



CLAUSE 5049 (10/1/02)

**Future Combat Systems (FCS) Program
Common Terms and Conditions**

Prime Contract No.: MDA972-02-9-0005
Customer: DARPA/Army
Program: Future Combat Systems (FCS)
Subject: Concept and Technology Development (CTD) Phase
Prime Contract Type: Section 845, Other Transaction

Revision: 01

Date: September 16, 2002

 **BOEING**
REVISIONS

Date	Revision	Author
9/16/02	01 – This revision updated Paragraph P, DATA RIGHTS, to reflect changes made pursuant to modification P00003 to Boeing prime contract MDA972-02-9-0005	J. D. Galloway

The applicable Terms and Conditions are as follows:

Paragraphs A-C apply only if the supplier will perform non-office type work on Boeing premises that involve maintenance, repair and work of that nature.

A. SUPPLIER REVIEW OF MATERIAL SAFETY DATA SHEETS

Before, or upon commencing work, Seller shall review all Material Safety Data Sheets for hazardous materials used or stored and any applicable safety measures to be employed in the areas of work. (This data will be provided to the Seller by the Buyer's Materiel Representative.) This requirement is in accordance with OSHA Hazard Communication Standard, 29 CFR 1910.1200.

B. HAZARDOUS CHEMICALS LIST

Prior to commencing work, Seller shall provide a list of hazardous chemicals, if any, to be used on site and corresponding Material Safety Data Sheets to the Buyer's Safety Organization through the appropriate Buyer representative.

C. HAZARDOUS WASTE

If in the performance of services on Buyer's property, Seller generates any hazardous substances, or hazardous wastes, or dangerous or extremely hazardous wastes (hereinafter "Hazardous Substances"), unless specifically directed otherwise by Buyer, these Hazardous Substances will be disposed by Buyer. Immediately upon the generation of such Hazardous Substances, the Seller shall advise the using organization's environmental control office. The Seller is hereby directed to coordinate with the using organization's environmental control office to properly package and manage these Hazardous Substances. Seller is further obligated to transport the Hazardous Substances, if so directed by the environmental control representative, to the proper "on-site" storage location for eventual disposal by Buyer. Should the Seller leave any Hazardous Substances improperly packaged, or abandoned, Seller shall be liable for all fines and/or expenses associated with (1) the improper storage or abandonment; (2) repackaging to comply with applicable federal, state, and local laws; and (3) the remediation of any contamination caused by such improper packaging or such abandonment.

For purposes of this agreement, the definitions of the terms "hazardous substance," "hazardous waste," "dangerous or extremely hazardous wastes," shall be those used in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq.; The Resource Conservation Recovery Act, 42 U.S.C., 6901 et seq., and its applicable state law equivalent; and/or the Washington State Model Toxics Control Act if this purchase order is performed in the State of Washington.

D. BASE SUPPORT

Insofar as possible, Seller shall avoid incurring direct or indirect costs involving the duplication of work, or support capacity available at or through any Government installation involved in the performance of this contract. Therefore, Seller agrees to utilize or cause to be utilized all available Government or Government-controlled working space, equipment, supplies, materials, services, or other support (including communication services) at or available through any Government installation or office where work under this contract is performed. Unless otherwise stipulated in this contract, such items will be made available in reasonable amounts on a no-charge-for-use basis, and the value thereof shall be part of the consideration for this contract. Seller shall report to Buyer any inadequacies or nonavailability to items contemplated hereby, together with a recommended plan for obtaining the

requested items, and Buyer shall determine the validity and extent of the requirement and the manner in which any approved requirement will be filled (as by purchase, rental, lease or otherwise).

Seller shall neither purchase nor otherwise furnish any requirement covered by this clause, nor authorize others to do so, without written approval of Buyer as to the terms of the proposed purchase or other arrangement. Items of a capital nature shall not be purchased under authority of this clause.

E. PERFORMANCE OF WORK ON GOVERNMENT PREMISES

Any work under this contract which is performed by Seller or any of its subcontractors on premises under Government control is subject to all provisions of this contract governing such work and to the following:

1. All Seller and subcontractor personnel shall at all times conspicuously display a distinctive badge provided by Seller, identifying such personnel as employees of Seller and shall observe and otherwise be subject to such security regulations as are in effect for the particular premises involved.
2. Except as may be otherwise specified in this contract, Seller shall furnish all supplies, material and equipment required for the work to be performed.
3. Seller shall provide direct supervision of its own employees but shall not supervise or accept supervision from any Government personnel.
4. Seller shall designate to Buyer in writing an on-the-premises representative to serve as point of contact for Seller with the Contracting Officer or his duly authorized representative.
5. Performance of work on Government premises shall be confined to the area(s) specified by the Contracting Officer or his duly authorized representative.

Paragraph F. applies only if the potential purchase contract sum allots (fund limited) unless there is a valid program reason for limiting our obligation.

