

SP 8018

**CUSTOMER CONTRACT REQUIREMENTS
(MANNED/UNMANNED COMMON ARCHITECTURE PROGRAM)
CUSTOMER AGREEMENT No. DAAH10-03-2-0002**

CUSTOMER REQUIREMENTS

If Form GP1 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 29. If Form GP2 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 28. If Form GP3 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 41. If Form GP4 is applicable to this procurement, this Attachment constitutes the Government clauses contemplated by Article 31

1. The following Technology Investment Agreement special provisions apply to this purchase contract:

A. COPELAND “ANTI-KICKBACK” ACT (18 U.S.C. 874 AND 40 U.S.C. 276c)

- 1) If this purchase contract is in excess of \$2000 for construction or repair, Seller shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Seller shall report all suspected or reported violations to the Federal awarding agency.
- 2) Seller shall include this provision, including this subparagraph 2), in all applicable lower-tier subcontracts.

B. EQUAL EMPLOYMENT OPPORTUNITY

Seller shall comply with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

C. CLEAN AIR ACT (42 U.S.C. 7401 ET SEQ.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251 ET SEQ.) AS AMENDED

- 1) If this purchase contract is in excess of \$100,000 the Seller shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 740 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 125 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 2) Seller shall include this provision, including this subparagraph 2), in all applicable lower-tier subcontracts or subgrants.

D. BYRD ANTI-LOBBING AMENDMENT (31 U.S.C. 1352) BYRD Anti-Lobbying Amendment (31 U.S.C. 1352)

- 1) If this purchase contract is for \$100,000 or more, the Seller shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

- 2) Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Buyer hereunder.
- 3) Seller shall include this provision, including this subparagraph 3), in all applicable lower-tier subcontracts.

E. AUTHORIZATION AND CONSENT

The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this agreement or any sub-agreement at any tier.

F. NOTICE AND ASSISTANCE REGARDING PARTNE AND COPYRIGHT INFRINGEMENT

- 1) Seller shall report to the Buyer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this agreement of which Seller has knowledge.
- 2) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this agreement, Seller shall furnish to the Government when requested by the Buyer, all evidence and information in possession of Seller pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where Seller has agreed to indemnify the Government.
- 3) Seller agrees to include, and require inclusion of, this provision (suitably modified to identify the parties) in any subcontract at any tier.

G. PATENT RIGHTS

This provision applies only if this purchase contract calls for experimental, developmental, or research work.

A. Definitions.

1. All references to "Recipient", as it applies to Provision 3.C, Patent Rights, shall be deemed to be reference to Seller.

2. "Invention" means any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of The United States Code.

3. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

4. "Practical application" means to manufacture, in the case of a composition of matter or 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, to the extent permitted by law or Government regulations, available to the Public on reasonable terms.

5. "Subject Invention" means any invention made, or improvement to any invention conceived or first reduced to practice in the performance of work under this Agreement.

6. "Background Invention" means an invention, or improvements to any invention, other than a Subject Invention, which the Recipient has previously conceived, designed, developed and/or produced, or has concurrently designed, developed and/or produced outside this Agreement.

7. "Agreement" as used herein means the Agreement No. DAAH10-03-2-0002 for the Manned/Unmanned Common Architecture Program (MCAP) between the Buyer (Boeing) and U.S. Army Aviation Applied Technology Directorate (AATD).

B. Allocation of Principal Rights.

All inventions conceived, developed or first reduced to practice by or for Seller, either alone or with others, using funds paid by Buyer under this contract, and any patents based on any such inventions will be the exclusive property of Buyer. Seller will (i) promptly disclose all such inventions to Buyer in writing and (ii) execute all papers, cooperate with Buyer and perform all acts necessary in connection with the filing, prosecution or assignment of related patents or patent applications on behalf of Buyer.

With respect to any Subject Invention, per the Agreement, the Government will have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Subject Invention throughout the world. All rights and title to data and inventions developed solely by Seller prior to the date of this Agreement, shall remain solely with Seller.

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

1. Seller will disclose each Subject Invention to the Buyer and the Government (through the Agreement Administrator) within six (6) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to AATD will be in the form of a written report and will identify the Agreement 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, optical, chemical, biological, or electrical characteristics of the invention. The disclosure will 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.

