

**CUSTOMER CONTRACT REQUIREMENTS
ROTORCRAFT DRIVE SYSTEM 21 (RDS-21)
CUSTOMER CONTRACT DAAH10-01-2-0005**

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. In all of the following clauses, "Contractor" and "Recipient" mean Seller, "Agreement" means this contract.

- 1 Equal Employment Opportunity. All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 2 Copeland "Anti-Kickback" Act (18 U.S.C.874 and 40 U.S.C.276c) -- All awards and sub-awards in excess of \$2000 for construction or repair awarded by recipients and sub-recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C.874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.
- 3 Contract Work Hours and Safety Standards Act (40 U.S.C.327-333) -- Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

The following requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4 Rights to Inventions Made Under a Contract or Agreement -- Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5 Clean Air Act (42 U.S.C.7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C.1251 et seq.), as amended -- Contracts and sub-grants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C.7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

6 Byrd Anti-Lobbying Amendment (31.U.S.C. 1352) Byrd Anti-Lobbying Amendment (31 U.S.C.1352) -- Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C.1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7 Debarment and Suspension (E.O.s 12549 and 12689) -- No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its and Suspension (E.O.s 12549 and 12689).

8 Patent Rights

A. Definitions.

1 All references to "Recipient", as it applies to Article 8, Patent Rights, shall be deemed to be reference to Seller.

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 of such invention.

4 “Practical application” means to manufacture, in the case of a composition of matter 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 capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the Public on reasonable terms.

5 “Subject Invention” means any invention made, or improvement to any invention conceived or first reduced to practice in the performance of work under this Agreement.

6 “Background Invention” means an invention, or improvements to any invention, other than a Subject Invention, which the Recipient has previously conceived, designed, developed and/or produced, or has concurrently designed, developed and/or produced outside this Agreement.

B. Allocation of Principal Rights.

Unless Seller will have notified the Buyer (in accordance with subparagraph C.2 below) that Seller does not intend to retain title, Seller will retain the entire right, title, and interest throughout the world to each Subject Invention consistent with the provisions of this Article, and 35 U.S.C. 203. With respect to any Subject Invention in which Seller retains title, Buyer and the Government will have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject Invention throughout the world. Notwithstanding the above, Seller may elect as defined in its Articles to provide full or partial rights to other parties. All rights and title, to data and inventions developed solely by Seller prior to the date of this agreement, shall remain solely with Seller.

C. Invention Disclosure, Election of Title, and Filing of Patent Application.

1. Seller will disclose each Subject Invention to the Buyer (through the Agreement Administrator) within three (3) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to AATD will be in the form of a written report and will identify the Agreement under which the invention was made and the identity of the inventor(s). It will be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, optical, chemical, biological, or electrical characteristics of the invention. The disclosure will also identify any publication, sale, or public use of the invention and whether a manuscript describing the

invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure.

1 If Seller determines that it does not intend to retain title to any such invention, Seller will notify Buyer, in writing, within six (6) months of disclosure to Buyer. However, in any case where publication, sale, or public use has initiated the one (1) year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by Buyer to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

2 Seller will file its initial patent application on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. Seller may elect to file patent applications in additional countries (or regional Patent Office or pursuant to the Patent Cooperation Treaty) within either twelve (12) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

3 Any Subject Inventions, jointly made or created by employees of Buyer and Recipient, will be jointly owned by those parties. With respect to jointly owned Subject Inventions, the parties will agree, on a case-by-case basis, as to which party will file patent applications, if any. Each party will bear its own patent filing expenses in filing patent applications on joint Subject Inventions. Requests for extension of the time for disclosure, election, and filing under Article 8, subparagraph C. may, at the discretion of Buyer, and after considering the position of Seller, be granted.

D. Conditions When the Buyer May Obtain Title.

Upon the Buyer's written request, Seller will convey title to any Subject Invention to Buyer under any of the following conditions:

1 If Seller fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph C of this Article, provided, that Buyer may only request title within sixty (60) days after learning of the failure of Seller to disclose or elect within the specified times.

2 In those countries in which Seller fails to file patent applications within the times specified in paragraph C of this Article, provided that, if Seller has filed a patent application in a country after the times specified in paragraph C of this Article, but prior to its receipt of the written request by Buyer, Seller will continue to retain title in that country; or

3 In any country in which Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or

opposition proceedings on a patent on a Subject Invention, if Buyer, at its expense, is going to continue to retain title in that country.

