

Common Terms and Conditions Guide
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PRELIMINARY
DAAE07-03-9-F001
FUTURE COMBAT SYSTEMS (FCS) SYSTEM DEVELOPMENT AND
DEMONSTRATION (SDD) AGREEMENT

- (a) The following contract clauses are incorporated by reference from the Federal Acquisition Regulation (FAR) and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller. Except as may be indicated otherwise in the subparagraphs below, "Contracting Officer" shall mean Grants Officer, "Administrative Contracting Officer" shall mean Administrative Agreements Officer, and "Agreement" shall mean the Future Combat Systems System Development and Demonstration Agreement. Any other typical terms not expressly included in this paragraph, contained within a FAR clause, shall be interpreted in terms of an Other Transaction Agreement, Section 845 contractual vehicle and not in terms of a FAR-based procurement contract.
- (1) 52.215-15 Pension Adjustments and Asset Reversions (DEC 1998). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR part 31. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.
 - (2) 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (OCT 1997). This clause applies only if under this contract certified cost or pricing data is required or preaward or postaward cost determinations are subject to FAR subpart 31.2. Buyer may withhold or recover from Seller such sums as the Contracting Officer withholds or recovers from Buyer because of liabilities of Seller or its subcontractors under this clause. "Contracting Officer" shall mean Buyer.
 - (3) 52.223-3 Hazardous Material Identification and Material Safety Data (DEC 1991). This clause applies only if Seller will deliver hazardous materials.
 - (4) 52.223-7 Notice of Radioactive Materials (JAN 1997). This clause applies only if this contract involves (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. "Contracting Officer" shall mean Buyer. In the blank in paragraph (a), insert "60 days."
 - (5) 52.225-8 Duty-Free Entry (FEB 2000). This clause applies only if supplies are be afforded duty-free entry or foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

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- (6) 52.227-1 Authorization and Consent (JUL 1995), Alternate I (APR 1984)
 - (7) 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996). This clause applies only if this contract exceeds \$100,000. A copy of each notice sent to the Government will be sent to Buyer.
 - (8) 52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 1984). This clause applies only if this contract will involve access to classified information.
 - (9) 52.227-11 Patent Rights – Retention by the Contractor (Short Form) (JUN 1997). This clause applies only if this contract is for experimental, developmental, or research work and Seller is a small business or nonprofit organization.
 - (10) 52.227-12 Patent Rights – Retention by the Contractor (Long Form) (JAN 1997). This clause applies only if this contract is for experimental, developmental, or research work and Seller is not a small business or nonprofit organization.
 - (11) 52.242-15 Stop Work Order (AUG 89). Change "90 days" and "30 days" to "100 days" and "80 days" respectively. "Contracting Officer" and "Government" shall mean Buyer. This clause applies only if this contract incorporates GP3 or GP4. If this contract incorporates GP3, in paragraph (a)(2) delete "the Default, or the Termination for Convenience of the Government, clause of this contract" and substitute in lieu thereof "the Termination for Convenience or Cancellation for Default clause of this contract." If this contract incorporates GP4, (i) in paragraph (a)(2) delete "the Default, or Termination for Convenience for the Government clause of this contract" and substitute in lieu thereof "the Termination/Cancellation clause of this contract" and (ii) in paragraph (b) delete "an equitable adjustment in the delivery schedule or contract price, or both" and substitute in lieu thereof "an equitable in the schedule, the cost, or the fee, or a combination thereof, and in any other terms of this contract that may be affected."
 - (12) 52.245-2 Government Property (DEC 1989). This clause is not applicable if this contract incorporates GP4.
 - (13) 52.246-9 Inspection of Research and Development (Short Form) (APR 1984)
- (b) The following contract clauses are incorporated by reference from the Department of Defense Federal Acquisition Regulation Supplement (DFARS) and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" shall mean Seller. Except as indicated otherwise in the subparagraphs below, "Contracting Officer" shall mean Grants Officer, "Administrative Contracting Officer" shall mean Administrative Agreements Officer, and "Agreement" shall

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mean the Future Combat Systems System Development and Demonstration Agreement. Any other typical terms not expressly included in this paragraph, contained within a DFARS clause, shall be interpreted in terms of an Other Transaction Agreement, Section 845 contractual vehicle and not in terms of a FAR-based procurement contract.

