

**CUSTOMER CONTRACT REQUIREMENTS  
CLEEN II  
CUSTOMER CONTRACT DTFAWA-15-A-80011**

**CUSTOMER CONTRACT REQUIREMENTS**

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

**1. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase order

**52.215-2 Audit and Records - Negotiation** (JAN 1997). Audit and Records - Negotiation

**DTFAWA-15-A-80011 Commercial Items Contracts for Commercial Items .**

Notwithstanding any other clause, the subcontractor is not required to include any FAA Acquisition Management System provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices, in a subcontract at any tier for commercial items or commercial components:

- (i) Equal Opportunity (E.O. 11246);
  - (ii) Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));
  - (iii) Affirmative Action for Handicapped Workers (29 U.S.C. 793); and
  - (iv) Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241)
- (flow down not required for subcontracts awarded beginning May 1, 1996).

The subcontractor shall include the terms of this clause, including this paragraph IV, in subcontracts awarded under this agreement.

**FAA DTFAWA-15-A-80011 Incorporation of Commercial Items Incorporation of Commercial Items .**

To the maximum extent practicable, the Subcontract shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or non developmental items as components of items to be supplied under this agreement.

## Attachment C: Data Rights and Assertions

### a. Rights in Data

(a) Definitions. As used in this clause –

"Commercial Computer Software" is Computer Software that meets the criteria of a "Commercial Item" defined in clause 3.10.2-6

"Computer database" or "database means" a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

"Computer Software" means -

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which they are recorded, that allow or cause a computer to perform a specific operation or series of operation, and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created or compiled.

Computer software does not include computer databases or computer software documentation. "Computer software documentation" means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explains the capabilities of the computer software or provide instructions for using the software.

"Data" means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to OTA administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data" means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulae, and flow charts of the software.

"Limited Rights" means the rights of the Government in Limited Rights Data 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, 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; and

(ii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iii) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

"Limited Rights Data" means data, other than computer software or Boeing Proprietary Information, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at

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private expense, including minor modifications, or as otherwise identified as Limited Rights Data.

“Boeing Proprietary Information” or “Subcontractor Proprietary Information” is: any business, financial, or specific program (including plans or strategies, resources, and budgets), and technical information (in the form of designs, concepts, requirements, specifications, software, interfaces, components, processes, or the like), or any combination thereof, that:

is owned by the Company or Subcontractor; the FAA or US Government does not already have greater license rights to such information, is considered competition sensitive, and as such, release of such data to 3<sup>rd</sup> parties presents a significant risk or possible harm to Company. No rights or license to use such information is provided to the FAA or US Government or any agency herein;

The Company, at its discretion, may choose to provide such information on a temporary, short term access basis either visually or in writing, for the benefit of the OTA. In the event that the Company shares such information with the FAA, the FAA agrees to protect such information and not distribute to any 3<sup>rd</sup> party and may only provide to FAA employees or other Government employees in direct support of this OTA with a need to know.

Within 30 days of receipt of a written request by the Company, the FAA agrees to return or destroy any written or electronic form Boeing Proprietary Information. The FAA may request, in writing to the Company, to release such information to a 3<sup>rd</sup> party for the benefit of the OTA.

The Company, at its option, may choose to enter into a non-disclosure agreement with such 3<sup>rd</sup> party and provide such information with restrictions. The Company and its subcontractor are required to mark all such information with the legend “Boeing Proprietary Information” or “Subcontractor Proprietary Information”. In the event Company fails to mark such data, the Company and FAA shall utilize part (f) of this clause.

"Restricted Computer Software," means computer software developed at private expense and that is a trade secret, Commercial Computer Software, or financial, confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

"Restricted Rights" means the rights of the Government in Restricted Computer Software, as set forth in a Restricted Rights Notice of subparagraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this OTA, including minor modifications of such computer software.

"Technical Data" means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include Computer Software or financial, administrative, cost or pricing, or management data or other information incidental to OTA administration. The term includes recorded information of a scientific or technical nature that is included in computer databases.

"Unlimited Rights" means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(a) Allocations of Rights.

(1) Except as provided in paragraph (c) of this clause, and in the case of Boeing Proprietary Information and the Limited Rights Data specifically identified at the bottom of Attachment C or

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as modified/updated through the life of this agreement, the Government must have unlimited rights in-

- (i) All other data first produced in the performance of this OTA;
- (ii) Form, fit, and function data first produced under this OTA;
- (iii) Data delivered under this OTA (except for Restricted Computer Software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this OTA; and
- (iv) All other data delivered under this OTA unless provided otherwise for by the Contractor with Boeing Proprietary Information or Limited Rights Data or Restricted Computer Software in accordance with paragraph (g) of this clause.

