

FL-104

INTELLECTUAL PROPERTY CLAUSES FOR A SUBCONTRACT PROVIDING TEMPORARY PERSONAL SERVICES THROUGH AN EMPLOYMENT OR PLACEMENT AGENCY

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1. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (48 C.F.R. 52.227-2)

- (a) The Subcontractor shall report to the Department Contracting Officer through Fermilab promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this subcontract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against Fermilab or the Government on account of any patent or copyright infringement arising out of the performance of this subcontract or out of the use of any supplies furnished or work or services performed under this subcontract, the Subcontractor shall furnish to Fermilab or the Government, when requested by Fermilab or the Department Contracting Officer, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government or Fermilab.
- (c) The Subcontractor agrees to include, and require inclusion of, this clause in all lower-tier sub-subcontracts for supplies or services (including construction and architect-engineer sub-subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

2. REFUND OF ROYALTIES (48 C.F.R. 952.227-9)

- (a) This clause applies only if the subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier sub-subcontractors or both.
- (b) 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 with performing this subcontract or any lower-tier subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.
- (c) The Subcontractor shall furnish to Fermilab or the DOE Contracting Officer, before final payment under this subcontract, a statement of royalties paid or required to be paid in connection with performing this subcontract and lower-tier subcontracts hereunder together with the reasons.
- (d) The Subcontractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the subcontract price and are determined by Fermilab or the DOE Contracting Officer to be properly chargeable to the Government and allocable to the subcontract. To the extent that any royalties that are included in the subcontract price are not, in fact, paid by the Subcontractor or are determined by Fermilab or the DOE Contracting Officer not to be properly chargeable to the Government and allocable to the subcontract, the subcontract price shall be reduced. Repayment or credit to Fermilab or the Government shall be made as Fermilab or the DOE Contracting Officer directs. The approval by Fermilab or DOE of any individual

payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

- (e) If, at any time within 3 years after final payment under this subcontract, the Subcontractor 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 (d) of this clause, the Subcontractor shall promptly notify Fermilab or the DOE Contracting Officer of that fact and shall reimburse Fermilab or the Government in a corresponding amount.
- (f) The substance of this clause, including this paragraph (f), shall be included in any sub-subcontract in which the amount of royalties reported during negotiation of the sub-subcontract exceeds \$250.

3. AGREEMENT COVERING DISCOVERIES, INVENTIONS AND IMPROVEMENTS

Unless otherwise authorized by Fermilab, only Subcontractor employees who execute the Agreement at FL-104 Attachment may be provided by the Subcontractor to perform work under this subcontract.