

CUSTOMER CONTRACT REQUIREMENTS
Metals Affordability Initiative II (MAI II)
CUSTOMER CONTRACT FA8650-06-2-2511

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

1. Prime Contract Special Provisions

The following prime contract special provisions apply to this purchase order

3.060 Property (Jun 2001) Tailored .

- (a) The AIPT Member(s) may purchase real property or equipment in whole or in part with federal funds under an award only with the prior approval of the Agreements Officer (except that additional approval is not required for such items included in the proposed/negotiated budget of any Agreement Order at the time of the Agreement Order award).
- (b) Equipment is defined as tangible nonexpendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000.00 or more per unit.
- (c) Title to all real property and equipment purchased by the the AIPT Member(s) under this agreement is vested in the the participating AIPT Member(s) subject to the conditions that the Consortium:
- (1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project.
 - (2) Not encumber the property without approval of the Agreements Officer.
 - (3) Use and dispose of the property in accordance with paragraphs (d), (e) and (f) of this article.
- (d) During the time that the real property or equipment is used on this program the Consortium shall make it available for use on other projects or programs, if such other use will not interfere with the work on this program. Use of the real property or equipment on other projects will be in the following order of priority:
- (1) Activities sponsored by DoD Components' grants, cooperative agreements, or other assistance awards;
 - (2) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;
 - (3) Activities under Federal procurement contracts, or activities not sponsored by any Federal agency. If so used, use charges shall be assessed to those activities. For real property or equipment, the use charges shall be at rates equivalent to those for which comparable real property or equipment may be leased. The use charges shall be treated as program income.
- (e) After Federal funding for the project ceases, or when the real property or equipment is no longer needed for the purposes of the project, the Consortium may use the real property or equipment for other projects, insofar as:
- (1) There are Federally sponsored projects for which the real property or equipment may be used. If the only use for

the real property or equipment is for projects that have no Federal sponsorship, the Consortium shall proceed with disposition of the real property or equipment, in accordance with paragraph (f) of this section.

(2) The Consortium obtains written approval from the agreements officer to do so. The agreements officer shall ensure that there is a formal change of accountability for the real property or equipment to a currently funded, Federal award.

(3) The Consortium's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (d) of this section.

(f) Disposition. When an item of real property or equipment with an acquisition cost of \$5,000.00 or more is no longer needed for Federally sponsored projects, the Consortium shall proceed as follows:

(1) If the property that is no longer needed is equipment (rather than real property), the Consortium may wish to replace it with an item that is needed currently for the project. In that case, the Consortium may use the original equipment as trade-in or sell it and use the proceeds to offset the costs of the replacement equipment, subject to the approval of the responsible agency.

(2) The Consortium may elect to retain title, without further obligation to the Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(3) If the Consortium does not elect to retain title to real property or equipment (see paragraph (f)(2) of this section), or request approval to use equipment as trade-in or offset for replacement equipment (see paragraph (f)(1) of this section), the Consortium shall request disposition instructions from the Agreements Officer.

3.071 Property Management (Aug 2001) (Tailored) .

The Subcontractor's property management system shall include the following, for property that is Federally owned, and for equipment that is acquired in whole or in part with Federal funds, or that is used as cost share:

(a) Property records shall be maintained, to include the following information:

(1) A description of the property.

(2) Manufacturer's serial number, model number, Federal stock number, national stock number, or any other identification number.

(3) Source of the property, including the award number.

(4) Whether title vests in the AIPT Member or the Federal Government.

(5) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(6) Information from which one can calculate the percentage of Federal participation in the cost of the property (not applicable to property furnished by the Federal Government).

(7) The location and condition of the property and the date the information was reported.

(8) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a subcontractor compensates the Federal Government for its share.

(b) Federally owned equipment shall be marked, to indicate Federal ownership.

(c) A physical inventory shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Consortium Member(s) shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(d) A control system shall be in effect to provide adequate safeguards against loss, damage, or theft of the property.

Any loss, damage, or theft of property shall be investigated and fully documented; if the property was owned by the Federal Government, the subcontractor (through the Consortium Administrator) shall promptly notify the Federal agency responsible for administering the property.

(e) Reasonable maintenance procedures shall be implemented to keep the property in good condition.

3.080 Government Furnished Property (June 2001) Tailored) .

(a) Government-owned property may be provided to the Consortium for use on this program. All property will be furnished "as is." Title to Government-owned property (equipment and supplies) shall remain vested in the Government: (Government Furnished Property shall be designated on an Agreement Order by Agreement Order basis in accordance with this Article*.

