

**CUSTOMER CONTRACT REQUIREMENTS**  
**Vulture Phase II**  
**CUSTOMER CONTRACT HR0011-10-9-0010**

**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

**ARTICLE V: OBLIGATION AND PAYMENT**

**B. Payments**

7. Financial Records and Reports:

a. The Contractor shall maintain adequate records to account for all funding under this Agreement and shall maintain adequate records to account for the Contractor funding provided under this Agreement. Upon completion or termination of this Agreement, whichever occurs earlier, the Boeing Contracts Administrator shall furnish to the Agreements Officer a copy of the Final Phase II Completion Report required by Attachment 2. The Contractor's relevant financial records are subject to examination or audit on behalf of DARPA by the Government for a period not to exceed three (3) years after expiration of the term of this Agreement. The Agreements Officer or designee shall have direct access to sufficient records and information of the Contractor, to ensure full accountability for all funding under this Agreement. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited Party. This clause shall not be construed to require any party, or entity, or subordinate element of such party or entity that participates in the performance of this Agreement, to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

b. The Comptroller General, at its discretion, shall have access to and the right to examine records of any party to the Agreement or any entity that participates in the performance of this Agreement that directly pertain to, and involve transactions relating to, the Agreement. The right provided to the Comptroller General above is limited as follows in the case of a party to the Agreement, an entity that participates in the performance of the Agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of this Agreement are cooperative agreements or transactions that were entered into under Section 845 of the National Defense Authorization Act for 1994 or section 2371 of title 10, United States Code:

The only records of a party, other entity, or subordinate element referred to in this paragraph that the Comptroller General may examine in the exercise of the right referred to above are records of the same type as the records the Government has had the right to examine under the audit clauses of the previous Agreements or transactions that were entered into by that particular party, entity, or subordinate element. This Article shall not be construed to require any party, or entity, or subordinate element of such party or entity that participates in the performance of this Agreement, to create or maintain any record that is not otherwise maintained in the ordinary course of business or pursuant to a provision of law.

This provision (paragraph 7) of the Agreement shall flow down to any entity that participates in the performance of this Agreement.

**ARTICLE VII: PATENT RIGHTS**

**As used in this article, "subject invention" shall be defined as follows:**

**Subject invention:** Any invention conceived or first actually reduced to practice in the performance of work under this Agreement.

**A. Allocation of Principal Rights**

Unless the Contractor shall have notified DARPA (in accordance with subparagraph B.2 below) that the Contractor does not intend to retain title, the Contractor 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 the Contractor 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.

**B. Invention Disclosure, Election of Title, and Filing of Patent Application**

1. The Contractor shall disclose each subject invention to DARPA within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to DARPA 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 Contractor shall also submit to DARPA an annual listing of subject inventions. All required reporting shall be accomplished, to the extent possible, using the i-Edison reporting website: <https://s-edison.info.nih.gov/iEdison/>. To the extent any such reporting cannot be carried out by use of i-Edison, reports and communications shall be submitted to the Agreements Officer and Administrative Agreements Officer.

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

3. The Contractor 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 Contractor 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: Patent Rights, paragraph B, may be granted at the discretion of DARPA, and after considering the position of the Contractor.

**C. Conditions When the Government May Obtain Title**

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

1. If the Contractor fails to disclose or elects not to retain title to the subject invention within the times specified in paragraph B of this Article; provided, that DARPA may only request title within sixty (60) calendar days after learning of the failure of the Contractor to disclose or elect within the specified times.

2. In those countries in which the Contractor fails to file patent applications within the times specified in paragraph B of this Article; provided, that if the Contractor has filed a patent application in a country after the times specified in paragraph B of this Article, but prior to its receipt of the written request by DARPA, the Contractor shall continue to retain title in that country; or

3. In any country in which the Contractor 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 elects to assume such obligation.

**D. Minimum Rights to the Contractor and Protection of the Contractor's Right to File**

1. The Contractor shall retain a nonexclusive, royalty-free license, with the right to grant sublicenses, throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph B of this Article. The Contractor's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant licenses of the same scope to the extent that the Contractor was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of DARPA, except when transferred to the successor of that part of the business to which the invention pertains. DARPA approval for license transfer shall not be unreasonably withheld.

