APPENDIX D-7

INTELLECTUAL PROPERTY PROVISIONS

Supplies/Services NOT requiring delivery of Data

Article
I. DEAR 970.5227-4 Authorization and Consent (AUG 2002)
II. DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)
III. DEAR 970.5227-8 Refund of Royalties (AUG 2002)
IV. FAR 52.227-3 Patent Indemnity—Supplies and Services (APR 1984)
I. DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002)

The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Laboratory or the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Laboratory or the Government directing the manner of performance.

The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

II. DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

The provisions of this clause shall be applicable only if the amount of this contract exceeds $100,000.

(a) The Contractor shall report to the Government through the Laboratory, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Government or the Laboratory, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government or the Laboratory, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed $100,000.

III. DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002)

(a) During performance of this Contract, if any royalties are proposed to be charged to the Laboratory or the Government as costs under this Contract, the Contractor agrees to submit for approval of the Government through the Laboratory, prior to the execution of any license, the following information relating to each separate item of royalty:

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

(b) If specifically requested by the Government through the Laboratory, the Contractor shall furnish a copy of any license agreement entered into prior to the effective date of this clause and an identification of applicable claims of specific patents or other basis upon which royalties are payable.

(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 that are used in the performance of this contract or any subcontract hereunder.

(d) The Contractor shall furnish to the Government through the Laboratory, annually upon request, a statement of royalties paid or required to be paid in connection with performing this Contract and subcontracts hereunder.

(e) For royalty payments under licenses entered into after the effective date of this Contract, costs incurred for royalties proposed under this paragraph shall be allowable only to the extent that such royalties are approved by the Government. If the Government determines that existing or proposed royalty payments are inappropriate, any payments subsequent to such determination shall be allowable only to the extent approved by the Government.

(f) Regardless of prior Government or Laboratory approval of any individual payments or royalties, the Government may contest at any time the enforceability, validity, scope of, or title to a patent for which the Contractor makes a royalty or other payment.

(g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of any royalties to which this clause applies, the Contractor shall promptly notify the Government through the Laboratory of that fact and shall promptly reimburse the Government for any refunds received or royalties paid after having received notice of such relief.

(h) The Contractor 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.
IV. FAR 52.227-3 PATENT INDEMNITY—SUPPLIES AND SERVICES (APR 1984)

(a) The Contractor shall indemnify the Laboratory, the Government and their officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this contract, or out of the use or disposal by or for the account of the Government or the Laboratory of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government (with notice to the Laboratory) of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to:

(i) An infringement resulting from compliance with specific written instructions of the Laboratory or the Government directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;

(ii) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(iii) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.