

Date: June 2001

EXHIBIT B

**DATA RIGHT CLAUSES
APPLICABLE TO
PRIME CONTRACT F34601-01-C-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 October 1, 2000.

Additional Provisions:

H-842 **RIGHTS IN TECHNICAL DATA - COMMERCIAL ITEMS**
NOV 1996

(A) Commercial Data Acquisition and Data Rights Policy.

(i) The VC-25, C-137, E-4B, T/TC-43, TC/EC-18, C-22, E-8, and C-9 aircraft, Government-owned derivative(s) of Boeing commercial airplane(s) incorporate(s) many components and systems, including the airframe(s), that are "commercial items" as defined in FAR 52.202-1. Consistent with DFARS 227.7102, only that technical data pertaining to or qualifying as such commercial items ("Commercial Data") that is customarily provided to commercial customers for such commercial items will be deliverable pursuant to this contract. Commercial data in the form of detail drawings are not deliverable pursuant to this or any other provision of this contract. At Contractor's sole discretion, such detail drawings may be available subject to additional fees and contractual provisions. This clause does not restrict delivery to the Government, or use or disclosure by or for the Government, of technical data that is not Commercial Data, in which the Government has unlimited rights. This clause constitutes a listing of all Commercial Data to be delivered under this contract.

(ii) Consistent with DFARS 227.7102-3 and DFARS 212.504, all such Commercial Data to be obtained from Contractor's subcontractor, Boeing Commercial Airplane Group ("BCAG"), including derivatives of such Commercial Data documenting modification of such commercial items, will be provided with the same rights customarily provided to a commercial customer, i.e., as set forth below. As used herein, the term "modification" has the meanings set forth in FAR 52.202-1 for "minor modifications" and "modifications of a type customarily available in the commercial marketplace". None of the other clauses of this contract pertaining to technical data shall apply to Commercial Data. Commercial Data, marked with the legend set forth in paragraph (C), are licensed to the Government and will be subject to Special License Rights - Commercial Item as described below in paragraph (B).

(B) Special License Rights - Commercial Item.

(i) Commercial Data will not be disclosed, transferred or permitted out of the Government's possession or used or furnished by the Government for any commercial purpose, and not for the design, manufacture, operation, maintenance, installation, repair, or modification of any aircraft or part thereof, except:

(a) for the sole Government purposes of operation, maintenance, installation, repair, and modification necessary to comply with service bulletins, of the aircraft and training of Government personnel and its agents in connection with the Government's operation and use of such aircraft;

(b) as required by law;

(c) or with Boeing's prior written consent.

(ii) The Government is authorized to provide the Commercial Data delivered under this contract in furtherance of the uses permitted above in (B)(i) to its Contractor's ("Recipient"). Prior to doing so, the Government will obtain the Recipient's agreement to comply with a provision equivalent to this contract provision. The Government may use a suitably tailored "Standard Non-Disclosure Agreement" as set forth in DFARS 227.7103-7(c) to satisfy this requirement. Upon request, the Government will provide the Contractor with a copy of any such agreement. If the Government receives a request for release or disclosure of Commercial Data under paragraph (B)(i)(b), the Government will promptly notify the Contractor prior to any such release or disclosure.

(iii) The Government is authorized to copy Commercial Data for the purposes set forth in paragraph (B)(i)(a) and (B)(ii), provided that all proprietary legends, and other restrictive notices appearing on the original Commercial Data are preserved on such copies. All copies will be considered to be Commercial Data.

(iv) All of the foregoing restrictions on disclosure and use by the Government and its Contractors will also apply to all materials copied or otherwise derived from Commercial Data. Upon Contractor's request at any time following a failure by the Government to perform in accordance with this special provision H-842, the Government will promptly return to Contractor all tangible embodiments of Commercial Data, together with all copies thereof.

(C) Restrictive Notices. The Contractor agrees to mark "Commercial Data" delivered hereunder with the following legend:

SPECIAL LICENSE RIGHTS - COMMERCIAL ITEM
Commercial data subject to restricted license. See Contract
No. F34601-01-C-0004. Reproduce this legend on all copies.

In addition to the legend set forth in this paragraph (C), the Contractor may retain any pre-existing commercial restrictive notices or proprietary legends on any Commercial Data to be delivered under this contract.

(OCALC H842)

SPECIAL GOVERNMENT RIGHTS LICENSE - KC-10

The following is a historical review of the data rights license pertaining to the KC-10 and contracts F34601-89-D-1454, F34601-91-C-0992, F34601-93-C-0463, F34601-94-C-0212, and F34601-97-C-0211.

