

Date: April 8, 2005

EXHIBIT A

GOVERNMENT PROVISIONS APPLICABLE TO PRIME CONTRACT MDA972-03-9-0004

The clauses contained in the following Government regulations are incorporated by reference. Where necessary or appropriate to derive proper meaning in a subcontract situation, "Contractor" shall mean Seller. Government clauses cited elsewhere in the contract shall be those in effect in April 05.

(a) Patent Rights

Note: The provisions of Article VII Patent Rights have been modified from the Prime Agreement to suitably identify the parties and their respective rights under the terms of the Prime Agreement. As used herein, "Contractor" shall mean subcontractor, or Seller, and "Agreement" shall mean this subcontract under the Prime Agreement.

ARTICLE VII: PATENT RIGHTS

A. Definitions

1. "Invention" means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code.
2. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
3. "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
4. "Subject invention," means any Contractor invention conceived or first actually reduced to practice in the performance of work under this Agreement

B. Allocation of Principal Rights

Unless the Contractor shall have notified DARPA (in accordance with subparagraph C.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, DARPA shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world, except as stated in Paragraph K of this article.

C. 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.

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 may be shortened by DARPA 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 may, at the discretion of DARPA, and after considering the position of the Contractor, be granted.

D. 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 C 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 C of this Article; provided, that if the Contractor 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 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.

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

1. The Contractor shall retain a non-exclusive, royalty-free license 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 C of this Article. The Contractor license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of the Contractor 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 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 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. 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 D 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, that employees of the Members of the Contractor, 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 the Contractor, each subject invention made under this Agreement in order that the Contractor can comply with the disclosure provisions of paragraph C of this Article. The Contractor shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

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 Government support under a lower tier agreement under Agreement No. MDA972-03-9-0004 awarded by DARPA. The Government has certain rights in the invention."

G. Reporting on Utilization of Subject Inventions

The Contractor 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 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 subcontractor (s), 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.

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;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; 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.

J. Allocation of Principal Rights

Seller agrees to retain and maintain in good condition until three (3) years after completion or termination of this agreement all data necessary to achieve practical application. In the event of the exercise of the Government's march-in rights, Seller agrees to deliver at no additional cost to Buyer or the Government all data necessary to achieve practical application within 45 days from the date of the written request.

K. Lower Tier Agreements

Seller shall include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, production, or research work.

(b) Restrictions on Sale or transfer of Technology to Foreign Firms or Institutions

(1) Seller shall provide timely notice to Buyer of any proposed transfers from Seller of any proposed transfers from Seller of technology developed under this order to foreign firms or institutions. If Buyer determines that the transfer may have adverse consequences to the national security interests of the United States, Seller, Buyer, and DARPA 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 Buyer. In any event, Seller shall provide written notice to Buyer of any proposed transfer to a foreign firm or institution at least 90 days prior to the proposed date of transfer; such notice shall state specifically what is to be transferred and the general terms of the transfer. No transfer shall take place until a decision is rendered.

(2) In the event a transfer of technology to foreign firms or institutions which is not approved takes place, Seller shall refund to Buyer funds paid for the development of the technology, and the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the technology throughout the world. Upon the request of Buyer, Seller shall provide written confirmation of such licenses.

(3) Seller shall include this clause, suitably modified to identify the parties, in all subcontracts for experimental, developmental, production, or research work.

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

(d) 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.

(e) Public Release or Dissemination of Information. Seller will submit to Buyer all proposed public releases of information relating to the work performed under this order. In addition, articles for publication or presentation will contain the following statement: "This research was 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 express or implied, of the U. S. Government"