

CUSTOMER CONTRACT REQUIREMENTS
VTOL X-PLANE
CUSTOMER CONTRACT HR0011-14-9-0002

CUSTOMER CONTRACT REQUIREMENTS

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

Definitions:

In this Agreement, the following definitions apply:

Agreement:

The body of this Agreement.

Computer Software:

(1) Means

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

Conception:

The formation in the mind of the inventor of a definite and permanent idea of the complete and operative invention as it is thereafter to be applied in practice. Established when the invention is made sufficiently clear to enable one skilled in the art to reduce it to practice without the exercise of extensive experimentation, or the exercise of inventive skill.

Covered Government Support Contractor:

A contractor under a contract, the primary purpose of which is to furnish independent and impartial advice or technical assistance directly to the Government in support of the Government's management and oversight of a program or effort (rather than to directly furnish an end item or service to accomplish a program or effort), provided that the contractor—

(i) Is not affiliated with the prime contractor or a first-tier subcontractor on the program or effort, or with any direct competitor of such prime contractor or any such first-tier subcontractor in furnishing end items or services of the type developed or produced on the program or effort; and

(ii) Receives access to Technical Data or Computer Software for performance of a Government contract that contains the clause at DFARS 252.227-7025, AGREEMENT NUMBER: HR0011-14-9-0002, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

Foreign Firm or Institution:

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.

Government:

The United States of America, as represented by DARPA.

Government Purpose Rights:

The rights to use, duplicate, or disclose Technical Data or Computer Software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes means any activity in which the United States Government is a party, but does not include any rights for commercial purposes.

Invention:

Any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

Know-How:

All undocumented information relating to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, Technical Data, specifications, devices, apparatus and machines.

Limited Rights:

The rights to use, modify, reproduce, release, perform, display, or disclose Technical Data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the Technical Data outside the Government, use the Technical Data for manufacture, or authorize the Technical Data to be used by another party, except that the Government may reproduce, release, or disclose such data or authorize the use or reproduction of the data by persons outside the Government if the reproduction, release, disclosure, or use is

- 1) a release or disclosure to a Covered Government Support Contractor, for use, modification, reproduction, performance, display, or release or disclosure to authorized person(s) in performance of a Government contract,
- 2) the recipient of the Technical Data is subject to a prohibition on the further reproduction, release, disclosure, or use of Technical Data; and 3) the contractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

Made:

Relates to any Invention means the conception or first actual reduction to practice of such Invention.

Practical Application:

To manufacture, in the case of a composition of 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.

Property:

Any tangible personal property other than property actually consumed during the execution of work under this agreement.

Restricted Rights:

The rights to

- (i) Use computer software with one computer at one time;
- (ii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;
- (iii) Permit Covered Government Support Contractors in the performance of covered Government support contracts that contain the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, to use and reproduce, or release or disclose the computer software to a person authorized to receive restricted rights computer software, provided that—

(A) The Government shall not permit the Covered Government Support Contractor to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government, for any purpose; and

(B) Such use is subject to the limitations of this definition.

Subject Invention:

Any Invention Made in the performance of work under this Agreement.

Technical Data:

Recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

Technology:

Discoveries, innovations, Know-How and Subject 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, and copyrights developed under this Agreement.

Unlimited Rights:

Rights to use, duplicate, release, or disclose, Technical Data or Computer Software in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so.

ARTICLE VII: PATENT RIGHTS

A. Allocation of Principal Rights

Unless the Seller shall have notified DARPA (in accordance with subparagraph B.2 below) that the Seller does not intend to retain title, the Seller shall 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. § 202. With respect to any Subject Invention in which the Seller retains title, DARPA shall 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.

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

1. The Seller shall disclose each Subject Invention to DARPA, through Buyer, within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to DARPA shall be in the form of a written report and shall identify the Agreement under which the Invention was made and the identity of the inventor(s). It shall 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, chemical, biological, or electrical characteristics of the Invention. The disclosure shall 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. The Seller shall also submit to DARPA, through Buyer, an annual listing of Subject Inventions.