- (1) 252.223-7002 Safety Precautions for Ammunition and Explosives (MAY 1994). This clause applies only if this contract involves ammunition or explosives. "Government" means Government or Buyer in paragraph (b)(2), each time it appears in (e), (f)(1), (f)(2), the first time it appears in (g)(1)(i), and in (g)(3). "Government" means Buyer in paragraphs (c)(3), (c)(4), (c)(5), and the second time it appears in (g)(1)(i). "Contracting Officer" means Contracting Officer and Buyer in paragraph (g)(4). "Contracting Officer" means Buyer in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and each time it appears in (d).
 - (2) 252.223-7007 Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives (SEP 1999)
 - (3) 252.225-7008 Supplies to be Accorded Duty-Free Entry (MAR 1998). The following goods are accorded duty-free entry: ALL.
 - (4) 252.225-7010 Duty-Free Entry -- Additional Provisions (AUG 2000). This clause applies only if FAR 52.225-8 is applicable to this contract. Additional information referenced in this clause is available on request.
 - (5) 252.225-7032 Waiver of United Kingdom Levies (OCT 1992). This clause applies only if a lower tier subcontract over \$1 million with a U.K. firm is anticipated.
 - (6) 252.225-7043 Antiterrorism/Force Protection for Defense Contractors Outside the United States (JUN 1998). This clause applies only if this contract requires Seller to perform or travel outside the United States and Seller is not (i) a foreign government, (ii) a representative of a foreign government, or (iii) a foreign corporation wholly owned by a foreign government.
 - (7) 252.228-7005 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles (DEC 1991)
 - (8) 252.235-7003 Frequency Authorization (DEC 1991). This clause applies only if this contract involves the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.
- (c) Cost Accounting Standards
- (1) (Applicable if this contract incorporates clause 3050) The version of FAR 52.230-2, Cost Accounting Standards, incorporated by clause 3050 is the version dated April 1998.

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- (2) (Applicable if this contract incorporates clause 3051). The version of FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, incorporated by clause 3051 is the version dated April 1998.
 - (3) Even if Seller's subcontract is not a CAS-covered subcontract, Seller shall nevertheless incorporate an appropriate CAS clause in any otherwise nonexempt subcontract (see 48 CFR 9903.201-1) awarded to a supplier that, as of the time of subcontract award, is performing on CAS-covered contracts or subcontracts.
- (d) Financial Management
- (1) Government Audit of Records
 - (A) As used in this article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of the type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
 - (B) Seller's relevant financial records are subject to examination or audit on behalf of US Army TACOM by the Government for a period not to exceed three years after final payment has been made under this Agreement. Seller shall provide the Grants Officer or designee direct access to sufficient records and information to ensure full accountability for all funds paid, or proposed to be paid to it, under the Agreement. The Grants Officer will require annual audits of cost-reimbursement based subcontracts. A final audit will be conducted at the end of the program; the final audit will not duplicate or re-examine the results of prior year audits except to verify that any outstanding issues have been resolved. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party. This clause shall not be construed to require any party, or entity, or subordinate element of such party or entity, that participates in the performance of the Agreement, to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.
 - (C) The Comptroller General shall have access to the records described in this article until three years after the date final payment is made by the Government under the Agreement. Seller shall flow down this provision as indicated in subparagraph (3), below. The Comptroller General, at its discretion, shall have access to and the right to examine records of any party to the Agreement or any entity that participates in the performance of the Agreement that directly pertain to, and involve transactions relating to, the Agreement. Excepted from this requirement is any party to the Agreement or any entity that participates in the performance of the Agreement, or any subordinate element of such party or entity, that has not entered into any other

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agreement (contract, grant, cooperative agreement, or “other transaction”) that provides for audit access by a Government entity in the year prior to the date of the Agreement. The only records of a party, other entity, or subordinate element referred to in this paragraph that the Comptroller General may examine are records of the same type as the records the Government has had the right to examine under the audit clauses of the previous agreements that were entered into by that particular party, entity, or subordinate element. This paragraph shall not be construed to require any party, entity, or subordinate element of such party or entity that participates in the performance of the Agreement to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