2. The Contractor's domestic license may be revoked or modified by DARPA 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 the Contractor 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 DARPA to the extent the Contractor, 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, DARPA shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) calendar days (or such other time as may be authorized by DARPA for good cause shown) after the notice to show cause why the license should not be revoked or modified.

**E. Action to Protect the Government's Interest**

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

2. The Contractor 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 the Contractor each subject invention made under this Agreement in order that the Contractor can comply with the disclosure provisions of paragraph B of this Article. The Contractor shall instruct its 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. The Contractor shall notify DARPA 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. The Contractor 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 U.S. Government support under Agreement No. HR0011-10-9-0010, awarded by the Defense Advanced Research Agency (DARPA). The U.S. Government has certain license rights in the invention."

**F. Lower Tier Agreements**

The Contractor shall flow down the provisions of this Article to its first tier subcontractors as well as other Boeing divisions and shall use reasonable efforts to flow down to lower tier subcontractors. The Contractor 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. The Contractor's subcontractors will retain all rights provided for the Contractor in this Article, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

**G. Reporting on Utilization of Subject Inventions**

1. The Contractor agrees to submit during the term of the Agreement an annual report on the utilization of subject inventions or on efforts at obtaining such utilization that are being made by the Contractor 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

Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DARPA in connection with any march-in proceedings undertaken by DARPA in accordance with paragraph I of this Article. Consistent with 35 U.S.C. § 202(c)(5), DARPA agrees it shall not disclose such information to persons outside the Government without permission of the Contractor.

2. All required reporting shall be accomplished, to the extent possible, using the i-Edison reporting website: <https://s-edison.info.nih.gov/iEdison/>. To the extent any such reporting cannot be carried out by use of i-Edison, reports and communications shall be submitted to the Agreements Officer and Administrative Agreements Officer.

#### **H. Preference for American Industry**

Notwithstanding any other provision of this clause, the Contractor 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 DARPA upon a showing by the Contractor 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.

#### **I. March-in Rights**

The Contractor agrees that, with respect to any subject invention in which it has retained title, DARPA has the right to require the Contractor, 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 Contractor, assignee, or exclusive licensee refuses such a request, DARPA has the right to grant such a license itself if DARPA determines that:

1. Such action is necessary because the Contractor or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the subject invention within (5) years from the date of disclosure;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees within five (5) years from the date of disclosure;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees within five (5) years from the date of disclosure; or
4. Such action is necessary because the agreement required by paragraph H 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.

The exercise of march-in rights will be carried out in accordance with 37 CFR § 401.6 "Exercise of March-in Rights."

#### **J. Opportunity to Cure**

Certain provisions of this Article provide that the Government may gain title or license to a Subject Invention by reason of the Contractor's action, or failure to act, within the times required by this Article. Prior to claiming such rights (excluding any rights under this Article, paragraph I. March-in Rights), the Government will give written notice to the Contractor of the Government's intent, and afford the Contractor 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) business days. The Contractor 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.

#### **K. Background Inventions**

The Contractor shall retain the entire right, title, and interest throughout the world to all Background Inventions.

## **ARTICLE VIII. DATA RIGHTS**

**A. Technical Data, Computer Software or Software Documentation**

The technical data, computer software, or software documentation created using Contractor (i.e. Boeing/Government) funding under this Agreement is to be furnished with Government Purpose Rights (GPR). The GPR granted to the Government under this Agreement shall be for a term of eight (8) years after the completion or termination of the Program, whichever is earlier, unless otherwise noted in the table below. After this term ends, the Government's rights shall convert to Unlimited Rights thereafter.

**B. Definitions****Developed exclusively at private expense:**

"Developed exclusively at private expense" means development was accomplished entirely with costs charged to indirect cost pools, not allocated to a government contract, or any combination thereof.

**Developed exclusively with government funds:**

"Developed exclusively with government funds" means development was not accomplished exclusively or partially at private expense.

