

**CUSTOMER CONTRACT REQUIREMENTS**  
**OTA**  
**CUSTOMER CONTRACT Boeing-DOTC16-01-INIT0302-01**

## CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below.

**1. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase order

### **1 Special Provisions .**

#### **32.1 PATENT RIGHTS**

Patent Rights for work funded by this Agreement or subsequent Ordnance Technology Initiative Agreements shall be as specified in FAR 52.227-11 ("Patent Rights- Ownership by the Contractor (DEC 2007)"), which is hereby incorporated by reference with the following modifications:

As appropriate, replace "Contractor" with "Seller" throughout; replace "Contracting Officer", "the agency" and "the Federal Agency" with "Government" throughout.

Add the following to Subclause (b) "Seller's rights":

Government Employee Inventions. The parties agree that the U.S. Government shall have the initial option to retain title to each Subject Invention made only by its employees. The Government shall promptly notify the applicable NAC Member upon making this election, and in the event that the Government retains title to said Subject Inventions, the Government agrees to timely file patent applications thereon at its own expense and agrees to grant to NAC members a non-exclusive, irrevocable paid-up license to practice such Subject Invention throughout the world. The Government may release the rights provided for by this paragraph to its employee inventors subject to a license in the Seller as described above.

Joint Employee Inventions. The parties agree the U.S. Government shall have the initial option to retain title to each Subject Invention Made jointly by Seller and Government employees. The Government shall promptly notify the Buyer upon making this election and the Buyer shall promptly inform the Seller of the Government's election. In the event that the Government elects to retain title to such joint Subject Invention, the Seller agrees to assign to the Government whatever right, title and interest the Seller has in and to such joint Subject Invention. The Government agrees to timely file patent applications on such Subject Invention at its own expense and agrees to grant to the Seller a non-exclusive, irrevocable paid-up license to practice such Subject Invention throughout the world.

#### **Patent Reports**

The Seller will file Invention (Patent) Reports at the end of each performance year and a final invention report at the end of the term for this Contract. Annual reports are due to the Buyer thirty (30) calendar days after the expiration of the end of the performance year and thirty (30) calendar days after the end of the Contract term. The Seller will use the U.S. Government DD Form 882, Report of Inventions and Subcontracts, to file invention reports. Negative reports will be filed by the Seller if there are no new filings during the annual reporting period. Seller shall also submit one copy to Buyer's Authorized Procurement Representative.

#### **Final Payment**

Final payment cannot be made, nor can this Contract be closed out, until the Seller delivers to the CMF all disclosures of subject inventions required by this Contract, an acceptable final report pursuant to the article entitled "Reports", and all confirmatory instruments.

#### **Cooperation**

The Government, the CMF, Buyer and Seller shall keep the others informed as to the status of joint patent matters. The Government and the Seller through the CMF shall each reasonably cooperate with and assist the other at its own expense in connection with such activities, at the other Party's request during the term of this Contract.

#### **Lower Tier Agreements**

The Seller shall include this Article, suitably modified, to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work performed under the Ordnance Technology Initiatives awarded pursuant to this Contract.

## 32.2 DATA RIGHTS AND COPYRIGHTS

### **General**

Rights in technical data under this agreement shall be determined in accordance with the provisions of DFARS Part 227, DFARS 252.227-7013, Rights in Technical Data – Noncommercial Items and related clauses in DFARS Part 252.227. With respect to both unlimited and Government purpose license rights provided for in those regulations, the Government acknowledges and agrees that it shall obtain such rights pursuant to this agreement only to the extent that its financial contributions toward the development of the technical data is equal to or greater than 50% of the total costs of such a development.

The Seller reserves the right to protect by copyright original works developed under this Contract. All such copyrights will be in the name of the Seller. The Seller hereby grants to the U.S. Government a nonexclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for Government purposes, any published, copyrighted materials developed under this Contract, and to authorize others to do so, but only to the extent that such license does not conflict with any restrictions upon the U.S. Government properly asserted on the copyrighted materials by Ordnance Technology Initiative Recipient under DFARS Part 252.227.

In the event Data is exchanged with a notice indicating that the Data is protected under copyright as a published, copyrighted work and it is also indicated on the Data that such Data existed prior to, or was produced outside of this Contract, Buyer, the Government, the CMF, or NAC member organization receiving the Data and others acting on its behalf may reproduce, distribute, and prepare derivative works for the purpose of carrying out that its responsibilities under this Contract or any subsequent Ordnance Technology Initiative Agreement between the CMF and NAC member organization.

The Seller is responsible for affixing appropriate markings indicating the rights of the Government on all data and technical data delivered under the Contract.

