

RIGHTS IN DATA - LIMITED EXCLUSIVE RIGHTS (JANUARY 1992)
(DEVIATION)

(A) DEFINITIONS

"COMPUTER SOFTWARE," AS USED IN THIS CLAUSE, MEANS COMPUTER PROGRAMS, COMPUTER DATA BASES, AND DOCUMENTATION THEREOF.

"DATA," AS USED IN THIS CLAUSE, MEANS RECORDED INFORMATION, REGARDLESS OF FORM OR THE MEDIA ON WHICH IT MAY BE RECORDED. THE TERM INCLUDES TECHNICAL DATA AND COMPUTER SOFTWARE. THE TERM DOES NOT INCLUDE INFORMATION INCIDENTAL TO CONTRACT ADMINISTRATION, SUCH AS FINANCIAL, ADMINISTRATIVE, COST OR PRICING, OR MANAGEMENT INFORMATION.

"FORM, FIT, AND FUNCTION DATA," AS USED IN THIS CLAUSE, MEANS DATA RELATING TO ITEMS, COMPONENTS, OR PROCESSES THAT ARE SUFFICIENT TO ENABLE PHYSICAL AND FUNCTIONAL INTERCHANGEABILITY, AS WELL AS DATA IDENTIFYING SOURCE, SIZE, CONFIGURATION, MATING, AND ATTACHMENT CHARACTERISTICS, FUNCTIONAL CHARACTERISTICS, AND PERFORMANCE REQUIREMENTS; EXCEPT THAT FOR COMPUTER SOFTWARE MEANS DATA IDENTIFYING SOURCE, FUNCTIONAL CHARACTERISTICS, AND PERFORMANCE REQUIREMENTS BUT SPECIFICALLY EXCLUDES THE SOURCE CODE, ALGORITHM, PROCESS, FORMULA, AND FLOW CHARTS OF THE SOFTWARE.

"LIMITED EXCLUSIVE RIGHTS," AS USED IN THIS CLAUSE, MEANS THE RIGHTS OF THE GOVERNMENT AND OTHERS ACTING IN ITS BEHALF TO USE, DUPLICATE, AND DISCLOSE FOR GOVERNMENT PURPOSES, THE RIGHTS OF THE CONTRACTOR TO USE, DUPLICATE, AND DISCLOSE FOR ITS PURPOSES WITHIN THE UNITED STATES, AND THE RIGHTS OF OTHER ENTITIES DESIGNATED OR APPROVED BY THE GOVERNMENT TO USE AND DUPLICATE (BUT NOT TO FURTHER DISCLOSE) FOR THEIR PURPOSES WITHIN THE UNITED STATES, PROVIDED THAT IN ALL INSTANCES THE DATA ARE MADE SUBJECT TO DISCLOSURE RESTRICTIONS THAT PROTECT AND PRESERVE ITS LIMITED EXCLUSIVE RIGHTS.

"LIMITED EXCLUSIVE RIGHTS DATA," AS USED IN THIS CLAUSE, MEANS TECHNICAL DATA (INCLUDING SYSTEM STUDIES AND COMPUTER SOURCE PROGRAMS AND CODE) FIRST PRODUCED IN THE PERFORMANCE OF THIS CONTRACT THAT HAVE BEEN SPECIFICALLY IDENTIFIED IN THIS CONTRACT (EITHER AT THE TIME OF CONTRACT OR SUBSEQUENTLY BY AMENDMENT) AS SUBJECT TO LIMITED EXCLUSIVE RIGHTS, PROVIDED SUCH DATA ARE NOT GENERALLY KNOWN, OR SUCH DATA HAVE NOT WITHOUT OBLIGATION AS TO ITS CONFIDENTIALITY BEEN MADE AVAILABLE TO OTHERS BY THE CONTRACTOR OR ARE NOT ALREADY AVAILABLE TO THE GOVERNMENT. THE LIMITED EXCLUSIVE RIGHTS OF THE GOVERNMENT, THE CONTRACTOR, AND OTHER ENTITIES REGARDING THE DISCLOSURE AND USE OF SUCH DATA ARE AS SET FORTH IN SUBPARAGRAPH (G)(4) OF THIS CLAUSE.