(b) Inventory. Every two years, the Consortiums shall submit to the Administrative Agreements Office responsible for administering the property under the agreement an inventory listing of all Federally owned property in their custody.

(c) Use on other activities.

(1) Use of Federally-owned property on other activities is permissible, if authorized by the Agreements Officer.

(2) Use on other activities will be in the following order of priority:

(i) Activities sponsored by Air Force grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts, or activities not sponsored by any Federal agency. If so used, use charges shall be assessed to those activities. For real property or equipment, the use charges shall be at rates equivalent to those for which comparable real property or equipment may be leased. The use charges shall be treated as program income.

(d) Disposition of property. Upon termination of this Agreement or completion of a TIA Order, the Consortium shall report the property to the Agreements Officer and request disposition instructions. *Excepting the following which is hereby recognized in conjunction with Consortium Member Lockheed Martin Corporation (Cage Code: 98897), in accordance with this Article: Due to the identification of the following with the initial Agreement Order proposal submittals the following is identified in accordance with this Article: No exception is taken to the usage of the following on Lockheed Martin Corporation MAI II TIA Agreement Order efforts (this has been coordinated with the cognizant Government Contracting Official for the respective "Leases"):

AF Plant 4, Ft. Worth TX, Lease F33657-97-L-2018

AF Plant 6, Marietta GA, Lease F33657-97-L-2019

AF Plant 42, Sites 2, 7, and 8, Palmdale CA, Lease F33657-00-L-2039).

6.020 Inventions (Tailored) (JUN 2001).

The following clause applies to all subcontracts for experimental, developmental or research work. The clause is hereby modified as follows: Replace the word "AIPT Members" with "subcontractor".

(a) Definitions

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) "Subject invention" means any invention of the AIPT conceived or first actually reduced to practice in the performance of work under this agreement, provided that in the case of a variety of plant, the date of determination (as

defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of agreement performance.

(3) "Practical Application" 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.

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

(5) "Small Business Firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business

Administration. For the purpose of this article, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26

U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Background Invention" means any invention that is not a Subject Invention as defined herein and was not conceived or first actually reduced to practice under another any other Government instrument including but not limited to: contracts, instruments or agreements.

(b) Allocation of Principal Rights

The AIPT member(s) may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this article and 35 U.S.C. 203. With respect to any subject invention in which the AIPT Member(s) retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by AIPT Member(s)

(1) The AIPT Member(s) will disclose each subject invention to the Government within 2 months after the inventor discloses it in writing to AIPT Member(s) personnel responsible for patent

matters. The disclosure to the Government shall be in the form of a written report and shall identify the agreement under which the invention was made and 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, on 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 addition, after disclosure to the Government, the AIPT Member(s) will promptly notify the Government of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the AIPT Member(s).

(2) The AIPT Member(s) will elect in writing whether or not to retain title to any such invention by notifying the Government within 2 years of disclosure to the Government. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Government to a date that is no more than 60 days prior to the end of the statutory period.

(3) The AIPT Member(s) will file any initial patent application(s) on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The AIPT Member(s) will file patent applications in additional countries or international patent

offices within either 10 months of the corresponding initial patent application or 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 under subparagraphs (1), (2), and (3) may, at the discretion of the Government, be granted.

(d) Conditions When the Government May Obtain Title

The AIPT Member(s) will convey to the Government, upon written request, title to any subject invention--

(1) If the AIPT Member(s) fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the Government may only request title within 60 days after learning of the failure of the AIPT Member(s) to disclose or elect within the specified times.

(2) In those countries in which the AIPT Member(s) fails to file patent applications within the times specified in (c) above; provided, however, that if the AIPT Member(s) has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Government, the AIPT Member(s) shall continue to retain title in that country.

(3) In any country in which the AIPT Member(s) decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to AIPT Member(s) and Protection of the AIPT Member(s) Right to File

(1) The AIPT Member(s) will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the AIPT Member(s) fails to disclose the invention within the times specified in (c), above. The AIPT Member(s) license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the AIPT Member(s) is a party and includes the right to grant sublicenses of the same scope to the extent the AIPT Member(s) 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 party of the AIPT Member(s) business to which the invention pertains.

