

TECHNICAL DATA – ITER

1. Rights in Data—Facilities.

(a) Definitions—

Assistant General Counsel for Technology Transfer and Intellectual Property is the senior intellectual property counsel for the Department of Energy, as distinguished from the NNSA Patent Counsel, and, where used in this clause, indicates that the authority for the activity(ies) being described belongs to DOE.

Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means:

(1) Computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(2) Data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

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 “data” does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (e) of this clause.

Patent Counsel means the DOE or NNSA Patent Counsel assisting the contracting activity.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others, including Members, to do so as necessary to comply with the ITER Agreement.

Members, 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).

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

Council, as used in this clause, means the principal organ of the ITER Organization composed of Representatives of the Members and as described in Article 6 of the Agreement.

Background data, as used in this clause, means Limited Rights Data and Restricted Computer Software owned or controlled by the seller at any time through completion of the contract and developed outside the scope of the contract.

(b) Allocation of Rights.

(1) Except as may be otherwise expressly provided or directed in writing by the Patent Counsel, the Government shall have

(i) Ownership of all technical data and computer software first produced in the performance of this subcontract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this subcontract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE Patent Counsel;

(iii) The right to inspect Technical Data and Computer Software first produced or specifically used in the performance of this subcontract at all reasonable times. The Seller shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this subcontract delivered to the Government or otherwise disposed of by the Seller, either as the Contracting Officer of the Company's Contract No. DE-AC05-00OR22725 with DOE may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this subcontract. The Seller agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer. If such data are

limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this subcontract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Seller fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Seller of the action taken.

(2) The Seller shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this subcontract, Data it first produces in the performance of this subcontract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this subcontract have been met as of the date of the private use of such data.

(3) The Seller agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or third party, including a DOE Contractor or subcontractor, and for Technical Data or Computer Software it first produces under this subcontract which is authorized to be marked by DOE, the Seller shall treat such data in accordance with any restrictive legend contained thereon.

(4) In the performance of DOE contracted obligations, each contractor is required to manage scientific and technical information (STI) produced under the contract as a direct and integral part of the work and ensure its broad availability to all customer segments by making STI available to DOE's central STI coordinating office, the Office of Scientific and Technical Information (OSTI). Requirements for all such reportable information to OSTI are in DOE Order 241.1, or successor version, whether it is publicly releasable, controlled unclassified information, or classified.

(c) Copyrighted Material.

(1) The Seller shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this subcontract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf and the ITER Organization, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor to such Technical Data or Computer Software to Members, with the right of the ITER Organization to sub-license, and the right of the other Members to sub-license within their respective territory, for the purposes of publicly sponsored fusion research and development programs.

(2) For technical data or computer software in which the Seller has received permission to assert copyright, Seller shall make available, on an equal and non-discriminatory basis, a non-exclusive license to such Technical Data or Computer Software to other Members for commercial fusion use, with the right to sub-license for such use by such Members own domestic third parties within such Members own territory, with reasonable and non-discriminatory terms, and in any event, terms no less favorable than the basis upon which Seller licenses such Technical Data or Computer Software to third parties within or outside the USA. As long as such terms have been offered Seller, such license shall not be denied. The above license may be revoked only in case the licensee does not fulfill its contractual obligations.

(3) Seller is encouraged to enter into commercial arrangements with the other Members, Domestic Agencies, ITER Contractors and third parties in order to allow use of Data first produced in the performance of this subcontract in fields other than fusion.

(4) If Seller licenses or sub-licenses Data first produced in the performance of this subcontract or Background Data under this clause, Seller will maintain records of any such licensing, which records will be available to other Members, such as through the ITER Organization.

(5) For data in which Seller has received permission to assert copyright jointly authored with a Member or the ITER Organization, said data shall be jointly-owned by the Seller and Member. The joint owners shall enter into a co-ownership arrangement to allocate the terms of exercising the ownership of copyrighted Data.

(6) The Seller agrees not to include in the technical data or computer software delivered under the subcontract any material copyrighted by the Seller and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Seller believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Seller shall obtain the written authorization of the Contracting Officer to include such material in the technical data or computer software prior to its delivery.

(7) If the Seller has not been granted permission to copyright technical data or computer software first produced under the contract, and if the Government desires to obtain copyright in such data and computer software, the Patent Counsel may direct the Contractor to establish claim to copyright in such data or computer software and to assign such copyright to the Government or its designated assignee.

(d) Subcontracting.

(1) Unless otherwise directed by the contracting officer, the Seller agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR (FAR) Subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 48 CFR 927.409 including alternates as appropriate with the prior approval of Patent Counsel, and the

Seller shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternate II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(d). In subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under the Company's contract with DOE, the Contractor shall use the "rights in Data-Facilities" clause at 48 CFR 970.5227-1.