"LIMITED RIGHTS," AS USED IN THIS CLAUSE, MEANS THE RIGHTS OF THE GOVERNMENT IN LIMITED RIGHTS DATA AS SET FORTH IN THE LIMITED RIGHTS NOTICE OF SUBPARAGRAPH (G)(2) IF INCLUDED IN THIS CLAUSE.

"LIMITED RIGHTS DATA," AS USED IN THIS CLAUSE, MEANS DATA (OTHER THAN COMPUTER SOFTWARE) DEVELOPED AT PRIVATE EXPENSE THAT EMBODY TRADE SECRETS OR ARE COMMERCIAL OR FINANCIAL AND CONFIDENTIAL OR PRIVILEGED.

"RESTRICTED COMPUTER SOFTWARE," AS USED IN THIS CLAUSE, MEANS COMPUTER SOFTWARE DEVELOPED AT PRIVATE EXPENSE AND THAT IS A TRADE SECRET; IS COMMERCIAL OR FINANCIAL AND IS CONFIDENTIAL OR PRIVILEGED; OR IS PUBLISHED COPYRIGHTED COMPUTER SOFTWARE; INCLUDING MINOR MODIFICATIONS OF SUCH COMPUTER SOFTWARE.

"RESTRICTED RIGHTS," AS USED IN THIS CLAUSE, MEANS THE RIGHTS OF THE

GOVERNMENT IN RESTRICTED COMPUTER SOFTWARE, AS SET FORTH IN A RESTRICTED RIGHTS NOTICE OF SUBPARAGRAPH (G)(3) IF INCLUDED IN THIS CLAUSE, OR AS OTHERWISE MAY BE PROVIDED IN A COLLATERAL AGREEMENT INCORPORATED IN AND MADE PART OF THIS CONTRACT, INCLUDING MINOR MODIFICATIONS OF SUCH COMPUTER SOFTWARE.

"TECHNICAL DATA," AS USED IN THIS CLAUSE, MEANS DATA (OTHER THAN COMPUTER SOFTWARE) WHICH ARE OF A SCIENTIFIC OR TECHNICAL NATURE.

"UNLIMITED RIGHTS," AS USED IN THIS CLAUSE, MEANS THE RIGHT OF THE GOVERNMENT TO USE, DISCLOSE, REPRODUCE, PREPARE DERIVATIVE WORKS, DISTRIBUTE COPIES TO THE PUBLIC, AND PERFORM PUBLICLY AND DISPLAY PUBLICLY, IN ANY MANNER AND FOR ANY PURPOSE, AND TO HAVE OR PERMIT OTHERS TO DO SO.

(B) ALLOCATION OF RIGHTS

(1) EXCEPT AS PROVIDED IN PARAGRAPH (C) OF THIS CLAUSE REGARDING COPYRIGHT, THE GOVERNMENT SHALL HAVE UNLIMITED RIGHTS IN -

(I) DATA FIRST PRODUCED IN THE PERFORMANCE OF THIS CONTRACT UNLESS PROVIDED OTHERWISE FOR LIMITED EXCLUSIVE RIGHTS DATA IN ACCORDANCE WITH SUBPARAGRAPH (G)(4) OF THIS CLAUSE;

(II) FORM, FIT, AND FUNCTION DATA DELIVERED UNDER THIS CONTRACT;

(III) DATA DELIVERED UNDER THIS CONTRACT (EXCEPT FOR RESTRICTED COMPUTER SOFTWARE) THAT CONSTITUTE MANUALS OR INSTRUCTIONAL AND TRAINING MATERIALS FOR INSTALLATION, OPERATION, OR ROUTINE MAINTENANCE AND REPAIR OF ITEMS, COMPONENTS, OR PROCESSES DELIVERED OR FURNISHED FOR USE UNDER THIS CONTRACT; AND

(IV) ALL OTHER DATA DELIVERED UNDER THIS CONTRACT UNLESS PROVIDED OTHERWISE FOR LIMITED RIGHTS DATA, RESTRICTED COMPUTER SOFTWARE, OR LIMITED EXCLUSIVE RIGHTS DATA IN ACCORDANCE WITH PARAGRAPH (G) OF THIS CLAUSE.

