

**CUSTOMER CONTRACT REQUIREMENTS
(NEXT GENERATION AIRFRAME NOISE PREDICTION TOOLS)
CUSTOMER CONTRACT>NNL07AA03C**

CUSTOMER CONTRACT REQUIREMENTS

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

1. Rights In Data

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 NASA, Boeing and Seller 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 Seller to furnish Boeing or NASA with Data which existed prior to, or produced outside of, this 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 NASA and its contractors (under suitable protective conditions) only for the purpose of carrying out Boeing's and/or NASA's responsibilities under this agreement. Upon completion of activities under this agreement, such Data will be disposed of as requested by Seller.

(3) *Data first produced by Seller.* In the event Data first produced by Seller in carrying out Seller's responsibilities under this agreement is furnished to Boeing or NASA, and Seller 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 in confidence for a period of five years after development of the data and be disclosed and used by ["NASA" or "Boeing," as appropriate] and its contractors (under suitable protective conditions) only for experimental; evaluation; research; development, etc. by or on behalf of ["NASA" or "Boeing" as appropriate] during that period. In order that ["NASA" or the "Boeing", as appropriate] and its contractors may exercise the right to use such Data for the purposes designated above, Boeing, upon request to the Seller, shall have the right to review and request delivery of Data first produced by Seller. Delivery shall be made within a time period specified by Boeing.

(4) *Data first produced by NASA or Boeing.* As to data first produced by NASA or Boeing in carrying out Boeing'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 Seller, will be marked with an appropriate legend and maintained in confidence for an agreed to period of up to five 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) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. Seller agrees not to disclose such Data to any third party without NASA's written approval (obtained through Boeing) until the aforementioned restricted period expires. Use of this data

under a separate agreement or contract issued to a party other than the Seller for the purpose of continuing the project in the event this agreement is terminated by either party shall constitute a government purpose.

(5) *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) 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 Seller 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.

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

(7) *Disclaimer of liability.* Notwithstanding the above, NASA or Boeing 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 NASA or Boeing 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 agreement, by NASA or the Seller, shall be marked with a suitable notice or legend indicating the data was generated under this agreement.

(d) *Lower tier agreements.* The Seller shall include this provision, suitably modified to identify the parties, in all subcontracts for experimental, developmental, or research work.

2. Designation of New Technology Representative and Patent Representative

For purposes of administration of the clause of this agreement entitled "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LARGE BUSINESS)" or "PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SMALL BUSINESS)" the following named representatives are hereby designated by the Boeing to administer such clause:

New Technology Representative: NASA Langley Research Center, Hampton Va. 23681-2199

Patent Representative: NASA Langley Research Center, Office of Chief Counsel, Hampton Va.

3. Patent Rights—Retention by the Seller (Large Business)

(a) *Definitions.* (1) *Administrator*, as used in this clause, means the Administrator of the National Aeronautics and Space Administration (NASA) or duly authorized representative.

(2) *Invention*, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(3) *Made*, as used in relation to any invention, means the conception or first actual reduction to practice such invention.

(4) *Nonprofit organization*, as used in this clause, means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

(5) *Practical application*, as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in case of a machine or system; and, in each, case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(6) *Reportable item*, as used in this clause, means any invention, discovery, improvement, or innovation of the Seller, whether or not the same is or may be patentable or otherwise protectable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of any work under this contract or in the performance of any work that is reimbursable under any clause in this contract providing for reimbursement of costs incurred prior to the effective date of this contract.

(7) *Small business firm*, as used in this clause, means a domestic small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.901 through 121.911 will be used.)

(8) *Subject invention*, as used in this clause, means any reportable item which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

(9) *Manufactured substantially in the United States* means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Seller of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty

(whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with Federal Acquisition Regulation 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) *Allocation of principal rights*—(1) *Presumption of title.* (i) Any reportable item that the Administrator considers to be a subject invention shall be presumed to have been made in the manner specified in paragraph (1) or (2) of section 305(a) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(a)) (hereinafter called “the Act”), and the above presumption shall be conclusive unless at the time of reporting the reportable item the Seller submits to the Boeing a written statement, containing supporting details, demonstrating that the reportable item was not made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(ii) Regardless of whether title to a given subject invention would otherwise be subject to an advance waiver or is the subject of a petition for waiver, the Seller may nevertheless file the statement described in paragraph (b)(1)(i) of this section. The Administrator will review the information furnished by the Seller in any such statement and any other available information relating to the circumstances surrounding the making of the subject invention and will notify the Seller whether the Administrator has determined that the subject invention was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act.

(2) *Property rights in subject inventions.* Each subject invention for which the presumption of paragraph (b)(1)(i) of this section is conclusive or for which there has been a determination that it was made in the manner specified in paragraph (1) or (2) of section 305(a) of the Act shall be the exclusive property of the United States as represented by NASA unless the Administrator waives all or any part of the rights of the United States, as provided in paragraph (b)(3) of this section.