(2) The Company may -

- (i) Assert copyright in data first produced in performance of this OTA to the extent provided in paragraph (c)(1) of this clause;
- (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Company in the performance of this OTA, unless provided otherwise in paragraph (d) of this clause;
- (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Protect from unauthorized disclosure and use those data which are Boeing Proprietary Information or Limited Rights Data as specifically identified in [Government and Company Agreement of Data Rights – TBD] or restricted computer software to the extent provided in paragraph (g) of this clause;

(a) Copyright.

(1) Data first produced in the performance of this OTA.

(i) Unless provided otherwise in paragraph (d) of this clause, the Company may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this OTA and publish in academic, technical or professional journals, symposia proceedings or similar works.

(ii) The Company must affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including OTA number).

(iii) For data other than computer software not containing Boeing Proprietary Information or Limited Rights Data as specifically identified in [Government and Company Agreement of Data Rights – TBD], the Company grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software not containing Boeing Proprietary Software or Restricted Computer Software, the Company grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Reserved

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(3) Removal of copyright notices. The Government will not remove any copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, Publication and Use of data. The Company has the right to use, release to others, reproduce, distribute, or publish all data first produced or specifically used by the Company in the performance of this OTA, except as prohibited by Federal law or regulation (e.g., export control or national security laws or regulations).or as expressly set forth in this OTA, e.g.[Dissemination of OTA Information] of this Agreement.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this OTA concerning inspection or acceptance, if any data delivered under this OTA are marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, or if the data bears any other restrictive or limiting markings not authorized by this OTA, the Contracting Officer shall return the data to the Company. While the FAA is not subject to the requirements of 41 U.S.C. 253d, nor to the procedures of the Contract Disputes Act at 41 U.S.C. 601-613, the following procedures apply.

(i) The Contracting Officer must make written inquiry to the Company affording the Company 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Company fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government must have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Company provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Company will be so notified in writing. If the Contracting Officer determines, with concurrence of the Chief of the Contracting Office [COCO], that the markings are not authorized, the Contracting Officer must provide a written determination to the Company. If the Company disagrees with the Contracting Officer determination, the Company may seek adjudication of that determination under AMS 3.9.1-1 "Contract Dispute." The decision of the Office of Dispute Resolution [ODRA] must be final regarding the appropriateness of the markings unless the Company files an appeal pursuant to 49 U.S.C. 46110 in a court of competent jurisdiction within 90 days of receipt of the ODRA decision. This is the Company's sole remedy to an adverse decision of the ODRA.

The Government must continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by ODRA (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if the ODRA's decision is appealed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request therein.

(f) Omitted or incorrect markings.

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(1) Data delivered to the Government without any restrictive markings must be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) The Company may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have authorized notices placed on the data at the Company's expense. The Contracting Officer may agree to do so if the Company-

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent; and,

(iii) Establishes that the use of the proposed notice is authorized;

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may -

(i) Permit correction of the notice at the Company's expense if the Company identifies the data and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software.

(1) Limited Rights Data that are formatted as a computer data base for delivery to the Government are to be treated as Limited Rights Data and not Restricted Computer Software.

(2) This OTA specifies that Boeing may deliver Boeing Proprietary Information or Limited Rights Data. If delivery of such data is required, the Company must affix the appropriate Rights Notice to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

LIMITED RIGHTS NOTICE (January 2009) (Modified)

(i) These Limited Rights Data or Restricted Computer Software data are submitted with Limited Rights under Government OTA No. OTA # TBD. These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Company, be used any purpose other than the mutually agreed upon terms by both parties within the program, nor disclosed outside the Government except as authorized herein;

(ii) This Notice must be marked on any reproduction of these data, in whole or in part.

(h) Subcontracting. The Company must obtain from its subcontractors all data and rights therein necessary to fulfill the Company's obligations to the Government under this OTA. If a subcontractor refuses to accept terms affording the Government those rights, the Company must promptly notify the Contracting Officer of the refusal.

Relationship to patents or other rights. Nothing contained in this clause imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

**b. RESERVED**

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c. 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.