2. If the Seller determines that it does not intend to retain title to any such Invention, the Seller shall notify DARPA, in writing, through Buyer, within eight (8) months of disclosure to DARPA. 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 DARPA to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

3. The Seller shall 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. The Seller may elect to file patent applications in additional countries (including the European Patent Office and the Patent Cooperation Treaty) within either twelve (12) months of the corresponding initial patent application or eight (8) 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.

4. Requests for extension of the time for disclosure election, and filing under Article VII, may, at the discretion of DARPA, and after considering the position of the Seller, be granted.

C. Conditions When the Government May Obtain Title

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

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

disclose or elect within the specified times.

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

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

1. The Seller shall retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Seller fails to disclose the Invention within the times specified in paragraph B of this Article.. The Seller's license extends to the subsidiaries and affiliates, if any, (subject to export control laws and ITAR restrictions) within the corporate structure of which the Seller is a party and includes the right to grant licenses of the same scope to the extent that the Seller was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of DARPA, except when transferred to the successor of that part of the business to which the Invention pertains. DARPA approval for license transfer shall not be unreasonably withheld or delayed.
2. The Seller's domestic license may be revoked or modified by DARPA to the extent necessary to achieve expeditious Practical Application of the Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which the Seller has achieved or reasonably expects to achieve Practical Application and continues to make the benefits of the Subject Invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DARPA to the extent the 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, DARPA shall furnish the Seller a written notice of its intention to revoke or modify the license, and the Seller shall 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.

E. Action to Protect the Government's Interest

1. The Seller agrees to execute or to have executed and promptly deliver to DARPA, through Buyer, all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Seller elects to retain title, and (ii) convey title to DARPA when requested under paragraph C of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.
2. The Seller agrees to require, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Seller each Subject Invention made under this Agreement in order that the Seller can comply with the disclosure provisions of paragraph B of this Article.
3. The Seller shall notify DARPA, through Buyer, of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent covering a Subject Invention, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.
4. The Seller shall 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. HR0011-14-9-0002, awarded by DARPA. The Government has certain rights in the Invention."

F. 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.

G. Reporting on Utilization of Subject Inventions

1. The Seller agrees to submit, during the term of the Agreement, an annual report to Buyer on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Seller or its licensees or assignees. Such reports shall include

information regarding the status of development, date of first commercial sale or use, if any, gross royalties received by the Seller, and such other data and information as the agency may reasonably specify. The Seller also agrees to provide additional reports as may be requested by DARPA in connection with any march-in proceedings undertaken by DARPA in accordance with paragraph I of this Article. Consistent with 35 U.S.C. § 202(c)(5), DARPA agrees it shall not disclose such information to persons outside the Government without permission of the Seller.

2. All required reporting shall be accomplished, to the extent possible, using the i Edison reporting website: <https://s-edison.info.nih.gov/iEdison/>. To the extent any such reporting cannot be carried out by use of i-Edison, reports and communications shall be submitted to the Agreements Officer and Administrative Agreements Officer.

H. Preference for American Industry

Notwithstanding any other provision of this clause, the Seller agrees that it shall not grant to any person the exclusive right to use or sell any Subject Invention in the United States or Canada unless such person agrees that any product embodying the Subject Invention or produced through the use of the Subject Invention shall be manufactured substantially in the United States or Canada. However, in individual cases, the requirements for such an agreement may be waived by DARPA upon a showing by the 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.

I. March-in Rights

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

1. Such action is necessary because the Seller or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the Subject Invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Seller, assignee, or licensees; or
4. Such action is necessary because the agreement required by paragraph (H) 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.

