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F29601-01-2-0045

The following contract clauses are incorporated in this contract and apply to the extent indicated.

(a) Cost Principles

The cost principles in 48 CFR 31 and 48 CFR 231 effective on April 26, 2001 apply to this contract.

(b) Claims, Disputes and Appeals. This clause is incorporated for the sole purpose of allowing Seller to appeal the Government's failure to consent to Seller's request to transfer technology to a foreign firm or institution (see paragraph (3)(C) of the Foreign Access to Technology clause of this contract).

(1) General. Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this clause. Department of Defense (DoD) policy is to resolve issues through discussions and mutual agreement at the agreements officer's level prior to submission of a claim. Where unassisted negotiations fail to resolve issues in controversy, the parties agree to consider the use of Alternative Dispute Resolution (ADR) procedures to the maximum extent practicable.

(2) Alternative Dispute Resolution. ADR should be used whenever practicable as a relatively inexpensive and expeditious procedure to resolve issues in controversy. ADR is any mutually agreed to voluntary means of settling issues in controversy without resorting to formal administrative appeals or litigation. ADR techniques shall be mutually agreed to and may be used at any appropriate time during the process.

(3) Claims Resolution Process. When a claim cannot be resolved by the parties, the parties agree to use the procedures identified in DoDGARs 22.815 as the administrative process to resolve claims, disputes and appeals. For purposes of this clause the Grant Appeal Authority will be the Director of AFRL/VS.

(4) Non-exclusivity of Remedies. Nothing in this clause is intended to limit Seller's right to any remedy under the law.

(c) Inventions. This clause applies only if this contract requires experimental, developmental, or research work.

The clause entitled "Patent Rights (Small Business Firms and Nonprofit Organizations) (37 CFR 401.14)" is hereby incorporated by reference, modified as follows: replace the word "contractor" with "Seller"; replace the words "agency," "Federal Agency" and "funding Federal Agency" with "Government"; delete paragraphs (g)(2), (g)(3), and the words "to be performed by a small business firm or domestic nonprofit organization" from paragraph (g)(1).

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(d) Data Rights. This clause applies only if this contract requires experimental, developmental, or research work.

(1) Definitions

(A) "Government purposes," as used in this clause, means any activity in which the United States Government is a party, including cooperative agreements with international or multinational 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 data for commercial purposes or authorize others to do so.

(B) "Government purpose rights," as used in this clause, means the 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.

(C) "Unlimited rights," as used in this clause, means rights to use, modify, reproduce, perform, display, release, or disclose data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

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

(E) "Practical application," as used in this clause, means to manufacture in the case of a composition 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 being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(2) Allocation of Principal Rights

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- (A) Ownership rights to data generated under Agreement No. F29601-01-2-0045, including data generated under this contract, shall vest in the recipient. Agreement No. F29601-01-2-0045 shall be performed with mixed Government and Buyer funding, and the parties (the Government and Buyer) have agreed that in consideration for Government funding, Buyer intends to reduce to practical application items, components, and processes developed under Agreement No. F29601-01-2-0045, including items, components, and processes developed under this contract.
- (B) Seller agrees to retain and maintain in good condition until three years after completion or termination of Agreement No. F29601-01-2-0045 (completion date is anticipated to be April 25, 2004), all data necessary to achieve practical application. In the event of exercise of the Government's march-in rights as set forth under the clause entitled Inventions, Seller agrees, upon written request from the Government, to deliver at no additional cost to the Government or Buyer, all data necessary to achieve practical application within 60 days from the date of the written request. The Government shall have unlimited rights to this delivered data.
- (C) Certain provisions of this clause provide that the Government may gain title or license to a subject invention by reason of Seller's action, or failure to act, within the times required by this clause. Prior to claiming such rights (including any rights under (c) Inventions), the Government will give written notice to Seller of the Government's intent, and afford Seller 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. Seller 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 Agreement No. F29601-01-2-0045 and this contract 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.
- (3) The Government may use, modify, reproduce, release, perform, display, or disclose these data within the Government without restriction, and may release or disclose outside the Government and authorize persons to whom such release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government purposes, including competitive procurement.
- (4) Any trade secrets and commercial or financial information Seller wishes to protect from release under Freedom of Information Act (FOIA) requirements must be marked with a legend identifying it as privileged or confidential information.