**Developed with mixed funding:**

"Developed with mixed funding" means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

**Government Purpose:**

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 or computer software or computer software documentation for commercial purposes or authorize others to do so.

**Government Purpose Rights (GPR):**

For technical data: The Government's right 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 only.

**Limited Rights:**

The Government's right 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; or (ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes; (iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and (iv) The Contractor or Subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

**Restricted Rights:**

The Government's right to (i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this Agreement; (ii) Transfer a computer program to another Government agency without further permission of the Contractor if the transferor

destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this definition; (iii) Make the minimum number of copies of the computer software required for safe-keeping (archive), backup, or modification purposes; (iv) Modify computer software provided that the Government may (A) Use the modified software only as provided in paragraphs (i) and (iii) of this definition; and (B) Not release or disclose the modified software except as provided in paragraphs (ii), (v) and (vi) of this definition; (v) Permit Contractors or Subcontractors performing service contracts in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that (A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made; (B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; (C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (iv) of this definition, for any other purpose; and (D) Such use is subject to the limitation in paragraph (i) of this definition; and (vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related Agreement or contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that (A) The intended recipient is subject to the use and nondisclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and (B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (iv) of this definition, for any other purpose.

**Specifically Negotiated License Rights – A (SNLR-A):**

The Government's right to allow each of the individuals (or organizations) specifically named in the assertions table to use the specified number of copies of the computer software in executable code format only, and only for the purposes of the Vulture II Program. Government is authorized to produce the appropriate number of copies as specified in the assertions table. No source code will be transferred to the Government under this Agreement. No one else is permitted to access or use the computer software and the software may not be used for any purpose other than Vulture II Program. Publishing the data/results from the software is prohibited without the approval of the DARPA TTO Vulture Program Office. The Government shall not have the rights to decompile, disassemble, reverse-engineer, modify, or transfer the software.

**Specifically Negotiated License Rights – B (SNLR-B):**

For technical data, the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data within the U.S. Department of Defense (DoD) without restriction. Also, the rights to release or disclose technical data outside the DoD only for applications for which the DoD is a party that do not pertain to unmanned air vehicles (UAV) or Spacecraft, and to authorize persons to whom proper release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for authorized U.S. DoD purposes only. The Government may disclose technical data to an Agreement Officer Representative (AOR) if the AOR has signed an appropriate non-disclosure agreement and is contractually bound to only use the data consistent with the scope of rights in this SNLR-B. Release or disclosure of the technical data outside the DoD for UAV, Spacecraft, or any application for which DoD is not a party requires the written permission of the party asserting

these Specifically Negotiated License Rights B (SNLR-B).

**Specifically Negotiated License Rights – C (SNLR-C):**

For technical data, the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data within the U.S. Department of Defense (DoD) without restriction. Also, after eight (8) years after completion of Vulture II Program, the rights to release or disclose technical data outside the DoD only for applications for which the DoD is a party that pertain to air vehicles or Spacecraft, and to authorize persons to whom proper release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for authorized DoD purposes only. The Government may disclose technical data to an Agreement Officer Representative (AOR) if the AOR has signed an appropriate non-disclosure agreement and is contractually bound to only use the data consistent with the scope of rights in this SNLR-C. Release or disclose of the technical data outside the DoD for any purpose other than air vehicles or Spacecraft applications where DoD is a party requires the written permission of the party asserting these Specifically Negotiated License Rights C (SNLR-C).

**Unlimited Rights:**

For technical data: The Government's right 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.

**C. Flowdown Lower Tier Agreements**

The Contractor will flow down the provisions of this Article to its first tier subcontractors as well as other Boeing divisions and use reasonable efforts to flow down to lower tier subcontractors. The Contractor shall include the obligations of the Contractor under 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 Requirements**

1. Computer software, computer software documentation, technical data and non-technical data (e.g., background data) furnished or delivered under this Agreement shall be marked, as appropriate, with the restrictive legends specified below. The authorized legends shall be placed on the transmitted document or software storage container and each page, or portions thereof, of printed material. Computer software, computer software documentation and technical data that is furnished or delivered without a restrictive marking shall be presumed to be furnished or delivered with Unlimited Rights.

