

**CUSTOMER CONTRACT REQUIREMENTS**  
**Advanced Exhaust System Demonstration**  
**CUSTOMER CONTRACT NNC10AA02A**

CUSTOMER CONTRACT REQUIREMENTS

**1. FAR Clauses** The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

**52.204-2 Security Requirements** (AUG 1996). Changes clause means the changes clause of this contract. This clause applies only if access to classified material is required.

**52.245-1 Government Property** (AUG 2010).

This clause applies only if Government property is acquired or furnished for contract performance. "Government" shall mean Government throughout except the first time it appears in paragraph (g)(1) when "Government" shall mean the Government or the Buyer. Paragraph (h)(1) is deleted and replaced by the following: "Seller assumes the risk of, and shall be responsible for, any loss, damage, destruction, or theft of Government property upon its delivery to Seller as Government-furnished property. However, Seller is not responsible for reasonable wear and tear to Government Property or for Government property properly consumed in performing this contract." If the contract incorporates Boeing General Provision GP4, the Government-Owned Property article in GP4 is hereby deleted.

**2. NASA FAR Supplement Clauses** NASA Contracts. The following contract clauses are incorporated by reference from the National Aeronautics and Space Administration Federal Acquisition Regulation Supplement and apply to the extent indicated. In all of the following clauses, "Contractor" means Seller.

**1852.237-72 Access to Sensitive Information** (JUN 2005).

**1852.237-73 Release of Sensitive Information** (JUN 2005). This clause applies only if Seller may be required to furnish sensitive information in performance of this contract. Throughout the referenced clause, "this proposal" means Seller's proposal, and "this contract" means the contract between Buyer and Seller.

**1852.245-70 Contractor Requests for Government-Provided Equipment** (JAN 2011).

**1852.245-73 Financial Reporting of NASA Property in the Custody of Contractors** (JAN 2011). Seller will submit annual reports to Buyer no later than October 15th.

**1852.245-74 Contractor Accountable On-Site Government Property** (JAN 2011).

**1852.245-76 Deviation cancelled 1/12/2011; replaced by clause 1852.245-76 released 1/12/2011. Deviation** (SEP 2007).

**1852.245-78 Physical Inventory of Capital Personal Property** (JAN 2011).

**3. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase contract and shall be included in all Seller's sub-contracts as applicable.

Within these provisions, any reference to "Recipient" means "Seller".

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 contracts in excess of \$50,000 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 recipient or subrecipient 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 NASA.

3. Contract Work Hours and Safety Standards Act (40 U.S.C. 327 333) - - Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$50,000 for other contracts, other than contracts for commercial items, 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 Subsection 102 of the Act, each recipient 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 1 ½ 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. These 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, other than contracts for commercial items, 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 NASA and the Regional Office of the Environmental Protection Agency (EPA).

6. 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 simplified acquisition threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

**Rights in Data (§1274.905) (July2002)**

## (a) Definitions.

"Data", means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

## (b) Data Categories.

- (1) General: Data exchanged between Buyer and Recipient under this agreement will be exchanged without restriction as to its disclosure, use or duplication except as otherwise provided below in this provision.
- (2) Background Data: In the event it is necessary for Recipient to furnish Buyer with Data which existed prior to, or produced outside of, this cooperative agreement, 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 Buyer and NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out Buyer's and NASA's responsibilities under this agreement. Upon completion of activities under this agreement, such Data will be disposed of as requested by Recipient.
- (3) Data first produced by Recipient: All data under this Cooperative Agreement will not be considered fully developed until completion of "Testing". In the event Data first produced by Recipient in carrying out Recipient's responsibilities under this agreement is furnished to Buyer and NASA, and Recipient considers such Data to embody trade secrets or to comprise 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 throughout the life of this agreement in confidence, and used by Buyer and/or NASA and its contractors (under suitable protective conditions, in accordance with Clause 38.C (NFS 1852.237-73, RELEASE OF SENSITIVE INFORMATION) only for the purpose of carrying out Buyer and NASA's responsibilities under this agreement. After full development of deliverable data, such data will be disclosed and used by NASA and its contractors (under suitable protective conditions, in accordance with Clause 38.C (NFS 1852.237-73, RELEASE OF SENSITIVE INFORMATION) only for experimental; evaluation; research; and development, for a period of five years. (NOTE: Both parties hereby agree that data disclosure to Pratt & Whitney is approved.) In order that NASA and its contractors may exercise the right to use such Data for the purposes designated above, Buyer and/or NASA shall have the right to review and request delivery of existing, non-proprietary Data first produced by Recipient under this cooperative agreement. Delivery shall be made within 60 days. In the event that this agreement is terminated by the Recipient, there is no restriction on the use or disclosure of non-proprietary data, whether it was first-produced by Buyer and/or NASA, the Recipient, or jointly-produced. Termination by the Recipient may occur through an express act or statement, or may occur de facto (by non-performance or by not funding in accordance with the funding schedule). In the event that the Buyer determines that the Recipient has terminated the agreement de facto, the data will immediately become fully developed, and the Buyer shall so notify the Recipient 15 calendar days (in writing) prior to release of any non-proprietary data to a third party.
- (4) Data first produced by NASA: As to Data first produced by NASA in carrying out NASA's responsibilities under this agreement and which Data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from the Recipient, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to 5 years after development of the information, with the express understanding that during the aforesaid period such Data may be disclosed and used (under suitable protective conditions, in accordance with Clause 38.C (NFS 1852.237-73, RELEASE OF SENSITIVE INFORMATION) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Recipient agrees not to disclose such Data to any third party without NASA's written approval through Buyer until the aforementioned restricted period expires. [NOTE: Both parties hereby agree that data disclosure to Pratt & Whitney is approved.] Use of this data under a separate cooperative agreement or contract issued to a party (other than the Recipient) for the purpose of continuing the project (in the event this cooperative agreement is terminated by either party) shall constitute a government purpose. All data under this agreement will not be considered fully developed until completion of "Testing".
- (5) Data Jointly Produced. In the event that Data is generated under this agreement that cannot be easily segregable as

