

CUSTOMER CONTRACT REQUIREMENTS
DAPA R. O. K. AIR FORCE PERFORMANCE BASED LOGISTICS
CUSTOMER CONTRACT KFX-DAPA-13AH04I59

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

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

B. PERFORMANCE BASED LOGISTICS

1. Maintenance of Secrecy

- a. The Seller shall warrant that any data or information related to this Contract, originally developed by the Republic of Korea, shall be held and preserved as "Confidential Matters of the Republic of Korea". The Seller shall warrant that any data or information related to this Contract, originally developed by the Boeing Company and its Suppliers shall be held and preserved as "Confidential Matters of The Boeing Company". The Parties warrant that any document provided to the other Party in relation to this Contract shall be protected in accordance with the equivalent U.S. or Korean security classification.
- b. Neither Party shall disclose any documents or communications in relation to this Contract in any way without the other Party's prior consent, regardless of whether any document is marked "Confidential", except when required by either the Republic of Korea or US Government or for the purpose of a Boeing audit.
- c. The Seller's and Buyer's obligations provided in this Article shall survive termination or completion of this Contract.
- d. This Contract shall not restrict disclosure of proprietary information which:
 - i. Was in the public domain at the time of disclosure or thereafter enters the public domain through no breach of this Contract by the receiving Party; or
 - ii. Was otherwise known to the receiving Party at the time of disclosure without restrictions as to disclosure or use; or
 - iii. Becomes known to the receiving Party from a source other than the disclosing Party without breach of this Contract by the receiving Party; or
 - iv. Is developed independently by the receiving Party without reliance upon proprietary information disclosed under this Contract.
 - v. Is used for future Contractual framework development.

2. Intellectual Property

2.1 "Goods" are the goods and services to be delivered to Buyer under this Contract.

2.2 "Intellectual Property Right" means all rights with respect to copyright, registered and unregistered patents, registered and unregistered trademarks, service marks, registered and unregistered designs and circuit layouts, and all other rights in relation to inventions or rights resulting from intellectual activity in industrial, scientific, literary or artistic fields (that is recognized in the domestic law of any country of the world), including any intellectual property right protected through legislation or arising from protection of information as a trade secret or as confidential information;

2.3 "Software" means computer programs, including those stored in integrated circuits, read-only memory or

similar devices, computer program documentation, and computer databases, including modifications to any of the foregoing; and

- 2.4 “Technical Information” means information required to be delivered under this Contract of a scientific or technical nature relating to the Goods, including information related to Inventions, designs, methods, processes, techniques, interfaces, data structures, architectures, analysis tools, modeling or simulation, models, prototypes, patterns, samples, schematics, experimental data, test data, reports, drawings, plans, specifications, photographs, collections of information, manuals, and Software. Technical Information does not include data concerned with the administration of the Contract, such as financial data, business processes, or management information. Technical Information also does not include any data systems, tools or applications that are developed using non-Buyer funding and that may be used to generate, modify or deliver Goods under this Contract.
- 2.5 The Seller shall own the Intellectual Property Rights attached to the design, development, manufacturing, assembling and testing process of the Goods or to any part thereof. The provision of any Technical Information or documentation under this Contract shall neither imply, nor permit, nor provide any right to manufacture or have manufactured any part, component, system or element of the Goods through licensing or otherwise. Buyer may not use, and may not license or permit others to use Intellectual Property or any Technical Information in commercial exploitation in competition with Seller. The Buyer shall have the right to use copy and reproduce Technical Information as necessary for the use, maintenance and repair of Goods.
- 2.6 If the Buyer receives a claim that any service or part provided by Seller under this Contract infringes a United States or South Korean patent right, the Seller shall, at its own expense and option, conduct the following actions, provided that Seller is notified promptly in writing of the claim, Buyer has not reached any compromise or settlement of such claim or made any admissions after receipt of such claim in respect of the same, and Seller is given the option, at its expense, to control the claim to the extent practicable and all requested reasonable assistance from Buyer regarding same:
- a. Settle the claim in an amicable way such as reconciliation with the claimant;
 - b. Procure for the Buyer the right to use such service or part provided by Seller under this Contract in a manner specified in this Contract;
 - c. Replace or modify the service or part provided by Seller under this Contract with an equivalent but non-infringing alternative that conforms to the specifications of this Contract; or defend against such claims.

If any court of competent jurisdiction holds such service or part provided by Seller under this Contract to constitute such infringement, the Seller shall take at its own option one of the actions described under a through c above.

Notwithstanding the foregoing provisions, Seller will have no obligation under this Section 2.6 with regard to any infringement arising from (i) the compliance of Seller's new service or part with formal specifications issued by Buyer where infringement could not be avoided in complying with such specifications, or (ii) use of the service or part for other than their intended application.