**“Government Purpose Rights**

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Agreement Number: HR0011-10-9-0010

Contractor Name: The Boeing Company

Address: 8181 Aviation Drive  
St. Louis, MO 63134

Expiration Date: 8 years after the completion or termination of Vulture II Agreement, HR0011-10-9-0010, whichever is earlier.

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data or computer software and/or software documentation are restricted as stated in Agreement HR0011-10-9-0010 between the Government (DARPA) and The Boeing Company. Any reproduction of technical data or computer software and/or software documentation, or portions thereof marked with this legend must also reproduce the markings.”

**“Government Purpose Rights**

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Agreement Number: HR0011-10-9-0010

Contractor Name: The Boeing Company

Address: 8181 Aviation Drive  
St. Louis, MO 63134

Expiration Date: None. (Perpetual GPR)

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**“Limited Rights**

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**“Restricted Rights**

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**“Specifically Negotiated License Rights - A**

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**“Specifically Negotiated License Rights - B**

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**“Specifically Negotiated License Rights - C**

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Address: 8181 Aviation Drive



St. Louis, MO 63134

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**"No Rights Granted**

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Agreement Number: HR0011-10-9-0010

Contractor Name: The Boeing Company

Address: 8181 Aviation Drive  
St. Louis, MO 63134

The Government has not been granted rights to use, modify, reproduce, release, perform, display, or disclose this technical data or computer software and/or computer software documentation, as stated in Agreement HR0011-10-9-0010 between the Government (DARPA) and The Boeing Company. No reproduction of this technical data or computer software and/or computer software documentation, or portions thereof, is authorized."

2. Deliverables of a proprietary non-Technical Data nature (Boeing Monthly Schedule and Cost Report, Boeing Funding Status Report, Boeing Cost Match Status Report, Program Management Plan, and Integrated Master Schedule (IMS) Updates)) shall be marked with the proprietary notice customarily used by the Contractor to identify data and information that is subject to restrictions regarding disclosure and/or use. The proprietary notice shall however, also include notation of this Agreement Number "HR0011-10-9-0010".

**"Boeing Proprietary**

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Agreement Number: HR0011-10-9-0010

Contractor Name: The Boeing Company

Address: 8181 Aviation Drive  
St. Louis, MO 63134"

3. Limitations and restrictions will be subject to the appropriate Contractor or third party markings and legends including a copyright notice to assure proper handling and shall bear notation to this Agreement Number "HR0011-10-9-0010".

**E. Disclosure to Government Support Contractors**

The Parties understand and agree that Government support contractors will be collaborating during this effort. These contractors will be reviewing the results of the design activities, analyzing performance and capability claims, and providing general support to Government officials associated with any programmatic efforts associated with further development. The Contractor authorizes the Government to disclose Limited Rights Technical Data and Proprietary non-Technical Data to Government support contractors provided that prior to release or disclosure the Government confirms that such support contractors have entered into a non-disclosure agreement with the Government.

**ARTICLE IX: FOREIGN ACCESS TO TECHNOLOGY**

**A. Notification of Intention to Export**

The Contractor will notify DARPA of its intention to export any technology developed under this Agreement prior to notification as required by the International Traffic in Arms Regulation (ITAR) of the United States Department of State ("ITAR", United States code of Federal Regulations, Title 22, Parts 120-130, inclusive). No technology will be transferred, and no technical data, assistance or service will be furnished to any Foreign Firm or Institution in violation of the ITAR, the Export Administration Regulations of the United States Department of Commerce (United States Code of Federal Regulations, Title 15, Parts 768-799, inclusive) or any other applicable laws or regulations of the United States.

**B. Lower Tier Agreements**

The Contractor 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 under this Agreement.

#### **ARTICLE X: EXPORT CONTROL**

1. The Contractor agrees to comply at all times with all U.S. export control laws and regulations, including, but not limited to, the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement. In the absence of available license exemptions or exceptions, the Contractor shall be responsible for obtaining all appropriate licenses or other approvals, including those required for exports, including deemed exports, of hardware, technical data, software, and technical assistance.