(2) THE CONTRACTOR SHALL HAVE THE RIGHT TO -

(I) USE, RELEASE TO OTHERS, REPRODUCE, DISTRIBUTE, OR PUBLISH ANY DATA FIRST PRODUCED OR SPECIFICALLY USED BY THE CONTRACTOR IN THE PERFORMANCE OF THIS CONTRACT, UNLESS PROVIDED OTHERWISE IN PARAGRAPH (D) OF THIS CLAUSE OR IN SUBPARAGRAPH (G)(4) OF THIS CLAUSE;

(II) PROTECT FROM UNAUTHORIZED DISCLOSURE AND USE THOSE DATA WHICH ARE LIMITED RIGHTS DATA, RESTRICTED COMPUTER SOFTWARE, OR LIMITED EXCLUSIVE RIGHTS DATA, TO THE EXTENT PROVIDED IN PARAGRAPH (G) OF THIS CLAUSE;

(III) SUBSTANTIATE USE OF, ADD OR CORRECT LIMITED RIGHTS, RESTRICTED RIGHTS, LIMITED EXCLUSIVE RIGHTS, OR COPYRIGHT NOTICES AND TO TAKE OTHER APPROPRIATE ACTION, IN ACCORDANCE WITH PARAGRAPHS (E) AND (F) OF THIS CLAUSE; AND

(IV) ESTABLISH CLAIM TO COPYRIGHT SUBSISTING IN DATA FIRST PRODUCED IN THE PERFORMANCE OF THIS CONTRACT TO THE EXTENT PROVIDED IN SUBPARAGRAPH (C)(1) OF THIS CLAUSE.

(C) COPYRIGHT

(1) DATA FIRST PRODUCED IN THE PERFORMANCE OF THIS CONTRACT.

UNLESS PROVIDED OTHERWISE IN PARAGRAPH (D) OF THIS CLAUSE, THE CONTRACTOR MAY ESTABLISH, WITHOUT PRIOR APPROVAL OF THE CONTRACTING OFFICER, CLAIM TO COPYRIGHT SUBSISTING IN SCIENTIFIC AND TECHNICAL ARTICLES BASED ON OR CONTAINING DATA FIRST PRODUCED IN THE PERFORMANCE OF THIS CONTRACT AND PUBLISHED IN ACADEMIC, TECHNICAL OR PROFESSIONAL JOURNALS, SYMPOSIA PROCEEDINGS OR SIMILAR WORKS. THE PRIOR, EXPRESS WRITTEN PERMISSION OF THE CONTRACTING OFFICER IS REQUIRED TO ESTABLISH CLAIM TO COPYRIGHT SUBSISTING IN ALL OTHER DATA FIRST PRODUCED IN THE PERFORMANCE OF THIS CONTRACT. WHEN CLAIM TO COPYRIGHT IS MADE, THE CONTRACTOR SHALL AFFIX THE APPLICABLE COPYRIGHT NOTICES OF 17 U.S.C. 401 OR 402 AND ACKNOWLEDGEMENT OF GOVERNMENT SPONSORSHIP (INCLUDING CONTRACT NUMBER) TO THE DATA WHEN SUCH DATA ARE DELIVERED TO THE GOVERNMENT, AS WELL AS WHEN THE DATA ARE PUBLISHED OR DEPOSITED FOR REGISTRATION AS A PUBLISHED WORK IN THE U.S. COPYRIGHT OFFICE. FOR DATA OTHER THAN COMPUTER SOFTWARE, THE CONTRACTOR GRANTS TO THE GOVERNMENT, AND OTHERS ACTING ON ITS BEHALF, A PAID-UP, NONEXCLUSIVE, IRREVOCABLE WORLDWIDE LICENSE IN SUCH COPYRIGHTED DATA TO REPRODUCE, PREPARE DERIVATIVE WORKS, DISTRIBUTE COPIES TO THE PUBLIC, AND PERFORM PUBLICLY AND DISPLAY PUBLICLY, BY OR ON BEHALF OF THE GOVERNMENT. FOR COMPUTER SOFTWARE, THE CONTRACTOR GRANTS TO THE GOVERNMENT AND OTHERS ACTING IN ITS BEHALF, A PAID UP, NONEXCLUSIVE, IRREVOCABLE WORLDWIDE LICENSE IN SUCH COPYRIGHTED COMPUTER SOFTWARE TO REPRODUCE, PREPARE DERIVATIVE WORKS, AND PERFORM PUBLICLY AND DISPLAY PUBLICLY BY OR ON BEHALF OF THE GOVERNMENT.