(2) Accounting Practices

- (A) Prior to the submission of invoices to Buyer, Seller shall have and maintain an accounting system that: (i) complies with Generally Accepted Accounting Principles or Cost Accounting Standards (CAS), whichever is applicable to Seller under this contract; (ii) complies with the requirements of this contract; and (iii) ensures that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds.
- (i) The contract cost principles in 48 CFR 31 and 48 CFR 231 (in the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS)) shall apply to determine the allowability of costs charged to this contract.
- (ii) Further, the allowability of any expenditures incurred in the performance of any subcontract will be subject to those Federal cost principles and accounting standards applicable to the particular type of organization concerned (e.g., full-, modified-, or no CAS coverage).
- (B) Seller agrees to an adjustment of the contract cost allowance or price, as appropriate, if Seller or a subcontractor fails to comply with this article, subparagraph (2)(A), or fails to follow an applicable cost accounting practice consistently and such failure results in any increased costs paid by the Government.
- (C) Within 30 days after award of this contract, Seller shall submit the following information to Buyer’s cognizant contract administration office, with a copy furnished to the Grants Officer, for transmittal to the contract administration office cognizant of the subcontractor’s facility:
- (i) Subcontractor’s name and subcontract number;
- (ii) Dollar amount and date of award, and

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(iii) Name of Contractor making the award.

(D) Seller shall include in all negotiated subcontracts that Seller enters into the substance of this clause and shall require such inclusion in all other subcontracts, at any tier, including the obligation to comply with all Federal cost principles, as applicable, in effect on the subcontractor's award date.

(e) Foreign Access to Technology

(1) Definitions

(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 contract, any agency or instrumentality of a foreign government and firms, institutions, or business organizations that are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

(B) "Foreign Person" means any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).

(2) ITAR Compliance

(A) Seller shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement. Unless otherwise granted an exemption, Seller shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

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

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

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- (D) Seller may request, in writing, authority to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). DASA DE&C may affirm the use of the exemption where the U.S. Army PM, FCS certifies the conditions specified by Seller exist and provided the data does not disclose details of the design, development, production, or manufacture of any defense article.
- (E) If the U.S. Army FCS Program Manager, through Buyer, directs Seller to provide information or briefings, then Seller will pursuant to ITAR section 125.4(b)(1), document the request and submit a written request to the U.S. Army PM, FCS who will certify the conditions specified by Boeing exist. The U.S. Army FCS Program Manager will provide the certification to DASA DE&C, who may affirm the use of the exemption provided the conditions certified by the U.S. Army FCS Program Manager satisfy the ITAR. Such request will only be pursued when beyond the scope of ITAR section 125.4(b)(3).

(3) Lower Tier Agreements. Seller shall include this article, suitably modified to identify the parties, in all subcontracts.

(f) Civil Rights

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

(g) Data Correction and Update

Notwithstanding inspection and acceptance by Buyer of data or software delivered under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, Buyer shall have the right to require Seller to correct (or update) any such data or software found deficient (or outdated), within three years of the delivery of such data or software. Such correction shall be at Buyer's expense.

(h) Data and Software Rights

(This article is the same as it appears in the most current draft of the prime agreement, DAAE07-03-9-F001, Future Combat Systems (FCS) System Development and Demonstration (SDD) Phase. Buyer does not anticipate further substantive changes. However, a revision of this article to suitably identify the Parties will be incorporated in clause 5068 in the near future.)

ARTICLE XVIII: DATA AND SOFTWARE RIGHTS

A. Definitions

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1. “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, 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 Article XVII, Patent Rights.

2. “Software”, as used in this Article, 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.

3. “Government Purpose Rights”, as used in this Article, means rights to use, modify, duplicate, release, perform, display, or disclose Data or Software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurements but does not include any commercial purpose or use. The Government Purpose Rights granted herein are without expiration.

4. “Limited Rights”, 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, use the Data for manufacture, or authorize the Data to be used by another party, except that the Government may reproduce, release or disclose such Data or authorize the use or reproduction of the Data by persons outside the Government if reproduction, release, disclosure, or use is:

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure of Data (other than detailed manufacturing or process data) to, or use of such Data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the Data; and

(iv) Boeing or its subcontractors asserting the restriction is notified of such reproduction, release, disclosure, or use.

(v) However, such express limitation shall not apply to any Government Systems Engineering and Technical Assistance (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 are under contract subject to DFARS clause 252.227-7025 entitled, “Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends”.