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

3. Seller will 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 (or regional Patent Office or pursuant to the Patent Cooperation Treaty) within either twelve (12) 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.

4. Any Subject Inventions, jointly made or created by employees of the Buyer and/or the Government of the United States of America and Recipient, will be jointly owned by those parties. With respect to jointly owned Subject Inventions, the parties will agree, on a case-by-case basis, as to which party will file patent applications, if any. Each party will bear its own patent filing expenses in filing patent applications on joint Subject Inventions. Requests for extension of the time for disclosure, election, and filing under Provision C, subparagraph C. may, at the discretion of the Government, and after considering the position of Seller, be granted.

D. Conditions When the Government May Obtain Title.

Upon the Government's written request, Seller will convey title to any Subject Invention to the USA under any of the following conditions:

1. If Seller fails to disclose or elects not to retain title to the Subject Invention within the times specified in paragraph C of this Article, provided, that the Government may only request title within sixty (60) days after learning of the failure of Seller to disclose or elect within the specified times.

2. In those countries in which Seller fails to file patent applications within the times specified in paragraph C of this Article, provided that, if Seller has filed a patent application in a country after the times

specified in paragraph C of this Article, but prior to its receipt of the written request by the Government, Seller will continue to retain title in that country; or

3. In any country in which 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, if the Government, at its expense, is going to continue to retain title in that country.

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

1. Seller will retain a nonexclusive, royalty free sub-licensable license throughout the world in each Subject Invention to which the Government obtains title, except if Seller fails to disclose the Subject Invention within the times specified in paragraph C of this Article. The Seller's license extends to the domestic subsidiaries and affiliates, if any, of Seller within the corporate structure of which Seller is a party and includes the right to grant licenses of the same scope to the extent that Seller was legally obligated to do so at the time the Agreement was awarded.

The license is transferable only within the approval of the Government, except when transferred to the successor or that part of the business to which the invention pertains. Government approval for license transfer will not be unreasonably withheld.

2. The Seller's domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404, provided that such revocation or modification will not take place less than three (3) years after the end of the term of the Agreement. This license will not be revoked in that field of use or the geographical areas in which Seller has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent Seller, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, the Government will furnish Seller a written notice of its intention to revoke or modify the license, and Seller will 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.

F. Action to Protect the Government's Interest.

1. Seller agrees to execute or to have executed and promptly provide to the Agreements Administrator all instruments necessary to: (a) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which Seller elects to retain title, and (b) 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.

2. 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 Agreement in order that Seller can comply with the disclosure provisions of paragraph C. of this Article. Seller will 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.

3. Seller will notify the Buyer and the Government of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a re-examination 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.

4. Seller will 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. DAAH10-03-2-0002 for the Manned/Unmanned Common Architecture Program (MCAP). The Government has certain rights in the invention."

G. Lower Tier Agreements.

1. Seller will include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier Agreements, regardless of tier, for experimental, developmental, or research work.

2. In the case of a lower tier Agreement with a vendor, at any tier, the Government, the vendor, and Seller agree that the mutual obligations of the parties created by this Article flow down to the vendor and constitute an Agreement between the vendor and the Government with respect to the matters covered by this Article.

H. Reporting on Utilization of Subject Inventions.

Seller agrees to submit to the Agreement Administrator during the term of the Agreement, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by Seller or licensees or assignees of the inventor. Such reports will include information regarding the status of development, date of first commercial sale or use, gross royalties received by Seller's subcontractor(s), and such other data and information as the agency may reasonably specify.

Seller also agrees to provide additional reports as may be requested by AATD in connection with any march-in proceedings undertaken by the Government in accordance with paragraph J of this Article. Consistent with 35 U.S.C. 202(c)(5), the Government agrees it will not disclose such information to persons outside the Government without permission of Seller.

I. Preference for American Industry.

Notwithstanding any other provision of this clause, Seller agrees that it will not grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any product embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States or Canada. However, in individual cases, the requirements for such an agreement may be waived by 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.