(2) DATA NOT FIRST PRODUCED IN THE PERFORMANCE OF THIS CONTRACT.

THE CONTRACTOR SHALL NOT, WITHOUT PRIOR WRITTEN PERMISSION OF THE CONTRACTING OFFICER, INCORPORATE IN DATA DELIVERED UNDER THIS CONTRACT ANY DATA NOT FIRST PRODUCED IN THE PERFORMANCE OF THIS CONTRACT AND WHICH CONTAINS THE COPYRIGHT NOTICE OF 17 U.S.C. 401 OR 402, UNLESS THE CONTRACTOR IDENTIFIES SUCH DATA AND GRANTS TO THE GOVERNMENT, OR ACQUIRES ON ITS BEHALF, A LICENSE OF THE SAME SCOPE AS SET FORTH IN SUBPARAGRAPH (C)(1) OF THIS CLAUSE; PROVIDED, HOWEVER, THAT IF SUCH DATA ARE COMPUTER SOFTWARE, THE GOVERNMENT SHALL ACQUIRE A COPYRIGHT LICENSE AS SET FORTH IN SUBPARAGRAPH (G)(3) OF THIS CLAUSE IF INCLUDED IN THIS CONTRACT OR AS OTHERWISE MAY BE PROVIDED IN A COLLATERAL AGREEMENT INCORPORATED IN OR MADE PART OF THIS CONTRACT.

(3) REMOVAL OF COPYRIGHT NOTICES.

THE GOVERNMENT AGREES NOT TO REMOVE ANY COPYRIGHT NOTICES PLACED ON DATA PURSUANT TO THIS PARAGRAPH (C), AND TO INCLUDE SUCH NOTICES ON ALL REPRODUCTIONS OF THE DATA.

(D) RELEASE, PUBLICATION AND USE OF DATA

- (1) THE CONTRACTOR SHALL HAVE THE RIGHT TO USE, RELEASE TO OTHERS, REPRODUCE, DISTRIBUTE, OR PUBLISH ANY DATA FIRST PRODUCED OR SPECIFICALLY USED BY THE CONTRACTOR IN THE PERFORMANCE OF THIS CONTRACT, EXCEPT TO THE EXTENT SUCH DATA MAY BE SUBJECT TO THE FEDERAL EXPORT CONTROL OR NATIONAL SECURITY LAWS OR REGULATIONS, OR UNLESS OTHERWISE PROVIDED IN THIS PARAGRAPH, IN PARAGRAPH (G) OF THIS CLAUSE OR AS EXPRESSLY SET FORTH IN THIS CONTRACT.

- (2) THE CONTRACTOR AGREES THAT TO THE EXTENT IT RECEIVES OR IS GIVEN ACCESS TO DATA NECESSARY FOR THE PERFORMANCE OF THIS CONTRACT WHICH CONTAIN RESTRICTIVE MARKINGS, THE CONTRACTOR SHALL TREAT THE DATA IN ACCORDANCE WITH SUCH MARKINGS UNLESS OTHERWISE SPECIFICALLY AUTHORIZED IN WRITING BY THE CONTRACTING OFFICER.
- (3) THE CONTRACTOR AGREES NOT TO ESTABLISH CLAIM TO COPYRIGHT OR PUBLISH OR RELEASE TO OTHERS ANY COMPUTER SOFTWARE FIRST PRODUCED IN THE PERFORMANCE OF THIS CONTRACT OTHER THAN PURSUANT TO SUBPARAGRAPH (G)(4) OF THIS CLAUSE WITHOUT THE CONTRACTING OFFICER'S PRIOR WRITTEN PERMISSION.