5. “Special License Rights”, as used in this Article, applies only to Data or Software developed at private expense prior to the date, or outside the scope, of this Agreement. This designation may not apply to a required deliverable under this Agreement unless agreed to by the Government, e.g. for commercial Software or Data pertaining to

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commercial items. If the Government requests the Data or Software, asserted by Boeing, or a subcontractor, as subject to Special License Rights, a specific written agreement identifying use, purpose and access must be executed prior to the Data or Software being provided to the Government and made a part of Attachment 6, Data or Software to be Furnished with Restrictions. If the Government and Boeing, or a subcontractor, do not agree to satisfactory terms then the Data or Software shall not be provided to the Government.

6. "Restricted Rights", as used in this Article, applies only to noncommercial Software and means the Government's 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 Boeing if the transferor destroys all copies of the program and related computer 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 this Article; and

(B) Not release or disclose the modified Software except as provided in this Article;

(v) Permit contractors or subcontractors performing service contracts (as defined by 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use Software to 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 the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the Software for performance of a Government contract that contains the clause at DFARS 252.227-7025, "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

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(D) Such use is subject to the limitation in paragraph 6.(i) of this Article; 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) The intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, "Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends"; and

(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 this clause, for any other purpose.

7. "Unlimited rights", as used in this Article, means rights to use, modify, reproduce, perform, display, release, or disclose Data or Software, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

B. Allocation of Principal Rights

1. This Agreement shall be performed with Government funding.

2. Boeing agrees to retain and maintain in good condition until three (3) years after completion or termination of this Agreement, all Data or Software developed under this Agreement necessary to achieve Practical application (as defined in Article XVII, Patent Rights) of deliverable items, components and processes. In the event of exercise of the Government's March-in Rights as set forth under Article XVII, Patent Rights or subparagraph B.3 of this Article, Boeing agrees, upon written request from the Government to deliver to the Government, Data and Software developed under this Agreement necessary to achieve Practical application of deliverable items, components and processes within sixty (60) calendar days from the date of the written request. The Government agrees to pay the costs of delivering such Data and Software and agrees these delivery costs are not covered by payments to Boeing under this Agreement.

3. Boeing agrees that, with respect to Data and Software developed under this Agreement necessary to achieve Practical application of deliverable items, components and processes, TACOM has the right to require Boeing to deliver all such Data and Software to TACOM in accordance with its reasonable directions if TACOM determines that:

(a) Such action is necessary because Boeing or assignee has not taken effective steps within three (3) years after completion or termination of this Agreement, consistent with the intent of this Agreement, to achieve Practical application of deliverable items, components and processes;

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- (b) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Boeing, assignee, or their licensees within three (3) years after completion or termination of this Agreement; or
- (c) Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by Boeing, assignee, or licensees within three (3) years after completion or termination of this Agreement.

4. With respect to all Data and Software delivered under this Agreement, the Government will, subject to subparagraph B.6, receive Government Purpose Rights, or if subparagraph B.5 applies, Unlimited Rights. In the event of the Government's exercise of its right under subparagraph B.3 of this Article, the Government shall, subject to subparagraph B.6, receive Government Purpose Rights in all such Data or Software. With respect to all Data and Software previously delivered to the Government with Government Purpose Rights, the Government shall receive those same rights for the Data or Software.

5. The Government shall have Unlimited Rights in Data or Software that are:

(a) Otherwise publicly available or have been released or disclosed by Boeing, or a subcontractor, without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the Data or Software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(b) Data or Software in which the Government has obtained Unlimited Rights under another Government Agreement/contract or as a result of negotiations; or

(c) Data or Software delivered to the Government, under this or any other Government Agreement/contract or subcontract thereunder, with –

(1) Government Purpose Rights or Limited Rights and the restrictive condition(s) has/have expired; or

(2) Government Purpose Rights and Boeing's, or a subcontractor's, exclusive right to use such Data for commercial purposes has expired.

6. Attachment 6, Data or Software to be Furnished with Restrictions, lists Data or Software of Boeing, and its subcontractors, which will be furnished to the Government with rights which are more restrictive than Government Purpose Rights. This list is subject to subparagraph D. of this Article. Any subcontract which includes Data or Software to be included in Attachment 6 must be approved by the Government prior to Boeing entering into the subcontract. The list may be amended, subject to approval of the Government, based upon new information or inadvertent omissions. The cognizant IPT Leader and IPT Co-Leader must first approve any such requested amendment to Attachment 6. Amendments to Attachment 6 will be considered approved if the Government, via the Grants Officer, does not disapprove, in writing, within five (5) business days for Software that will not be incorporated into FCS systems and within ten (10) business days for Software that will be incorporated into FCS systems following receipt of the requested amendment. No Data or

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Software (other than with respect to subcontracts not subject to this Article as set forth in subparagraph D.) shall be delivered under this Agreement with rights, which are more restrictive than Government Purpose Rights unless included in Attachment 6. Boeing and TACOM mutually agree to formally modify the subject Agreement at certain block points, vice each time a request of this nature is submitted to TACOM for approval, in order to facilitate efficient Agreement performance.

