

CUSTOMER CONTRACT REQUIREMENTS
Unmanned Combat Air Vehicle (UCAV)
Advanced Technology Demonstration (ATD)
CUSTOMER CONTRACT MDA972-99-9-0003

CUSTOMER CONTRACT 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.

ARTICLE I: PATENT RIGHTS**A. Definitions**

1. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
2. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
3. "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, to the extent permitted by law or Government regulations, available on reasonable terms.
4. "Subject invention" means any Seller invention conceived or first actually reduced to practice in the performance of work under this contract.

B. Allocation of Principal Rights

Unless Seller shall have notified 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 this Article and 35 U.S.C. § 202. With respect to any subject invention in which Seller retains title, the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license 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 full or partial rights that it has retained to contractors or other parties.

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

1. Seller shall disclose each subject invention to the Government within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to the Government shall be in the form of a written report and shall identify the Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, 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. Seller shall also submit to the Government an annual listing of subject inventions, with a copy to Boeing.
2. If Seller determines that it does not intend to retain title to any such invention, Seller shall notify the Government in writing, within eight (8) months of disclosure to 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 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.
4. Requests for extension of the time for disclosure election, and filing under Article VII, paragraph 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 shall convey title to any subject invention to the Government 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) calendar 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 shall 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.

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

1. Seller shall retain a non-exclusive, royalty-free license 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 C of this Article. Seller's license extends to the domestic (including Canada) 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 this 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 approval for license transfer shall not be unreasonably withheld.
2. Seller's domestic license may be revoked or modified by 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 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 shall furnish Seller a written notice of its intention to revoke or modify the license, and 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.

F. Action to Protect the Government's Interest

1. Seller agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to 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.

2. Seller agrees to require, by written agreement, that employees of the Members 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 Contract in order that Seller can comply with the disclosure provisions of paragraph C 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.
3. Seller shall notify 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.
4. 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. MDA972-9*-3-00** awarded by the Government. The Government has certain rights in the invention."

G. Lower Tier Contracts

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

H. Reporting on Utilization of Subject Inventions

Sellers agrees to submit, during the term of this contract, an annual report on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by Seller or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the 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 the Government 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 shall 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 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 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 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 determines that:

1. Such action is necessary because Seller or assignee has not taken effective steps, consistent with the intent of this Contract, to achieve practical application of the subject invention;
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 (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.

ARTICLE II: DATA AND SOFTWARE

A. Definitions

1. Unlimited Rights, as used in this article, means rights to use, duplicate, release, or disclose, Data in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.
2. Government Purpose, as used in this article, 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 transfer by the United States Government to foreign governments or international organizations. Government purposes include competitive procurements but do not include commercial purpose or use.
3. Government Purpose Rights, as used in this article, means rights to use, duplicate, or disclose data or software, in whole or in part and in any manner, for Government purposes only, and have or permit others to do so for Government purposes only. Government purpose rights do not include the right to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes, or authorize other to do so.
4. Limited Rights, as used in this article, means the right to use, modify, reproduce, release, perform, display, or disclose Data in whole or in part within the Government and Boeing. The Government and Boeing may not, without written permission of the party asserting limited rights, release or disclose the technical data outside of the Government and Boeing, use the Data for manufacture, or authorize the Data to be used by another party, except that the Government and Boeing may reproduce, release or disclose such Data or authorize the use or reproduction of the Data by persons outside of the Government and Boeing if reproduction, release, disclosure, or use is –
 - a) Necessary for emergency repair and overhaul: or
 - b) A release or disclosure of Data (other than detailed manufacturing or process Data) to, or use data by, a foreign government, that is in the interest of the Government and is required for evaluation or information purposes: and
 - c) Subject to a prohibition on the further reproduction, release, disclosure, or use of Data and the contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use: and
 - d) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.
5. Restricted Rights, as used in this article, means the right of the Government and Boeing to:
 - a) Use software with one computer at one time. The software may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this Contract. For purposes of this Contract, the Government and Boeing may utilize software delivered under this Contract for simulation purposes at multiple U.S. Government sites.
 - b) Transfer Software to another Government agency without the further permission of the Seller if the transferor destroys all copies of the program and related Software documentation in its possession and notifies the Seller of the transfer. Transferred Software remains subject to the provisions of this clause;
 - c) Make the minimum number of copies of the software required for safekeeping (archive), backup, or modification purposes:

- d) Modify Software provided that the Government and Boeing may-
 - (i) Use the modified Software only as provided in this definition; and
 - (ii) Not release or disclose the modified software except as provided in this Contract;
 - e) Permit contractors or subcontractors performing service contracts 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-
 - (i) the Government or Boeing notifies the party which has granted Restricted Rights that a release or disclosure to particular contractors or subcontractors was made;
 - (ii) the intended recipient is subject to a use and non-disclosure agreement or is a Government contractor receiving access to the Software for performance or a Government contract that contains a clause describing the limitations on the use or disclosure of Government-furnished information marked with restrictive legends;
 - (iii) the Government and Boeing shall not permit the recipient to decompile, disassemble, or reverse engineer the Software, or use Software decompiled, disassembled, or reverse engineered; and
 - (iv) such use is subject to the limitation of Restricted Rights;
 - f) Permit contractors or subcontractors performing emergency repairs or overhauls of items or components of items procured under this or 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-
 - (i) the intended recipient is subject to a use and non-disclosure agreement or is a Government contractor receiving access to the Software for performance of a Government contract that contains a clause describing the limitations on use or disclosure of Government furnished information marked with restrictive legends; and
 - (ii) the Government shall not permit the recipients to decompile, disassemble, or reverse engineer the Software, or use the Software decompiled, disassembled or reverse engineered.
6. Data, as used in this article, means recorded information, regardless of form or method of recording, which includes but is not limited to, Technical Data, computer software documentation, 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 I, or Software.
7. Technical Data, as used in this article, means information, which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes blueprints, drawings, photographs, plans, instructions and documentation.
8. Software, as used in this Article, means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the software to be reproduced, recreated or recompiled.
9. Proprietary Information, means information which embodies trade secrets developed at private expense or business commercial or financial information that is privileged or confidential provided that such information:

- a) is not known or 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 already available to the Government without obligation concerning its confidentiality; and
- d) has not been developed independently by person who had access to the Proprietary Information.