F. LIMITATION OF BUYERS OBLIGATION

1. Of the total price of this contract the sum set forth in (9) below is presently available for payment and allotted to this contract. It is anticipated that from time to time additional funds will be allotted to this contract until the total price of these items is allotted.
2. The Seller agrees to perform or have performed work on the items up to the point at which, in the event of termination of this contract pursuant to the "Termination - Convenience" clause of this contract, the total amount payable by the Buyer (including amounts payable in respect of subcontracts and settlement costs) pursuant to paragraph (5) of the clause would, in the exercise of reasonable judgment by the Seller, approximate the total amount at the time allotted to the contract. The Seller will not be obligated to continue performance of the work beyond that point. The Buyer will not be obligated in any event to pay or reimburse the Seller in excess of the amount from time to time allotted to the contract, regardless of anything to the contrary in the "Termination - Convenience" clause of this contract.
3. It is contemplated that the funds presently allotted to this contract will cover the work to be performed, as limited by the provisions of (2) above until the date set forth in (9) below. If funds allotted

are considered by the Seller to be inadequate to cover the work to be performed until the above date or an agreed substitute date, the contractor will notify the Buyer in writing when, within the next 30 days, the work will reach a point at which, in the event of termination of this contract pursuant to the "Termination - Convenience" clause of this contract, the total amount payable by the Buyer (including amount payable in respect of subcontracts and settlement costs), will approximate 85 percent of the total amount then allotted to the contract. The notice will state (i) the estimated date when that point will be reached and (ii) the estimated amount of additional funds required to continue performance to the above date or an agreed substitute date, advise the Buyer in writing as to the estimated amount of additional funds which will be required for the timely performance of the contract for a further period as may be specified in the contract or otherwise agreed to by the parties. If after such latter notification, additional funds are not allotted by the date above written, or by an agreed substitute date, the Buyer will, upon written request of the Seller, terminate this contract on that date or the date set forth in the request, whichever is later, pursuant to the provisions of the "Termination - Convenience" clause of this contract.

4. When additional funds are allotted from time to time for continued performance of the work under this contract, the parties will agree as to the applicable period of contract performance which will be covered by the funds. The provisions of (2) and (3) above will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be amended accordingly.

5. If the Seller incurs additional costs or is delayed in the performance of the work under this contract solely by reason of failure of the Buyer to allot additional funds in amounts sufficient for timely performance of this contract, and if additional funds are allotted, an equitable adjustment

will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items or in the time of delivery or both.

6. The Buyer may at any time prior to termination and, with the consent of the Seller, after notice of termination allot additional funds for this contract.

7. The provisions of this clause with respect to termination will not be deemed to limit the rights of the Buyer under the clause entitled, "Cancellation - Default." The provisions of this clause are limited to the work on and allotment of funds for the items set forth in (1) above. This clause will become inoperative upon the allotment of funds for the total price of the work except for rights and obligations then existing under this clause.

8. Nothing in this clause affects the right of the Buyer to terminate this contract pursuant to the "Termination - Convenience" clause of this contract.

9. The sum allotted and the contemplated date through which such funds will cover work to be performed are set forth elsewhere in this contract.

G. AUDIT RIGHTS

For the purpose of evaluating Seller's incurred costs with respect to Seller's invoices for cost reimbursement, progress payments, Seller's claim(s) arising out of a termination or partial termination of this contract, and Seller's proposals for incentive price revisions or elements of Seller's change proposals which involve unique claims (e.g., obsolescence costs) which must be verified by audit, Seller agrees that Buyer or any of its duly authorized representatives shall have access to and the right to audit any directly pertinent books, documents, papers, and records which support direct and indirect costs.

H. EXAMINATION OF PROPOSED COSTS

For the purpose of evaluating Seller's proposed costs with respect to proposals, change proposals, and proposals for follow-on procurement, Seller agrees that Buyer or any of its duly authorized representatives may subject such proposals or reports and related financial data to analysis type examination at Seller's facility. For such purposes, Seller shall make available all data supporting direct and indirect costs.

I TAXES

Buyer warrants: (i) that title to items purchased hereunder shall pass to and vest in the United States Government upon delivery by Seller under the terms of the Buyer's Government contract or (ii) that the items are purchased for resale, and that state and local sales and use taxes are not applicable to this purchase; or that the taxing authority has authorized Buyer to purchase items without payment of sales or use taxes to Seller. Buyer's authorization or registration numbers for sales and use taxes are:

STATE	REGISTRATION NO.	STATE	REGISTRATION NO.
ALABAMA	PERMIT NO. 103	NEBRASKA	01-3072142
CALIFORNIA	SS-OH-30-001106	NEVADA	0170-736-01 16 95
COLORADO	80-04609-0000	NEW JERSEY	YT-910-425-694/001
CONNECTICUT	3001070-000	NEW MEXICO	01-088668-00
DST OF COL	9270-75833-01	NEW YORK	91-0425694C
FLORIDA	78-45-007177-63	N CAROLINA	901 9 101 48209
GEORGIA	067-69-08263-3	N DAKOTA	28031-00
HAWAII	10006656	OHIO	97-119379
ILLINOIS	0375-3239	OKLAHOMA	034115
INDIANA	003672425-001-8	PENNSYLVANIA	99-53283-1
KANSAS	10020327	S DAKOTA	53-021933-UT-1
KENTUCKY	098857	TENNESSEE	2-910425694-002-6
LOUISIANA	0347518-001W	TEXAS	1-91-425694-6
MARYLAND	02242329	UTAH	90983
MASSACHUSETTS	910-425-694-02	VIRGINIA	000-244516-6
MICHIGAN	91-042-56-94	WASHINGTON	C178-005-030
MINNESOTA	9060204	WISCONSIN	UT09367
MISSOURI	10536833	WYOMING	25000752

J. OPTION ADJUSTMENTS

In addition to other requirements of the "Changes" clause of this contract, each change proposal submitted pursuant to such clause shall include Seller's proposal for adjustment of the prices set forth in the "Options" clause of this contract. If Buyer orders or accepts such change, the contract price and the contract option prices shall be adjusted accordingly.

Paragraph K. (Insurance) applies only to non-office type work.

K. INSURANCE REQUIREMENTS

1. Seller shall procure and maintain during the entire period of its performance under this contract the minimum insurance indicated below:

The indication of minimum insurance coverage limits does not act in any way to limit the liability of the supplier.

TYPE	AMOUNT
Worker's Compensation Employer's Liability	Statutory Limits \$500,000
Comprehensive General Liability including contractual	
Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
or Combined Single Limit Bodily	\$1,000,000 Injury and Property Damage
Comprehensive Automobile	
Liability Bodily Injury	\$1,000,000 per person or per accident
Property Damage	\$1,000,000 per accident
or \$1,000,000 combined single limit bodily injury and property damage.	

2. Prior to the commencement of work hereunder, Seller shall furnish to Buyer a certificate of the above-required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellations or any material change in the policies adversely affecting the interests of the Buyer or Government in such insurance shall not be effective until 30 days after written notice thereof to the Buyer.

3. Seller agrees to insert the substance of this clause, including this paragraph 3, in all subcontracts hereunder, which involve work on premises of the Buyer or the Government. The Seller shall maintain a copy of all subcontractor's proofs of insurance, and shall make copies available to the Contracting Officer upon request.

L. ASBESTOS FREE DUNNAGE

Each package and/or container shipped to Buyer is to be free of any asbestos-containing vermiculite and/or any asbestos-containing material as dunnage. Seller hereby warrants to Buyer that the vermiculite and any other dunnage is asbestos-free.

M. STATUS REVIEWS

Buyer or Contracting officer (or his representative), with the concurrence of Buyer, may visit Seller's facilities to review progress, discuss problems/failures and witness testing pertaining to the requirements of this contract. Seller shall provide adequate information in response to reasonable requests of Buyer or Contracting Officer or his authorized representative on contract performance as required.

N. CONTRACT PROVISIONS

Special provisions and general provisions forms referenced in this contract can be found at the following website: www.boeing.com/companyoffices/doingbiz

Paragraph O. applies only if government property will be used in performance of a potential purchase contract. Proposal price should not include any cost for Paragraph O. provision if a contract will not require or require government property.

O. GOVERNMENT FURNISHED EQUIPMENT, PROPERTY, INFORMATION, FACILITIES, AND SERVICES AND BOEING ACQUIRED PROPERTY

1. The Government Equipment, Property, Information Facilities, and Services listed below shall be provided upon the written approval of the cognizant Contracting Officers through the period of performance of this purchase contract. Seller will provide assistance, and where appropriate, formally request that the Government office with cognizance over the item release or provide to Seller the requested item within the desired timeframe.

2. Title to Government-furnished property will remain with the Government. Seller will use the Government-furnished property only in connection with this purchase contract. Boeing will maintain adequate property control records in accordance with sound industry practice and will make such records available to the Government. Seller, at a minimum, will return Government-furnished property as received less normal wear and tear.

3. Upon delivery of Government-furnished property to Seller, the Government retains the risk and responsibility for its loss, destruction or damage, including incidental expenses related to such loss, destruction or damage, except for damage that results from willful misconduct or lack of good faith on the part of Sellers.

Seller shall be responsible for loss or destruction of, or damage to, the Government property provided under this purchase contract.

- (a) That results from a risk expressly required to be insured under this purchase contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
- (b) That results from a risk that is in fact covered by insurance or for which Seller is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
- (c) For which Seller is otherwise responsible under the express terms of this purchase contract; or
- (d) That results from willful misconduct or lack of good faith on the part of Seller's managerial personnel.