(3) *Waiver of rights.* (i) Section 305(f) of the Act provides for the promulgation of regulations by which the Administrator may waive the rights of the United States with respect to any invention or class of inventions made or that may be made under conditions specified in paragraph (1) or (2) of section 305(a) of the Act. The promulgated NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, have adopted the Presidential memorandum on Government Patent Policy of February 18, 1983, as a guide in acting on petitions (requests) for such waiver of rights.

(ii) As provided in 14 CFR part 1245, subpart 1, Sellers may petition, either prior to execution of the Agreement or within 30 days after execution of the Agreement, for advance waiver of rights to any or all of the inventions that may be made under an Agreement. If such a petition is not submitted, or if after submission it is denied, the Seller (or an employee inventor of the Seller may petition for waiver of rights to an identified subject invention within eight months of first disclosure of invention in accordance with paragraph (e)(2) of this section or within such longer period as may be authorized in accordance with 14 CFR 1245.105. Further procedures are provided in the REQUESTS FOR WAIVER OF RIGHTS—LARGE BUSINESS provision.

(c) *Minimum rights reserved by the Government.* (1) With respect to each Seller subject invention for which a waiver of rights is applicable in accordance with 14 CFR part 1245, subpart 1, the Government reserves—

(i) An irrevocable, royalty-free license for the practice of such invention throughout the world by or on behalf of the United States or any foreign government in accordance with any treaty or agreement with the United States; and

(ii) Such other rights as stated in 14 CFR 1245.107.

(2) Nothing contained in this paragraph shall be considered to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Seller.* (1) The Seller is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Seller subject invention and any resulting patent in which the Government acquires title, unless the Seller fails to disclose the subject invention within the times specified in paragraph (e)(2) of this section. The Seller's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Seller is a party and includes the right to grant sublicenses of the same scope to the extent the Seller was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Administrator except when transferred to the successor of that part of the Seller's business to which the invention pertains.

(2) The Seller's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 14 CFR part 1245, subpart 3, Licensing of NASA Inventions. This license will not be revoked in that field of use or the geographical areas in which the 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 the Administrator to the extent the Seller, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the Seller will be provided a written notice of the Administrator's intention to revoke or modify the license, and the Seller will be allowed 30 days (or such other time as may be authorized by the Administrator for good cause shown by the Seller) after the notice to show cause why the license should not be revoked or modified. The Seller has the right to appeal, in accordance with 14 CFR 1245.112, any decision concerning the revocation or modification of its license.

(e) *Invention identification, disclosures, and reports.* (1) The Seller shall establish and maintain active and effective procedures to assure that reportable items are promptly identified and disclosed to Seller personnel responsible for the administration of this clause within six months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of the reportable items, and records that show that the procedures for identifying and disclosing reportable items are followed. Upon request, the Seller shall furnish the Boeing a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Seller will disclose each reportable item to Boeing within two months after the inventor discloses it in writing to Seller personnel responsible for the administration of this clause or, if earlier, within six months after the Seller becomes aware that a reportable item has been made, but in any event for subject inventions before any on sale, public use, or publication of such invention known to the Seller. The disclosure to the agency shall be in the form of a written report and shall identify the Agreement under which the reportable item was made and the inventor(s) or innovator(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 physical, chemical, biological, or electrical characteristics of the reportable item. The disclosure shall also identify any publication, on sale, or public use of any subject invention and whether a manuscript describing such invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Seller will promptly notify the agency of the acceptance of any manuscript describing a subject invention for publication or of any on sale or public use planned by the Seller for such invention.

(3) The Seller shall furnish Boeing the following:

(i) Interim reports every 12 months (or such longer period as may be specified by Boeing) from the date of the Agreement, listing reportable items during that period, and certifying that all reportable items have been disclosed (or that there are no such inventions) and that the procedures required by paragraph (e)(1) of this section have been followed.

(ii) A final report, within three months after completion of the work, listing all reportable items or certifying that there were no such reportable items, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Seller agrees, upon written request of Boeing, to furnish additional technical and other information available to the Seller as is necessary for the preparation of a patent application on a subject invention and for the prosecution of the patent application, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions.

(5) The Seller agrees, subject to 48 CFR (FAR) 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) Boeing or any authorized representative shall, pursuant to the Retention and Examination of Records provision of this agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Seller relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Seller has established and maintained the procedures required by paragraph (e)(1) of this section; and

(iii) The Seller and its inventors have complied with the procedures.