E. Minimum Rights to Seller and Protection of Seller's Right to File.

1. Seller will retain a nonexclusive, royalty free sub-licensable license throughout the world in each Subject Invention to which the Buyer obtains title, except if Seller fails to disclose the Subject Invention within the times specified in paragraph C of this Article. The Seller license extends to the domestic subsidiaries and affiliates, if any, of Seller within the corporate structure of which Seller is a party and includes the right to grant licenses of the same scope to the extent that Seller was legally obligated to do so at the time the Agreement was awarded.

The license is transferable only within the approval of Buyer, except when transferred to the successor or that part of the business to which the invention pertains. Buyer approval for license transfer will not be unreasonably withheld.

2 The Seller domestic license may be revoked or modified by Buyer to the extent necessary to achieve expeditious practical application of Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404, provided that such revocation or modification will not take place less than three (3) years after the end of the term of the Agreement. This license will not be revoked in that field of use or the geographical areas in which Seller has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of Buyer to the extent Seller, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3 Before revocation or modification of the license, Buyer will furnish Seller a written notice of its intention to revoke or modify the license, and Seller will be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Buyer's Interest.

1 Seller agrees to execute or to have executed and promptly provide to the Agreements Administrator all instruments necessary to: (a) establish or confirm the rights Buyer has throughout the world in those Subject Inventions to which Seller elects to retain title, and (b) convey title to Buyer when requested under paragraph D. of this Article and to enable Buyer to obtain patent protection throughout the world in that Subject Invention.

2 Seller agrees to require, by written Agreement, that employees of Seller, other than clerical and non-technical employees, agree to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters and in a

format acceptable to Seller, each Subject Invention made under this Agreement in order that Seller can comply with the disclosure provisions of paragraph C. of this Article. Seller will instruct employees, through employee Agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

3 Seller will notify Buyer of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a re-examination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

4 Seller will include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This invention was made with Government support under Agreement No. DAAH10-01-2-0005 for the Rotorcraft Drive System 21 (RDS-21). The Government has certain rights in the invention."

G. Lower Tier Agreements.

1 Seller will 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.

2 In the case of a lower tier Agreement with a vendor, at any tier, the Government, the vendor, and Boeing Mesa agree that the mutual obligations of the parties created by this Article flow down to the vendor and constitute an Agreement between the vendor and the Government with respect to the matters covered by this Article.

H. Reporting on Utilization of Subject Inventions.

Seller agrees to submit to the Agreement Administrator during the term of the Agreement, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by Seller or licensees or assignees of the inventor. Such reports will include information regarding the status of development, date of first commercial sale or use, gross royalties received by Seller's subcontractor(s), and such other data and information as Buyer may reasonably specify.

Seller also agrees to provide additional reports as may be requested in connection with any march-in proceedings undertaken by the Buyer in accordance with paragraph J of this Article. Consistent with 35 U.S.C. 202(c)(5), the Buyer agrees it will not disclose such information to persons outside the Buyer or the Government without permission of Seller.

I. Preference for American Industry.

Notwithstanding any other provision of this clause, Seller agrees that it will not grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any product embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States or Canada. However, in individual cases, the requirements for such an agreement may be waived by the Buyer upon a showing by Seller that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

J. March-In Rights.

Seller agrees that, with respect to any Subject Invention in which it has retained title, the Buyer has the right to require Seller, an assignee, or exclusive licensee of a Subject Invention to grant a nonexclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if Seller, assignee or exclusive licensee refuses such a request, the Buyer has the right to grant such a license itself if the Buyer determines that:

- 1 Such action is necessary because Seller or assignee has not taken effective steps, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention, a reasonable time being no less than three (3) years from the end of the term of the Agreement;
- 2 Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by Seller, assignee, or their licensees;
- 3 Such action is necessary to meet requirements for public use; and such requirements are not reasonably satisfied by Seller, assignee, or licensees; or
- 4 Such action is necessary because the Agreement required by paragraph (1) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such Agreement.

K. Opportunity to Cure.

Certain provisions of this Article provide that the Buyer may gain title or license to a Subject Invention by reason of Seller's action or failure to act within the times required by this Article. Prior to claiming such rights (including any rights under Article XII. J., "March-In Rights"), the Buyer will give written notice to Seller of the Buyer's intent and afford Seller a reasonable period of time to cure such action or failure to act. The length of the cure period will depend on the circumstances, but in no event will be less than sixty (60) days. Seller may also use the cure period to show good cause why the claiming of such title or right would be inconsistent with the intent of this Agreement,

in light of the appropriate timing for introduction of the technology in question, the relative funding and participation of the parties in the development and other factors.

