

National Aeronautics and Space Admin.

§ 1274.911

same as that in the cooperative agreement or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of the person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the cooperative agreement.

(ix) Taxpayer identification number (TIN).

(x) While not required, the recipient is strongly encouraged to assign an identification number to each invoice.

(d) A payment milestone may be successfully completed in advance of the date appearing in paragraph (b) of this section. However, payment shall not be made prior to that date without the written consent of the Agreement Officer.

(e) The recipient is not entitled to partial payment for partial completion of a payment milestone.

(f) Unless approved by the Agreement Officer, all preceding payment milestones must be completed before payment can be made for the next payment milestone.

(g) (i) If the Recipient is authorized to submit invoices directly to the NASA paying office, the original invoice should be submitted to:

[Insert the mailing address for submission of cost vouchers]

(ii) If the Recipient is not authorized to submit invoices directly to the NASA paying office, the original invoice should be submitted to the Agreement Officer for certification.

(iii) Copies of the recipient's invoice should be submitted to the following offices:

- (A) Copy 1—NASA Agreement Officer.
- (B) Copy 2—Auditor.
- (C) Copy 3—Contract administration office.
- (D) Copy 4—Project management office.
- (E) Copy 5—Other recipients as designated by the Agreement Officer.

[End of provision]

§ 1274.909 Term of agreement.

TERM OF AGREEMENT

July 2002

(a) The agreement commences on the effective date indicated on the attached cover sheet and continues until the expiration date indicated on the attached cover sheet unless terminated by either party. If all resources are expended prior to the expiration date of the agreement, the parties have no obligation to continue performance and may elect to cease at that point. The parties may extend the expiration date if additional time is required to complete the milestones at no increase in Government resources. Requests for approval for no-cost extensions must be forwarded to the NASA Agreement Officer no

later than ten days prior to the expiration of the award to be considered.

(b) Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than that specified as the agreement term, shall be given effect, notwithstanding expiration of the term of the agreement.

[End of provision]

§ 1274.910 Authority.

AUTHORITY

July 2002

This is a cooperative agreement as defined in 31 U.S.C. 6305 (the Chiles Act) and is entered into pursuant to the authority of 42 U.S.C. 2451, *et seq.* (the Space Act).

[End of provision]

§ 1274.911 Patent rights.

PATENT RIGHTS

July 2002

(a) Definitions. (1) *Administrator* means the Administrator or Deputy Administrator of NASA.

(2) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(3) *Made* when used in relation to any invention means the conception or first actual reduction to practice such invention.

(4) *Nonprofit organization* 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.

(5) *Practical application* 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 the 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.

(6) *Recipient* means:

(i) The signatory Recipient party or parties or;

(ii) The Consortium, where a Consortium has been formed for carrying out Recipient responsibilities under this agreement.

(7) *Small Business Firm* 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 121.901 through 121.911 will be used.)

(8) *Subject Invention* means any invention of a Recipient and/or Government employee conceived or first actually reduced to practice in the performance of work under this Agreement.

(9) *Manufactured substantially in the United States* means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Recipient of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) *Allocation of principal rights*—(1) *Recipient Inventions*. For other than Small Business Firm or Nonprofit organization Recipients, the “PATENT RIGHTS—RETENTION BY RECIPIENT (LARGE BUSINESS)” provision applies. For Small Business Firm and Nonprofit organization Recipients, the “PATENT RIGHTS—RETENTION BY RECIPIENT (SMALL BUSINESS)” provision applies.

(2) *NASA Inventions*. NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or which bear a direct relation to, the performance of specified NASA activities under this cooperative agreement and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, on terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(1) of this section. Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be 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. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sub-

licenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(3) *NASA Contractor Inventions*. In the event NASA contractors are tasked to perform work in support of specified NASA activities under this cooperative agreement and inventions are made by contractor employees, the recipient will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR Part 1245, and E.O. 12591. In the event the recipient decides not to pursue right to title in any such invention and NASA obtains title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, NASA will use its best efforts to grant the Recipient or designated Consortium Member (if applicable) the first option to acquire either an exclusive or partially exclusive, revocable, royalty-bearing license, upon terms to be subsequently negotiated, for any patent applications and patents covering such inventions, and subject to the license reserved in paragraph (b)(5)(ii) of this section. Upon application in compliance with 37 CFR Part 404—Licensing of Government Owned Inventions, the Recipient or each Consortium Member (if applicable), shall be 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. Each nonexclusive license may extend to subsidiaries and affiliates, if any, within the corporate structure of the licensee and includes the right to grant sub-licenses of the same scope to the extent the licensee was legally obligated to do so at the time the cooperative agreement was signed.

(4) *Joint NASA and Recipient Inventions*. NASA and Recipient agree to use reasonable efforts to identify and report to each other any inventions made jointly between NASA employees (or employees of NASA contractors) and employees of Recipient.

(i) For other than small business firms and nonprofit organizations the Administrator may agree that the United States will refrain from exercising its undivided interest in a manner inconsistent with Recipient’s commercial interest and to cooperate with Recipient in obtaining patent protection on its undivided interest on any waived inventions subject, however, to the condition that Recipient makes its best efforts to bring the invention to the point of practical application at the earliest practicable time. In the event that the Administrator determines that such efforts are not undertaken, the Administrator may void NASA’s agreement to refrain from exercising its undivided interest and grant licenses for the practice of the invention so as to further its development. In the event that the Administrator decides to

void NASA's agreement to refrain from exercising its undivided interest and grant licenses for this reason, notice shall be given to the Inventions and Contributions Board as to why such action should not be taken. Either alternative will be subject to the applicable license or licenses reserved in paragraph (b)(5) of this section.

(i) For small business firms and nonprofit organization, NASA may assign or transfer whatever rights it may acquire in a subject invention from its employee to the Recipient as authorized by 35 U.S.C. 202(e).

(5) *Minimum rights reserved by the Government.* Any license or assignment granted Recipient pursuant to paragraphs (b)(2), (b)(3), or (b)(4) of this section will be subject to the reservation of the following licenses:

(i) As to inventions made solely or jointly by NASA employees, the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States; and

(ii) As to inventions made solely by, or jointly with, employees of NASA contractors, the rights in the Government of the United States as set forth in paragraph (b)(5)(i) of this section, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 CFR 1245.108.

(6) *Preference for United States manufacture.* The Recipient agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Assistant Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Recipient that under the circumstances domestic manufacture is not commercially feasible.

(7) Work performed by the Recipient under this cooperative agreement is considered undertaken to carry out a public purpose of support and/or stimulation rather than for acquiring property or services for the direct benefit or use of the Government. Accordingly, such work by the Recipient is not considered "by or for the United States" and the Government assumes no liability for infringement by the Recipient under 28 U.S.C. 1498.

[End of provision]

§ 1274.912 Patent rights—retention by the recipient (large business).

PATENT RIGHTS—RETENTION BY THE
RECIPIENT (LARGE BUSINESS)

July 2002

(a) *Definitions.* (1) *Administrator*, as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) *Invention*, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(3) *Made*, as used in relation to any invention, means the conception or first actual reduction to practice such invention.

(4) *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.

(5) *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.

(6) *Reportable item*, as used in this clause, means any invention, discovery, improvement, or innovation of the Recipient, whether or not the same is or may be patentable or otherwise protectable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

(7) *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 121.901 through 121.911 will be used.)

(8) *Subject invention*, as used in this clause, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be