(2) If Boeing learns of an unreported Seller invention that the Boeing believes may be a subject inventions, the Seller may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by Boeing, the Seller shall—

(i) Include this Clause Patent Rights—Retention by the Seller—(Large Business) (suitably modified to identify the parties) in any subcontract hereunder with other than a small business firm or nonprofit organization for the performance of experimental, developmental, or research work; and

(ii) Include the clause Patent Right—Retention by the Seller—(Small Business) (suitably modified to identify the parties) in any subcontract hereunder with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Seller—

(i) Shall promptly submit a written notice to Boeing setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Boeing.

(3) The Seller shall promptly notify Boeing in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Boeing, the Seller shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Seller in the clause of paragraph (g)(1)(i) or (1)(ii) of this section, whichever is included in the subcontract, and the Seller will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(h) *Preference for United States manufacture.* The Seller agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Assistant Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Seller 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 acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Seller, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Seller or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(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 specified by Federal regulations 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 (i) of this clause 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.

4. Patent Rights—Retention by the Seller (Small Business)

(a) *Definitions.* (1) *Invention*, as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the U.S.C.

(2) *Made*, as used in this clause, when used in relation to any invention means the conception or first actual reduction to practice such invention.

(3) *Nonprofit organization*, as used in this clause, means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) *Practical application*, as used in this clause, means 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 being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) *Small business firm*, as used in this clause, means a small business concern as defined at Section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.901 through 121.911 will be used.

(6) *Subject invention*, as used in this clause, means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this Agreement.

(7) *Manufactured substantially in the United States* means the product must have over 50 percent of its components manufactured in the United States. This requirement is met if the cost to the Seller of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all components required to make the product. (In making this determination only the product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with FAR 25.102(a)(3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) *Allocation of principal rights*. The Seller may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Seller retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by Seller*. (1) The Seller will disclose each subject invention to NASA within two months after the inventor discloses it in writing to Seller personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and 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, on 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. In addition, after disclosure to the agency, the Seller will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any sale or public use planned by the Seller.

(2) The Seller will elect in writing whether or not to retain title to any such invention by notifying NASA within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Seller will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Seller will file patent applications in additional countries or international patent

offices within either 10 months of the corresponding initial patent application of six 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 paragraphs (c)(1), (2), and (3) of this section may, at the discretion of the agency, be granted.

(d) *Conditions when the Government may obtain title.* The Seller will convey to NASA, upon written request, title to any subject invention—

(1) If the Seller fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this section, or elects not to retain title; provided, that the agency may only request title within 60 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 (c) of this section; provided, however, that if the Seller has filed a patent application in a country after the times specified in paragraph (c) of this section, but prior to its receipt of the written request of the Federal agency, the Seller shall continue to retain title in that country.

(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 proceeding on, a patent on a subject invention.

(e) *Minimum rights to Seller and protection of the Seller right to file.* (1) The Seller will 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 (c) of this section. The Seller's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Seller is a party and includes the right to grant sublicenses of the same scope to the extent the Seller was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Seller's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonable accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Seller a written notice of its intention to revoke or modify the license, and the Seller will be allowed 30 days (or such other time as may be authorized by NASA for good cause shown by the Seller) after the notice to show cause why the license should not be revoked or modified. The Seller has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and 14 CFR Subpart 1245.1, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Seller action to protect the Government's interest.* (1) The Seller agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and,

(ii) convey title to the Federal agency when requested under paragraph (d) of this section and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Seller agrees to require, by written agreement, its employees, other than clerical and nontechnical 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 contract in order that the Seller can comply with the disclosure provisions of paragraph (c) of this section, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this section. The Seller shall instruct such 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) The Seller will notify NASA through Boeing of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Seller agrees to 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 (identify the agreement) awarded by NASA. The Government has certain rights in the invention."

(5) The Seller shall provide Boeing the following:

(i) A listing every 12 months (or such longer period as Boeing may specify) from the date of the Agreement, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the Agreement listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number, and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Seller has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(g) *Subcontracts.* (1) Unless otherwise authorized or directed by Boeing, the Seller shall—

(i) Include this clause (Patent Rights—Retention by the Seller (Small Business)), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization; and

(ii) Include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause (Patent Rights—Retention by the Seller (Large Business)).

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Seller—

(i) Shall promptly submit a written notice to Boeing setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of Boeing.

(3) The Seller shall promptly notify Boeing in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of Boeing, the Seller shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(4) The subcontractor will retain all rights provided for the Seller in the clause under paragraph (g)(1)(i) or (g)(1)(ii) of this section, whichever is included in the subcontract, and the Seller will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(h) *Reporting on utilization of subject inventions.* The Seller agrees to submit, on request, 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 the Seller or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, 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 the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (i) of this section. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Seller.

