

Date: November 2000

EXHIBIT A**GOVERNMENT PROVISIONS
APPLICABLE TO
PRIME CONTRACT C79A85**

The clauses contained in the following Government regulations are incorporated by reference. Where necessary or appropriate to derive proper meaning in a subcontract situation, "Contractor" shall mean Seller. Government clauses cited elsewhere in the contract shall be those in effect July 13, 1999.

**FAR/DFARS
Reference****Title**

52.219-8	Utilization of Small Business Concerns (OCT 99)
52.222-1	Notice to the Government of Labor Disputes (FEB 97) ("Contracting Officer" means Buyer.)
52.222-21	Prohibition of Segregated Facilities (FEB 99) (Certification required. The clause is to be included in every subcontract or purchase order subject to the equal opportunity clause.)
52.222-26	Equal Opportunity (FEB 99) [Subparagraphs (b)(1) through (11)]
52.227-1	Authorization and Consent (JUL 95)
52.242-15	Stop Work Order (AUG 89) ("Contracting Officer" means Buyer)

The following clauses also apply if the contract price exceeds \$100,000:

52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation (SEP 00)
52.223-2	Clean Air and Water (APR 84) (Also applicable if Seller's facility has been the subject of a conviction under the Clean Air Act or Federal Water Pollution Control Act.)

SPECIAL CONTRACT REQUIREMENTS:1274.905 Rights in Data (FEB 96)

(a) Definitions

"Data," means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(b) Except for items of data specifically identified under each category of restricted data in paragraph (c) of this provision, all data developed, used, or furnished by the Seller under this purchase contract shall not include restrictions or limitations on its use or disclosure. The Seller shall make all data, described in this paragraph and paragraph (c) of this provision available to the Government as required by this purchase contract or otherwise

upon request. There are no restrictions on the use or disclosure of data first produced by NASA under this purchase contract.

(c) Restricted Rights Data and Categories

(1) The following categories of restrictions on data are the only restrictions on data applicable under this purchase contract.

Category A: Data which will be maintained in confidence and disclosed and used by the Government and its contractors (under suitable protective conditions) only for the purpose of carrying out the Government's responsibilities under this purchase contract. Upon completion of activities under this purchase contract such data will be disposed of as requested by the Seller except for official record retention purposes.

Category B: Data which will be maintained in confidence and disclosed and used by the Government and its contractors (under suitable protective conditions) only for Government internal purposes during the shortest period of:

(1) three (3) years from the date the data is furnished, used or developed by the Seller under this purchase contract.

(2) the completion of the purchase contract (which is defined as completion of the final payment, milestone criteria or in the event this purchase contract is terminated by either party, completion of the purchase contract shall be the current estimated completion (expiration) date included in the purchase contract at the time of termination.)

After this period, there will be no restrictions on the use or disclosure of this data by the Government.

Category C: Data which will be maintained in confidence and disclosed and used by the Government and its contractors (under suitable protective conditions) only for Government internal purposes for two (2) years after development of the X-37 Flight Software source code. After this period there will be no restrictions on the use or disclosure of this data by the Government. For purposes of this provision, "development" is defined as occurring after Vehicle Management System (VMS) Formal Qualification Test (FQT) has been completed. In the event this purchase contract is terminated prior to completion of VMS/FQT, this data can be released by the Government after two (2) years without restriction.

Category D: Seller data which will be maintained in confidence and disclosed and used by the Government and its contractors (under suitable protective conditions) as identified by the Seller. (Note: By mutual purchase contract, additional items may be added to this list or the following items may be modified throughout the term of this purchase contract to reflect corresponding purchase contracts with the Seller's subcontractors/suppliers. It is intended by the parties that in general, such modifications or additions will be accomplished without additional consideration to the Government.)

(2) Copyright Data

(i) In the event Data is exchanged with a notice indicating the Data is protected under copyright as a published copyrighted work, or are deposited for registration as a published work in the U.S. Copyright Office, the following paid-up licenses shall apply:

(A) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this purchase contract, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this purchase contract; and

(B) If the furnished Data does not contain the indication of paragraph (2)(i)(A) of this section, it will be assumed that the Data was first produced under this purchase contract, and the receiving party and others acting on its behalf, shall be granted a paid up, nonexclusive, irrevocable, world-wide license for all such Data to reproduce, distribute copies to the public, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the receiving party. For Data that is computer software, the right to distribute shall be limited to potential users in the United States.

(ii) When claim is made to copyright, the Seller shall affix the applicable copyright notice of 17 U.S.C. 401 or 402

and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government.

(3) Oral and visual information. If information which the Seller considers to be items specifically identified in this provision as restricted is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e., converted into Data as defined herein), identified and marked with a suitable notice or legend, and furnished to NASA within ten (10) days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(4) Disclaimer of Liability. Notwithstanding the above, NASA shall not be restricted in, nor incur any liability for, the disclosure and use of:

(i) Data not identified with a suitable notice or legend; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraph (c) of this provision, if such information is or becomes generally known without breach of the above, is known to or is generated by NASA independently of carrying out responsibilities under this purchase contract, is rightfully received from a third party without restriction, or is included in data which Seller has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(d) Marking of Data. Any Data delivered under this purchase contract by NASA or the Seller, shall be marked with a suitable notice or legend identifying the applicable category of data restriction in accordance with paragraph (c) hereof.

(e) Lower Tier Agreements/Purchase Contracts. The Seller shall include this provision, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental or research work.

16. Cross-Waiver of Liability for Space Shuttle Services

(a) As prescribed by regulation (14 CFR Part 1266), NASA agreements involving Space Shuttle flights are required to contain broad cross-waivers of liability among the parties and the parties related entities to encourage participation in space exploration, use, and investment. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.

(b) As used in this clause, the term:

(1) "Contractors" and "Subcontractors" include suppliers of any kind.

(2) "Damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage;

(3) "Party" means the Seller and NASA;

(4) "Payload" means all property to be flown or used on or in the Space Shuttle; and

(5) "Protected Space Operations" means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of this cooperative agreement involving Space Shuttle services. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement this agreement involving Space Shuttle services. It includes, but is not

limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;

(ii) All activities related to ground support, test, training, simulation or guidance and control equipment, and related facilities or services.

(6) "Related entity" means:

(i) A party's Contractors or subcontractors at any tier;

(ii) A party's users or customers at any tier; or

(iii) A Contractor or subcontractor of a party's user or customer at any tier.

(c)(1) Each party agrees to a cross-waiver of liability pursuant to which each party waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. This cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:

(i) The other party;

(ii) Any person or entity who has signed an agreement with NASA that includes a Shuttle flight;

(iii) A related entity of a party, person, or entity in c(1)(i) or (c)(1)(ii); and

(iv) The employees of any of the entities identified in (c)(1)(i) through (c)(1)(iii) of this provision.

(2) Each party shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this clause to its own related entities by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision.

(3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other paragraphs of this provision, this cross-waiver of liability shall not be applicable to:

(i) Claims between any party and its own related entities or claims between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims between the parties based on the express provisions of this purchase contract; and

(vi) Claims for damage based on a failure of the parties or their related entities to flow down this cross-waiver.

(5) Nothing in this provision shall be construed to create the basis for a claim or suit where none would otherwise exist.

A = ADDED

D = DELETED

R = REVISED