(2) It is the responsibility of the Seller to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Seller's obligations to the Government, other Members and the ITER Organization with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government, other Members and the ITER Organization such rights, the Seller shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Seller nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

(e) Rights in Limited Rights Data. Except as may be otherwise specified in this subcontract as data which are not subject to this paragraph, the Seller agrees to and does hereby grant to the Government, an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Seller specifically used in the performance of this subcontract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Seller at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government, except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Subcontract No. _____ and Contract No. DE- AC05-00OR22725 with the United States Department of Energy which may be duplicated and used by the Government, with the express limitations that the "limited rights data" may not be disclosed outside the Government, or be used for purposes of manufacture without prior permission of the Seller, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this subcontract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(f) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this subcontract as data which are not subject to this paragraph, the Seller agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Seller specifically used in the performance of this subcontract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Seller at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

(a) This computer software is submitted with restricted rights under Subcontract No. _____ and Contract No. DE-AC05-00OR22725 with the United States Department of Energy. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and

(5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

(d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice--Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Subcontract No. _____ with (name of Seller).

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this subcontract contains any variation to the rights in the Long Form Notice, then the subcontract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Seller includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(g) Limited Rights Data and Restricted Computer Software (Background Data) Incorporated in items provided to ITER Organization.

(1)(i) Where Seller has incorporated background data into the items provided to the ITER Organization which is required:

- to construct, operate, use or integrate technology for research and development in relation to the ITER facilities,
- to maintain or repair the item, or
- for safety, for quality assurance and quality control reasons as required by regulatory authorities,

Seller hereby grants the ITER Organization an irrevocable, non-exclusive, royalty-free license to use such background data, including manuals or instructional training materials for the construction, operation, maintenance and repair of the ITER facilities.

(ii) When Seller makes background data available to the ITER Organization, it must be clearly marked so and transmitted pursuant to an arrangement for confidentiality and in accordance with this clause. The recipient of such background data shall use it only for purposes set forth in paragraph (1) and shall preserve its confidentiality to the extent provided in that arrangement. Compensation for damages arising from the misuse of such background data by the ITER Organization shall be paid by the ITER Organization.

(2) Where Seller has incorporated background data such as know how or trade secrets into the items provided to the ITER Organization which is required:

- To construct, operate, use or integrate technology for research and development in relation to the ITER facilities, or
- To maintain the item provided,

Seller shall grant a commercial license to such background data or supply the same items incorporating the background data to the receiving party by means of private contracts with financial compensation for publicly sponsored fusion research and development programs of a Member on reasonable and non-discriminatory terms, and in any event, terms no less favorable than the basis upon which Seller licenses such background data or supplies the same items to third parties within or outside the USA. As long as such terms have been offered Seller, such license or supply of such item shall not be denied. The license, if granted, may be revoked only in case the licensee does not fulfill its contractual obligations. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE. Such waiver may be granted in advance of execution of the subcontract.

(3) Where Seller has incorporated background data in the execution of this subcontract, Seller shall ensure that the component incorporating such background data is available on reasonable terms and conditions, or use its best efforts to grant, on an equal and non-discriminatory basis, a non-exclusive license to the Members for commercial fusion use, with the right to sub-license for such use by such Members' own domestic third parties within such Member's territory, on terms no less favorable than the basis which Seller licenses similar background data to third parties within or outside the USA. As

long as such terms have been offered, such license shall not be denied. The above license may be revoked only in that case where the licensee does not fulfill its contractual obligations. However, in individual cases and for good cause shown in writing, the requirement for such a license may be waived by DOE. Such waiver may be granted in advance of execution of the subcontract.

(4) Seller is encouraged to make available, for commercial purposes other than those set out in paragraph (3), to the other Members, any background data incorporated into the items provided to the ITER Organization where the background data was required to:

- To construct, operate, use or integrate technology for research and development in relation to the ITER facilities, or
- To maintain or repair the item provided.

Such background data, if licensed by the Seller to the Members, shall be licensed on an equal and non-discriminatory basis.

(5) Seller shall identify, in a timely manner, its background data to DOE with a view to obtaining for the ITER Organization and the Members access to the background data in conformity with the Agreement.

(h) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)

2. Additional Data Requirements.

(Note: This clause does not apply to this subcontract if the subcontract is for the conduct of basic or applied research, as set out elsewhere in this subcontract, to be performed solely by a college or university, and the estimated cost is not in excess of \$500,000.)

(a) In addition to the data (as defined in the Rights in Data – Facilities clause included in this subcontract) specified elsewhere in this subcontract to be delivered, the Company may, at any time during subcontract performance or within a period of 3 years after acceptance of all items to be delivered under this subcontract, order any data first produced or specifically used in the performance of this subcontract.

(b) The Rights in Data – Facilities clause included in this subcontract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Seller to deliver any data the withholding of which is authorized by the Rights in Data – Facilities clause of this subcontract, or data which are specifically identified in this subcontract as not subject to this clause.

(c) When data are to be delivered under this clause, the Seller will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Company may release the Seller from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.