4. The term 'Seller's managerial personnel' as used in paragraph 3 of this article, means any of the Seller's directors, officers, managers, superintendents or equivalent representatives who have supervision or direction of -

- (a) All or substantially all of the Seller's business;
- (b) All or substantially all of the Seller's operation at any one plant, or separate location at which the purchase contract is being performed; or
- (c) A separate and complete major industrial operation connected with performing this purchase contract.

5. Upon completing this purchase contract, Seller will follow the instructions of Boeing regarding the disposition of all Government-furnished property not consumed in performing this purchase contract or previously delivered to the Government. Seller will prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by Boeing. The net proceeds of any such disposal will be credited to or used in the performance of this purchase contract. Seller shall identify any such proceeds in writing to Boeing.

6. Rent-free use of any facilities or other property under the current Government contract is hereby authorized for the term of this purchase contract.”

Requested Government Equipment, Property, Information, Facilities, or services:

GFP Item #	Government Property Description	IPT	Need Date	Program Impact if Not Available

P. DATA RIGHTS

1. Definitions

(a). ‘Government Purpose Rights,’ as used in this article, means rights to use, duplicate, or disclose Data, 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 include competitive procurements but does not include any commercial purpose or use. The Government Purpose Rights granted herein are without expiration.

(b). ‘Data,’ as used in this article, means recorded information, regardless of form or method of recording, of a scientific or technical nature, which includes but is not limited to, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under the ‘Patent Rights’ clause.

(c). ‘Software’ means computer software documentation, computer programs, object code listings, source code, and related materials that would enable the software to be reproduced, recreated or recompiled.

(d). “Limited Rights”, as used as used in this Article means the rights to use, modify, reproduce, release, perform, display, or disclose 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 Data outside the Government, or authorize the Data to be used by another party unless required by law. However, such express limitation shall not apply to SETA Contractors under contract to the Government for the purpose of providing systems engineering and technical assistance services and/or administrative support services; provided that, the parties to whom this Data is disclosed shall have a legitimate need-to-know, and is under contract subject to DFARS clause 252.227-7025 entitled,

“Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive

(e). "Restricted Rights", as used in this Article apply only to Software as defined in this Agreement and mean the Government has license rights to --

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this Agreement;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related Software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this article;

(iii) Make the minimum number of copies of the Software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify Software provided that the Government may --

(A) Use the modified Software only as provided in paragraphs (i) and (iii) of this article; and

(B) Not release or disclose the modified Software except as provided in paragraphs (ii), (v) and (vi) of this article;

(v) Permit contractors or subcontractors performing service contracts in support of this or a related contract to use Software to perform their required tasks under their service contract; diagnose and correct deficiencies in a computer program; to modify software to enable a computer program to be combined with, adapted to or merged with other computer programs; or when necessary to respond to urgent tactical situations, provided that --

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to DFARS clause 252.227-7025 entitled, "Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends."

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the Software, or use Software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the Software when necessary to perform the repairs or overhaul, or to modify the Software to reflect the repairs or overhaul made, provided that --

(A) Such contractors or subcontractors are subject to DFARS clause 252.227-7025 entitled, "Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends."

- (B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the Software, or use Software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph(iv) of this clause, for any other purpose.

2. Allocation of Principal Rights

(a). This purchase contract shall be performed with mixed Boeing and Government funding. The Parties agree that in consideration for funding, Seller intends to reduce to practical application items, components and processes developed under this purchase contract.

(b). Seller agrees to retain and maintain in good condition until five (5) years after completion or termination of this purchase contract, all Data and Software developed under this purchase contract necessary to achieve practical application. In the event of exercise of the Government's March-in Rights as set forth under the 'Patent Rights' clause, Seller agrees, upon written request from the Government, to deliver at no additional cost to the Government, all Data and Software developed under this purchase contract necessary to achieve practical application within sixty (60) calendar days from the date of the written request.

(c). Seller agrees that, with respect to Data and Software developed under this purchase contract necessary to achieve practical application, the Government has the right to require Seller to deliver all such Data and Software to the Government in accordance with its reasonable directions if the Government determines that:

(1) Such action is necessary because Seller or assignee has not taken effective steps within five (5) years after completion or termination of this purchase contract, consistent with the intent of this purchase contract, to achieve practical application of the technology developed during the performance of this purchase contract.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Seller, assignee, or their licensees within five (5) years after completion or termination of this purchase contract; or

(3) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Seller, assignee, or licensees within five (5) years after completion or termination of this purchase contract.

(d). With respect to all Data and Software developed or used during performance of this purchase contract, regardless of funding source, the Government will receive Government Purpose Rights. In the event of the Government's exercise of its right under subparagraph 2(c) of this Article, the Government shall receive Government Purpose Rights.

3. Marking of Data or Software

Pursuant to Paragraph 2(d) above, any Data or Software delivered or provided under this purchase contract shall be marked with the following legends:

'GOVERNMENT PURPOSE RIGHTS

The Government is granted Government Purpose Rights to this Data or Software. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement MDA972-02-9-0005 between The Boeing Company and the Government.'

