



Section 9 : GOVERNMENT CONTRACT REQUIREMENTS

CLAUSE 90T (10/10/00)

MDA972-00-9-0015

Orbital Express Advance Technology Demonstration (ATD)

Government Contract Requirements

(a) Financial Records and Reports. Seller's relevant financial records are subject to audit or examination by the Government for a period not to exceed three years after expiration of Boeing's agreement with Boeing's Customer. Seller shall provide direct access to sufficient records and information to ensure full accountability for all funding under this contract. Such audit, access or examination shall be performed upon prior written notice and shall be subject to Seller's security requirements.

(b) Patent Rights:

(1) Definitions: "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code; "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention; "practical application" means to manufacture (in the case of a composition of a product), to practice (in the case of a process or method) or to operate (in the case of a machine or system, under such conditions as to establish that the invention is capable of being utilized and that its benefits are available to the public on reasonable terms; "subject invention" means any Seller invention conceived or first actually reduced to practice in the performance of work under this contract.

(2) Allocation of Principles Rights. Unless Seller shall have notified Boeing that Seller does not intend to retain title, Seller shall retain entire right, title and interest throughout the world to each subject invention consistent with provisions of this clause and of 35 U.S.C. Sec. 202. With respect to any subject invention in which Seller retains title, Seller shall provide to Boeing's Customer a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the U.S. the subject invention throughout the United States except as stated below.

(3) Invention Disclosure, Election of Title, and Filing of Patent Application. Seller shall disclose each subject invention to Boeing within 3 months after inventor discloses it in writing to her/his company personnel responsible for patent matters. This disclosure 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. It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. Seller shall also submit to Buyer an annual listing of subject inventions. If Seller determines that it does not intend to retain title to any such invention, Seller shall notify Boeing in writing within 6 months of initial disclosure of the invention. Seller shall file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of

the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. Seller may elect to file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents & Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

(4) Conditions When the Government May Obtain Title. Upon the request of Boeing's customer, Seller shall convey title to any subject invention to Customer through Boeing under any of the following circumstances: if Seller fails to disclose or elects not to retain title to the subject invention within the time specified in subparagraph (3) above; in those countries in which Seller fails to file patent applications within the times specified in subparagraph (3) above; in any country in which Seller decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in re-examination or opposition proceedings on, a patent on the subject invention.

(5) Minimum Rights to the Contractor and Protection of Contractor's Right to File. Seller shall retain a non-exclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Seller fails to disclose the invention within the times specified above. Seller's license includes the right to grant licenses of the same scope to the extent Seller was legally obligated to do so at the time Agreement was awarded. The license is transferable only with the approval of Boeing's customer, obtained through Boeing, except when transferred to the successor to that part of the business to which the invention pertains. Seller's domestic license may be revoked or modified by Boeing's customer to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404; this license shall not be revoked in that field of use or the geographical areas in which Seller has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. Before revocation or modification of the license, Boeing's Customer shall furnish Seller a written notice of its intention to revoke or modify the license, and Seller shall be allowed 15 calendar days after the notice to show cause why the license should not be revoked or modified.

(6) Action to Protect the Government's Interest. Seller agrees to execute or to have executed and promptly deliver to Boeing all instruments necessary to establish or confirm the rights Boeing's Customer has throughout the world in those subject inventions to which Seller elects to retain title, and convey title to Boeing's customer whenever request by Boeing. Seller agrees to require, by written agreement, that employees of Seller (other than clerical and non-technical employees) agree to disclose promptly in writing to personnel identified as responsible for administration of patent matters and in a format acceptable to Boeing, each subject invention made under this contract. Seller 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. Seller shall notify Boeing 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 not less than 15 calendar days before the expiration of the response period required by the relevant patent office. Seller shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under Agreement No. MDA972-00-9-0015 awarded by DARPA. The Government has certain rights in the invention."

(7) Reporting on Utilization of Subject Inventions. Seller agrees to submit, during the term of the Agreement, an annual report on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by Seller or its licenses or assignees; such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the subcontractor, and such other data and information as Boeing may reasonably specify. Boeing and

Boeing's Customer agree that they shall not disclose such information to persons outside the Government without Seller's permission.

(8) Preference for American Industry. Seller agrees that it shall not grant to any person the exclusive right to use or sell any subject invention in the United States or Canada unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention shall be manufactured substantially in the United States or Canada.

(9) March-In Rights. Seller agrees that, with respect to any subject invention in which it has retained title, Boeing's Customer has the right to require Seller, an assignee, or exclusive licensee of a subject invention to grant a non-exclusive license to a responsible applicant upon terms that are reasonable under the circumstances, and that if Seller, assignee, or exclusive licensee refuses such a request, Boeing's Customer has the right to grant such a license itself if it determines that: such action is necessary because Seller or assignee has not taken effective steps to achieve practical application of the subject invention; such action is necessary to alleviate health or safety needs which are not reasonably satisfied by Seller, assignee, or their licensees; or a license of the exclusive right to use or sell any subject invention in the United States is in breach of Subparagraph (7) above.

(10) Allocation of Principle Rights. "Interface specification" means non-proprietary, fully documented draft and final specification for satellite-to-satellite mechanical and electrical interfaces developed for the Orbital Express Demonstration System, together with source code and full documentation for all enabling software, and specification of associated protocols. With respect to any subject invention relating to the Interface Specification, Boeing's Customer shall have a non-exclusive, transferable, irrevocable, paid-up license to use, duplicate, release or disclose the subject invention, in whole or in part, in any manner and for any purposes whatsoever, and to have or permit others to do so.