B. Allocation of Principal Rights

1. Seller agrees to retain and maintain in good condition until three (3) years after completion or termination of this Contract, all Data and Software generated under this Contract (not including Data developed entirely at private expense), necessary to achieve practical application. In event of the Government's March-in-Rights as set forth under Article I or subparagraph B.2 of the Article, Seller agrees upon written request from the Government, to deliver at no additional cost to the Government, all Data and Software generated under this Contract (not including Data developed entirely at private expense) necessary to achieve practical application within forty five (45) calendar days from the date of the written request. The Government shall receive Government Purpose Rights, as defined in paragraph A of this Article, to the Data and Software delivered in the event of the Government's exercise of its rights under subparagraph B.2 of this Article, except for Data identified in the Seller's proposal as Data being provided with rights other than Unlimited Rights or Government Purpose Rights. .
2. Seller agrees that with respect to Data and Software generated under this Contract and 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 direction if the Government determines that:
 - a) Such action is necessary because Seller or assignee has not taken effective steps within three (3) years after completion or termination of this Contract consistent with the intent of this Contract, to achieve practical application of the technology developed during the performance of this Contract; or
 - b) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Seller, assignee, or their licensees.
3. With respect to Data and Software delivered pursuant to this Contract, the Government shall receive Government Purpose Rights to such Data and Software, excluding Data and Software identified in Seller's proposal as Data or Software being provided with other than Government Purpose Rights, and Boeing shall receive Limited Rights to such Data and Software
4. If Boeing decides to terminate this Contract, or if Seller ceases work, the Government shall receive Government Purpose Rights to Data and Software delivered pursuant to this Contract prior to termination, except for Data and Software identified in Seller's proposal as being provided with rights other than Government Purpose Rights, and Boeing shall receive Limited Rights to such Data and Software.
5. The Seller will use reasonable efforts to flow down the provisions of this Article to its Suppliers. Any exception to the provisions of this Article taken by Seller's suppliers will result in a mutually agreed to modification of this Contract.

C. Marking of Data or Software

Pursuant to paragraph B of this Article, any Data or Software delivered under this Contract shall be marked with the following legend:

X-45 Program / Competition Sensitive

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement MDA972-99-9-0003
Between the Government and Boeing

In addition, any information provided to Boeing that is developed at private expense by Seller will be marked "Seller Proprietary". Such information may not be disclosed outside of Boeing and the Government without the written permission of the Seller. For information that is partially funded at private expense, Seller will mark the privately funded portion as "Seller Proprietary", to the extent that it is practicable to segregate the privately funded portion. Seller will receive the concurrence of Boeing prior to using any Seller Proprietary Data or Software (not already identified as being provided with other than Government Purpose Rights) in the performance of this Contract.

D. Government Support Contractors

Nothing herein shall be construed as prohibiting the Government from disclosure of Data covered by this section to the Government's support Contractors (and their successors) as the Government shall deem necessary in connection with its administration of its Agreement with Boeing. Such disclosures shall be made only to support the contractors whose contracts with the Government prohibit further disclosure and other use of the materials disclosed.

ARTICLE III: FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect during the term of the Contract and for three years thereafter.

A. Definition

"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 which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

"Know-How" means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

"Technology" means discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue including, but not limited to, patents, trade secrets, maskworks, and copyrights developed under this contract.

B. General

The Parties agree that research findings and technology developments in SEAD/Strike mission technology may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this contract by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.)

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

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

- (a) sales of products or components, or
 - (b) licenses of software or documentation related to sales of products or components, or
 - (c) transfer to foreign subsidiaries of Seller for purposes related to this contract, or
 - (d) transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Contract provided that such transfer shall be limited to that necessary to allow the firm or Institution to perform its approved role under this Contract.
- 2. Seller shall provide timely notice to Buyer of any proposed transfers from Seller of technology developed with Government funding under this contract to Foreign Firms or Institutions. If Buyer determines that the transfer may have adverse consequences to the national security interests of the United States, Seller, its vendors, Buyer and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide equivalent benefits to Seller.
- 3. In any event, Seller shall provide written notice to the Buyer Program Manager and Authorized Procurement Representative of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of Seller's written notification, Buyer shall advise Seller whether the Government consents to the proposed transfer. In cases where the Government does not concur or sixty (60) calendar days after receipt and the Government provides no decision, Seller may utilize the procedures under Article IX, Disputes. No transfer shall take place until a decision is rendered.
- 4. In the event transfer of Technology to Foreign Firms or Institutions which is NOT approved by DARPA takes place, Seller shall (a) refund to DARPA funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this contract. Upon request by the Government, Seller shall provide written confirmation of such licenses.

D. Lower Tier Agreements

Seller shall include this Article, suitably modified, in all subcontracts or lower tier Agreements, for experimental, developmental, or research work.