2. The Contractor agrees to obtain all necessary export licenses before utilizing any foreign persons in the performance of this Agreement, including in those instances, if any, where the work is to be performed on-site at any Government installation.

3. The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of export licenses and license exemptions or exceptions.

4. The Contractor agrees to take all necessary steps to ensure that its subcontractors comply with all applicable provisions of U.S. export control laws.

#### **ARTICLE XI: GOVERNMENT FURNISHED EQUIPMENT, PROPERTY, INFORMATION, FACILITIES, AND SERVICES**

##### **A. Definitions**

1. "Contractor-acquired property" means property acquired, fabricated, or otherwise provided by the Contractor for performing this Agreement, and to which the Government has title.

2. "Equipment" means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of this Agreement. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

3. "Government-furnished property" means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of this Agreement.

4. "Government property" means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

5. "Material" means property that may be consumed or expended during the performance of this Agreement, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, special test equipment or real property.

6. "Property" means all tangible property, both real and personal, other than consumable property which is actually consumed during the execution of work under this Agreement.

7. "Provide" means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

##### **B. Government Furnished Equipment, Property, Information, Facilities and Services**

1. The Government does anticipate the need for Government Furnished Equipment, Property, Information, Facilities and Services in the performance of this Agreement. The delivery and/or performance dates specified in this Agreement are based upon the expectation that the Government-furnished property will be suitable for Agreement performance and will be delivered to the Contractor by the dates required to meet the Program Schedule. This Agreement shall be modified with need dates and specific details at such time that flight test dates are scheduled, and specific Government-furnished requirements are known and agreed by the Parties,

which is anticipated to be at the completion of Critical Design Review (CDR). If the property is not delivered to the Contractor by the dates stated in the Agreement, the Agreements Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the Agreement.

The Contractor may require use of the GFE, GFP, GFI, GFF, and GFS as described in the table below:

Item Name	Item Number	Need Date	Location	NTE Cost
Total Test Range facility and support				\$5,311,940

2. Title to Government-furnished property will remain with the Government. The Contractor shall have a system to manage Government property in its possession and will use the Government-furnished property only in connection with this Agreement. The Contractor will maintain adequate property control records in accordance with sound industry practice and will make such records available to the Government. The Contractor, at a minimum, will return Government-Furnished property as received less normal wear and tear.

3. Upon delivery of Government-furnished property to the Contractor, the Government retains the risk and responsibility for its loss, theft, destruction or damage, including incidental expenses related to such loss, theft, destruction or damage, except for damage that results from willful misconduct or lack of good faith on the part of the Contractor or its subcontractors.

4. The Contractor shall be responsible for loss, theft, or destruction of, or damage to, the Government property provided under this Agreement using a reasonable standard of care, less normal wear and tear:

- (a) That results from a risk expressly required to be insured under this Agreement, but only to the extent of the insurance required to be purchased or maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
- (b) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
- (c) For which the Contractor is otherwise responsible under the express terms of this Agreement; or
- (d) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

5. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, damage, destruction, or theft of Government property. Upon the request of the Agreements Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

6. Upon completing this Agreement, the Contractor will follow the instructions of the Agreements Officer regarding the disposition of all Government-furnished property not consumed in performing this Agreement or previously delivered to the Government. The Agreements Officer shall have forty-five (45) calendar days from the end date of the Agreement to provide written disposition instructions to the Contractor. The Contractor will prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Agreements Officer. The net proceeds of any such disposal will be credited to or used in the performance of this Agreement, unless the Parties agree otherwise. The Contractor shall identify any such proceeds in writing to the Agreements Officer.

7. Rent-free use of any Government facilities or other property in performance of this Agreement is hereby authorized for the term of this Agreement.

**C. Contractor Acquired Property**

1. Title to Property

- (a) Title to all Contractor Acquired Property furnished under this Agreement shall pass to and vest in the Government upon—

- (i) Issuance of the property for use in Agreement performance; or
- (ii) Commencement of processing of the property for use in Agreement performance.