<b>STRUCTURALLY EFFICIENT WING</b>			
Technical Data to be Furnished	Basis for Assertion	Asserted Rights, Category of Deliverable, Applicable Time Period	Name of Entity Making Assertion
<p><b><u>FOREGROUND IP :</u></b></p> <ul style="list-style-type: none"> <li>• Ground test and system level comparisons of predicted and actual performance in terms of satisfactory or unsatisfactory, of ground tested hardware, such as fuel burn savings, test description and objective.</li> <li>• Overall objective of technology and project, overview of progress to date and planned next steps, and discussion of design and analysis activities.</li> <li>• Design and analysis overview information, such as, but not limited to, overall design layout, rib and stringer count, weight savings, usage of non-traditional laminates, usage of advanced materials, and fuel burn savings, photos of Model, Solid Model Screen Captures (non- dimensional)</li> </ul>	<p>Technical data to be generated, developed, &amp; delivered with mixed Boeing &amp; FAA funding</p>	<p>Unlimited Rights Non-Proprietary Reports and Presentations Indefinite</p>	<p>Boeing</p>

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<p><b><u>FOREGROUND IP:</u></b></p> <ul style="list-style-type: none"> <li>• Detailed part engineering drawings/models</li> <li>• Design and analysis detail, such as, but not limited to, rib and stringer spacing dimensions, ply count, critical loads cases and magnitude, resulting structural margins, and absolute weight.</li> <li>• Material, laminate, and joint design allowable</li> <li>• Test specimen geometry and configuration detail, test setup, instrumentation, and detailed test sequence</li> <li>• Discussion of data, data quality, test execution relative to plan, interpretation of data relative to goals of FAA CLEEN and overall assessment of data relative to prediction.</li> </ul>	<p>Technical data developed &amp; first generated under CLEEN with mixed Boeing &amp; FAA funds &amp; that inseparably includes Boeing Proprietary Data</p>	<p>Limited Rights Reports, Presentations, and Non-Deliverables Indefinite</p>	<p>Boeing</p>
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<p><b><u>FOREGROUND IP :</u></b></p> <ul style="list-style-type: none"> <li>• Non-traditional laminates, Braided Resin Infused Hats stiffeners, Stitched resin infused blade stiffeners, stamped thermoplastic ribs, braided sine-wave resin infused ribs fabrication processing information and procedures, such as, but not limited to laminate/layout schedule/sequence, cure time, cure temperatures, cure durations, cure rate, internal tooling mandrel materials and design, co-bond procedures, manufacturing flows, and infusion parameters.</li> <li>• Steering parameters for fiber placement of prepreg material</li> <li>• Design and analysis methods and philosophy such as, but not limited to, damage tolerance approach, application of allowable data, allowable calculation method, and structural margin calculation method.</li> <li>• Capital and tooling configurations for automated fiber placement, braiding, forming, and stitching of materials for fabrication of components and assembly of wing.</li> </ul>	<p>Technical data developed &amp; first generated under CLEEN with mixed Boeing &amp; FAA funds &amp; that inseparably includes Boeing Proprietary Data</p>	<p>Boeing Proprietary</p> <p>Reports, Presentations, and Non-Deliverables</p> <p>Indefinite</p>	<p>Boeing</p>
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<p><b><u>BACKGROUND IP :</u></b></p> <ul style="list-style-type: none"> <li>• Aeroelastic and structural sizing processes, methods, and software tools</li> <li>• Advanced IM+ Prepreg Material System, Non-traditional laminates, Braided Resin Infused Hats stiffeners, Stitched resin infused blade stiffeners, stamped thermoplastic ribs, braided sine-wave resin infused ribs fabrication processing information and procedures, such as, but not limited to laminate/layup schedule/sequence, cure time, cure temperatures, cure durations, cure rate, internal tooling mandrel materials and design, co-bond procedures, manufacturing flows, and infusion parameters.</li> <li>• Steering parameters for fiber placement of prepreg material</li> <li>• Design and analysis methods and philosophy such as, but not limited to, damage tolerance approach, application of allowable data, and structural margin calculation method.</li> <li>• Capital and tooling configurations for automated fiber placement, braiding, forming, and stitching of materials for fabrication of components and assembly of wing.</li> <li>• Advanced IM+ prepreg material system constituents</li> <li>• Material, laminate, and joint design allowables</li> </ul>	<p>Developed exclusively at Private Expense</p>	<p>Boeing Proprietary Non-Deliverables Indefinite</p>	<p>Boeing</p>
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