

§ 1274.904

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(d) Since NASA contractors may obtain certain intellectual property rights arising from work for NASA in support of this agreement, NASA will inform Recipient whenever NASA intends to use NASA contractors to perform technical engineering services in support of this agreement.

(e) Unless the Cooperative Agreement is terminated by the parties, end date can only be changed by execution of a bilateral modification.

[End of provision]

§ 1274.904 Resource sharing requirements.

RESOURCE SHARING REQUIREMENTS

July 2002

Where NASA and other Government agencies are involved in the cooperative agreement, "NASA" shall also mean "Federal Government".

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a ___ percent (NASA)—___ percent (Recipient) basis. Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by FAR Parts 30 and 31, and NFS Parts 1830 and 1831.

(b) The funding and non-cash contributions by both parties are represented by the following dollar amounts:

Government Share _____
Recipient Share _____
Total Amount _____

(c) The Recipient's share shall not be charged to the Government under this Agreement or under any other contract, grant, or cooperative agreement, except to the extent that the Recipient's contribution may be allowable IR&D costs pursuant to FAR 31.205-18(e).

[End of provision]

[67 FR 45790, July 10, 2002, as amended at 71 FR 51714, Aug. 31, 2006]

§ 1274.905 Rights in data.

As noted in §1274.208(1)(1), the following provision assumes a substantially equal cost sharing relationship where collaborative research, experimental, developmental, engineering, demonstration, or design activities are to be carried out, such that it is likely that "proprietary" information will be

developed and/or exchanged under the agreement. If cost sharing is unequal or no extensive research, experimental, developmental, engineering, demonstration, or design activities are likely, a different set of provisions may be appropriate. The Agreement Officer is expected to complete and/or select the appropriate bracketed language under the provision for those paragraphs dealing with data first produced under the cooperative agreement. In addition, the Agreement Officer may, in consultation with the Center's Patent or Intellectual Property Counsel, tailor the provision to fit the particular circumstances of the program and/or the recipient's need to protect specific proprietary information.

RIGHTS IN DATA

July 2002

(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) Data categories.

(1) General. Data exchanged between NASA and Recipient under this cooperative agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided below in this provision.

(2) Background Data. In the event it is necessary for Recipient to furnish NASA with Data which existed prior to, or produced outside of, this cooperative agreement, and such Data embodies trade secrets or comprises commercial or financial information which is privileged or confidential, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out NASA's responsibilities under this cooperative agreement. Upon completion of activities under this agreement, such Data will be disposed of as requested by Recipient.

(3) Data first produced by Recipient. In the event Data first produced by Recipient in carrying out Recipient's responsibilities under this cooperative agreement is furnished to NASA, and Recipient considers such Data to embody trade secrets or to comprise commercial or financial information which is privileged or confidential, and

such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence for a period of [insert "two" to "five"] years after development of the data and be disclosed and used by ["NASA" or "the Government," as appropriate] and its contractors (under suitable protective conditions) only for [insert appropriate purpose; for example: experimental; evaluation; research; development, etc.] by or on behalf of ["NASA" or "the Government" as appropriate] during that period. In order that ["NASA" or the "Government", as appropriate] and its contractors may exercise the right to use such Data for the purposes designated above, NASA, upon request to the Recipient, shall have the right to review and request delivery of Data first produced by Recipient. Delivery shall be made within a time period specified by NASA.

(4) *Data first produced by NASA.* As to data first produced by NASA in carrying out NASA's responsibilities under this cooperative agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from the Recipient, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to () years [INSERT A PERIOD UP TO 5 YEARS] after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such Data to any third party without NASA's written approval until the aforementioned restricted period expires. Use of this data under a separate cooperative agreement or contract issued to a party other than the Recipient for the purpose of continuing the project in the event this cooperative agreement is terminated by either party shall constitute a government purpose.

(5) *Copyright.* (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 agreement, 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 cooperative agreement; and

(B) If the furnished Data does not contain the indication of paragraph (b)(5)(i)(A) of this section, it will be assumed that the Data was first produced under this agreement, 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 Recipient 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.

(6) *Oral and visual information.* If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential 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 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.

(7) *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 as set in paragraph (b)(2) of this section; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraphs (b)(2) or (3) of this section, 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 agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

(c) *Marking of data.* Any Data delivered under this cooperative agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the data was generated under this cooperative agreement.

(d) *Lower tier agreements.* The Recipient 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.

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[End of provision]

§ 1274.906 Designation of New Technology Representative and Patent Representative.

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE

July 2002

(a) For purposes of administration of the clause of this cooperative agreement entitled “PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)” or “PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)” the following named representatives are hereby designated by the Agreement Officer to administer such clause:

Title	Office code	Address
New Technology Representative Patent Representative		

(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 “PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)” clause or “PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)” clause, unless otherwise authorized or directed by the Agreement Officer. The respective responsibilities and authorities of the above-named representatives are set forth in NFS 1827.305-370.

[End of provision]

§ 1274.907 Disputes.

DISPUTES

July 2002

(a) In the event that a disagreement arises, representatives of the parties shall enter into discussions in good faith and in a timely and cooperative manner to seek resolution. If these discussions do not result in a satisfactory solution, the aggrieved party may seek a decision from the Dispute Resolution Official under paragraph (b) of this provision. This request must be presented no more

than (3) three months after the events giving rise to the disagreement have occurred.

(b) The aggrieved party may submit a written request for a decision to the Center Ombudsman, who is designated as the Dispute Resolution Official. The written request shall include a statement of the relevant facts, a discussion of the unresolved issues, and a specification of the clarification, relief, or remedy sought. A copy of this written request and all accompanying materials must be provided to the other party at the same time. The other party shall submit a written position on the matters in dispute within thirty (30) calendar days after receiving this notification that a decision has been requested. The Dispute Resolution Official shall conduct a review of the matters in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position.

[End of provision]

§ 1274.908 Milestone payments.

MILESTONE PAYMENTS

July 2002

(a) By submission of the first invoice, the Recipient is certifying that it has an established accounting system which complies with generally accepted accounting principles, with the requirements of this agreement, and that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds received under this agreement.

(b) Payments will be made upon the following milestones: [The schedule for payments may be based upon the Recipient’s completion of specific tasks, submission of specified reports, or whatever is appropriate.]

Date	Payment Milestone	Amount
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(c) Upon submission by the recipient of invoices in accordance with the provisions of the agreement and upon certification by NASA of completion of the payable milestone, the Agreement Officer shall authorize payment. Payment shall be made within 30 calendar days after receipt of proper invoice. Payment shall be considered as being made on the date of electronic funds transfer. A proper invoice must include the following:

- (i) Name and address of the recipient.
- (ii) Invoice date (The Recipient is encouraged to date invoices as close as possible to the date of the mailing or transmission).
- (iii) Cooperative agreement number.
- (iv) Description, milestone, and extended price of efforts/tasks performed.
- (v) Payment terms.
- (vi) Name and address of Recipient official to whom payment is to be sent. (Must be the