(E) UNAUTHORIZED MARKING OF DATA

- (1) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CONTRACT CONCERNING INSPECTION OR ACCEPTANCE, IF ANY DATA DELIVERED UNDER THIS CONTRACT ARE MARKED WITH THE NOTICES SPECIFIED IN SUBPARAGRAPH (G)(2), (G)(3), OR (G)(4) OF THIS CLAUSE, OR IF SUCH DATA BEARS ANY OTHER RESTRICTIVE OR LIMITING MARKINGS NOT AUTHORIZED BY THIS CONTRACT, THE CONTRACTING OFFICER MAY AT ANY TIME EITHER RETURN THE DATA TO THE CONTRACTOR, OR CANCEL OR IGNORE THE MARKINGS. HOWEVER, THE FOLLOWING PROCEDURES SHALL APPLY PRIOR TO CANCELLING OR IGNORING THE MARKINGS.
 - (I) THE CONTRACTING OFFICER SHALL MAKE WRITTEN INQUIRY TO THE CONTRACTOR 30 DAYS FROM RECEIPT OF THE INQUIRY TO PROVIDE WRITTEN JUSTIFICATION TO SUBSTANTIATE THE PROPRIETY OF THE MARKINGS;
 - (II) IF THE CONTRACTOR FAILS TO RESPOND OR FAILS TO PROVIDE WRITTEN JUSTIFICATION TO SUBSTANTIATE THE PROPRIETY OF THE MARKINGS WITHIN THE 30 DAY PERIOD (OR A LONGER TIME NOT EXCEEDING 90 DAYS APPROVED IN WRITING BY THE CONTRACTING OFFICER FOR GOOD CAUSE SHOWN), THE GOVERNMENT SHALL HAVE THE RIGHT TO CANCEL OR IGNORE THE MARKINGS AT ANY TIME AFTER SAID PERIOD AND THE DATA WILL NO LONGER BE MADE SUBJECT TO ANY DISCLOSURE PROHIBITIONS.
 - (III) IF THE CONTRACTOR PROVIDES WRITTEN JUSTIFICATION TO SUBSTANTIATE THE PROPRIETY OF THE MARKINGS WITHIN THE PERIOD SET IN SUBDIVISION (E)(1)(I) OF THIS CLAUSE, THE CONTRACTING OFFICER SHALL CONSIDER SUCH WRITTEN JUSTIFICATION AND DETERMINE WHETHER OR NOT THE MARKINGS ARE TO BE CANCELLED OR IGNORED. IF THE CONTRACTING OFFICER DETERMINES THAT THE MARKINGS ARE AUTHORIZED, THE CONTRACTOR SHALL BE SO NOTIFIED IN WRITING. IF THE CONTRACTING OFFICER DETERMINES, WITH CONCURRENCE OF THE HEAD OF THE CONTRACTING ACTIVITY, THAT THE MARKINGS ARE NOT AUTHORIZED, THE CONTRACTING OFFICER SHALL FURNISH THE CONTRACTOR A WRITTEN DETERMINATION, WHICH DETERMINATION SHALL BECOME THE FINAL AGENCY DECISION REGARDING THE APPROPRIATENESS OF THE MARKINGS UNLESS THE CONTRACTOR FILE SUIT IN A COURT OF COMPETENT JURISDICTION WITHIN 90 DAYS OF RECEIPT OF THE CONTRACTING OFFICER'S DECISION. THE GOVERNMENT SHALL CONTINUE TO ABIDE BY THE MARKINGS UNDER THIS SUBDIVISION (E)(1)(III) UNTIL FINAL RESOLUTION OF THE MATTER EITHER BY THE CONTRACTING OFFICER'S DETERMINATION BECOMING FINAL (IN WHICH INSTANCE THE GOVERNMENT SHALL THEREAFTER HAVE THE RIGHT TO CANCEL OR IGNORE THE MARKINGS AT ANY TIME AND THE DATA WILL NO LONGER BE MADE SUBJECT TO ANY DISCLOSURE

PROHIBITIONS), OR BY FINAL DISPOSITION OF THE MATTER BY COURT DECISION IF SUIT IS FILED.