2. Contractor Liability for Contractor Acquired Property.

Unless otherwise provided for in the Agreement, the Contractor shall not be liable for loss, theft, damage or destruction to the Contractor acquired property under this Agreement, except when any one of the following applies—

- (a) From a risk expressly required to be insured under this Agreement, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
- (b) From a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
- (c) For which the Contractor is otherwise responsible under the express terms of this Agreement; or
- (d) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

3. Disposition of Property

Upon completing this Agreement, the Contractor will follow the instructions of the Government Agreements Officer regarding the disposition of all Contractor Acquired Property not consumed in performing this Agreement or previously delivered to the Government. The Agreements Officer shall have forty-five (45) calendar days from the end date of the Agreement to provide written disposition instructions to the Contractor. The Contractor will prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Agreements Officer. The net proceeds of any such disposal will be credited to or used in the performance of this Agreement. The Contractor shall identify any such proceeds in writing to the Agreements Officer.

#### **D. Subcontractor's Risk of Loss**

The Agreements Officer agrees and has approved, in advance, that the risk of loss provisions, both for Government furnished or Contractor acquired property, of this Article pass to Boeing's subcontractors for whom Government property is acquired or furnished for subcontract performance.

#### **E. Lower Tier Agreements**

The Contractor shall flow down the provisions of this Article to its first tier subcontractors as well as other Boeing divisions and shall use reasonable efforts to flow down to lower tier subcontractors in all subcontracts under which Government property is acquired or furnished for subcontract performance.

### **ARTICLE XV: SUBCONTRACTORS**

1. The Contractor is authorized to use best commercial practices under this Agreement. The Contractor may seek relief from normal flowdown requirements to subcontractors where it potentially impacts the Program; however, any such relief shall be approved by the Agreements Officer. The Contractor shall make every effort to satisfy the intent of competitive bidding of sub-Agreements to the maximum extent practicable and where appropriate to do so. The Contractor may use foreign entities or nationals as subcontractors, subject to compliance with the requirements of this Agreement and to the extent otherwise permitted by law.

### **ARTICLE XVI: PUBLIC RELEASE OR DISSEMINATION OF INFORMATION**

1. There shall be no dissemination or publication, except within and between the Contractor and any subcontractors, of information developed under this Agreement or contained in the reports to be furnished pursuant to this Agreement without prior written approval, which will be communicated to the Contractor by email through the DARPA Public Release Center (PRC) at PRC@darpa.mil. All technical reports will be given proper review by appropriate authority to determine which Distribution Statement is to be applied prior to the initial distribution of these reports by the Contractor. Unclassified patent related documents are exempt from prepublication controls and this review requirement. Papers resulting from unclassified fundamental research are exempt from prepublication controls and this review requirement, pursuant to DoD Instruction 5230.27 dated October 6, 1987.

2. When submitting material for written approval for open publication as described in subparagraph (1) above, the Contractor must submit a request for public release request to the PRC and include the following information: 1) Document Information: document title, document author, short plain-language description of technology discussed in the material (approx 30 words), number of pages (or minutes of video) and document type (briefing, report, abstract, article, or paper); 2) Event Information: event type (conference, principle investigator meeting, article or paper), event date, desired date for DARPA's approval; 3) DARPA Sponsor: DARPA Program Manager, DARPA office, and Agreement number; and 4) Contractor's Information: POC name, e-mail and phone. Allow four (4) weeks for processing; due dates under four (4) weeks require a justification. Unusual electronic file formats may require additional processing time. Requests can be sent either via e-mail to PRC@darpa.mil or via hard copy to 3701 North Fairfax Drive, Arlington VA 22203-1714, telephone (571) 218-4235. Refer to www.darpa.mil/prc for information about DARPA's public release process.

3. Public releases include press releases, specific publicity or advertisement, and publication or presentation, but exclude those relating to the open sourcing or licensing, sales or other commercial exploitation of products, services or technologies. In addition, articles for publication or presentation will contain a statement on the title page worded substantially as follows:

“This research was, in part, funded by the U.S. Government. The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the official policies, either expressed or implied, of the U.S. Government.”