L. Notification of Background Inventions, Disclosures, or Patents

In no event shall the provisions set forth in this Article apply to any Background Inventions or Patents obtained thereon by Seller or its Industry Team Members. Seller or its Industry Team Members shall retain the entire right, title, and interest throughout the world to each such invention and patents, and the Buyer shall not acquire any rights under this Agreement. Such Intellectual Property, including but not limited to, Background Inventions, Disclosures, or Patents are identified herein (Attachment 5). This listing of Seller's and its Team Members Other Intellectual Property Rights, is subject to revision upon the mutual agreement of the Parties, evidenced by a bilateral modification to this Agreement.

9 Other Intellectual Property Rights

A. Definitions. For the purposes of this Agreement, the following terms have the meanings indicated:

1 "Background Data" as used in this Article, means Data produced by Seller at private expense prior to or outside the scope of this Agreement. Such Background Data may include any modifications, derivatives, to previously conceived, designed, developed, and resultant revisions to software, processes, qualification data, and manufacturing plans.

2 "Government Data" as used in this Article, means Data that has been delivered to Buyer or the Government prior to or outside the terms of this Agreement. The Buyer's or the Government's pre-existing rights in that Data govern disclosure and use of such Government Data.

3. "Limited Rights" as defined in DFARS 252.227-7013(a)(13).

4. "Proprietary Information" means information which embodies trade secrets or which is privileged or confidential technical, business or financial information provided that such information:

(a) is not generally known, or is not available from other sources without obligations concerning its confidentiality;

(b) has not been made available by the owners to others without obligation concerning its confidentiality;

(c) is not described in an issued patent or a published copyrighted work or is not

otherwise available to the public without obligation concerning its confidentiality; or

(d) can be withheld from disclosure under 15 U.S.C. § 3710a(c)(7)(A) & (B) and the Freedom of Information Act, 5 U.S.C. § 552 *et seq*; and

(e) is identified as such by labels or markings designating the information as proprietary.

5. "Subject Technical Data", as used in this article, means any Technical Data first produced during performance of this Agreement.

6. "Technical Data" as defined in DFARS 252.227-7013(a)(14). For purposes of this Agreement, Computer Software Documentation is treated as Technical Data pursuant to this DFARS definition.

7. "Unlimited Rights" as defined in DFARS 252.227-7013(a)(15) or DFARS 252.227-7014(a)(15), as applicable.

8. All references to Defense Federal Acquisition Regulation Supplement (DFARS) clauses are to versions of the cited clauses in effect on the effective date of this Agreement. All references to "this contract" included therein shall be deemed to be "this Agreement."

B. Allocation of Principal Rights

1 This Agreement shall be performed with mixed Government and Prime Contractor funding. In consideration of Government funding, the Parties agree as follows:

2 Background Data provided to the Government shall be limited to that information normally shared with commercial customers or that information specifically negotiated under this Agreement and shall be subject to Limited Rights. Seller retains all right, title, and interest in such Background Data. Certain deliverable reports/documentation may, by necessity, incorporate Background Data. The deliverable reports/documentation, which will include Background Data, are Design Review Briefing Charts, Test Plan(s)/Test Report(s), and a "Government" version of the Final Report, which will be subject to Limited Rights.

3 Subject Technical Data developed under this Agreement and delivered as Program Requirement/Agreement Deliverables, the Government shall receive Limited Rights, as defined in paragraph A, above.

4 The Government shall obtain Unlimited Rights in a public version of the Final Report, which will exclude any Background, Proprietary, privileged, or confidential Information, or information subject to Government Purpose Rights.

5 The following reports, incidental to Agreement administration, may contain

Recipient proprietary information: Management/Program Plan and Bimonthly Report.

6 To the extent that Government Data is used in the performance of this Agreement, the Government shall retain its preexisting rights in such Data.

C. 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.

D. Marking of Data

1. Pursuant to paragraph B above, Technical Data (other than the public version of the final report) delivered under this Agreement shall be marked appropriately with the following legend:

Limited Rights Markings

“Limited Rights

Agreement Number DAAH10-01-2-0005

Contractor Name:

Buyer’s and the Government’s rights to use, modify, reproduce, release, perform, display or disclose these Technical Data are restricted as stated in this Agreement. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person other than the Government, who has been provided access to such Technical Data, must promptly notify Buyer.

