

Date: May 2002

EXHIBIT A

to

114960-1130010

Special Contract Requirements:

Use of name of Boeing, Carnegie Mellon or Subcontractor (7.0 of the subcontract)

Each party agrees not to use the name of the other party or any member of its staff in sales promotion work, or advertising, or in any other form of publicity without the written permission of the other party.

Acknowledgment (8.0 of the subcontract)

Seller and its subcontractors agree to include on all releases of information the following disclaimer Clause: "Any opinions, findings, conclusions or recommendation expressed herein are those of the author(s) and do not reflect the views of The Boeing Company, DARPA or Carnegie Mellon."

Obligation and Payment (Article VII of the prime contract)

Prior to the submission of invoices to Boeing by the Seller, the Seller and its subcontractors shall have and maintain an accounting system which complies with Generally Accepted Accounting Principles (unless CAS applies), and with the requirements of this Agreement, and shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds and cost share if applicable.

Financial Records and Reports (Article VII(B6) of the prime contract)

To the extent that the total government payments under this agreement exceed \$5,000,000, the Comptroller General, at its discretion, shall have access to and the right to examine records of any party to the agreement or any entity that participates in the performance of this agreement that directly pertain to and involve transactions relating to, the agreement for a period of three (3) years after final payment is made. This requirement shall not apply with respect to any party to this agreement or any entity that participates in the performance of the agreement, or any subordinate element of such party or entity, that has not entered into any other agreement (contract, grant, cooperative agreement, or "other transaction") that provides for audit access by a government entity in the year prior to the date of this agreement. This paragraph only applies to any record that is created or maintained in the ordinary course of business or pursuant to a provision of law. All the terms of this paragraph shall be included in all sub-agreements to the agreement.

Disputes (DELETED) [D/Orig.]

Patent Rights (Article IX of the prime contract)

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.
2. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
3. "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 (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a

state nonprofit organization statute.

4. "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.

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 clause, 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. "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract.

7. "Background Invention" means any invention made by Boeing or its subcontractors prior to the performance of this Agreement or outside the scope of work performed under this Agreement.

B. Allocation of Principal Rights

Unless Seller shall have notified Boeing and DARPA (in accordance with subparagraph C.2 below) that Seller does not intend to retain title, Seller 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 Seller 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. Notwithstanding the above, the Seller may elect to provide full or partial rights that it has retained to Seller Subcontractors or other parties.

C. Invention Disclosure, Election of Title, and Filing of Patent Application

1. Seller shall disclose each subject invention to Boeing and DARPA within four (4) months after the inventor discloses it in writing to the appropriate personnel responsible for patent matters. The disclosure to Boeing and 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. Seller shall also submit to DARPA an annual listing of subject inventions.

2. If Seller determines that it does not intend to retain title to any such invention, Seller shall notify Boeing and DARPA, in writing, within two (2) years of disclosure to Boeing and 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. Seller 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. Seller 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 under Article IX,

subparagraph C, may, at the discretion of DARPA, and after considering the position of Seller and its subcontractors, be granted.

D. Conditions When the Government May Obtain Title

Upon Boeing and DARPA's written request, Seller shall convey title to any subject invention to DARPA under any of the

following conditions:

1. If Seller 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 Seller to disclose or elect within the specified times.

2. In those countries in which Seller fails to file patent applications within the times specified in paragraph C of this Article; provided, that if

Seller 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, Seller shall continue to retain title in that country; or

3. 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 reexamination or opposition proceedings on, a patent on a subject invention.

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

1. Seller shall retain a non-exclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if Seller fails to disclose the invention within the times specified in paragraph C of this Article. Seller's license extends to the domestic (including Canada) subsidiaries and affiliates, if any, of Seller within the corporate structure of which Seller is a party and includes the right to grant licenses of the same scope to the extent that Seller was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of Boeing and 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. Seller's domestic license may be revoked or modified by Boeing or 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 Seller 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 Boeing or DARPA to the extent the Consortium, 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, Boeing or DARPA shall furnish Seller a written notice of its intention to revoke or modify the license, and Seller 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. Seller agrees to execute or to have executed and promptly deliver to Boeing and DARPA all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which Seller 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. Seller agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing, to personnel identified as responsible for the administration of patent matters and in a format suggested by Seller each subject invention made under this Agreement in order that Seller can comply with the disclosure provisions of paragraph C of this Article. Seller 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. Seller 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. 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. MDA972-01-9-0005 awarded by DARPA. The Government has certain rights in the invention."

G. Lower Tier Agreements

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. Seller will include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause required by Subpart 27.3. All subcontractors will receive similar patent rights.