- (2) THE TIME LIMITS IN THE PROCEDURES SET FORTH IN SUBPARAGRAPH (E)(1) OF THIS CLAUSE MAY BE MODIFIED IN ACCORDANCE WITH AGENCY REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT (5 U.S.C. 552) IF NECESSARY TO RESPOND TO A REQUEST THEREUNDER.
- (3) THIS PARAGRAPH (E) DOES NOT APPLY IF THIS CONTRACT IS FOR A MAJOR SYSTEM OR FOR SUPPORT OF A MAJOR SYSTEM BY A CIVILIAN AGENCY OTHER THAN NASA AND THE U.S. COAST GUARD AGENCY SUBJECT TO THE PROVISIONS OF TITLE III OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.

(F) OMITTED OR INCORRECT MARKINGS

- (1) DATA DELIVERED TO THE GOVERNMENT WITHOUT EITHER THE LIMITED RIGHTS, RESTRICTED RIGHTS, OR LIMITED EXCLUSIVE RIGHTS NOTICE AS AUTHORIZED BY PARAGRAPH (G) OF THIS CLAUSE, OR THE COPYRIGHT NOTICE REQUIRED BY PARAGRAPH (C) OF THIS CLAUSE SHALL BE DEEMED TO HAVE BEEN FURNISHED WITH UNLIMITED RIGHTS, AND THE GOVERNMENT ASSUMES NO LIABILITY FOR THE DISCLOSURE, USE, OR REPRODUCTION OF SUCH DATA. HOWEVER, TO THE EXTENT THE DATA HAS NOT BEEN DISCLOSED WITHOUT RESTRICTION OUTSIDE THE GOVERNMENT, THE CONTRACTOR MAY REQUEST, WITHIN 6 MONTHS (OR A LONGER TIME APPROVED BY THE CONTRACTING OFFICER FOR GOOD CAUSE SHOWN) AFTER DELIVERY OF SUCH DATA, PERMISSION TO HAVE NOTICES PLACED ON QUALIFYING DATA AT THE CONTRACTOR'S EXPENSE, AND THE CONTRACTING OFFICER MAY AGREE TO DO SO IF THE CONTRACTOR -
 - (I) IDENTIFIES THE DATA TO WHICH THE OMITTED NOTICE IS TO BE APPLIED;
 - (II) DEMONSTRATES THAT THE OMISSION OF THE NOTICE WAS INADVERTENT;
 - (III) ACKNOWLEDGES THAT THE GOVERNMENT HAS NO LIABILITY WITH RESPECT TO THE DISCLOSURE, USE, OR REPRODUCTION OF ANY SUCH DATA MADE PRIOR TO THE ADDITION OF THE NOTICE OR RESULTING FROM THE OMISSION OF THE NOTICE.
- (2) THE CONTRACTING OFFICER MAY ALSO (I) PERMIT CORRECTION AT THE CONTRACTOR'S EXPENSE OF INCORRECT NOTICES IF THE CONTRACTOR IDENTIFIES THE DATA ON WHICH CORRECTION OF THE NOTICE IS TO BE MADE, AND DEMONSTRATES THAT THE CORRECT NOTICE IS AUTHORIZED, OR (II) CORRECT ANY INCORRECT NOTICES.

(G) PROTECTION OF LIMITED RIGHTS DATA, RESTRICTED COMPUTER SOFTWARE, AND LIMITED EXCLUSIVE RIGHTS DATA.

