

**CUSTOMER CONTRACT REQUIREMENTS
THERMAL PROTECTION SYSTEMS
CUSTOMER CONTRACT F33615-00-2-3000**

CUSTOMER CONTRACT REQUIREMENTS

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

1. The following contract clauses are incorporated by reference.

Inventions

A. The clause entitled "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms," (37 CFR 401) is hereby incorporated by reference and the clauses in paragraph 401.14 are modified as follows: replace the word "contractor" with "recipient"; replace the words "agency," "Federal Agency" and "funding Federal Agency" with "government"; replace the word "contract" with "agreement"; delete paragraphs (g)(2), (g)(3) and the words "to be performed by a small business firm or domestic nonprofit organization" from paragraph (g)(1); paragraph (A), Communications, point of contact on matters relating to this clause will be the servicing Staff Judge Advocate's office identified elsewhere in this agreement.

B. The recipient shall file Invention (Patent) Reports with Boeing as of the close of the performance year and at the end of the term for this agreement. Annual reports are due 45 days after the end of each year of performance and final reports are due 45 days after the expiration of the final performance period. The consortium/recipient shall use DD Form 882, Report of Inventions and Subcontracts, to file an inventions report. Negative reports are also required. The recipient shall submit the original and three copies to Boeing.

C. Final payment cannot be made nor can the agreement be closed out until the recipient delivers to Boeing all disclosures of subject inventions required by this agreement.

Data Rights**A. Definitions**

"Government purpose rights", as used in this article, means rights to modify, reproduce, release, perform, display, or disclose data within the Government without restriction; and release or disclose data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

"Unlimited rights", as used in this article, means rights to use, modify, reproduce, perform, display, release, or disclose data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

"Data", as used in this article, means recorded information, regardless of form or method or recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under the article entitled, 'Inventions.'

"Practical application", as used in this article, is defined at 37 CFR 401.2(e).

B. Allocation of Principal Rights

1. This agreement shall be performed with mixed Government and Boeing funding. The parties agree that in consideration for Government funding, the consortium/recipient intends to reduce to practical application items, components and processes developed under this agreement.

2. The recipient agrees to retain and maintain in good condition until 5 years after completion or termination of this agreement, all data necessary to achieve practical application. In the event of exercise of the Government's march-in rights as set forth under the Article entitled "Inventions," the recipient agrees, upon written request from the Government, to deliver at no additional cost to the Government, all data generated under this agreement within sixty (60) calendar days from the date of the written request. The Government shall have unlimited rights, as defined in paragraph A above, to this delivered data.

3. With respect to data delivered pursuant to *Technical and Financial Reporting* requirements of the prime contract, the government shall receive Government purpose rights, as defined in paragraph A above.

C. Marking of Data. Pursuant to paragraph B above, any data delivered under this agreement shall be marked with the following legend:

"U.S. Government Only/Unclassified"

Any trade secrets and commercial or financial information the recipient wishes to protect from release under Freedom Of Information Act (FOIA) requirements must be marked with a legend identifying it as privileged or confidential information.

D. Lower Tier Agreements. The consortium/recipient 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.

Foreign Access to Technology

This article shall remain In effect during the term of the agreement and for 5 years thereafter.

A. Definitions

"Foreign firm or institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this agreement, any agency or instrumentality of a foreign government, and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Know-how" means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

"Technology" means discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, mask works, and copyrights developed under this agreement.

B. General. The parties agree that research findings and technology developments in Ceramic Composite Development for Lightweight, Durable Thermal Protection Systems technology may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this agreement by foreign firms or institutions must be carefully controlled. The controls contemplated in this article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms

Regulation (22 CFR pt. 121 et seq.), the DOD Industrial Security Regulation (DOD 5220.22-R) and the Department of Commerce. Export Regulation (15 CFR pt. 770 et. seq.)

C. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie, the regulations cited above, the procedures stated in subparagraphs C.2, C.3. and C.4 below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of technology. Transfers do not include:

- a. sales of products or components, or
- b. licenses of software or documentation related to sales of products or components, or
- c. transfer to foreign subsidiaries of the recipient for purposes related to this agreement, or
- d. transfer which provides access to technology to a foreign firm or institution which is an approved source of supply, or source for the conduct of research under this agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this agreement.

2. The recipient shall provide timely notice to the Government and Boeing of any proposed transfer from the consortium/recipient of technology developed under this agreement to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the recipient, its vendors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to the recipient.

3. In any event, the recipient shall provide written notice to Boeing and the Government program manager of any proposed transfer to a foreign firm or institution at least 60 calendar days prior to the proposed date of transfer. Such notice shall cite this article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty calendar days of receipt of the recipient's written notification, the grants officer shall advise the recipient whether it consents to the proposed transfer. In cases where the Government does not concur or sixty calendar days, after receipt and the Government provides no decision, the recipient

may utilize the procedures under the article entitled "*Disputes.*" No transfer shall take place until a decision is rendered.

4. Except as provided in subparagraph C.1 above and in the event the transfer of technology to foreign firms or institutions is NOT approved by the Government and the recipient has been so notified, and the information is released anyway, the recipient shall (a) refund to the Government the funds paid for the development of the technology and (b) negotiate a license with the Government to the technology under terms that are reasonable under the circumstances.

D. Lower Tier Agreements. The recipient shall include this article, suitably modified, to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.

Officials Not to Benefit

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

Intellectual Property

Government will have Government Purpose Rights to all delivered data.