H. 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 licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by Seller subcontractor(s), and such other data and information as the agency may reasonably specify. Seller 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 J of this Article. Consistent with 35 U.S.C. § 202(c)(5), Boeing DARPA agree it shall not disclose such information to persons outside the Government without permission of Seller.

I. Preference for American Industry

Notwithstanding any other provision of this clause, 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. However, in individual cases, the requirements for such an agreement may be waived by DARPA upon a showing by Seller 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

Seller agrees that, with respect to any subject invention in which it has retained title, DARPA 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 or applicants, upon terms that are reasonable under the circumstances, and if Seller, 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 Seller or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the subject invention within five (5) years from the date of disclosure;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Consortium, assignee, or their licensees within five (5) years from the date of disclosure;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by the Consortium, assignee, or licensees within five (5) years from the date of disclosure; 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. Opportunity to Cure

Certain provisions of this Article 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 Article. Prior to claiming such rights (including any rights under Article IX, paragraph J. March-in Rights), 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 this Agreement 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.

L. Patent Notification

In no event shall the provisions set forth in this Article apply to any Background Inventions or Patents obtained thereon by Seller or its subcontractors. Seller or its subcontractors shall retain the entire right, title, and interest throughout the world to each such Inventions and Patents that each party has brought to this Agreement, and the Government shall not have any rights under this Agreement.

Data Rights (Article X of the prime contract)

A. Definitions

1. "Government Purpose Rights", as used in this article, means rights to use, duplicate, or disclose Data in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only.
2. "Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information and does not include subject inventions included under Article IX.
3. "Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
4. "Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.
5. "Background Data Rights" means any data produced by Seller or its subcontractors prior to the performance of this Agreement or outside the scope of work performed under this Agreement.

B. Allocation of Principal Rights

1. Except as provided in paragraph C of this Article regarding copyright, the Government shall have government purpose rights in--
 - (i) Data first produced in the performance of this agreement;
 - (ii) Form, fit, and function data delivered under this agreement;
 - (iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and
2. Seller shall have the right to--
 - (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Agreement or in the performance of this agreement, unless provided otherwise in sub-paragraph (C.4) of this Article;
 - (ii) Substantiate use of, add or correct copyright notices and to take other appropriate action, in accordance with subparagraph C.3 and C.4 of this Article; and
 - (iii) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in paragraph (C) of this Article.

C. Copyrights

1. Data first produced in the performance of this agreement. Unless provided otherwise in paragraph C.4 of this clause, Seller may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this agreement and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this agreement. When claim to copyright is made Seller shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software Seller grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, Seller grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

2. Data not first produced in the performance of this agreement. Seller shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement and which contains the copyright notice of 17 U.S.C. 401 or 402, unless Seller identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph C.1 of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph C.1 of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement

3. Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to Article X and to include such notices on all reproductions of the data.

4. Release, publication and use of data. Seller shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by Seller in the performance of this agreement, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this agreement.

D. Marking of Data

Pursuant to paragraph B above, any Data delivered under this Agreement shall be marked with the following legend:

Use, duplication, or disclosure is subject to the restrictions as stated in Agreement MDA972-01-9-0005 between the Government and Carnegie Mellon.

E. Lower Tier Agreements

Seller shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work. Seller will include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause required by Subpart 27.3. All subcontractors will receive similar data rights.

F. Data Rights Notification

In no event shall the provisions set forth in this Article apply to any Background Inventions or Background Data obtained thereon by Seller or its subcontractors. Seller or its subcontractors shall retain the entire right, title, and interest throughout the world to each such Inventions and Data that each party has brought to this Agreement, and the Government shall not have any rights under this Agreement. Attachment 2 to this agreement lists Background Inventions or Background Data that Seller and its subcontractors will utilize on Phase IA of the UGCV program.

ARTICLE XI: FOREIGN ACCESS TO TECHNOLOGY

This Article shall remain in effect during the term of the Agreement and five (5) years thereafter.

A. Definition

1. "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.
2. "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.
3. "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 Agreement.

B. General

The Parties agree that research findings and technology developments arising under this Agreement 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. 121 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:

- (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 Seller for purposes related to this Agreement, 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 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. For purposes of this Article, all subcontractors included in Carnegie Mellon's original proposal are considered approved sources of supply.

2. Seller shall provide timely notice to DARPA of any proposed transfers from Seller of technology developed under this Agreement to Foreign Firms or Institutions. If DARPA determines that the transfer may have adverse consequences to the national security interests of the United States, Seller, its subcontractors, Boeing 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 Seller and its subcontractors.

3. In any event, Seller shall provide written notice to the DARPA Agreements Officer's Representative and Agreements Officer 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

Subcontractor agrees to notify Buyer immediately if there is any change of status mentioned above.



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