- (1) WHEN DATA OTHER THAN THAT LISTED IN SUBDIVISIONS (B)(1)(I), (II), AND (III) OF THIS CLAUSE ARE SPECIFIED TO BE DELIVERED UNDER THIS CONTRACT AND QUALIFY AS EITHER LIMITED RIGHTS DATA OR RESTRICTED COMPUTER SOFTWARE, IF THE CONTRACTOR DESIRES TO CONTINUE PROTECTION OF SUCH DATA, THE CONTRACTOR SHALL WITHHOLD SUCH DATA AND NOT FURNISH THEM TO THE GOVERNMENT UNDER THIS CONTRACT. AS A CONDITION TO THIS WITHHOLDING, THE CONTRACTOR SHALL IDENTIFY THE DATA BEING WITHHELD AND FURNISH FORM, FIT, AND FUNCTION DATA IN LIEU THEREOF. LIMITED RIGHTS DATA THAT ARE FORMATTED AS A COMPUTER DATA BASE FOR DELIVERY TO THE GOVERNMENT ARE TO BE TREATED AS LIMITED RIGHTS DATA AND NOT RESTRICTED COMPUTER SOFTWARE.

- (2) [RESERVED]
- (3) [RESERVED]
- (4) (I) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CLAUSE, THE CONTRACT MAY SPECIFY OR NASA MAY REQUIRE BY WRITTEN REQUEST THAT ANY DATA FIRST PRODUCED IN THE PERFORMANCE OF THIS CONTRACT BE DELIVERED TO NASA OR FURNISHED TO OTHERS IN ACCORDANCE WITH (III)(A) BELOW, AND IF SO SPECIFIED OR REQUIRED, THE CONTRACTOR SHALL AFFIX THE FOLLOWING "LIMITED EXCLUSIVE RIGHTS NOTICE" TO DATA THAT ARE IDENTIFIED IN THIS CONTRACT AS LIMITED EXCLUSIVE RIGHTS DATA PRIOR TO DELIVERY TO THE GOVERNMENT OR PRIOR TO RELEASE TO OTHERS BY THE CONTRACTOR:

LIMITED EXCLUSIVE RIGHTS NOTICE

THESE DATA ARE SUBJECT TO LIMITED EXCLUSIVE RIGHTS UNDER GOVERNMENT CONTRACT NO. _____ (AND SUBCONTRACT _____, IF APPROPRIATE.) THESE DATA MAY BE: USED, DUPLICATED, AND DISCLOSED BY OR ON BEHALF OF THE GOVERNMENT FOR GOVERNMENT PURPOSES; USED, DUPLICATED, AND DISCLOSED BY OR ON BEHALF OF THE CONTRACTOR FOR ITS PURPOSES WITHIN THE UNITED STATES; AND USED AND DUPLICATED (BUT NOT FURTHER DISCLOSED) BY OTHER RECIPIENTS THAT HAVE BEEN DESIGNATED OR APPROVED NASA AS PARTICIPANTS IN THE PROGRAM OF WHICH THIS CONTRACT IS A PART FOR THEIR PURPOSES WITHIN THE UNITED STATES, WITH THE EXPRESS LIMITATION THAT ANY RELEASE OR DISCLOSURE FOR ANY OF THE FOREGOING PURPOSES ARE TO BE MADE SUBJECT TO DISCLOSURE CONDITIONS THAT PROTECT AND PRESERVE ITS LIMITED EXCLUSIVE RIGHTS. THESE LIMITED EXCLUSIVE RIGHTS SHALL BE EFFECTIVE UNTIL _____ (INSERT A DATE CERTAIN.) NO OTHER DISCLOSURE AND USE OF THESE DATA IS AUTHORIZED WITHOUT THE WRITTEN PERMISSION OF (INSERT NAME OF CONTRACTOR OR SUBCONTRACTOR.) THIS NOTICE SHALL BE MARKED ON ANY REPRODUCTION OF THESE DATA, IN WHOLE OR IN PART.

