

CUSTOMER CONTRACT REQUIREMENTS
Advanced Aircrew Protection
CUSTOMER CONTRACT W911W6-10-2-0003

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below.

1. Equal Employment Opportunity - All contracts shall contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964-1965 Comp., p. 339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 1966-1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
2. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subawards in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the responsible DoD Component.
3. Contract Work Hours and Safety Standards Act (40 U.S.C.) 327-333 - Where applicable, all contracts awarded by recipients in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
4. Rights to Inventions Made Under a Contract or Agreement -- Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
5. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and subawards of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the responsible DoD Component and the Regional Office of the Environmental Protection Agency (EPA).
6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall

also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7. Debarment and Suspension (E.O.s 12549 and 12689) – Contract awards that exceed the simplified acquisition threshold and certain other contract awards shall not be made to parties listed on nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.

8. Patent Rights

Note: All references to "Government" shall mean "Buyer".

A. Definitions.

1. All references to "Recipient", as it applies to Article XII, Patent Rights, shall be deemed to be reference to Recipient and any team member. Use of the name "Recipient" is not intended to exclude any team member.

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

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

4. "Practical application" means to manufacture, in the case of a composition of matter or product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the Public on reasonable terms.

5. "Subject Invention" means any invention made, or improvement to any invention conceived or first reduced to practice in the performance of work under this Agreement. Any invention both conceived and first actually reduced to practice at private expense outside this Agreement, including reduction to practice by simulation if the technology is sufficiently mature to reasonably ensure workability, is not a Subject Invention.

6. "Background Invention" means an invention, or improvements to any invention, other than a Subject Invention, which the Recipient has made or will make not in the performance of work under this Agreement.

B. Allocation of Principal Rights.

Unless Recipient will have notified the Government (in accordance with subparagraph C.2 below) that Recipient does not intend to retain title, Recipient will 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. 203. With respect to any Subject Invention in which Recipient retains title, the Government will have a nonexclusive, nontransferable, irrevocable, paid-up license for Government to practice or have practiced on behalf of the United States the Subject Invention throughout the world. Notwithstanding the above, Recipient may elect to provide full or partial rights to other parties.

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

1. Recipient will disclose each Subject Invention to the Government (through the Agreement Administrator) within six (6) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to AATD will be in the form of a written report and will identify the Agreement under which the invention was made and the identity of the inventor(s). It will be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, optical, chemical, biological, or electrical characteristics of the invention. The disclosure will also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In the event there are no subject inventions, Recipient will submit to the Government a negative report as part of Agreement closeout.

2. If Recipient determines that it does not intend to retain title to any such invention, Recipient will 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. Recipient will file its initial patent application on a Subject Invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. Recipient may elect to file patent applications in additional countries (or regional Patent Office or pursuant to the Patent Cooperation Treaty) within either twelve (12) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

4. Any Subject Inventions, jointly made by employees of the Government of the United States of America and Recipient, will be jointly owned by those parties. With respect to jointly owned Subject Inventions, the parties will agree, on a case-by-case basis, as to which party will file patent applications, if any. Each party will bear its own patent filing expenses in filing patent applications on joint Subject Inventions. Requests for extension of the time for disclosure, election, and filing under Article XII, subparagraph C. may, at the discretion of the Government, and after considering the position of Recipient, be granted and will normally be granted unless the Agreements Officer has reason to believe that a particular extension would prejudice the Government's interest.

D. Conditions When the Government May Obtain Title.

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

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

2. In those countries in which Recipient fails to file patent applications within the times specified in paragraph C of this Article, provided that, if Recipient 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, Recipient will continue to retain title in that country; or

3. In any country in which Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on a patent on a Subject Invention, if the Government, at its expense, is going to continue to retain title in that country.