- (a) The KC-10 sustaining Engineering Support contracts required McDonnell Douglas Corporation to deliver pre-existing data as well as data developed under the contract.
- (b) The pre-existing data consists of the following: (1) DC-10 commercial data, (2) Data which contains DC-10 commercial data, (3) or is DC-10 data which is common to both KC-10 and DC-10 aircraft.
- (c) The DC-10 data and DC-10/KC-10 common data were produced at McDonnell Douglas Corporation's (MDC) private expense or at the private expense of its subcontractors and vendors.
- (d) The records supporting the fact that said KC-10 data and DC-10/KC-10 common data were produced at private expense may no longer exist or may not have been generated at the time the data was originally produced, or if produced and existing, may be difficult, expensive or time-consuming to produce.
- (e) The Air Force acquired greater than limited rights in the original production contract F33700-78-C-0001 that were purchased from the MDC in order to support the KC-10 aircraft, however, this agreement did not include the manufacture of parts.
- (f) McDonnell Douglas Corporation has provided greater than limited rights in DC-10 data and DC-10/KC-10 common data so long as said data is not used for commercial purposes (i.e.. use other than the U.S. Government owned DC-10 type aircraft), or to produce spare parts for the DC-10 type aircraft.
- (g) The Contractor has notified the Government that MD-11 developed changes may be applicable to the DC/KC-10 technical data. The Contractor has agreed that even though these MD-11 developed changes could be delivered with limited rights (as defined under DFARS Part 227) THE PARTIES AGREE THAT SUCH DATA WILL BE DELIVERED WITH Special Government Rights as defined herein.
- (h) The contract and Government agree the technical data delivered with Limited and Special Rights under this contract will not be subject to expiration.
- (i) DC-10 data, DC-10/KC-10 common data, and MD-11 data applicable to the DC-KC-10 data have been delivered in place under this contract.

Therefore, based upon the above the parties agree to the following Special Government Rights License pursuant to DFARS 252.227-71 & 72:

(1) All technical data and computer/software delivered under this contract which is developed under this contract and/or other Government contracts shall be furnished with unlimited rights. Any portion of said data or computer software which contains proprietary rights shall be furnished in accordance with paragraph 2.

(2) All other technical and computer software data, not defined in paragraph 1, delivered under this contract shall be furnished with Special Government Rights pursuant to this license agreement. This does not include any previous data delivered to the Government with unlimited rights or other Contractors with unlimited rights or other Contractors with unlimited rights. Those rights will continue to exist.

(3) Special Government Rights in data conferred upon the Government pursuant to this license are the rights to use or duplicate technical data and computer software, in whole or in part, within the Government, and rights to disclose or release such technical data and computer software to any Contractors for their use, including the right to duplicate, in meeting all U.S. Government requirements to support the KC-10 aircraft, but in no event shall it include use or duplication to satisfy the manufacture

of spare parts. In addition, use and duplication by the U.S. Government and/or such contracts shall be limited exclusively to Government Requirements of all effort involving KC-10 type aircraft owned by the U.S. Government.

(4) In addition concerning support of the KDC-10, the Government may disclose data and computer software in which it has obtained Special Rights from McDonnell Douglas Corporation for the same data and computer software, so long as the third party has agreed in the MDC third party license that it is subject to the restrictions in the license no matter whether the Special Rights data or computer software is received from the Government or MDC, and will copy such markings and notices onto any data or computer generated by the Government, which contains such Special Rights data or computer software before delivery of such to MDC-licensed third parties.

(5) Data and computer software furnished under this Special Government Rights License shall include the following legend:

“This data and/or computer software furnished under Government contract shall be used only for satisfying U.S. Government requirements on U.S. Government owned DC-10 type aircraft, and shall not be used, released or disclosed, in whole or in part, for any other purpose without the express written permission of the aircraft manufacturer. Such data and/or computer software shall not be used for the manufacture of spare parts. This legend shall have precedence over all other (owner of data) data rights legends contained hereon.”

(6) The following agreement will be entered between the Government and any third party using authorized data under this Special Government rights License (SGRL).

STANDARD NONDISCLOSURE AGREEMENT

The undersigned, _____ (name) as the authorized representative of _____ (company name) (hereinafter, the licensee”), request technical data and/or computer software subject to Special Governments Rights License (hereinafter, “SGRL data”), to compete for, perform, or to prepare to compete for, or to perform Government contracts. In consideration therefore:

- (i) Licensee agrees that the SGRL data identified in this agreement shall be used only for Government purposes.
- (ii) Licensee agrees to provide written notice and a copy of the non-disclosure agreement to the Contractor whose name appears in the SGRL legend (hereinafter referred to as the “Contractor”) whenever it receives SGRL data. The notification shall identify the SGRL data, the date and place of its receipt and the source from which the data was received.
- (iii) Licensee shall not without prior written permission of the contract, provide or disclose any SGRL data to any other company, person, or entity, except its subcontractors. The Licensee agrees not to disclose SGRL data to any subcontractor or potential subcontractor unless the subcontractor or potential subcontractor has executed the standard nondisclosure agreement.
- (iv) Licensee agrees not to use SGRL data for commercial purposes.
- (v) Licensee agrees to adopt operating procedures and physical security measures designed to protect SGRL data from disclosure or release to unauthorized third parties.
- (vi) Licensee agrees to indemnify the Government, its agents and employees from all liability arising out of, or in any way related to, the misuses of unauthorized disclosure by the licensee, its employees or agents of any SGRL data it received. Licensee will hold the Government, its agents and employees, harmless against any claim or liability, including attorney fees, costs and expenses, arising out of the misuse or unauthorized disclosure of any SGRL data supplied to the licensee hereunder.
- (vii) Execution of this non-disclosure agreement by the licensee or any of its authorized subcontractors is for the benefit of the Contractor identified in the legend on any SGRL data received. Any such Contractor is a third party beneficiary of this agreement who may have the right of direct action against the licensee to enforce the agreement or to seek damages which may result any material breach of the agreement.
- (viii) This agreement shall be effective only for so long as the data remains unpublished (or until the SGRL legend expires).

_____ day of _____ 20_____

Licensee

(7) Finally, it is further agreed as part of this License Agreement that upon termination or completion of this contract, McDonnell Douglas shall have the right to retain copies of all Government owned data developed at Government Expense.

A = ADDED
D = DELETED
R = REVISED