7. Except for Data subject to Unlimited Rights or Special License Rights, the Government shall have Limited Rights in Data required to be delivered to the Government under this Agreement and are listed in Attachment 6:

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the Limited Rights legend prescribed in this Article, or

(B) Created exclusively at private expense in the performance of an Agreement/contract that does not require the development, manufacture, construction, or production of items, components, or processes.

8. Except for Software subject to Unlimited Rights or Special License Rights, the Government shall have Restricted Rights in Software required to be delivered to the Government under this Agreement that were developed exclusively at private expense and are listed in Attachment 6.

9. The Government will receive a copyright license in any Data or Software item deliverables that are copyrighted. The license will permit the Government to copy, modify, and/or distribute the Data or Software item deliverables in any manner consistent with the restrictions in this Article on the Government's use and disclosure of the Data or Software in the deliverables.

C. Marking of Data or Software

1. Any Data or Software delivered or provided pursuant to subparagraph B.4 above, shall be marked with the following legend:

“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 DAAE07-03-9-F001 between The Boeing Company and the Government.”

2. Any Data or Software delivered or provided pursuant to subparagraph B.5 above, shall be unmarked or marked with the following legend:

“UNLIMITED RIGHTS”

“The Government is granted Unlimited Rights to this Data or Software. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement DAAE07-03-9-F001 between The Boeing Company and the Government.”

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3. Any Data or Software delivered or provided pursuant to subparagraphs B.7, B.8 or A.5, shall be marked with one of the following legends:

B.7 “LIMITED RIGHTS”

“The Government is granted Limited Rights to this Data. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement DAAE07-03-9-F001 between The Boeing Company and the Government.”

B.8 “RESTRICTED RIGHTS”

“The Government is granted Restricted Rights to this Software. Use, duplication, or disclosure is subject to the restrictions as stated in Agreement DAAE07-03-9-F001 between The Boeing Company and the Government.”

A.5 “SPECIAL LICENSE RIGHTS”

“The Government is granted Special License Rights to this Data or Software. Use, duplication, or disclosure is subject to the restrictions of a Special Data or Software Use Agreement as provided for in Agreement DAAE07-03-9-F001 between The Boeing Company and the Government.”

D. Validation of Asserted Restrictions – Data and Software

1. Boeing shall maintain records sufficient to justify the validity of any markings that assert restrictions on Data or Software delivered or required to be delivered under this Agreement and shall be prepared to furnish to the Grants Officer a written justification for such restrictive markings in response to a request by the Grants Officer for such information.

2. Boeing agrees that the Grants Officer may transact matters under this clause directly with subcontractors or suppliers, at any tier, who assert restrictions on Data or Software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and Boeing’s subcontractors or suppliers.

3. Requests for Information: The Grant’s Officer may request Boeing to provide sufficient information to evaluate Boeing’s asserted restrictions.

- (a) Based upon the information provided, the Grants Officer may –
- (i) If Boeing (or the applicable subcontractor) agrees that the asserted restriction is not valid,
 - (ii) Strike or correct the unjustified marking at Boeing’s expense; or
 - (B) Return the Data or Software to Boeing for correction at Boeing’s expense, or
 - (iii) Conclude that the asserted restriction is appropriate for this Agreement, and notify Boeing in writing.

(b) Boeing’s failure to provide a timely response to a Grants Officer’s request for information shall constitute reasonable grounds for questioning the validity of an asserted restriction.

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4. Government Right to Challenge and Validate Asserted Restrictions:

(a) The Government has the right to challenge any restrictions asserted by Boeing on Data or Software delivered or provided for system or hardware performance under this Agreement. Except for Data or Software that is publicly available, or has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within the later of three (3) years after the date(s) the Data or Software is delivered or provided to the Government, or three years following final payment.

(b) Only a Grants Officer's final decision or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

5. Challenge Procedures: A challenge must be in writing and shall –

- (i) State the specific grounds for challenging the asserted restriction;
- (ii) Require Boeing to respond within sixty (60) days; and
- (iii) Require Boeing to provide justification for the assertion, in sufficient detail to enable the Grants Officer to determine the validity of the asserted restrictions.