Pursuant to subparagraph 4.b below, any Data or Software delivered or provided under this Agreement shall be marked with the following legends:

“LIMITED RIGHTS”

“The Government is granted Limited Rights to this Data. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement [MDA972-02-9-0005](#) between The Boeing Company and the Government.”

"RESTRICTED RIGHTS"

“The Government is granted Restricted Rights to this Software. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement [MDA972-02-9-0005](#) between The Boeing Company and the Government.”

4. Lower Tier Agreements

(a) Seller will use reasonable efforts to flow down the provisions of this Article to its subcontractors. Seller shall include this article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for work performed on this purchase contract. Seller will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Data or Software.

(b) If any subcontractor requires providing to the Government Data or Software rights less than those described in subparagraph 2(d), above, Boeing will notify the Government Agreements Officer prior to entering into the subcontracts. Such a notification shall be mutually discussed by the parties and acceptance of lesser rights shall require a bi-lateral modification to this purchase contract. All such Data or Software items shall be identified and documented in Table B below.

Data or Software to be Furnished with Restrictions	Basis for Assertion	Asserted Rights Category	Name of Person Asserting Restrictions

Table B – Data or Software to be Furnished with Restrictions”

Q. FOREIGN ACCESS TO TECHNOLOGY

Definition

(a) ‘Foreign Firm or Institution’ means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this purchase contract, 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.

(b) Seller will notify Boeing and the Government of its intention to export any technology developed under this purchase contract 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.

2. Lower Tier Agreements

Seller shall include this article, suitably modified, to identify the parties, in all subcontracts or lower tier agreements, for experimental, developmental, or research work.

Paragraph R applies only if (i) the proposed price and purchase contract exceeds \$100,000 and (ii) the period of performance extends beyond one year.

R. SUPPLIER FINANCIAL DATA

If requested, Supplier shall provide financial data, on a quarterly basis, or as requested, to the Boeing Credit Office for credit and financial condition reviews. Such data shall include, but not be limited to, balance sheets, schedule of accounts payable and receivable, major lines of credit, creditors, income statements (profit and loss), cash flow statements, firm backlog, and headcount. Copies of such data are to be made available within 72 hours of any written request by Boeing. All such information shall be treated as confidential.

S. PATENT RIGHTS

1. Definitions

(a) 'Invention' means any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(b) 'Made' when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(c) 'Practical application' 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 capable of being utilized and that its benefits are available to the U.S. Government, or to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(d) 'Subject invention' means any Seller or subcontractor invention conceived or first actually reduced to practice in the performance of work under this purchase contract, or any Seller or subcontractor invention made prior to performance of this purchase contract or outside the scope of work performed under this purchase contract that will be practiced during performance of this purchase contract.

2. Allocation of Principal Rights

Unless Seller shall have notified Boeing and the Government (in accordance with subparagraph C.2 below) that Seller does not intend to retain title, 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 Seller retains title, the Government will have a non-exclusive, nontransferable, irrevocable, paid-up license for U.S. Government, not commercial, purposes only to practice or have practiced on behalf of the United States the subject invention throughout the world. Notwithstanding the above, Seller may elect to provide to other parties any full or partial rights that it has retained.

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

(a) The Seller shall disclose each subject invention to Boeing and the Government within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to Boeing and the Government will be in the form of a written report and will identify the purchase contract under which the invention was made and the identity of the inventor(s). It will 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.

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

(c) 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. Seller may elect to file patent applications in additional countries (including the European Patent Office and the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application or six (6) 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.

(d) Requests for extension of the time for disclosure, election, and filing under paragraph 3 of this Article, may, at the discretion of Boeing and the Government, and after considering the position of Seller, be granted.

4. Conditions When the Government May Obtain Title

Upon Boeing and the Government's written request, Seller shall convey title to any subject invention to the Government under any of the following conditions:

(a) If Seller fails to disclose or elects not to retain title to the subject invention within the times specified in paragraph 3 of this Article; provided, that the Government 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.

(b) In those countries in which Seller fails to file patent applications within the times specified in paragraph 3 of this Article; provided, that if Seller has filed a patent application in a country after the times specified in paragraph 3, of this Article, but prior to its receipt of the written request by Boeing and the Government, the Seller shall continue to retain title in that country; or

(c) 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 provided the U.S. Government will assume such obligation.

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

(a) Seller shall retain a non-exclusive, royalty-free license, with the right to grant sublicenses, throughout the world in each subject invention to which the Government obtains title, except if Seller fails to disclose the invention within the times specified in paragraph 3 of this Article. The Seller license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of Seller 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 purchase contract was awarded. The license is transferable only with the approval of the Government, except when transferred to the successor of that part of the business to which the invention pertains. The Government's approval for license transfer will not be unreasonably withheld.

(b) The Seller's domestic license may be revoked or modified by Boeing and the Government 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 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 Boeing and the Government to the extent Seller, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(c) Before revocation or modification of the license, Boeing and/or the Government will furnish 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.

