

EXHIBIT A

GOVERNMENT PROVISIONS

APPLICABLE TO

PRIME CONTRACT F33615-99-2-5501

(Applicable only to contracts which involve
experimental, developmental or research work.)

1. If Seller is a small business or non-profit organization, the following clause applies:

"Patent Rights (Small Business Firms and Nonprofit Organizations

The clause set forth in 37 CFR 401.14(a), titled 'Patent Rights (Small Business Firms and Nonprofit Organizations)' is incorporated by reference. 'Contractor' shall mean Seller."

2. If Seller is not a small business or non-profit organization, the following clause applies:

"Patent Rights

FAR 52.227-12, 'Patent Rights - Retention by the Contractor (Long Form)', is incorporated by reference. 'Contractor' means Seller."

3. The following clauses apply to all contracts:

A. "Data Rights

A. Ownership rights to data and technical data, as defined in 48 CFR 27.401 (FAR Section 27.401), generated under this contract shall vest in the Seller.

B. The Seller hereby agrees to provide to the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to use, duplicate, or disclose for governmental purposes any data, technology and inventions, whether patented or not, made or developed under this contract.

C. The Seller reserves the right to protect by copyright original works developed under this contract. All such copyrights will be in the name of the Seller. The Seller hereby grants the U.S. Government a non-exclusive, non-transferable, royalty-free, fully paid-up license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, for governmental purposes, any copyrighted materials developed under this contract, and to authorize others to do so. The Seller also grants non-exclusive, non-transferable, royalty-free, fully paid-up licenses to project subrecipients to use any copyrighted material developed under this contract for research purposes as necessary to fulfill the requirements of this contract.

D. The Seller is responsible for affixing appropriate markings indicating rights on all data and technical data delivered under the contract. The Government shall be deemed to have unlimited rights in all data and technical data delivered without markings."

B. "Foreign Access to Technology

This article shall remain in effect during the term of the contract and for five (5) years thereafter.

A. Definitions

'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 contract, any agency or instrumentality of a foreign government, and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

'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, how-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 contract.

B. General. The parties agree that research findings and technology developments under this contract 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 article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR part 121 et. seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR part 770 et. seq.)

C. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions.

1. 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 C.2, C.3 and C.4 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:

- a. sales of products or components, or
- b. licenses of software or documentation related to sales of products or components, or
- c. transfer to foreign subsidiaries of the recipient for purposes related to this contract, or
- d. 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 this contract provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this contract.

2. The Seller shall provide timely notice to the Government of any proposed transfer from the Seller of technology developed with Government funding 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, the Seller, its vendors, 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 the recipient.

3. In any event, the Seller shall provide written notice to the Government Program Manager of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of the Seller's written notification, the grants officer shall advise the Seller whether it consents to the proposed transfer. In cases where the Government does not concur or sixty (60) calendar

days after receipt and the Government provides no decision, the Seller may utilize the procedures under the article entitled 'Disputes'. No transfer shall take place until a decision is rendered.

4. Except as provided in subparagraph C.1 above and in the event the transfer of technology to foreign firms or institutions is approved by the Government, the Seller shall (a) refund to the Government the funds paid for by the development of the technology and (b) negotiate a license with the Government to the technology under terms that are reasonable under the circumstances.

D. Lower Tier Agreements. The Seller shall include this article, suitably modified, to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work."

C. "Foreign Nationals - Foreign Sources

A. For the purpose of this clause,

(1) Foreign nationals are those persons not citizens of, not nationals of, or resident/immigrant aliens to, the United States.

(2) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official or employee of a foreign government, a foreign-owned or influenced firm, corporation or person; and

(3) Foreign sources are those sources (vendors, sub-recipients and suppliers) not owned and controlled by citizens or immigrant aliens of the United States.

B. Nothing in this article is intended to waive any requirement imposed by any other U.S. Government agency with respect to employment of foreign national or export controlled data and information.

C. The Seller acknowledges that the technical data generated or delivered in performance of this agreement is controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128, and require an export license before assigning any foreign national to perform work under this agreement or before granting access to foreign nationals to any technical data generated or delivered in performance of this agreement (see 22 CFR Section 125). The Seller agrees to notify and obtain the written approval of the Grants Officer prior to assigning or granting access to any work, or technical data generated or delivered in performance of this agreement to foreign nationals or their representatives. This notification shall include the name and country of origin of the foreign national or representative. The specific work, government property or data to which the person will have access, and whether the foreign national is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

D. Lower Tier Agreements. The Seller shall include this article, suitably modified, to identify the parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, development, or research work.