4. The Contractor shall flow down the provisions of this Article to its first tier subcontractors as well as other Boeing divisions and shall use reasonable efforts to flow down to lower tier subcontractors

#### **ARTICLE XX: APPLICABLE LAW**

United States federal law will apply to the construction, interpretation, and resolution of any disputes arising out of or in connection with this Agreement.

#### **ARTICLE XXIV: EXCUSABLE DELAY**

The Contractor shall not be liable because of any failure to perform this Agreement under its terms if such failure arises from causes beyond the control and without the sole fault or negligence of the Contractor. Examples of excusable delays are (1) acts of God or the public enemy, (2) acts of the Government in its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, job actions or labor disputes, (8) freight embargoes, (9) terrorism, and (10) unusually severe weather. Upon request of the Contractor, the Agreements Officer shall ascertain the facts and extent of the failure. If the Agreements Officer determines that any failure to perform results from an excusable delay, the Payable Milestones schedule and/or Agreement deliverables shall be revised in writing accordingly.

#### **ARTICLE XXV: DISCLAIMERS**

Such information as may be transmitted or exchanged by the Parties under this Agreement shall not constitute any representation, warranty, assurance, guarantee, or inducement by any party to the other with respect to the infringement of any patent or proprietary right owned or controlled by a third party.

**NEITHER PARTY MAKES ANY WARRANTY OR REPRESENTATION, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE CONTENT, ACCURACY, SUFFICIENCY, PRACTICALITY, PERFORMANCE, OR ADEQUACY OF DOCUMENTS AND INFORMATION EXCHANGED BY THE PARTIES AND THE IMPLIED**

**WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.****ARTICLE XXVI: INSPECTION OF RESEARCH AND DEVELOPMENT**

The Government has the right to inspect and evaluate the work performed or being performed under the Agreement, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

**ARTICLE XXVII: ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES**

The Contractor shall report promptly to the Agreements Officer and the Administrative Agreements Officer all pertinent facts relating to each accident involving an aircraft, missile or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this Agreement. If the Government conducts an investigation of the accident, the Contractor will cooperate and assist the Government's personnel until the investigation is complete. The Contractor will include a clause in subcontracts under this Agreement to require subcontractor cooperation and assistance in accident investigations.

**ARTICLE XXVIII: FREQUENCY AUTHORIZATION**

The Contractor shall obtain authorization for radio frequencies required in support of this Agreement. For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Agreements Officer during the initial planning, experimental, or developmental phase of Agreement performance. The Agreements Officer shall furnish the procedures for obtaining radio frequency authorization.

The Contractor shall include this Article, including the requirement to flow this article down to lower tier subcontractors, in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

**ARTICLE XXIX: GROUND AND FLIGHT RISK**

(a) Definitions. As used in this clause—

(1) "Aircraft," unless otherwise provided in the Agreement, means—

Aircraft acquired, fabricated, or otherwise provided by the Contractor under this Agreement;

(2) "Contractor's premises" means those premises, including subcontractors' premises, designated in the Agreement or in writing by the Agreements Officer, and any other place the aircraft is moved for safeguarding.

(3) "Flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this Agreement, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Agreements Officer (AO).

(4) "Flight crew member" means the pilot or operator of an unmanned aerial vehicle. If required, a defense systems operator may also be assigned as a flight crew member.

(5) "In the open" means located wholly outside or inside of buildings on the Contractor's premises or other places described in the Agreement as being "in the open." Government furnished aircraft shall be considered to be located "in the open" at all times while in the Contractor's possession, care, custody, or control.

(6) "Operation" means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.

