

**CUSTOMER CONTRACT REQUIREMENTS
Composite Affordability Initiative, Phase II
CUSTOMER CONTRACT F33615-98-3-5103**

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 2 below.

1. The following contract clauses are incorporated by reference from the Federal Acquisition Regulation and apply to the extent indicated. In all of the following clauses, "Contractor" and "Offeror" mean Seller.

52.222-1 Notice to Government of Labor Disputes (FEB 1997). "Contracting Officer" shall mean Buyer.

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (FEB 1999).

52.222-35 Equal Opportunity for Special Disabled, Veterans of the Vietnam Era, and Other Eligible Veterans (APR 1998). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$ 10,000.

52.244-6 Subcontracts for Commercial Items (FEB 2006)

2. If goods or services being procured under this contract are commercial items and Clause H203 is set forth in the purchase order, the foregoing Government clauses in Section 1 above are deleted and the following FAR clauses are inserted in lieu thereof:

52.222-26 Equal Opportunity (subparagraph (b)(1) through (11)) (FEB 1999).

52.222-35 Equal Opportunity for Special Disabled, Veterans of the Vietnam Era, and Other Eligible Veterans (APR 1998). This clause applies only if this contract exceeds \$25,000.

52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998). This clause applies only if this contract exceeds \$ 10,000.

3. The following prime contract special provisions apply to this purchase order:

A. The following special provision applies to all orders:

1. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

Seller shall provide immediate notice to Buyer in the event of being debarred suspended, or proposed for debarment by any Federal Agency during the performance of this Contract.

B. The following special provisions applies to this contract if experimental, developmental or research work is involved in the work performed thereunder:

1. INVENTIONS

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 to the public on reasonable terms.
4. Subject invention means any invention conceived or first actually reduced to practice in the performance of work under this Agreement.

B. Allocation of Principal Rights

Unless the Seller has notified the Buyer (in accordance with subparagraph C.2 below) that Seller does not intend to retain title, Seller shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of this Article and 35 U.S.C. 202. With respect to any subject invention in which Seller retains title, the Government shall 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.

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

1. The 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. The Seller shall also submit to the Government an annual listing of subject inventions.
2. If the Seller determines that it does not intend to retain title to any such invention, the 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. The 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. The 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 this article, paragraph C, may, at the discretion of the Government, and after considering the position of the recipient, be granted.

D. Conditions When the Government May Obtain Title

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

1. If the 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 the recipient to disclose or elect within the specified times.

2. In those countries in which the Seller fails to file patent applications within the times specified in paragraph C of this Article; provided, that if the 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, the 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 the Seller and Protection of the Seller's Right to File

1. The Seller shall retain a nonexclusive, 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. The Seller license extends to the domestic (including Canada) subsidiaries and affiliates, if any, 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 Seller is legally required to grant such license to the other CAI Industry Participants. 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. Government approval for license transfer shall not be unreasonably withheld.

F. Action to Protect the Governments Interest

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

2. The Seller agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and requested under paragraph D of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.

3. The Seller agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by Seller each subject invention made under this Agreement in order that recipient can comply with the disclosure provisions of paragraph C of this Article. The 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.

4. The 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.

5. The Seller shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following: This invention was made with Government support under Other Transaction No. F33615-98-3-5103 awarded by Wright Research Site. The Government has certain rights in the invention.

G. Lower Tier Agreements

The 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.

H. Reporting on Utilization of Subject Inventions

The Seller agrees to submit upon request, and no more frequently than annually, during the term of the Agreement, a report on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Seller or licensees or assignees of the inventor. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties

received by Seller, and such other data and information as the agency may reasonably specify. The 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 the Seller.

I. Preference for American Industry

Notwithstanding any other provision of this clause, the 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 the 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

The Seller agrees that, with respect to any subject invention in which it has retained title, the Government has the right to require the 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 the 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 the Seller or assignee has not taken effective steps, consistent with the intent of this Agreement, 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 the Seller, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the 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.

2. DATA RIGHTS

A. Definitions

"Government purpose rights," as used in this article, means rights to modify, reproduce, release, perform, display, or disclose data within the Government without restriction; and release or disclose data outside the Government only to CAI Industry Participants.

"Unlimited rights," as used in this article, means rights to use, modify, reproduce, perform, display, 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.

"Data," as used in this article, means recorded information, regardless of form or method or recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under the article entitled, "*Inventions*."

B. Allocation of Principal Rights

1. This article applies only to government and Seller data rights.
2. In the event of exercise of the Government's march-in rights as set forth under the article entitled "*Inventions*," the Seller agrees, upon written request from the Government, to deliver to the Government a copy of the patent application filed by the Seller on the invention that is the subject of such march-in rights exercise, if a patent has not yet been issued. In addition to the patent application, Seller agrees to provide to the Government any additional information

concerning such invention as may be contained in the related file maintained by its patent organization.

3. With respect to data first created in the performance of this agreement, the Government shall have Government purpose rights, as defined in paragraph A above, for the term of this agreement and for a period of 5 years thereafter, at which time the Government shall have unlimited rights.

With respect to data first created at the private expense of the Seller and submitted to Buyer but considered by the Seller to be proprietary, the Government shall have the right to use such data solely for the purpose of the review and evaluation of Seller's performance of this agreement. Such data shall be marked with the Proprietary legend provided below. –

C. Marking of Data. Pursuant to paragraph B above, any data submitted under this agreement shall be marked with either of the following legends as appropriate:

"CAI Program Data – Distribution limited to US Government and CAI Industry Participants"

"CAI Program Data – PROPRIETARY – (insert owner's name)"

D. Lower Tier Agreements. The 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.

C. The following provision applies to this contract if this contract is executed with a foreign supplier and involves experimental, developmental or research work:

1. FOREIGN ACCESS TO TECHNOLOGY

This article shall remain in effect during this term of the agreement.

A. Definitions

"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 agreement, 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, technical data, know-how and inventions, developed under this agreement, whether patentable or not, including computer software, recognized under U.S. law as intellectual property including, but not limited to, patents, trade secrets, mask works, and copyrights.

B. General

The parties agree that research findings and technology developments in airframe composites 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 agreement by foreign firms or institutions must be controlled in accordance with 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 and

C.3 below shall apply to any transfer of CAI Developed Technology to a foreign firm or institution. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of technology.

2. For any contemplated transfer of CAI Developed Technology to a foreign firm or institution during the term of this agreement to which the provisions of the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DOD Industrial Security Regulation (DOD 5220.22-R) or the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.) apply, and for which an export license may be required, the recipient shall utilize reasonable efforts to provide the Government program manager a copy of the license request or application.

3. The Government may, subject to prior consultation with the Seller direct the Buyer to withhold funding to the Seller under this Contract on that technology contemplated for transfer. Such withholding of funding shall be solely at the Government's discretion and shall not constitute a claim or dispute between the Seller and the Buyer under this Contract.

D. Lower Tier Agreements. The Seller shall include this article, suitably modified, to identify the parties, in all subcontracts or lower tier agreements with other than a foreign firm or institution, regardless of tier, for experimental, development, or research work.