(END OF NOTICE)

(II) THE CONTRACTOR IS TO PLACE THE LIMITED EXCLUSIVE RIGHTS NOTICE ON LIMITED EXCLUSIVE RIGHTS DATA AS SOON AS PRACTICABLE AFTER THE DATA IS REDUCED TO SOME TANGIBLE, RECORDED FORM AS DEFINED BY THE TERM "DATA" IN THIS CLAUSE, BUT IN ANY EVENT NO LATER THAN THE EARLIER OF EITHER THE DATE OF DELIVERY TO NASA IF DELIVERY IS REQUESTED, OR OF RELEASE OF THE DATA TO OTHERS OUTSIDE OF THE CONTRACTOR'S ORGANIZATIONAL ELEMENT PRODUCING THE DATA. THE DATE CERTAIN TO BE INSERTED IN THE NOTICE, INDICATING THE PERIOD OF LIMITED EXCLUSIVE RIGHTS, SHALL BE 5 YEARS FROM THE DATE THE NOTICE IS PLACED ON THE DATA, UNLESS OTHERWISE AGREED TO AND STATED WITH RESPECT TO ANY ITEM, COMPONENT, PROCESS, OR COMPUTER SOFTWARE SPECIFICALLY IDENTIFIED IN THIS CONTRACT.

(III) THE CONTRACTOR AGREES:

- (A) TO MAKE LIMITED EXCLUSIVE RIGHTS DATA AVAILABLE TO ANY OTHER ENTITY DESIGNATED OR APPROVED BY NASA AS A PARTICIPANT IN THE PROGRAM OF WHICH THIS CONTRACT IS A PART, EITHER AS SPECIFICALLY

DESIGNATED IN THIS CONTRACT OR AS SUBSEQUENTLY APPROVED AND DIRECTED IN WRITING BY NASA;

- (B) OBTAIN WRITTEN AFFIRMATION THAT ANY ENTITY RECEIVING LIMITED EXCLUSIVE RIGHTS DATA PURSUANT TO (A) ABOVE WILL ABIDE BY THE USE, DUPLICATION, AND DISCLOSURE PROHIBITIONS OF THE LIMITED EXCLUSIVE RIGHTS NOTICE; AND
- (C) NOT TO AUTHORIZE ANY DISCLOSURE AND USE OF LIMITED EXCLUSIVE RIGHTS DATA THAN AS SET FORTH IN THE LIMITED EXCLUSIVE RIGHTS NOTICE WITHOUT THE CONCURRENCE OF NASA.

(H) SUBCONTRACTING

- (1) THE CONTRACTOR HAS THE RESPONSIBILITY TO OBTAIN FROM ITS SUBCONTRACTORS ALL DATA AND RIGHTS THEREIN NECESSARY TO FULFILL THE CONTRACTOR'S OBLIGATIONS TO THE GOVERNMENT UNDER THIS CONTRACT. IF A SUBCONTRACTOR REFUSES TO ACCEPT TERMS AFFORDING THE GOVERNMENT SUCH RIGHTS, THE CONTRACTOR SHALL PROMPTLY BRING SUCH REFUSAL TO THE ATTENTION OF THE CONTRACTING OFFICER AND NOT PROCEED WITH SUBCONTRACT AWARD WITHOUT FURTHER AUTHORIZATION.

(I) RELATIONSHIP TO PATENTS

- (1) NOTHING CONTAINED IN THIS CLAUSE SHALL IMPLY A LICENSE TO THE GOVERNMENT UNDER ANY PATENT OR BE CONSTRUED AS AFFECTING THE SCOPE OF ANY LICENSE OR OTHER RIGHT OTHERWISE GRANTED TO THE GOVERNMENT.
- (2) NOTHING IN THIS CLAUSE SHALL RESTRICT THE RIGHTS OF THE CONTRACTOR UNDER THE NEW TECHNOLOGY CLAUSE OF THIS CONTRACT.

(J) IMMIGRANT ALIENS

- (1) FOR THE PURPOSES OF THIS CLAUSE, DISCLOSURE OF "LIMITED EXCLUSIVE RIGHTS DATA" TO IMMIGRANT ALIENS IN THE COURSE OF THEIR EMPLOYMENT BY THE CONTRACTOR SHALL NOT BE INTERPRETED AS DISCLOSURE OUTSIDE THE UNITED STATES. AN IMMIGRANT ALIEN IS DEFINED AS "ANY PERSON LAWFULLY ADMITTED IN THE UNITED STATES UNDER AN IMMIGRATION VISA FOR PERMANENT RESIDENCE".