firewalls; and systems operated by the Recipient for NASA whose function or data has substantial cost to replace, even if these systems are not interconnected with a NASA network.

(3) Screening for individuals shall employ forms appropriate for the level of risk as follows:

(i) IT-1: Fingerprint Card (FC) 258 and Standard Form (SF) 85P, Questionnaire for Public Trust Positions;

(ii) IT-2: FC 258 and SF 85, Questionnaire for Non-Sensitive Positions; and

(iii) IT-3: NASA Form 531, Name Check, and FC 258.

(4) The Agreement Officer may allow the Recipient to conduct its own screening of individuals requiring privileged access or limited privileged access provided the Recipient can demonstrate that the procedures used by the Recipient are equivalent to NASA's personnel screening procedures. As used here, equivalent includes a check for criminal history, as would be conducted by NASA, and completion of a questionnaire covering the same information as would be required by NASA.

(5) Screening of Recipient personnel may be waived by the Agreement Officer for those individuals who have proof of—

(i) Current or recent national security clearances (within last three years);

(ii) Screening conducted by NASA within last three years; or

(iii) Screening conducted by the Recipient, within last three years, that is equivalent to the NASA personnel screening procedures as approved by the Agreement Officer under paragraph (d)(4) of this provision.

(e) The Recipient shall ensure that its employees, in performance of the cooperative agreement, receive annual IT security training in NASA IT Security policies, procedures, computer ethics, and best practices in accordance with NPG 2810.1, Section 4.3 requirements. The Recipient may use web-based training available from NASA to meet this requirement.

(f) The Recipient shall afford NASA, including the Office of Inspector General, access to the Recipient's, subcontractors' or subawardees' facilities, installations, operations, documentation, databases and personnel used in performance of the cooperative agreement. Access shall be provided to the extent required to carry out a program of IT inspection, investigation and audit to safeguard against threats and hazards to the

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integrity, availability and confidentiality of NASA data or to the function of computer systems operated on behalf of NASA, and to preserve evidence of computer crime.

(g) The Recipient shall incorporate the substance of this clause in all subcontracts or subagreements that meet the conditions in paragraph (a) of this provision.

[End of provision]

§ 1274.938 Modifications.

MODIFICATIONS

July 2002

During the term of this agreement and in the interest of achieving program objectives, the parties may agree to changes that affect the responsibility statements, milestones, or other provisions of this agreement. Any changes to this agreement will be accomplished by a written bilateral modification.

[End of provision]

§ 1274.939 Application of Federal, State, and Local laws and regulations.

APPLICATION OF FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS

July 2002

(a) *Federal Laws and Regulations.* This Cooperative Agreement shall be governed by the Federal Laws, regulations, policies, and related administrative practices applicable to this Cooperative Agreement on the date the Agreement is executed. The Recipient understands that such Federal laws, regulations, policies, and related administrative practices may be modified from time to time. The Recipient agrees to consider modifying this Agreement to be governed by those later modified Federal laws, regulations, policies, and related administrative practices that directly affect performance of the Project.

(b) *State or Territorial Law and Local Law.* Except to the extent that a Federal statute or regulation preempts State or territorial law, nothing in the Cooperative Agreement shall require the Recipient to observe or enforce compliance with any provision thereof, perform any other act, or do any other thing in contravention of any applicable State or territorial law; however, if any of the provisions of the Cooperative Agreement violate any applicable State or territorial law, or if compliance with the provisions of the Agreement would require the Recipient to violate any applicable State or territorial law, the Recipient agrees to notify the Government (NASA) immediately in writing in order that the Government and the Recipient may

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.