Action to Protect the Government's Interest

(a) Seller agrees to execute or to have executed and promptly deliver to Boeing and the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which Seller elects to retain title, and (ii) convey title to the Government when requested under paragraph D of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.

(b) Seller agrees to require, by written agreement, that employees of Seller, other than clerical and non-technical employees, agree to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters and in a format acceptable to Seller, each subject invention made under this purchase contract in order that Seller can comply with the disclosure provisions of paragraph 3 of this Article. Seller shall instruct 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.

(c) Seller shall notify Boeing and the Government 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, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

(d) 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. MDA972-02-9-0005 awarded by DARPA. The Government has certain rights in the invention.’

Lower Tier Agreements

(a) Seller will use reasonable efforts to flow down the provisions of this Article to its subcontractors. Seller shall include this Article, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work. Seller's subcontractors will retain all rights provided for Seller in this Article, and Seller will not, as part of the consideration for awarding the purchase contract, obtain rights in the subcontractor's Subject Inventions.

(b) If any proposed subcontractor, including Seller, requires providing to the Government patent rights less than those described in paragraph 2 above, Boeing will notify the Government Agreements Officer prior to entering into the subcontracts. Such notification shall be mutually discussed by the parties and acceptance of lesser rights shall require a bi-lateral modification to this agreement. Each of these inventions shall be identified and documented in **Table A** below.

Inventions	Basis for Assertion	Asserted Rights Category	Name of Person Asserting Restrictions

Table A – Inventions

6. Reporting on Utilization of Subject Inventions

Seller agrees to submit, during the term of the purchase contract, upon written Boeing and/or Government request, but no more than annually, a report 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 Seller, and such other data and information as Boeing and/or the Government may reasonably specify. Seller also agrees to provide additional reports as may be requested by Boeing and the Government in connection with any march-in proceedings undertaken by Boeing and the Government in accordance with paragraph 10 of this Article. Consistent with 35 U.S.C. § 202(c)(5), Boeing and the Government agree it will not disclose such information to persons outside Boeing and the Government without permission of Seller.

9. Preference for American Industry

Notwithstanding any other provision of this clause, 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 Boeing and the Government upon a showing by 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.

10. March-in Rights

Seller agrees that, with respect to any subject invention in which it has retained title, Boeing (on behalf of the Government) and the Government have the right to require 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 Seller, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Government determine that:

- (a) Such action is necessary because the Seller or assignee has not taken effective steps, consistent with the intent of this purchase contract, to achieve practical application of the subject invention within five (5) years from the date of disclosure;
- (b) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Seller, assignee, or their licensees within five (5) years from the date of disclosure;
- (c) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Seller, assignee, or licensees within five (5) years from the date of disclosure; or
- (d) Such action is necessary because the agreement required by paragraph (I) 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.

11. Opportunity to Cure

Certain provisions of this Article provide that the Government may gain title or license to a Subject Invention by reason of Seller's action, or failure to act, within the times required by this article. Prior to claiming such rights (including any rights under this Article, paragraph J. March in Rights), Boeing and/or the Government will give written notice to Seller of the Government's intent, and afford Seller a reasonable period of time to cure such action or

failure to act. The length of the cure period will depend on the circumstances, but in no event will be less than sixty (60) days. Seller may also use the cure period to show good cause why the claiming of such title or right would be inconsistent with the intent of this purchase contract in light of the appropriate timing for introduction of the technology in question, the relative funding and participation of the Parties in the development, and other factors.”

S. OPTIONS

For the considerations contained in this contract, buyer shall have the right and option to purchase, and seller hereby agrees to sell to buyer upon receipt of buyer's notice exercising the option, the following item(s), within the quantities and to the schedule(s) set forth below, and upon the terms and conditions and other provisions of this contract. Buyer may exercise any or all of the foregoing option(s) by issuance of said notice(s) not later than the date(s) shown in the column entitled "options exercise date(s)", below. Seller's failure to meet contract performance schedules or milestones leading up to buyer's decision to exercise the following option(s) shall result in a day-for-day slide in the option exercise date(s). Each proposal submitted by seller pursuant to the "changes" clause of this contract shall include seller's proposed adjustment, if any, to the unit price(s) set forth below, directly caused by the changes(s) to which such proposal relates. Seller shall not be entitled to any adjustment of these unit price(s) beyond that negotiated by buyer and seller as a result of such proposal.

Quantity	Item	Unit Price	Schedule option	Exercise Date(s)

T. EXPORT REQUIREMENTS - U.S. SUPPLIERS

Technical data provided, activities undertaken, and articles produced in support of this purchase contract may come under the purview of U.S. export regulations arms export control act (Title 22, U.S.C., Sec. 2751, Et Seq.) Or the export administration act of 1979, as amended, (title 50, U.S.C., App. 2401, Et Seq.). It is the responsibility of the recipient of this purchase contract to ensure their compliance with all applicable U.S. export regulations.