(a) The Grants Officer shall extend the time for response if Boeing submits a written request with appropriate justification.

(b) The Grants Officer may request additional supporting documentation if, in the Grants Officer's opinion, Boeing's explanation does not provide sufficient evidence to justify the validity of the asserted restrictions.

(c) Notwithstanding challenge by the Grants Officer, the Parties may agree on the disposition of an asserted restriction at any time prior to a Grants Officer's final decision or, if Boeing has appealed that decision at any time prior to a decision by a court of competent jurisdiction.

(d) If Boeing fails to respond to the Grants Officer's request for information, the Grants Officer shall issue a final decision, in accordance with Article XV, Disputes of this Agreement, pertaining to the validity of the asserted restriction.

- (e) If the Grants Officer determines that the asserted restriction has –
- (i) Not been justified, the Grants Officer shall issue promptly a final decision subject to Article XV, Disputes denying the validity of the asserted restriction; or
 - (ii) Been justified, the Grants Officer shall issue promptly a final decision validating the asserted restriction.

6. The Government agrees, notwithstanding a Grants Officer final decision denying validity of the asserted restriction, that it will honor the asserted restriction for a period of ninety (90) days, after which if there is no formal challenge to the decision, the Government may strike the restriction, remove the legends and there is no liability incurred by this action.

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E. Lower Tier Agreements

1. Boeing shall include this Article, suitably modified to identify the Parties, in all subcontracts regardless of tier, including Boeing business units, who will be furnishing Data or Software to be provided to the Government in the performance of this Agreement. Boeing will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Data or Software.

END OF DATA AND SOFTWARE RIGHTS ARTICLE

- (i) Design and Source Considerations; Clauses That Must be Considered in Both Design and Production Planning.

Buyer has been advised by its customer that the following DFARS clauses, while not required for the FCS SDD Agreement, will be mandatory under any subsequent contract for Long Lead Items, Low Rate Initial Production, or Production. To the extent that they are applicable to subcontractors, Seller shall consider these clauses in its planning for transition to production. Design limitations and supply chain management decisions required to comply with these clauses will be documented in sufficient detail, so that, in the event of any subsequent contract for Long lead Items, Low Rate Initial Production, or Production, compliance with the requirements of these clauses can be demonstrated.

- (1) 252.225-7001 Buy American Act and Balance of Payments Program (JAN 1994)
- (2) 252.225-7002 Qualifying Country Sources as Subcontractors (DEC 1991)
- (3) 252.225-7014 Preference for Domestic Specialty Metals (MAR 1998)
- (4) 252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (DEC 2000)
- (5) 252.225-7022 Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (DEC 1991)
- (6) 252.225-7025 Restriction on Acquisition of Forgings (JUN 1997)
- (7) 252.225-7026 Reporting of Contract Performance Outside the United States (JUN 2000)
- (8) 252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (OCT 1992)
- (9) 252.225-7031 Secondary Arab Boycott of Israel (JUN 1992)

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(j) Termination Notification. This clause applies only if this contract exceeds \$500,000.

- (1) Should the Government terminate work, or substantially reduce work, under the Agreement worth twenty-five (25%) percent or more of the total Agreement amount and Buyer has so notified Seller, Seller will provide appropriate notices, in accordance with Section 1372 of Pub L. 103-160 and Section 824 of Pub. L. 104-201, to (i) all potentially affected employees or their official representatives, (ii) the State dislocated worker unit or office described in section 311(b)(2) of the Job Training Partnership Act (29 U.S.C. 1661(b)(2)); (iii) the chief elected official of the unit of general local government within which the adverse effect may occur, and (iv) to all subcontractors with subcontracts worth \$100,000 or more.
- (2) This notice to the employee shall have the same effect as a notice of termination to the employee for the purposes of determining eligibility for training, adjustment assistance, and employment services under section 325 or 325A of the Job Training Partnership Act (29 U.S.C. 1662d, 1662d-1), as specified by the act. If Seller specifies that the anticipated termination or reduction is not likely to result in plant closure or mass layoff, as defined in 29 U.S.C. 2101, the employee shall be eligible only for services, as appropriate, under the Job Training Partnership Act.