J. March-In Rights.

Seller agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require Seller, an assignee, or exclusive licensee of a Subject Invention to grant a nonexclusive 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 determines that:

1. Such action is necessary because Seller or assignee has not taken effective steps, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention, a reasonable time being no less than three (3) years from the end of the term of the Agreement;

2. Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by Seller, assignee, or their licensees;

3. Such action is necessary to meet requirements for public use; and such requirements are not reasonably satisfied by Seller, assignee, or licensees; or

4. Such action is necessary because the Agreement required by paragraph (1) 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.

K. 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 Paragraph. Prior to claiming such rights (including any rights under Paragraph C.J, "March-In Rights"), 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 Agreement, 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.

L. Notification of Background Inventions, Disclosures, or Patents

In no event shall the provisions set forth in this Article apply to any Background Inventions or Patents obtained thereon by Seller. Seller shall retain the entire right, title, and interest throughout the world to each such invention and patents, and the Government shall not acquire any rights under this Agreement. Such Intellectual Property, including but not limited to, Background Inventions, Disclosures, or Patents are identified herein (**cite applicable Attachment submitted by Seller**). This listing of Seller's Other Intellectual Property Rights, is subject to revision upon the mutual agreement of the Parties, evidenced by a bilateral modification to this Agreement.

H. OTHER INTELLECTUAL PROPERTY RIGHTS

This provision applies only if this purchase contract calls for experimental, developmental, or research work.

A. Definitions. For the purposes of this Agreement, the following terms have the meanings indicated:

1. "Background Data" means Technical Data produced by Seller at private expense prior to performance of or outside the scope of this Agreement and is considered by Seller to be proprietary; and is identified in (**cite applicable Attachment submitted by Seller**). Such Background Data may include any modifications, derivatives to previously conceived, designed, developed, and resultant revisions to software, processes, qualification data, and manufacturing plans.

2. "Background Software" means any Software developed by Seller prior to the performance of this Agreement or outside the scope of work performed under this Agreement and is considered by Seller to be proprietary and is identified in (**cite applicable Attachment submitted by Seller**).

3. "Government Data" means Data that has been delivered to the Government prior to or outside the terms of this Agreement. The Government's pre-existing rights in that Data govern disclosure and use of such Government Data.

4. "Government Purpose" means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

5. "Government Purpose Rights" means the rights to-

- (i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
- (ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

6. "Limited Rights" means the rights to use, modify, reproduce, release, perform, display, or disclose technical 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 technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party.

7. "Proprietary Information" means information which embodies trade secrets or which is privileged or confidential technical, business or financial information provided that such information:

(a) is not generally known, or is not available from other sources without obligations concerning its confidentiality;

(b) has not been made available by the owners to others without obligation concerning its confidentiality;

(c) is not described in an issued patent or a published copyrighted work or is not otherwise available to the public without obligation concerning its confidentiality; or

(d) can be withheld from disclosure under 15 U.S.C. § 3710a(c)(7)(A) & (B) and the Freedom of information Act, 5 U.S.C. § 552 *et seq* ; and

(e) is identified as such by labels or markings designating the information as proprietary.

8. "Subject Technical Data", as used in this article, means any Technical Data first produced during performance of this Agreement.

9. "Technical Data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

10. "Unlimited Rights" means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

B. Allocation of Principal Rights

All technical data produced by or for Seller, either alone or with others, using funds paid by Buyer under this contract will be the exclusive property of Buyer and will be delivered to Buyer promptly upon completion of work under the purchase contract.

C. Seller shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower-tier agreements, regardless of tier, for experimental, developmental, or research work.

D. Marking of Data

1. Pursuant to paragraph B above, Seller shall deliver all technical data free of any Seller restrictive legends or markings.

I. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C.327-333)

If this purchase contract is in excess of \$2,000 and involves construction or is in excess of \$2,500 for other work that involves the employment of mechanics or laborers, Seller shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

J. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If this purchase contract is for the performance of experimental, developmental, or research work Seller shall provide for the rights of the Federal Government and the Buyer in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations.

K. DEBARMENT AND SUSPENSION (E.O.s 12549 and 12689)

Seller shall not award any lower-tier subcontracts to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. By accepting this purchase contract Seller certifies that Seller has not been debarred or suspended and that Seller will not award any lower-tier subcontracts to any person or entity that is debarred or suspended.