NMIMT CONTRACT CLAUSE AS TO DATA, PATENTS, AND COPYRIGHTS

A. Definitions

1. "Computer software" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled.

2. "Contractor" means the entity or person who is contracting with NMIMT under this contract.

3. "Data" means recorded information regardless of form or the medium 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.

4. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

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

6. "Technical data" means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

7. "Unlimited rights" means rights to use, modify, reproduce, perform, display, release, or disclose data or a work in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

8. "Works" means computer data bases, computer software, or computer software documentation; literary, musical, choreographic or dramatic compositions; pantomimes; pictorial, graphic or sculptural compositions; motion pictures and other audiovisual compositions; sound recordings in any medium; or, items of similar nature.

B. Data

1. Grant of unlimited rights. NMIMT shall have unlimited rights in data that are--

   a. Data pertaining to an item, component, or process which has been or will be developed exclusively with NMIMT funds;
b. Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

c. Created exclusively with NMIMT funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

d. Data that describes the required overall physical, functional, and performance characteristics of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items;

e. Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

f. Corrections or changes to data furnished to the Contractor by NMIMT;

g. Otherwise publicly available or have been released or disclosed by the Contractor or its subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the data to another party or the sale or transfer of some or all of a business entity or its assets to another party; or

h. Data in which NMIMT has obtained unlimited rights under another NMIMT contract or as a result of negotiations.

2. Mixed funding. Rights in data created with funds from both NMIMT and the Contractor and not otherwise within the scope of paragraph B1 above, shall be allocated by means of good faith negotiations between the parties.

3. Mix of funding and expertise. Rights in data created with funds solely from the Contractor but where the expertise of employees of NMIMT is used in the creation of data shall be allocated by means of good faith negotiations between the parties.

C. Patents

1. Rights to subject inventions.

a. The Contractor agrees to assign to NMIMT the entire right, title, and interest throughout the world in and to each subject invention covered by Section B1. a-h, inclusive.

b. The Contractor agrees to assign to NMIMT that portion of the entire right, title and interest throughout the world which is agreed to between the parties as to any data created by mixed funding or by mix of funding and NMIMT expertise.
2. Invention disclosure. The Contractor shall disclose each subject invention to NMIMT within six months after the Contractor becomes aware that a subject invention has been made.

D. Copyrights

1. Applicability. This section applies to data and works first created, generated, or produced and required to be delivered under this contract.

2. License rights.

   a. NMIMT shall have unlimited rights in data and works first produced, created, or generated and required to be delivered under this contract.

   b. When data or a work is first produced, created, or generated under this contract, and such data or work is required to be delivered under this contract, the contractor shall assign copyright in those data or works to NMIMT.

   c. The Contractor grants to NMIMT a royalty-free, world-wide, non-exclusive, irrevocable license to reproduce, prepare derivative works from, distribute, perform, or display, and to have or authorize others to do so, the Contractor's copyrighted data and works not first produced, created, or generated under this contract that have been incorporated into the works deliverable under this contract.