2, Further, any deliverable proprietary information (namely the Management Program Plan and Bimonthly Reports) not subject to Limited Rights or Unlimited Rights, shall be marked with the proprietary notice customarily used by Seller or any subrecipient to identify data and information that is subject to restrictions regarding disclosure and/or use. The proprietary notice shall however, also include notation of Agreement Number “DAAH10-01-2-0005.”

3. Except for Technical Data or Proprietary Information delivered under this Agreement, the parties agree that Seller will appropriately advise Buyer regarding any limitation or restriction to Technical Data or Software to which Buyer may have access. Limitations and restrictions will be subject to the appropriate Seller or third party markings and legends to assure proper handling and bear notation to Agreement Number DAAH10-01-2-0005.

10 Notice and Assistance Regarding Patent and Copyright Infringement

(a) Seller shall report to the Buyer, promptly and in reasonable written detail, each

notice or claim of patent or copyright infringement based on the performance of this agreement of which Seller has knowledge.

(b) In the event of any claim or suit against Buyer or the Government on account of any alleged patent or copyright infringement arising out of the performance of this agreement or out of the use of any supplies furnished or work or services performed under this agreement, Seller shall furnish to Buyer when requested, all evidence and information in possession of Seller pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of Buyer except where Seller has agreed to indemnify Buyer.

(c) Seller agrees to include, and require inclusion of, this Article (suitably modified to identify the parties) in all sub-agreements at any tier.

11. Foreign Access To Technology

Nothing in this Agreement is intended to change the applicability of the International Traffic in Arms Regulations, 22 CFR part 120 et.seq. and the Department of Commerce Export Administration Regulations, 15 CFR part 730 et.seq. to any disclosure to foreign persons of anything developed under this Agreement. Seller acknowledges its obligation to comply with referenced regulations.

12. Public Release or Dissemination of Information

A. Notwithstanding the reporting requirements of this Agreement, Parties to this Agreement favor an open-publication policy to promote the commercial acceptance of the technology developed under this Agreement, but simultaneously recognize the necessity to protect proprietary, privileged, or confidential information of the Agreement because successful commercialization of aspects of the technology by Seller may depend on the proprietary nature of the information.

B. Seller is encouraged to publish results of the research projects, unless subject to export controls, in appropriate journals. One advance copy of each article to be publicized will be submitted to Buyer who will staff request for release. Approval by Buyer is required prior to any release.

Six copies of all publications resulting from the project shall be forwarded to Buyer upon release. Seller shall assure that an acknowledgment of Government support will appear on each publication or presentation of any material based upon or developed under this Program. A statement shall appear on the title page worded substantially as follows:

“This research was partially funded by the Aviation Applied Technology Directorate under Agreement No. DAAH10-01-2-0005. The U.S. Government is authorized to reproduce and distribute reprints for Government purposes notwithstanding any copyright notation thereon.”

C. Seller is responsible for assuring that every publication of material based on or developed under this Program contains the following disclaimer:

“The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies, either expressed or implied, of the Aviation Applied Technology Directorate or the U.S. Government.”

13. Officials Not To Benefit

No member of or delegate to Congress, or resident commissioner, will be admitted to any share or part of this Agreement, or to any benefit arising from it. However, this article does not apply to this Agreement to the extent that this Agreement is made with a Corporation for the Corporation's general benefit.

14. Copyrights

Ownership to copyrights for original works of authorship created by employees of Seller or for hire by Seller in the course of performance of work under this Agreement are retained by Seller. Seller grants to the Government a royalty-free, nonexclusive, irrevocable license to use, modify, prepare derivative works, reproduce, distribute, perform, and display worldwide such copyrighted works by or on behalf of the Government for Government purposes.

15. Certifications

A. By signing this Agreement or accepting funds under this Agreement, Seller certifies that it is complying with the requirements of: (1) Title VI of the Civil Rights Act of 1964, as implemented by 32 CFR 195, concerning nondiscrimination in activities under the agreement based on race, color, or national origin; (2) section 504 of the Rehabilitation act of 1973, as implemented by 32 CFR 56, concerning access for people with disabilities; (3) Title IX of the Education Amendment of 1972 concerning discrimination based on sex in Seller programs and activities including but not limited to those under this Agreement; and (4) Drug-Free Workplace Act of 1988.

B. Other Certifications

The following Certifications, which have been executed by Seller prior to award of this Agreement and are on file with the issuing office, are hereby incorporated herein by reference: (1) Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions, 32 CFR Appendices A and B to Part 25, (2) Certification Regarding Lobbying Activities, 32 CFR Appendix A to Part 28.

16. Authorization and Consent

The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this agreement or any sub-agreement at any tier.