(2) The AIPT Member(s) domestic license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and Government licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the AIPT Member(s) 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 the AIPT Member(s), its licensees, or the domestic 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 the AIPT Member(s) a written notice of its intention to revoke or modify the license, and the AIPT Member(s) will be allowed 30 days (or such other time as may be authorized by the Government for good cause shown by the AIPT Member(s)) after the notice to show cause why the license should not be revoked or modified. The AIPT Member(s) has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and Government regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) AIPT Member(s) Action to Protect the Government's Interest

(1) The AIPT Member(s) agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the AIPT Member(s) elects to retain title, and

(ii) convey title to the Government when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The AIPT Member(s) agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the AIPT Member(s) each subject invention made under an agreement in order that the AIPT Member(s) can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The AIPT Member(s) shall instruct such 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 AIPT Member(s) will notify the Government of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The AIPT Member(s) agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under FA8650-06-02-5211 (MAI II) awarded by USAF/AFMC. The Government has certain rights in the invention."

(g) Lower Tier Agreements

The AIPT member(s) shall include the substance of this article, suitably modified to identify the parties, in all lower tier agreements and instruments, regardless of tier, for experimental, developmental or research work. Agreement participants at all levels shall retain all rights provided for the AIPT Member(s) in this article, and the AIPT Member(s) shall not, as part of the consideration for awarding a lower tier agreement or instrument, obtain rights in a lower tier agreement or instrument's Participants subject invention(s).

(h) Reporting on Utilization of Subject Inventions

The AIPT member(s) agrees to submit on request 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 the AIPT Member(s) 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 AIPT Member(s), and such other data and information as the Government may reasonably specify. The AIPT Member(s) also agrees to provide additional reports as may be requested by the Government in connection with any march-in proceeding undertaken by the Government in accordance with paragraph

(j) of this article. As required by 35 U.S.C. 202(c)(5), the Government agrees it will not disclose such information to persons outside the Government without permission of the AIPT Member(s).

(i) Preference for United States Industry

Notwithstanding any other provision of this article, the AIPT Member(s) agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products 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 requirement for such an agreement may be waived by the Government upon a showing by the AIPT Member(s) or its assignee 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

The AIPT Member(s) agrees that with respect to any subject invention in which it has acquired title, the Government has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the Government to require the consortium, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to

a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the AIPT Member(s) , 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 the AIPT Member(s) or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the

subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the AIPT Member(s) , assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the AIPT Member(s) , assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) 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) Special Provisions for Agreements with Nonprofit Organizations If the AIPT Member(s) is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Government, except where such assignment is made to an organization which has as one

of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the AIPT Member(s) ;

(2) The AIPT Member(s) will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Government deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the AIPT Member(s) with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the AIPT Member(s) determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the AIPT Member(s) is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the AIPT Member(s) . However, the AIPT Member(s) agrees that the Secretary of the Air Force may review the AIPT Member(s) licensing program and decisions regarding small business applicants, and the AIPT Member(s) will negotiate changes to its licensing policies, procedures, or practices with the Secretary of the Air Force when the Secretary of the Air Force's review discloses that the AIPT Member(s) could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communication

The point of contact on matters relating to this article will be the servicing Staff Judge Advocate's office identified in the article entitled Administrative Responsibilities.

6.030 DATA RIGHTS (TAILORED) (JUN 2001).

A. Definitions

1. "Data" means recorded information, regardless of form or method of recording, which includes but is not limited to

technical data and computer software and related documentation.

2. "Foreground Data" means Data first created in the performance of this Agreement.

3. "Background Data" means Data, other than Foreground Data, demonstrated as being first created at private expense or to which the Government has agreed to accept limited rights.

4. "Unlimited Rights" 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.

5. "Government Purpose Rights" means rights to (i) use, modify, reproduce, release, perform, display, or disclose Data within the Government without restriction for U.S. government, but not commercial, purposes, and (ii) release or disclose Data outside the Government, and authorize persons to whom release or disclosure has been made, to use, modify, reproduce, perform, display, or disclose that Data for U.S. government purposes (but not commercial purposes). ("Commercial purposes" means purposes other than those for which the Government is the end user of the item resulting from the use, modification, reproduction, performance, display, or disclosure of the Data by the Government.) Any release or disclosure of such Data outside the Government shall be subject to a prohibition on the use, modification, reproduction, release, performance, display, or disclosure of such Data for commercial purposes and subject to a requirement that the AIPT Member or vendor asserting the restriction is notified of such use, modification, reproduction, release, performance, display, or disclosure, and made a third party beneficiary with full rights of enforcement.