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

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

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

2. The Recipient domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of Subject Invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404, provided that such revocation or modification will not take place less than ten (10) years after the end of the term of the Agreement. This license will not be revoked in that field of use or the geographical areas in which Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Government to the extent Recipient, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, the Government will furnish Recipient a written notice of its intention to revoke or modify the license, and Recipient will be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Government's Interest.

1. Recipient agrees to execute or to have executed and promptly provide to the Agreements Administrator all instruments necessary to: (a) establish or confirm the rights the Government has throughout the world in those Subject Inventions to which Recipient elects to retain title, and (b) convey title to the Government when requested under paragraph D. of this Article and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

2. Recipient agrees to require, by written Agreement, that employees of Recipient, other than clerical and non-technical employees, agree to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters and in a format acceptable to Recipient, each Subject Invention made under this Agreement in order that Recipient can comply with the disclosure provisions of paragraph C. of this Article. Recipient will instruct employees, through employee Agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

3. Recipient will notify the Government of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a re-examination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

4. Recipient will include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This invention was made with Government support under Agreement No. W911W6-10-2-0003 for Advanced Aircrew Protection. The Government has certain rights in the invention."

G. Lower Tier Agreements.

1. The Recipient shall include the obligations of the Recipient under this Article, suitably amended to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.
2. In the case of a lower tier agreement with a vendor, at any tier, the Government, the vendor, and the Recipient agree that the mutual obligations of the parties created by this Article flow down to the vendor and constitute an agreement between the vendor and the Government with respect to such obligations.
3. The foregoing flow down requirements shall pertain only to the obligations created by this Article. For purposes of clarity, the Parties agree that the Recipient has the right to freely negotiate the ownership and other allocation of intellectual property rights as between the Recipient and its vendors.

H. Reporting on Utilization of Subject Inventions.

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

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

I. Preference for American Industry.

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

Recipient agrees that, with respect to any Subject Invention in which it has retained title, the Government has the right to require Recipient, an assignee, or exclusive licensee of a Subject Invention to grant a nonexclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if Recipient, 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 Recipient or assignee has not taken effective steps, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention, a reasonable time being no less than ten (10) years from the end of the term of the Agreement;
2. Such action is necessary to alleviate health or safety needs, which are not reasonably satisfied by Recipient, assignee, or their licensees;

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

4. Such action is necessary because the Agreement required by paragraph (1) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such Agreement.

K. Opportunity to Cure.

Certain provisions of this Article provide that the Government may gain title or license to a Subject Invention by reason of Recipient's action or failure to act within the times required by this Article. Prior to claiming such rights (including any rights under Article XII. J., "March-In Rights"), the Government will give written notice to Recipient of the Government's intent and afford Recipient a reasonable period of time to cure such action or failure to act. The length of the cure period will depend on the circumstances, but in no event will be less than sixty (60) days. Recipient may also use the cure period to show good cause why the claiming of such title or right would be inconsistent with the intent of this Agreement, in light of the appropriate timing for introduction of the technology in question, the relative funding and participation of the parties in the development and other factors.

L. Notification of Background Inventions, Disclosures or Patents

In no event shall the provisions set forth in this Article apply to any Background Inventions or Patents obtained thereon by recipient. Recipient shall retain the entire right, title, and interest throughout the world to each such invention and patents, and the Government shall not acquire any rights to such Invention and Patents under this Agreement except for Subject Inventions. Such Intellectual Property, including but not limited to, Background Inventions, Disclosures, or Patents are identified in Attachment 6. The listing of Recipient's Background Inventions, Disclosures, or Patents is subject to revision based upon new information or inadvertent omission, or otherwise by mutual agreement of the Parties, evidenced by a bi-lateral modification to this Agreement.

9. Other Intellectual Property Rights

Note: All references to "Government" shall mean "Buyer".

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

1. "Background Data" means Technical Data produced by Recipient at private expense prior to performance of or outside the scope of this Agreement and is considered by Recipient to be proprietary. Such Background Data may include any modifications, derivatives to previously conceived, designed, developed, and resultant revisions to software, processes, qualification data, and manufacturing plans.