U. CIVIL RIGHTS ACT

This purchase contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) relating to nondiscrimination in employment.

V. DEBARMENT DISCLOSURE

By execution of this Purchase Contract Seller confirms that in accordance with its earlier written disclosure that neither the Seller nor its principals is debarred, suspended or proposed for debarment by the Federal Government.

W. CONTRACTUAL AUTHORITY

Seller's performance under this purchase contract shall be subject to technical direction by the individual(s) designated in writing by the Supplier Management Procurement Agent. As used herein, technical direction is limited to information provided to the Seller, which clarifies,

details, or otherwise completes the general description of tasks set forth in the Statement of Work. The direction may not be of such a nature as to change the price, period of performance, or any other provision of this contract. Only the Supplier Management Procurement Agent has the authority to make contractual modifications or commitments.

X. SOFTWARE DEVELOPMENT SAFEGUARDS

Supplier will ensure that Future Combat Systems (FCS) software will be safeguarded from potential terrorists or potential mishaps from three perspectives: business processes, engineering processes, and software reliability.

Y. THIRD-PARTY SOFTWARE ACQUISITION

In an effort to minimize the likelihood that terrorists can introduce malicious software during the development processes, suppliers will require in their supplier statements of work that any third party software supplier will provide the following:

- Evidence of compliance with International Traffic in Arms Regulations and the FCS program DD 254.
- Evidence of training of their software developers in relevant Information Assurance and trusted software development topics using materials and standards that are in accordance with applicable Federal standards.
- Evidence that their software development environment is protected by defense-in-depth technical, operational and physical information assurance controls to minimize the likelihood that their software development environment is breached by unauthorized insiders or outsiders.
- Evidence that they conduct multi-person team source code security reviews by competent software engineers to reduce the likelihood that unauthorized software has been inserted or obscured within the deliverable code and that they provide evidence of the thoroughness and efficacy of those reviews reducing the likelihood of insider collusion during the software development process.
- Evidence of rigorous and fully audited software change management and version control during development.
- Evidence that they have conducted independent (parties not involved in the development) verification and validation of the developed source code against security, as well as functional, interface, and performance requirements.
- Access to their software development environment to conduct periodic ad hoc inspections of their controls and ad hoc source code inspections as deemed needed.

Z. SOFTWARE RELIABILITY

Supplier will ensure that Future Combat Systems (FCS) software will be safeguarded from potential terrorists or potential mishaps from three perspectives: business processes, engineering processes, and software reliability.

Supplier will ensure that all software developments incorporate best practices and lessons learned from high-reliability applications in space, commercial, and military programs, developing safety and nuclear critical software. Key best practices are provided in **Figure Z-1**. Supplier will ensure that the software development was reviewed to identify best practices. that lessons learned from programs with mishaps contributed to software were also reviewed.

Figure Z-1

Key best practices produce reliable software that our soldiers' lives will depend on

Key best practices	ISS EPS	MM AVE	Shuttle	FC S
1. Trace of Requirements from High level to Low Level	X	X	X	X
2. Defect Prevention	X	X	X	X
3. Root Cause Analysis and Fault Tree Analysis	X	X	X	X
4. Design Reviews for Establishing Baselines	X	X	X	X
5. Standard Software Product Documentation	X	X	X	X
6. QA as Part of Engineering Team	X	X	X	X
7. Peer Review and Inspections at all SW Development Stages	X	X	X	X
8. Formal Software Anomaly Reporting and Change System	X	X	X	X
9. Rigorous Change Management and Configuration Management	X	X	X	X
10. Failure Mode Effects Analysis	X	X	X	X
11. Redundancy Management	X		X	X
12. Testing for Failure Isolation, Detection, and Recovery	X	X	X	X
13. Unit- Level, CSCI- Level, System- Level Testing	X	X	X	X
14. Formal Qualification Test to each "Shall"	X	X	X	X
15. Worst Case Scenario Testing and Stress Testing	X	X	X	X
16. Monte Carlo Simulation/ High Fidelity Modeling and Simulation	X	X	X	X
17. Hardware and Software Integration Testing (including Prototype testing)	X	X	X	X
18. Verification and Validation (V& V) Review and Testing	X	X	X	X
19. System Testing	X	X	X	X
20. Customer Agency Review of Software Documentation, Testing	X	X	X	X
21. System Safety Hazard Analysis of Requirements, Design, Code	X	X	X	X
22. Site Process Training	X	X	X	X
23. Adequate Resources (Funding, Development Environment)	X	X	X	X

AA. SOFTWARE SOURCE CODE ESCROW ACCOUNT

Supplier agrees to establish an escrow account so that the source code will be available in the event their product is discontinued.