### **Data First Produced by the Government**

As to Data first produced by the Government in carrying out the Government's responsibilities under this Contract and which Data would embody Trade Secrets or would comprise commercial or financial information that is privileged or confidential if obtained from Seller, such Data will, to the extent permitted by law, be appropriately marked with a suitable notice or legend and maintained in confidence for a period of five (5) years after the 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.

### **Government Prior Technology**

In the event it is necessary for the Government to furnish the Seller, through Buyer's Authorized Procurement Representative, with Data which existed prior to, or was produced outside of this Contract or a subsequent Ordnance Technology Initiative Agreement, and such Data is so identified with a suitable notice or legend, the Data will be maintained in confidence and disclosed and used by the Seller only for the purpose of carrying out the Seller's responsibilities under this Contract. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreement by the Seller and/or Seller's subcontractors. Upon completion of activities under this Contract, such Data will be disposed of as requested by the Buyer's Authorized Procurement Representative.

### **Seller's Prior Technology**

In the event it is necessary for the Seller to furnish the Government with Data which existed prior to, or was produced outside of this Contract, 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 the Government and such Government Contractors or contract employees that the Government may hire on a temporary or periodic basis only for the purpose of carrying out the Government's responsibilities under this Contract. Data protection will include proprietary markings and handling, and the signing of non-disclosure agreements by such Government Contractors or contract employees with the disclosing party. The protection contemplated herein is in addition to, rather than a replacement of, any restriction placed on the U.S. Government by virtue of assertions properly made by Seller under DFARS Part 252.227. With respect to the use of such technical data or software by other NAC member organizations, the Ordnance Technology Initiative Recipient with proprietary rights may offer to license such rights for use exclusively in the performance of Ordnance Technology Initiative Agreements conducted under other Ordnance Technology Initiative Agreements by other Consortium member organizations, on reasonable terms and conditions under a

non-exclusive license without the right to sub-license. If the Seller furnishes Data which existed prior to, or was produced outside of this Contract, the Seller has the right to license such Data to other NAC member organizations or to entities not a party to NAC for a fee and/or royalty payments as determined by the Seller. Seller shall not be obligated to provide Data that existed prior to, or was developed outside of this Contract to other NAC member organization or the Government. Upon completion of activities under the applicable Ordnance Technology Initiative Agreements, such Data will be disposed of as requested by the Seller.

### **Oral and Visual Information**

If information which the Seller considers to embody Trade Secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to the Buyer or the Government, 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 the Government and CMF within 10 calendar days after such oral or visual disclosure, or the Government shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

### **Disclaimer of Liability**

Notwithstanding the above, the Buyer, the Government and the CMF shall not be restricted in, nor incur any liability for, the disclosure and use of:

- (a) Data not identified with a suitable notice or legend as set forth in Article 31.2; nor
- (b) Information contained in any Data for which disclosure and use is restricted under Article 31.2, if such information is or becomes generally known without breach of the above, is known to or is generated by the Buyer, the Government or CMF independently of carrying out responsibilities under this Agreement or subsequent Ordnance Technology Initiative Agreements, is rightfully received from a third party without restriction, or is included in Data which the member organizations have, or are required to furnish to the Government without restriction on disclosure and use.

### **Marking of Data**

Any Data delivered under this Contract by the Seller shall be marked with a suitable notice or legend.

### **Lower Tier Agreements**

The Seller shall include this Article suitably modified to identify the parties, in all subcontracts, lower tier agreements, regardless of tier, for experimental, development, or research work performed under this Contract.

### **Other Instances**

Notwithstanding Paragraphs in this Article, differing rights in data may be negotiated between the Buyer, Seller and the Government through the CMF and Buyer's Authorized Procurement Representative on a case by case basis.

## **11. EXPORT/IMPORT**

Seller agrees to comply with U.S. Export regulations including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. § 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. § 120 et seq.; and the Export Administration Act, 50 U.S.C. app. § 2401-2420. Each party is responsible for obtaining from the Government export licenses or other authorizations/approvals, if required, for information or materials provided from one party to another under this Contract. Accordingly, the Parties shall not export, directly, or indirectly, any products and/or technology, Confidential Information, Trade Secrets, or Classified and Unclassified Technical Data in violation of any U.S. Export laws or regulations. Seller shall include the substance of this paragraph from the Export/Import Article in all lower tier agreements, all subtier subcontracts or other forms of lower tier agreements, regardless of tier.

### **12.2 Waiver of Liability**

With regard to the activities undertaken pursuant to this Agreement, no Party shall make any claim against the others, employees of the others, the others' related entities (e.g., contractors, subcontractors, etc.), or employees of the others' related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

Notwithstanding the foregoing, claims for contribution toward third-party injury, damage, or loss are not limited, waived, released, or disclaimed.

The Seller agrees to extend the waiver of liability as set forth above to subcontractors or sub entities at all tiers by requiring them, by contract or otherwise, to agree to waive all claims against the U.S. Government, CMF, and NAC member organization.