ARTICLE VIII. DATA RIGHTS

A. Allocation of Principal Rights

1. The Parties agree that in consideration for Government funding, the Seller intends to reduce to Practical Application items, components and processes developed under this Agreement.
2. The Seller agrees to retain and maintain in good condition until three (3) years after completion or termination of this Agreement, all Technical Data and Computer Software necessary to achieve practical application. In the event of exercise of the Government's March-in Rights as set forth under Article VII, Section I, the Seller agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data necessary to achieve practical application within sixty (60) calendar days from the date of the written request. The Government shall retain Limited Rights, as defined in paragraph A above, to all Technical Data first developed under this Agreement.
3. The Seller agrees that, with respect to Technical Data and Computer Software necessary to achieve practical application, DARPA has the right to require the Seller to deliver all such Data to DARPA in accordance with its reasonable directions if DARPA determines that:
 - (a) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Seller, assignee, or their licensees; or

(b) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Seller, assignee, or licensees.

4. With respect to Technical Data or Computer Software developed or generated under this Agreement, because of the competitive harm that would occur if Phase I Technical Data or Computer Software were disclosed to other Phase I participants, the Government shall receive:

(a) Limited Rights or Restricted Rights to all Technical Data and Computer Software generated in performance of all activities funded under this Agreement including, but not limited to, the following:

- Top-level conceptual designs, including sizing, propulsion/airframe interfaces, structural interfaces, and control/controller approach(es) for the VTOL X-Plane.
- VTOL X-Plane Design – adequate information to enable full description of the design features, functions and performance capabilities.
- Technology Maturation – adequate to enable independent verification of the performance predictions such as test results and interface definitions.
- All model scale and flight-test data.

Subsequently, if and when the Government awards Phase II, the rights granted in such generated Technical Data and/or Computer Software will be modified to provide the Government with Government Purpose Rights. Notwithstanding the above, if any Technical Data delivered under this Agreement pertains to items developed exclusively at private expense, Seller may continue to provide such Technical Data to the Government with Limited Rights.

5. With respect to Data previously developed with a mix of private and Government funds as listed in the Data Assertions supplied to DARPA via Boeing, , the Government shall have Government Purpose Rights.

6. With respect to Data developed entirely with private funds, as listed in the Data Assertions supplied to DARPA via Boeing, the Government shall have Limited Rights.

B. Marking of Data

Pursuant to paragraph A above, any Data delivered under this Agreement shall be marked with the following legend:

“Use, duplication, or disclosure is subject to the restrictions as stated in Agreement HR0011-14-9-0002 between the Government and the Seller.”

1. In addition, Technical Data required to be delivered under this Agreement may be marked appropriately with the following legend, as applicable, in lieu of or in addition to the marking set forth above:

B. Marking of Data

Pursuant to paragraph A above, any Data delivered under this Agreement shall be marked with the following legend:

“Use, duplication, or disclosure is subject to the restrictions as stated in Agreement HR0011-14-9-0002 between the Government and the Boeing.”

1. In addition, technical data required to be delivered under this Agreement may be marked appropriately with the following legend, as applicable, in lieu of or in addition to the marking set forth above:

Government Purpose Rights

Agreement Number: HR0011-14-9-0002

Seller Name:

Seller Address:

Expiration Date: {TBD Based Upon Agreement Award Date}

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement HR0011-14-9-0002 between the Government and Boeing. 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.

Limited Rights

Agreement Number: HR0011-14-9-0002

Seller Name:

Seller Address:

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement HR0011-14-9-0002 between the Government and Boeing. 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 data, must promptly notify Buyer.

2. Further, the deliverable proprietary non-Technical Data information (i.e. the Monthly Program Status Report and Payable Milestone Reports) may be marked with the proprietary notice customarily used by Seller to identify data and information that is subject to restrictions regarding disclosure and/or use. The proprietary notice shall however, also include notation of this Agreement Number "HR0011-14-9-0002" and a right for the Government to use the report for purpose of administration of this Agreement.