AB. COMMUNICATION WITH BOEING CUSTOMER

Boeing shall be solely responsible for all liaison, coordination, status requests and other communication with, and deliverables to, the Boeing Customer (i.e. the U. S. Army and DARPA), concerning the Future Combat Systems Program other agreement MDA972-02-9-

0005, this subcontract and any related lower tier subcontract. Subcontractor and its lower tier subcontractors shall not contact the Boeing Customer, or otherwise attempt to lobby, intervene in or status contract actions, or otherwise release information to Boeing Customers, either directly or indirectly (except through Boeing), without Boeings written direction. Subcontractor agrees that no public announcement will be made except through, or as approved in writing by Boeing.

Exceptions to the general rule stated above shall be made: (i) when an authorized Boeing person is present at a face-to-face meeting, or when an authorized Boeing person is involved as a participant in a telephone conversation, and consents to the communication; or, (ii) when a release relates solely to subcontractor's internal processes, proprietary rates expressly excluded from release to Boeing under subcontract terms and conditions, or Government allegations of the Subcontractor's or a lower tier subcontractor's misconduct; or, (iii) pursuant to a properly issued subpoena or other order of a court of competent jurisdiction; or, (iv) as is required to respond to questions initiated by a federal auditor in the course of a program audit. In the event an exception applies, written notice of any statement and/or questions and answers, will be provided by the subcontractor to the cognizant authorized Boeing Procurement Agent within two business days of the communication.

Further, except as required by law, no release of information, or confirmation or denial of same, with respect to the prime contract, this subcontract or a related lower tier subcontract, or the subject matters thereof, will be made by the subcontractor without the prior written approval of Boeing.

Subcontractor agrees to incorporate the substance of this clause, suitably adjusted, in all lower tier subcontracts under this subcontract.

AC. LIFE CYCLE SOFTWARE MANAGEMENT

During the CTD phase, the Subcontractor shall document and implement software management processes maintained at no less than CMM level 3 as specified by the Software Engineering Institute (SEI) for a Major Defense Acquisition Program (MDAP) program in accordance with DoDD 5000.2-R. The subcontractor shall ensure that their personnel and lower tier subcontractors performing major software development are in full compliance with CMM level 3.

AD. INVOICE PAYMENT INSTRUCTIONS

Payments. Payments are made from "original" invoices only. Fax copies, copies of invoices or statements will not be accepted. "duplicate original" invoices must not be sent without prior authorization from either your purchasing agent or accounts payable. Duplicate original invoices, altered invoices or computer prints of invoices not on your company letterhead must be signed and dated with full signature of the appropriate manager in your company. Initials will not be accepted. Third party billing is not allowed.

Payment terms. Payment terms begin upon receipt of an acceptable invoice by accounts payable. Payments are not scheduled based upon the date of your invoice.

Prepaid freight charges. When prepaid freight charges are authorized by your procurement agent, include a copy of each freight bill with the invoice if total charges exceed \$100.00. Freight charges over \$100.00 require approval from Boeing traffic prior to payment and will be

deducted from your invoice payment. It is not necessary to re-invoice. When the approval has been received, an additional check will be issued for the approval freight charge.

Invoice requirements. All invoices must contain the following information:

1. The name and address of the supplier which must match the name and address on the purchase contract.
2. Invoice number.
3. Invoice date.
4. Boeing purchase contract number. Only one purchase contract number per invoice.
5. Boeing purchase contract line item number (s) and description of item ordered (Boeing part number).
6. Quantity invoiced which must equal quantity shipped and cannot exceed quantity ordered.
7. Unit of measure. If the invoice billing unit of measure is different than the purchase contract order unit of measure, both units of measure must be included on the invoice.
8. Unit price which must agree with the purchase contract unit price. If the invoice billing unit price is different than the purchase contract order unit price, both unit prices must be included on the invoice.
9. Extended unit price. Each Boeing purchase contract line item must be subtotaled individually before tax, freight or any additional charges are listed. Each invoice must have a grand total which includes all charges.
10. Payment terms which must agree with the purchase contract payment terms.
11. Shipping information which includes shipment number, date of shipment and freight carrier.
12. Name and address where invoice payment is to be mailed. Name must agree with the purchase contract name.
13. Name, title, phone/fax number and mailing address of person to be notified in event of a defective invoice.

The purchase contract is the sole basis for your payment. Incorrect invoices will be returned unpaid. Accounts payable cannot authorize or negotiate any changes to the purchase contract. Please contact your procurement agent directly to resolve invoice discrepancies.

Payment inquiries. Accounts payable checks are generated once a week. Checks are prepared and mailed each Friday.

AE. SECURITY

This purchase contract will be provided protection as required by the appropriate security requirements required by contracts security classification specification, DD Form 254.

AF. BUSINESS SIZE CERTIFICATION

In accordance with seller's current business size certification (Form DO-6000-4195), or other information provided to the buyer, seller's business size has been established as set forth below. If this business size is not correct, seller shall immediately notify the buyer's supplier management.

Seller's current business size is: (retype and add fill-in)