

RIGHTS IN DATA – SPECIAL WORKS – ITER (Sept 2010)

(a) Definitions. (1) "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.

(2) "Unlimited rights", as used in this clause, means the rights of the Government and Members to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(3) "Member", as used in this clause, means members of the ITER Organization who are parties to the Agreement on the Establishment of the ITER International Fusion Energy Organization for the Joint Implementation of the ITER Project (the Agreement).

(4) "ITER Organization", as used in this clause, means the ITER International Fusion Energy Organization as described in the Agreement.

(b) Allocation of Rights. (1) The Government and Members shall have unlimited rights in all data delivered under this subcontract, and in all data first produced in the performance of this subcontract, except as provided in paragraph (c) of this clause.

(2) The Government shall have:

(i) the right to limit assertion of copyright in data first produced in the performance of this subcontract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause, and

(ii) the right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(3) The Seller shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this subcontract.

(c) Copyright. (1) Data first produced in the performance of this subcontract. (i) The Seller shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this subcontract without prior written permission of the Government. When copyright is asserted, the Seller shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including the number of the Company's prime Government contract and the number of this subcontract) to the data when delivered to the Company, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Seller grants to the Government and Members, a paid-up, nonexclusive, irrevocable, world-wide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner, and for any purpose whatsoever, and to permit others to do so on their behalf.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this subcontract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Government shall direct the Seller to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(2) Data not first produced in the performance of this subcontract. The Seller shall not, without prior written permission of the Company, incorporate in data delivered under this subcontract any data not first produced in the performance of this subcontract and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Seller identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) Release and Use Restrictions. Except as otherwise specifically provided for in this subcontract, the Seller shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this subcontract, nor authorize others to do so, without written permission of the Government.

(e) Indemnity. The Seller shall indemnify the Company, the Government, Members and their officers, agents, and employees acting for them against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this subcontract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Company, the Government or Member provides notice to the Seller as soon as practicable of any claim or suit, affords the Seller an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Seller's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the Seller by the Company or the Government and incorporated in data to which this clause applies.