6. "Limited Rights" means the rights to use, modify, reproduce, release, perform, display, or disclose Data, in whole or in part, within and by the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the Data outside the Government, permit the Data to be used by another party, except that the Government may reproduce, release or

disclose such Data or authorize the use or reproduction of the Data by persons outside the Government if reproduction, release, disclosure, or use is

(i) Necessary for emergency repair and overhaul; or a release or disclosure of Data (other than detailed manufacturing or process Data) to, or use of such Data by, a foreign government that is in the interest of the Government and is required for evaluation or informational purposes; and

(ii) Subject to a prohibition on the further reproduction, release, performance, display, disclosure, or use of Data and the contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

B. Allocation of License Rights

1. This Agreement shall be performed with mixed Government and private funding. The Parties agree that in consideration for Government funding, the AIPT Member(s) intends to reduce to practical application, items, components and processes made under this Agreement.

2. The AIPT Member(s) creating Data agree 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 for each subject invention. In the event of the exercise of the Government's march-in rights as set forth in the Article herein entitled "Patent Rights", the Recipient agrees to obtain the agreement of each AIPT Member(s) to, deliver upon written request from the Government, at no additional cost to the Government, all Data pertaining to the subject invention to which the Government has exercised its march-in rights within sixty (60) calendar days from the date of the written request. The Government shall be granted an unlimited rights license to this delivered Data.

3. With the exception of Foreground Data derived from or including Background Data, all deliverable Foreground Data first created exclusively or in part with Government funds shall be furnished to the Government with Government Purpose Rights.

4. All Foreground Data derived from or including Background Data shall be furnished to the Government with Limited Rights.

5. All Foreground Data first created exclusively at private expense will be furnished to the Government with Limited Rights.

6. All Background Data shall be furnished to the Government with Limited Rights.

7. All licenses granted to the Government herein are non-exclusive, world-wide, royalty-free, and nontransferable.

C. Marking of Data

The AIPT Member(s) first creating deliverable Data is responsible for affixing the appropriate notice as indicated in Article 7.353 to this Agreement.

D. Reservation of Rights

All rights not otherwise granted to the Government under this Agreement are retained by the AIPT Member.

E. Lower Tier Agreements

The Consortium Administrator agrees to include this provision in its Collaboration Agreement with the Consortium Members and in any agreements with third parties performing work under or in connection

with this Agreement (suitably modified to identify the parties / participants). This requirement applies to all subcontracts and lower tier agreements, regardless of tier.

6.040 FOREIGN ACCESS TO TECHNOLOGY (TAILORED) (APR 2000).

This article applies only if this contract requires experimental, developmental, or research work.

(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 agreement, 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, 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.

(b) General. The parties agree that research findings and technology developments in specialty aerospace metals 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 agreement 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 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.)

(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:

- (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 the recipient (recipient participants) for purposes related to this agreement, 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 this agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this agreement.
- (2) The recipient shall provide timely notice to the Government of any proposed transfer from the recipient of technology developed under this agreement 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 recipient, 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 recipient shall provide written notice to the Agreements Officer and Government program manager 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 article and shall state specifically what is to be transferred and the general terms of the transfer. Within 30 days of receipt of the recipient's written notification, the Agreements Officer shall advise the recipient whether it consents to the proposed transfer. In cases where the Government does not concur or 60 days after receipt and the Government provides no decision, the recipient may utilize the procedures under the article entitled Claims, Disputes and Appeals. 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 not approved by the Government, but the transfer is made nonetheless, the recipient shall (a) refund to the Government the funds paid for 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 recipient 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.
- (e) This article shall remain in effect during the term of the agreement and for 5 years thereafter.

8.353 DoDGARs REQUIREMENTS .

- (a) DoDGARs part 32 is applicable to universities or other nonprofit organizations, DoDGARs part 33 is applicable to state and local governments, and DoDGARs part 34 is applicable to for-profit entities. Appendix A to DoDGARs part 34 is applicable to all recipients/subawards.
- (b) The recipient shall apply to each subaward the administrative requirements of the DoDGARs applicable to the particular type of subrecipient. DoDGARs part 32 shall be applied to awards to universities or other nonprofit organizations, DoDGARs part 33 shall be applied to awards to state and local governments, and DoDGARs part 34 shall be applied to for-profit entities.
- (c) Recipients awarding contracts under this agreement shall assure that contracts awarded contain the provisions in Appendix A to DoDGARs part 34.