3. Except for Technical Data or proprietary information delivered under this Agreement, the parties agree that Seller may place additional or different limitations or restrictions on the Government's access to nondeliverable Technical Data or Computer Software, and the Government agrees to comply with such limitations and restrictions, including any such restrictions set forth in Seller or third party markings and legends.

C. 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.

ARTICLE IX: FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect during the term of the Agreement and for five (5) years thereafter.

A. Notification of Intention to Export

The Seller will notify DARPA, through Buyer, of its intention to export any technology developed under this Agreement prior to notification as required by the International Traffic in Arms Regulation (ITAR) of the United States Department of State ("ITAR", United States code of Federal Regulations, Title 22, Parts 120-130, inclusive). No technology will be transferred, and no technical data, assistance or service will be furnished to any Foreign Firm or Institution in violation of the ITAR, the Export Administration Regulations of the United States Department of Commerce (United States Code of Federal Regulations, Title 15, Parts 768-799, inclusive) or any other applicable laws or regulations of the United States.

B. 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 under this Agreement.

ARTICLE X: TITLE TO AND DISPOSITION OF PROPERTY

A. Title to Property

The Seller will acquire property with an acquisition value greater than \$5,000 under this Agreement as set forth in this Agreement which is necessary to further the research and development goals of this Program and is not for the direct benefit of the Government. Title to this property shall vest in the Seller upon acquisition. Title to any other items of property acquired under this Agreement with an acquisition value of \$5,000 or less shall vest in the Seller upon acquisition with no further obligation of the Parties unless otherwise determined by the Agreements Officer. Should any other item of property with an acquisition value greater than \$5,000 be required, the Seller shall obtain prior written approval of the Agreements Officer. Title to this property shall also vest in the Seller upon acquisition. The Seller shall be responsible for the maintenance, repair, protection, and preservation of all property at its own expense.

B. Disposition of Property

Upon completing this Agreement, the Seller will follow the instructions of the Government Agreements Officer regarding the disposition of all items of property set forth in this Agreement or any other items of property with an acquisition value greater than \$5,000. The Agreements Officer shall have forty-five (45) calendar days from the end date of the Agreement to provide written disposition instructions to the Seller. The Seller will prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Agreements Officer. The net proceeds of any such disposal will be credited to or used in the

performance of this Agreement. The Seller shall identify any such proceeds in writing to the Agreements Officer.

ARTICLE XI: CIVIL RIGHTS ACT

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) relating to nondiscrimination in Federally assisted programs. The Seller has signed an Assurance of Compliance with the nondiscriminatory provisions of the Act.

ARTICLE XIII: SUBCONTRACTORS

The Seller shall make every effort to satisfy the intent of competitive bidding of sub-agreements to the maximum extent practical. The Seller may use foreign entities or nationals as subcontractors, subject to compliance with the requirements of this Agreement and to the extent otherwise permitted by law.

ARTICLE XIV: PUBLIC RELEASE OR DISSEMINATION OF INFORMATION

(1) There shall be no dissemination or publication, except within and between The Boeing Company and any subcontractors, of information developed under this Agreement or contained in the reports to be furnished pursuant to this Agreement without prior written approval of the AOR. All technical reports will be given proper review by appropriate authority to determine which Distribution Statement is to be applied prior to the initial distribution of these reports by the Seller. Unclassified patent related documents are exempt from prepublication controls and this review requirement. Papers resulting from unclassified fundamental research are exempt from prepublication controls and this review requirement, pursuant to DoD Instruction 5230.27 dated October 6, 1987.

(2) The Seller shall submit all proposed public releases for review and approval as instructed at <http://www.darpa.mil/prc/>. Public releases include press releases, specific publicity or advertisement, and publication or presentation, but exclude those relating to the open sourcing or licensing, sales or other commercial exploitation of products, services or technologies. In addition, articles for publication or presentation will contain a statement on the title page worded substantially as follows:

“This research was, in part, funded by the U.S. Government. 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 U.S. Government.”