(k) Effect of Termination on Patent Rights and Data and Software Rights

In the event of a termination of this contract, it is agreed that disposition of intellectual property developed under this contract shall be in accordance with provisions set forth in the Patent Rights and Data and Software Rights provisions of this contract. Buyer and Seller will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination.

(l) Protection and Disclosure of Information – Public Release

- (1) Except for FCS Program information previously approved for public release by the Government, Seller shall not publicly release any information outside of Seller and its subcontractors, to include associate contractors, at any tier, regarding the work performed under this Agreement without first obtaining approval for Public Release as identified in the DD254. All such requests will first go to the Grants Officer who, after appropriate review, will make a determination of the suitability to disseminate program information publicly. Subcontractors and associate contractors shall submit such requests through Buyer.
- (2) Seller will use computer and communications equipment that meets the requirements identified in the DD254 or Program Security Guide.
- (3) Seller shall include this clause, including this subparagraph (3), in all subcontracts.

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(m) Non-Disclosure of Sensitive Government Program Information

- (1) In the course of Agreement performance, the Government or Buyer may furnish Seller information (written, verbal or otherwise) developed outside of the FCS program, regarding Army programs and initiatives that is often sensitive to past, present, and future procurements within the Government (hereafter "Sensitive Government Program Information"). If the Government or Buyer initially makes a disclosure of Sensitive Government Program Information to Seller in non-written form, e.g., verbally, the information disclosed shall be identified as being Sensitive Government Program Information and confirmed, as such, in writing by the Government or Buyer within 30 days from such disclosure. Subject to the foregoing, Sensitive Government Program Information will be marked as such before it is provided to Seller. Seller agrees to use reasonable efforts not to use or reproduce Sensitive Government Program Information for any purpose other than fulfilling work under the FCS Program (the "Purpose"), and to keep Sensitive Government Program Information in confidence, disclosing it only for the Purpose to (i) Seller's employees assigned to or supporting the FCS Program, (ii) the Government and its FCS Program support contractors, and (iii) other companies, organizations, or individuals that have agreed contractually to control Sensitive Government Program Information under the same conditions set forth herein. The obligations set forth above shall not apply: to information which is or becomes publicly available, or to information which is already in the possession of the recipient without restrictions, or to the extent prior written authorization of the Government is given, or after three years after receipt of the information. This provision does not supercede the terms and conditions of the Data and Software Rights article of this contract.
- (2) Seller may disclose such Sensitive Government Program Information to subcontractors, regardless of tier, on the FCS program, provided that it includes this article in each such subcontract.

(n) Ordering From Government Supply Sources

- (1) Seller is authorized to use Government Federal Supply Schedule Contracts in the performance of this contract.
- (2) This authorization is issued in accordance with the provisions of FAR 51.1, Contractor Use of Government Supply Sources, and can be used only to acquire goods and services required specifically for performance under this contract.
- (3) Buyer will provide Seller a copy of the authorization letter upon request.
- (4) For each order placed to a Federal Supply Schedule vendor (i) a copy of the authorization letter must accompany the order, unless a copy was previously furnished to the vendor, and (ii) the following statement must appear on the order:

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“This order is placed under written authorization from the U.S. Army Tank-Automotive and Armaments Command (TACOM) dated [Date of Agreement Award]. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule Contract, the latter will govern.”

(o) Proposals in Support of Government’s Work Directives

Buyer may be required to begin work under Grants Officer-directed Work Directives in an expeditious manner. If Seller’s goods and/or services are required in support of such Work Directives, Seller agrees to provide a not-to-exceed (NTE) proposal within three days of receiving a request for proposal. If a NTE change order or contract results from such NTE proposal, Seller agrees to provide Buyer a firm proposal within 15 business days after authorization to proceed under the NTE change order or contract.

(p) Management of the FCS Program

Seller is aware that Buyer, as the Lead Systems Integrator of the FCS Program, intends to use a team approach to management of various aspects of this contract. The management team will be comprised of employees of Buyer, as well as Government and associate contract representatives. Seller agrees that it will accept representatives of the Government and associate contractors at meetings, program reviews, test viewings, etc, as though they were employees of Buyer. In order to make the most efficient use of the management-team members, representatives of the Government and/or associate contractors may attend meetings, program reviews, test viewings, etc, without an employee of Buyer being in attendance. Notwithstanding this team approach to management of various aspects of this contract, Seller is aware and agrees that representatives of the Government and associate contractors have no authority to direct the efforts of Seller.