- (b) Government as self-insurer. Subject to the conditions in paragraph (c) of this Article, the Government self-insures and assumes the risk of damage to, or loss or destruction of aircraft “in the open,” during “operation,” and in “flight,” except as may be specifically provided in the Agreement as an exception to this Article. The Contractor shall not be liable to the Government for such damage, loss, or destruction.
- (c) Conditions for Government’s self-insurance. The Government’s assumption of risk for aircraft in the open shall continue unless the Agreements Officer finds that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.
- (1) The Agreements Officer, when finding that the aircraft is in the open under unreasonable conditions, shall notify the Contractor in writing and shall require the Contractor to make corrections within a reasonable time.
  - (2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable.
    - (i) If the Agreements Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the Agreement value for any additional costs incurred in correcting the conditions.
    - (ii) Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under Article VI: Disputes.
  - (3) If the Agreements Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the AO may terminate the Government’s assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 a.m. on the fifteenth (15<sup>th</sup>) day following the day the written notice is received by the Contractor.
    - (i) If the Agreements Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the Agreement value for any additional costs incurred as a result of termination of the Government’s assumption of risk.
    - (ii) Any dispute as to the timeliness of the Contractor’s action or the equitable adjustment shall be considered a dispute under Article VI: Disputes.
  - (4) If the Government terminates its assumption of risk pursuant to the terms of this Article—
    - (i) The Contractor shall thereafter assume the entire risk for damage, loss, or destruction of, the affected aircraft;
    - (ii) Any costs incurred by the Contractor (including the costs of the Contractor’s self-insurance, insurance premiums paid to insure the Contractor’s assumption of risk, deductibles associated with such purchased insurance, etc.) to mitigate its assumption of risk are unallowable costs; and
    - (iii) The liability provisions of the Government Property Article of this Agreement are not applicable to the affected aircraft.
  - (5) The Contractor shall promptly notify the Agreements Officer when unreasonable conditions have been corrected.
    - (i) If, upon receipt of the Contractor’s notice of the correction of the unreasonable conditions, the Government elects to again assume the risk of loss and relieve the Contractor of its liability for damage, loss, or destruction of the aircraft, the DARPA AO will notify the Contractor of the AO’s decision to resume the Government’s risk of loss. The Contractor shall be entitled to an equitable adjustment in the Agreement price for any insurance costs extending from the end of the third working day after the Government’s receipt of the Contractor notice of correction until the Contractor is notified that the Government will resume the risk of loss.
    - (ii) If the Government does not again assume the risk of loss and the unreasonable conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day after the Government’s receipt of the Contractor’s notice of correction.
  - (6) The Government’s termination of its assumption of risk of loss does not relieve the Contractor of its obligation to comply with all other provisions of this Article.

- (d) Exclusions from the Government's assumption of risk. The Government's assumption of risk shall not extend to damage, loss, or destruction of aircraft which—
- (1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice, including oversight of subcontractor's program.
  - (2) Is covered by insurance;
  - (3) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this Article. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice, e.g., a known condition or design defect, in the property); or
  - (4) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government's assumption of risk.
- (e) (Reserved)
- (f) Contractor's exclusion of insurance costs. The Contractor warrants that the Agreement price does not and will not include, except as may be authorized in this Article, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government, even if the assumption may be terminated for aircraft "in the open".
- (g) Procedures in the event of loss.
- (1) In the event of damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft and to put all aircraft in the best possible order. The Contractor shall furnish to the AO a statement of—
    - (i) The damaged, lost, or destroyed aircraft;
    - (ii) The time and origin of the damage, loss, or destruction;
    - (iii) All known interests in commingled property of which aircraft are a part; and
    - (iv) The insurance, if any, covering the interest in commingled property.
  - (2) The Agreements Officer will make an equitable adjustment for expenditures made by the Contractor in performing the obligations under this paragraph.
- (h) Loss, damage, or destruction of aircraft prior to being furnished to DARPA shall be subject to Article XI: Government Furnished Equipment, Property, Information, Facilities, and Services.
- (i) Reimbursement from a third party. In the event the Contractor is reimbursed or compensated by a third party for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Agreements Officer or AOR, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation) in obtaining recovery.
- (j) Government acceptance of liability. The Contractor shall be reimbursed for liability to third persons for loss or damage to property or for death or bodily injury caused by aircraft during flight, except that the Contractor shall be liable for such damage to the extent that it results from willful misconduct or lack of good faith of any of the Contractor's managerial personnel.