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- (5) Distribution Statement. In addition to any marking relative to ownership of data, any data delivered under this contract shall be marked with the following distribution statement, which indicates to whom data may be distributed:

Distribution authorized to U.S. Government agencies only; Proprietary Information: Mar 2001. Other requests for this document shall be referred to the Air Force Research Laboratory/VSSV, 3550 Aberdeen Ave SE, Kirtland AFB, NM 87117-5776.

This document contains data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec. 2751 et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C. App 2401 et seq. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DOD Directive 5230.25.

- (6) Lower Tier Agreements. Seller shall include this clause, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.
- (e) Foreign Access to Technology. This clause applies only if this contract requires experimental, developmental, or research work.

(1) Definitions

(A) "Foreign firm or institution" means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this agreement, any agency or instrumentality of a foreign government, and firms, institutions, or business organizations that are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

(B) "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.

(C) "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, mask works, and copyrights developed under this agreement.

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- (2) General. Seller acknowledges that research findings and technology developments in Lightweight Composite Structures with Integrated Damping technology may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this contract by foreign firms or institutions must be carefully controlled. The controls contemplated in this clause are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 120 et seq.), the DOD Industrial Security Regulation (DOD 5220.22-R), and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.).
- (3) Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.
- (A) In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs (3)(B), (3)(C), and (3)(D) below shall apply to any transfer of technology. For purposes of this paragraph, a transfer includes a sale of the company and sales or licensing of technology. Transfers do not include:
- (i) sales of products or components, or
 - (ii) licenses of software or documentation related to sales of products or components, or
 - (iii) transfer to foreign subsidiaries of Seller for purposes related to Agreement No. F29601-01-2-0045, or
 - (iv) transfer which provides access to technology to a foreign firm or institution which is an approved source of supply or source for the conduct of research under Agreement No. F29601-01-2-0045 provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under Agreement No. F29601-01-2-0045.
- (B) Seller shall provide timely notice to the Government of any proposed transfer from Seller of technology developed under this contract to foreign firms or institutions. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, Seller, its subcontractors, and the Government shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to Seller.
- (C) In any event, Seller shall provide written notice to the agreements officer and Government program manager, through Buyer's Authorized

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Procurement Representative, of any proposed transfer to a foreign firm or institution at least 60 days prior to the proposed date of transfer. Such notice shall cite this clause and shall state specifically what is to be transferred and the general terms of the transfer. Within 30 days of receipt of Seller's written notification, the agreements officer shall advise Seller whether he or she consents to the proposed transfer. In cases where the Government does not concur or 60 days after receipt and the Government provides no decision, Seller may utilize the procedures under the clause entitled Claims, Disputes and Appeals. No transfer shall take place until a decision is rendered.

- (D) Except as provided in subparagraph (3)(A) above and in the event the transfer of technology to foreign firms or institutions is not approved by the Government, but the transfer is made nonetheless, Seller shall (a) refund to Buyer the funds paid for the development of the technology and (b) negotiate a license with Buyer to the technology under terms that are reasonable under the circumstances.
- (4) Lower Tier Agreements. Seller shall include this clause, suitably modified to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.
- (5) This clause shall remain in effect during the term of Agreement No. F29601-01-2-0045 and for five years thereafter. The end of the effectivity period is estimated to be April 25, 2009.
- (f) Equal Employment Opportunity
- Seller shall comply with E.O. 11246 (3 CFR 1964-1965 Comp., p.339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 196601970 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."
- (g) Clean Air and Water (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended. This clause applies only if this contract exceeds \$100,000.
- Seller shall 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).
- (h) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). This clause applies only if this contract exceeds \$100,000.

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By submission of a response to a solicitation that incorporates this clause or by entering into a contract that incorporates this clause, Seller will be making the certification required by the Byrd Anti-Lobbying Amendment. 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 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.

- (i) Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c). This clause applies only if this contract exceeds \$2000 and is for construction or repair.

Seller shall comply 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"). In accordance with the Act, Seller is 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. Seller shall report all suspected or reported violations to the responsible DoD component.

- (j) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). This clause is applicable only if this contract exceeds \$100,000 for construction or for other purposes that involve the employment of mechanics or laborers.

Seller shall comply 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). In accordance with Section 102 of the Act, Seller is required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 and ½ times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. 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 purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (k) Rights to Inventions Made Under a Contract, Grant or Cooperative Agreement

Contracts (including subcontracts), grants, or cooperative agreements for the performance of experimental, developmental, or research work shall provide for the

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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."

(l) Debarment and Suspension (E.O.s 12549 and 12689)

Contract (and subcontract) 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.