“Data first produced by Recipient” or “Data first produced by Buyer and/or NASA”, of if its provenance is in dispute, that Data shall be treated as “Data Jointly Produced” by Buyer and/or NASA and the Recipient. Data Jointly Produced that (a) embodies trade secrets, or (b) could compromise commercial or financial information that is privileged or confidential if it had been obtained from the Recipient, will be marked with an appropriate legend and maintained in confidence for 5 years after the Data is fully developed, with the express understanding that during the aforesaid 5-year period such Data may be used by Buyer and/or NASA and its contractors (under suitable protective conditions, in accordance with Clause 38.C (NFS 1852.237-73, RELEASE OF SENSITIVE INFORMATION) only for experimental; evaluation; research; development; and government purposes, for a period of five years, and thereafter for any purpose whatsoever without restriction on disclosure and use. Both Recipient, Buyer, and NASA agree not to disclose such Data to any third party without the other party’s written approval until the aforementioned restricted period expires. [NOTE: Both parties hereby agree that data disclosure to Pratt & Whitney is approved.] Use of this data under a separate agreement or contract issued to a party (other than the Recipient) for the purpose of continuing the project (in the event this agreement is terminated by either party) shall constitute a government purpose. In the event that this agreement is terminated by the Recipient, there is no restriction on the use or disclosure of non-proprietary data, whether it was first-produced by Buyer, NASA, the Recipient, or jointly-produced. Termination by the Recipient may occur through an express act or statement, or may occur de facto (by non-performance or by not funding in accordance with the funding schedule). In the event that Buyer determines that the Recipient has terminated the agreement de facto, Buyer shall so notify the Recipient 15 calendar days (in writing) prior to release of any non-proprietary data to a third party.

(6) Copyright.

(i) In the event Data is exchanged with a notice indicating the Data is protected under copyright as a published copyrighted work, or are deposited for registration as a published work in the U.S. Copyright Office, the following paid-up licenses shall apply:

(A) If it is indicated on the Data that the Data existed prior to, or was produced outside of, this agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this agreement; and

(B) If the furnished Data does not contain the indication of paragraph (b)(5)(i)(A) of this section, it will be assumed that the Data was first produced under this agreement, and the receiving party and others acting on its behalf, shall be granted a paid up, nonexclusive, irrevocable, world-wide license for all such Data to reproduce, distribute copies to the public, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the receiving party. For Data that is computer software, the right to distribute shall be limited to potential users in the United States.

(ii) When claim is made to copyright, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government.

(7) Oral and visual information. If information which the Recipient considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to Buyer and/or NASA, 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 Buyer within 10 days after such oral or visual disclosure, or Buyer shall have no duty to limit or restrict, and shall not incur any liability for, any disclosure and use of such information.

(8) Disclaimer of Liability. Notwithstanding the above, Buyer shall not be restricted in, nor incur any liability for, the disclosure and use of:

(i) Data not identified with a suitable notice or legend as set in paragraph (b)(2) of this section; nor

(ii) Information contained in any Data for which disclosure and use is restricted under paragraphs (b)(2) or (3) of this section, if such information is or becomes generally known without breach of the above, is known to or is

generated by Buyer and/or NASA independently of carrying out responsibilities under this agreement, is rightfully received from a third party without restriction, or is included in data which Participant has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

- (c) Marking of Data. Any Data delivered under this cooperative agreement, by NASA or the Recipient, shall be marked with a suitable notice or legend indicating the data was generated under this cooperative agreement.
- (d) Lower Tier Agreements. The Recipient shall include this provision, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

**[End of Provision]**

3. Safety (§1274.934)(JUL 2002)

NASA’s safety priority is to protect: (1) the public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(a) The Recipient shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this cooperative agreement. The Recipient shall comply with all applicable federal, state, and local laws relating to safety. The Recipient shall maintain a record of, and will notify Buyer immediately (within one workday) of any accident involving death, disabling injury or substantial loss of property. The Recipient will immediately (within one workday) advise Buyer of hazards that come to its attention as a result of the work performed.

(c) Where the work under this cooperative agreement involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the Recipient. Compliance with this provision by subcontractors shall be the responsibility of the Recipient.

4. Export Licenses (§1274.942)(JUL 2002)

(a) The Recipient shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this agreement. In the absence of available license exemptions/exceptions, the Recipient shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Recipient shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this agreement, including instances where the work is to be performed on-site at any NASA installation, where the foreign person will have access to export-controlled technical data or software.

(c) The Recipient shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Recipient shall be responsible for ensuring that the requirements of this provision apply to its subcontractors.

5. PROVISIONS INCORPORATED BY REFERENCE

The following provisions are incorporated by reference:

FULL TEXT REFERENCE	TITLE	DATE
§ 1274.911	Patent Rights	July 2002
§ 1274.912	Patent Rights - Retention by Recipient (Large Business)	July 2002
§ 1274.915	Restriction on Sale or Transfer of Technology to Foreign Firms or Institutions	July 2002

§ 1274.926	Clean Air-Water Pollution Control Acts	July 2002
§ 1274.932	Retention and Examination of Records	July 2002

(Source: 14 CFR Part 1274. Provisions incorporated by reference have the same force and effect as if they were given in full text. Copies of Code of Federal Regulation volumes are available on the Internet at the following address:

<http://www.whitehouse.gov/OMB/grants/index.html>