

REFUND OF ROYALTIES (Apr 2001)

(a) The subcontract price includes certain amounts for royalties, payable by the Seller or subcontractors or both, reported to the Company in accordance with the Royalty Information provision of the solicitation.

(b) During performance of this subcontract, if any additional royalty payments are proposed to be charged to the Company as costs under the subcontract that were not included in the original subcontract price, the Seller agrees to submit for approval of DOE prior to the execution of any licensing agreement the following information relating to each separate item of royalty or license fee:

- (1) Name and address of licensor;
- (2) Date of license agreement;
- (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
- (4) Brief description, including any part or model numbers of each subcontract item or component on which the royalty is payable;
- (5) Percentage or dollar rate of royalty per unit;
- (6) Unit price of subcontract item;
- (7) Number of units; and
- (8) Total dollar amount of royalties.

(9) In addition, if specifically requested by DOE, the Seller shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

(c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection performing this subcontract or any subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that are represented to be proprietary and are related to the performance of this subcontract or subcontracts hereunder, or the copying of such data or data that are copyrighted.

(d) The Seller shall furnish to DOE, before final payment under this subcontract, a statement of royalties paid or required to be paid in connection with performing this subcontract and subcontracts hereunder.

(e) The Seller is compensated for any royalties reported under paragraph (b) of this clause only to the extent that such royalties were included in the subcontract price and are determined by DOE to be properly chargeable to the Government and allocable to the subcontract.

(f) The Company shall reduce the subcontract price to the extent any royalties that are included in the subcontract price are not, in fact, paid by the Seller or are determined by DOE not to be properly chargeable to the Company and allocable to the subcontract. The Seller agrees to repay or credit the Company accordingly, as DOE directs. Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to, a patent or the proprietary nature of data pursuant to which DOE makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this subcontract, the Seller for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (f) of this clause, the Seller shall promptly notify DOE of that fact and shall promptly reimburse the Government in a corresponding amount.

(h) The Seller agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties, in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.