2. "Background Software" means any Software developed by Recipient prior to the performance of this Agreement or outside the scope of work performed under this Agreement and is considered by Recipient to be proprietary.

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

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

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

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

6. "Limited Rights" as defined in (a)(13) of DFARS 252.227-7013, Rights in Technical Data-Noncommercial Items (NOV 1995).

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

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

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

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

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

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

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

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

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

B. Allocation of Principal Rights

1. Background Data provided to the Government shall be limited to that information normally shared with commercial customers or that information specifically negotiated under this Agreement and shall be subject to Limited Rights. Recipient retains all right, title, and interest in such Background Data. Certain deliverable reports/documentation may, by necessity, incorporate Background Data. If so, such report/documentation will be supplied with Limited Rights. Furnishing of "Background Data" by incorporating it into a deliverable report/documentation shall not affect any preexisting Government Rights in such Technical Data.

Assertions meeting the definition of Background Data/Background Software may be identified after award. Such identification shall be submitted to Buyer as soon as practicable, but in no case shall the additional Background Data be included in any data deliverable to the Government until the prime contract Agreement has been amended to reflect such addition. There is no requirement for Software deliverables.

2. The following reports are administrative/management documentation and not considered technical data. They contain Recipient proprietary information and may be marked "Proprietary": Program Management Plan and Bi-Monthly Business/Financial Status Report.

3. The Government shall obtain Unlimited Rights in a version of the Final Report that will not contain any proprietary information. An additional version of the Final Report will be delivered with Government Purpose Rights.

4. The following reports/documentation may include background data: Bi-monthly Technical Status Report, Test Plans and one of the two Final Reports. When Background Data is included and subject to Limited Rights, that Background Data shall be submitted in an appendix to the report/document such that the Government may have Government Purpose Rights in the primary portion of the report/document.

5. To the extent that Government Data is used in the performance of this Agreement, the Government shall retain its preexisting rights in such Data.

C. Recipient shall include the obligations of the Recipient 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 of Data

1. Pursuant to paragraph B above, technical data delivered under this Agreement with less than Unlimited Rights shall be marked with one of the following legends as appropriate:

Government Purpose Rights

Agreement Number: W911W6-10-2-0003

Contractor Name:

Address:

Expiration Date:

Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

Limited Rights

Agreement Number W911W6-10-2-0003

Contractor Name:

Address:

Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

2. Further, the deliverable proprietary non-technical data (Program Management Plan and Business/Financial Status Report) not subject to Unlimited Rights, Government Purpose Rights or Limited Rights, shall be marked with the proprietary notice customarily used by Recipient 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 "W911W6-10-2-0003".

3. Except for Technical Data or Administrative/Management Reports delivered under this Agreement, the parties agree that Recipient will appropriately advise the Government regarding any limitation or restriction to Technical Data or Computer Software to which the Government may have access. Limitations and restrictions will be subject to the appropriate Recipient or third party markings and legends including a copyright notice to assure proper handling and shall bear notation to this Agreement Number "W911W6-10-2-0003".

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 Recipient 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 contractors are subject to a non-disclosure agreement (either by virtue of the contract under which they are performing work and which contains DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends, or by separate execution of a non-disclosure agreement that is acceptable to Recipient.

10. Notice and Assistance Regarding Patent and Copyright Infringement

Note: All references to "Government" and "Grants/Agreements Officer" shall mean "Buyer".

(a) Recipient shall report to the Grants/Agreements Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this agreement of which Recipient has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this agreement, Recipient shall furnish to the Government when requested by the Grants/Agreements Officer, all evidence and information in possession of Recipient pertaining to such suit or claim.

Such evidence and information shall be furnished at the expense of the Government except where Recipient has agreed to indemnify the Government.

(c) Recipient agrees to include, and require inclusion of, this Article (suitably modified to identify the parties) in all sub-agreements at any tier.