(11) Seller shall include this clause, suitably modified, in all subcontracts supporting this contract that involve experimental, development or research work.

(c) Foreign Access to Technology

(1) "Foreign firm or institution" means a firm or institution organized or existing under the laws of a country other than the U.S. or its territories or possessions; "know-how" means all information including (but not limited to) discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines; "technology" means discoveries, innovations, know-how and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including (but not limited to) patents, trade secrets, maskworks and copyrights developed under this contract.

(2) The controls contemplated by this clause are in addition to, and are not intended to change or supercede, the provisions of the International Traffic in Arms Regulation, the DoD Industrial Security Regulation (DoD 5220.22-R), and the Department of Commerce Export Regulation.

(3) For purposes of this clause, "transfer" includes a sale of the company, and sales or licensing of technology; but does not include sale of products or components, licenses of software or documentation related to sales of products or components, or transfer which provides access to technology to a foreign firm which is an approved source of supply or source for the conduct of research under this Program. Seller shall provide timely notice to Boeing's Customer through Boeing of any proposed transfers from Seller of technology developed under this contract to foreign firms or institutions. If Boeing's Customer

determines that the transfer may have adverse consequences to the national security interests of the United States, Seller, its subcontractors, Boeing, and Boeing's Customer shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer.

(4) In any event, Seller shall provide written notice to Boeing's Customer through Boeing of any proposed transfer to a foreign firm or institution at least 60 calendar days prior to the proposed date of transfer. Within 60 calendar days of receipt of Seller's written notification, Boeing will inform Seller as to whether Boeing's Customer consents to the proposed transfer. In any case, no transfer may take place until a formal decision is rendered by Boeing's Customer.

(5) In the event a transfer of technology to foreign firms or institutions which is not approved by Boeing's Customer takes place, Seller shall refund to Boeing the costs Seller incurred in developing the technology, and Boeing's Customer shall be provided a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the technology throughout the world for Government and any and all other purposes. Upon request of Boeing, Seller shall provide written confirmation of such licenses.

(6) Seller shall include this clause, suitably modified to identify the parties, in all subcontracts supporting this contract which are for experimental, developmental, or research work.

(d) Data Rights. "Government Purpose Rights" means rights to use, duplicate or disclose data in any manner, for Government purposes only; "unlimited rights" means rights to use, duplicate, release or disclose, data in any manner and for any purposes whatsoever, and to have or permit others to do so; "data" means recorded information which includes but is not limited to technical data, software, trade secrets, and mask works, but not including financial, administrative, cost, pricing or management information; "limited rights" means the right of the Government to use, modify, reproduce, release, perform, display or disclose data within the Government, provided that such data may not be disclosed to a third party without permission of Seller; "proprietary data" means information which embodies trade secrets developed at private expense or business commercial or financial information that is privileged or confidential, providing that such information is not known or available from other sources without obligations concerning its confidentiality, has not been made available by Seller to others without obligation concerning its confidentiality, or has not been developed independently by persons who had no access to the proprietary information.

(1) Seller agrees that it intends to reduce to practical applications items, components and processes developed under this contract. Seller agrees to retain and maintain in good condition until five (5) years after completion or termination of this contract all data necessary to achieve practical application. In the event of the Government exercising "march-in" rights, Seller agrees to deliver at no additional cost all data necessary to achieve practical application within forty-five (45) calendar days from the date of a written request. The Government shall retain unlimited rights to this delivered data. Seller agrees that with respect to data necessary to achieve practical application, Boeing has the right to require Seller to deliver to the Government all such data if the Government determines that such action is necessary because Seller or assignee have not taken effective steps to achieve practical application of the technology developed during the performance of this contract, such action is necessary to alleviate health or safety needs, or such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Seller, assignee or licensee. With respect to "data" developed, the Government shall receive Government Purpose Rights as defined above. With respect to "data" subject to the Government's march-in rights, the Government shall receive unlimited rights except as defined in subparagraph (2) below. The satellite-to-satellite interface preliminary and final specifications, enabling software and associated protocols, for the Orbital Express ATD program must be delivered to the Government free of

restriction on their use or further distribution.

(2) All data developed by Seller at private expense shall remain Seller proprietary data. As part of Seller's work under this contract, Seller may modify such data or deliver such data to Boeing or the Government. All such data shall remain Seller proprietary data, and if delivered to the Government, the Government shall obtain only limited rights in such data.

(3) Any Seller proprietary data provided to Boeing or the Government must be marked "CONTRACTOR PROPRIETARY DATA / LIMITED RIGHTS".

(4) Nothing herein shall be construed as prohibiting the Government's disclosure of data covered by this section to the Government's support contractors (and their successors) as the Government shall deem necessary. Such disclosures shall be made only to support contractors whose contracts with the Government prohibit further disclosure and other use of the materials disclosed.

(5) Seller shall include this clause, suitably modified to identify the parties, in all of its own subcontracts supporting this contract, when those subcontracts are for experimental, developmental or research work.

(e) Insurance. Seller shall maintain: workers' compensation and employers' liability; general liability; and automobile liability with the minimum amounts indicated in FAR 28.307-2.

(f) Civil Rights Act. This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) relating to nondiscrimination in employment.