(i) *Preference for United States manufacture.* The Seller agrees that any products embodying subject inventions or produced through the use of subject inventions shall be manufactured substantially in the United States. However, in individual cases, the requirement to manufacture substantially in the United States may be waived by the Assistant Administrator for Procurement (Code HS) with the concurrence of the Associate General Counsel for Intellectual Property upon a showing by the Seller that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Seller agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Seller, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request NASA has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Seller or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(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 specified by Federal regulations 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 (i) of this section 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) *Special provisions for Agreements with nonprofit organizations.* If the Seller is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has one of its primary

functions the management of inventions; *provided*, that such assignee will be subject to the same provisions as the Seller;

(2) The Seller will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Seller with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Seller determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; *provided* that the Seller is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Seller. However, the Seller agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Seller will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Seller could take reasonable steps to more effectively implement the requirements of this paragraph.

(l) *Documentation submissions.* A copy of all submissions or requests required by this clause, plus a copy of any reports, manuscripts, publications, or similar material bearing on patent matters, shall be sent to the installation Patent Counsel through Boeing in addition to any other submission requirements in the agreement. If any reports contain information describing a "subject invention" for which the Seller has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical series, in order for a patent application to be filed, provided that the Seller identify the information and the "subject invention" to which it relates at the time of submittal. If required by Boeing, the Seller shall provide the filing date, serial number and title, a copy of the patent application, and a patent number and issue date for any "subject invention" in any country in which the Seller has applied for patents.

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

a) The parties agree that access to technology developments under this Agreement by foreign firms or institutions must be carefully controlled. For purposes of this clause, a transfer includes a sale of the company, or sales or licensing of the technology. Transfers include:

(1) Sales of products or components,

(2) Licenses of software or documentation related to sales of products or components, or

(3) Transfers to foreign subsidiaries of the Recipient for purposes related to this Agreement.

(b) The Seller shall provide timely notice to Boeing in writing of any proposed transfer of technology developed under this Agreement. If NASA determines that the transfer may have adverse consequences to the national security interests of the United States, or to the establishment of a robust United States industry, Boeing and the Seller shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer.

6. Liability and Risk of Loss

(a) With regard to activities undertaken pursuant to this agreement, neither party shall make any claim against the other, employees of the other, the other's related entities (e.g., contractors, subcontractors, etc.), or employees of the other's related entities for any injury to or death of its own employees or employees of its related entities, or for damage to or loss of its own property or that of its related entities, whether such injury, death, damage or loss arises through negligence or otherwise, except in the case of willful misconduct.

(b) To the extent that a risk of damage or loss is not dealt with expressly in this agreement, each party's liability to the other party arising out of this Agreement, whether or not arising as a result of an alleged breach of this Agreement, shall be limited to direct damages only, and shall not include any loss of revenue or profits or other indirect or consequential damages.

7. Cost Principles and Accounting Standards

The expenditure of Government funds by the Seller and the allowability of costs recognized as a resource contribution by the Seller shall be governed by the FAR cost principles implemented by FAR Parts 30, 31, and 48 CFR part 99. (If the Recipient is a consortium which includes non-commercial firm members, cost allowability for those members will be determined as follows: Allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.")

8. Civil Rights

Work on NASA cooperative agreements is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. 2000d-l), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 *et seq.*), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and the NASA implementing regulations (14 CFR parts 1250, 1251, 1252 and 1253).

9. Clean Air – Water pollution Control Acts

If this agreement or supplement thereto is in excess of \$100,000, the Seller agrees to notify Boeing promptly of the receipt, whether prior or subsequent to the Seller's acceptance of this agreement, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this agreement or any subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of an agreement in excess of \$100,000, the Seller—

(a) Stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance;

(b) Agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.* as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.* as amended by Public Law 92-500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the cooperative agreement; and

(c) Agrees to include the criteria and requirements of this clause in every subcontract hereunder in excess of \$100,000, and to take such action as Boeing may direct to enforce such criteria and requirements.

10. Retention and Examination of Records

Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this agreement shall be retained for a period of 3 years, except that records for nonexpendable property acquired with agreement funds shall be retained for 3 years after its final disposition and, if any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The retention period starts from the date of the submission of the final invoice. The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient and of subcontractors to make audits, examinations, excerpts, and transcripts. All provisions of this clause shall apply to any subcontractor performing substantive work under this agreement.

11. Subcontracts

(a) Sellers are not authorized to issue grants or cooperative agreements.

(b) NASA Agreement Officer consent (obtained through Boeing) is required for subcontracts over \$25,000.

(c) If not submitted by the Seller and accepted by NASA in the original proposal, Seller shall provide the following information to the Agreement Officer:

(1) A copy of the proposed subcontract.

(2) Basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) Basis for award cost or award price.

(d) The Seller shall utilize small business, veteran-owned small business, service-disabled veteran-owned small business, historically underutilized small business, small disadvantaged business, women-owned business concerns, Historically Black Colleges and Universities, and minority educational institutions as subcontractors to the maximum extent practicable.