3. Import and Export of the Service

3.1 The import, export and re-export of items to be delivered under this Contract are subject to U.S. Government import, export and re-export laws and regulations. The Parties shall comply with such laws and regulations and the Seller shall assist the Buyer to comply with such laws and regulations. As the U.S. importer/exporter of record, Seller shall obtain and properly utilize any required U.S. import, export or re-export authorization. Buyer shall assist in obtaining such authorization, as requested by Seller. If such U.S. Government authorization is not available, cannot be obtained, or is subsequently revoked, items to be delivered under this Contract shall not be imported, exported or re-exported. A mutually agreed to temporary support concept will be established until a long-term solution is in place or the contract is terminated. And metric relief shall be granted. It shall be the Buyer's responsibility to obtain from the Korean Government any required permission to import the Contract items and to pay any charges associated with the importation of said items. Resale or other transfer of hardware delivered under this Contract shall be in accordance with these provisions.

3.2 Information furnished under this Contract may contain technical data, defense services, and defense articles subject to U.S. Export Laws and Regulations. The Parties are advised that such technical data, defense services, and defense articles may not be retransferred or re-exported to foreign persons, employed by or associated with, or under Contract to [Republic of Korea MND or ROKAF] lower-tier subcontractors, without the prior written consent of Boeing and U.S. Department of State approval.

3.3 Parties should be aware that Boeing and Seller must obtain required U.S. export authority prior to implementing work packages. The Parties may be required to sign an export agreement prior to beginning work. The agreement will include contractually binding requirements imposed by the U.S. Department of State as part of their approval process.

4. Non-Disclosure

4.1 Subject to the Parties' compliance with applicable laws, and subject to Buyer's and Seller's rights under this Contract, each Party shall protect as set forth herein any information received from the other Party under or in connection with this Contract that the disclosing Party considers proprietary or confidential ("Proprietary Information"). Each Party shall protect such information except to the extent disclosure is required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction. Where this exception applies, the receiving Party shall, to the extent legally permitted to do so, provide prompt written notice to the disclosing Party prior to proceeding with such disclosure and shall afford the disclosing Party the right to resist such release.

4.2 The receiving Party shall, at the disclosing Party's written request, return to the disclosing Party all such Proprietary Information of the disclosing Party when no longer needed for completion of this Contract, or shall, at the disclosing Party's option, destroy all such information and certify as to such destruction to the disclosing Party.

4.3 The receiving Party may use and copy the disclosing Party's Proprietary Information solely for the purpose of performing the receiving Party's obligations under this Contract, and such information shall remain the property of the disclosing Party or a third party as applicable. The receiving Party may disclose the disclosing Party's Proprietary Information to employees of the receiving Party who have a need-to-know the Proprietary Information for the purposes of performing the receiving Party's obligations under this Contract. Notwithstanding the restrictions set forth herein, Seller may disclose to a subcontractor Proprietary Information of the Buyer as may be necessary to perform the subcontract, on the condition that the subcontractor agrees that such information will be used solely for the purposes of such subcontract. In addition, each receiving Party may disclose the other Party's Proprietary Information to the receiving Party's advisers, agents and contract labor for the purpose of performing the receiving Party's obligations under this Contract, provided that such advisers, agents and contract labor are subject to written obligations of confidentiality no less stringent than those set forth herein.

4.4 Neither Party's obligations apply to any information that:

- 1) The receiving Party knew and held without restriction as to further disclosure when the disclosing Party disclosed the information under this Contract; or
- 2) is publicly available from a source other than the disclosing Party other than as a result of the receiving Party's breach of its obligations under this Article; or
- 3) Is or becomes known to the receiving Party from a source other than the disclosing Party who is authorized to disclose the information without restriction; or
- 4) Is independently developed by the receiving Party without use of the information of the disclosing Party.

4.5 The receiving Party will satisfy its obligations hereunder to protect Proprietary Information from misuse or unauthorized disclosure by exercising reasonable care. Such care will include protecting such information using those practices the receiving Party normally uses to restrict disclosure and use of its own information of like importance.

4.6 The nondisclosure obligations set forth herein shall persist after termination or expiration of this Contract.

4.7 The Parties acknowledge that the disclosing Party may suffer irreparable harm if the receiving Party fails to comply with its nondisclosure obligations set forth herein, and that monetary damages in that event would be inadequate to compensate the disclosing Party. Consequently, the disclosing Party shall be entitled, in addition to any monetary relief as may be recoverable by law, to seek any temporary, preliminary or permanent injunctive relief as may be necessary to restrain any continuing or further breach by the receiving Party, without showing or proving any actual damages sustained by the disclosing Party and without the necessity of posting any bond or, if required, a bond of minimal value only.