apply. Accordingly, the Rights in Technical Data-Facility clause set forth in 952.227–78 is to be used as a basic or minimal clause which may be modified or expanded with the concurrence of Patent Counsel to meet particular contract situations.

(b) Whenever a contract has as a purpose the operation of a Government-owned research or production facility, the clause set forth at 952.227–78 shall normally be included in the contract. Inasmuch as this clause secures to the Government ownership, access to, and, if requested, delivery of all technical data first produced in the performance of the contract and access to and delivery of technical data which are specifically used in the performance of the contract, there is no need to include the Additional Technical Data Requirements Clause of 952.227–73.

(c) Subcontracting. Unless otherwise directed by the contracting officer, the contractor shall be required to follow the policy and procedures of 927.402-1, 927.402-2, and 927.402-3 and shall employ the provisions of the Additional Technical Data Requirements clause of 952.227–73 and the Rights in Technical Data (Long Form) clause of 952.227-75, where appropriate, except in subcontracts for the design of special production plants or facilities or specially designed equipment for facilities or plants, in which instances contractors shall include the provisions of the Rights in Technical Data—Facility clause of 952.227-78.

(d) Optional clause—Limited rights in proprietary data. In contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data clause of this section shall be supplemented by the additional paragraph (e), set forth in 952.227-79. Paragraph (e) provides that technical data may be specified in the contract as being excluded from the delivery requirements thereof. Alternatively, paragraph (e) may be limited or made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the limited rights legend, paragraphs (a), (b) and (c) of 952.227–79 may be modified as follows. When proprietary data is to be furnished only for evaluation, paragraph (a) of the limited rights legend shall be used, and paragraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirement that proprietary data be disclosed to other DOE contractors only for information or use in connection with work performed under their contracts,

paragraph (b) of the limited rights legend shall be used, and paragraphs (a) and (c) may be deleted if otherwise inapplicable. In either of the foregoing examples, the contractor may, if it can show the possibility of a conflict of interest because of disclosure of such data to certain contractors or evaluators. exclude contractors or evaluators from paragraph (a) or (b). If the data is required solely for emergency repair or overhaul, paragraph (c) of the limited rights legend shall be retained, and paragraphs (a) and (b) may, unless otherwise applicable, be deleted. In the event that it is determined that all of the paragraphs (a), (b) and (c) of the limited rights legend are to be deleted, the word "none" shall be inserted in the legend after the colon (:).

(e) For contracts involving access to certain categories of DOE-owned restricted data, as set forth in 10 CFR Part 725, see 927.402–1(h).

18. Subsection 970.5204–71 is added to read as follows:

970.5204-71 Patent Rights—Nonprofit Management and Operating Contractors.

As prescribed at 970.2703, insert the clause at 952.227–11, Patent Rights-Retention by the Contractor (Short Form) with the following changes:

PATENT RIGHTS-NONPROFIT MANAGEMENT AND OPERATING CONTRACTORS (MAR 1995)

1. Replace subparagraph (e)(1) with the following: (e)(1) The contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. When DOE approves such reservation, the contractor's license will extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

2. Add the following paragraphs (m) and (n): (m) Transfer to successor contractor. (1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity

positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.

(2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent

applications.

(n) Facilities license. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of these rights shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed. (End of clause)

19. Subsection 970.5204–72 is added to read as follows:

970.5204–72 Patent Rights—Profit-Making Management and Operating Contractors

As prescribed at 970.2703, insert the clause at 952.227–13, Patent Rights-Retention by the Government, with the following changes:

PATENT RIGHTS—PROFIT-MAKING MANAGEMENT AND OPERATING CONTRACTORS (MAR 1995)

- 1. Add the following paragraphs (j) and (k): (j) Transfer to successor contractor. (1) In the event of termination or expiration of this contract, the contractor shall transfer any unexpended balance of income received relating to intellectual property, in accordance with instructions from the contracting officer, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the contracting officer. The contractor shall also transfer title, as one package, in all patents and patent applications, license agreements, accounts containing royalty revenues from such license agreements, including equity positions in third-party entities, and other intellectual property that arose under the performance of this contract, to the successor contractor or to the Government, as directed by the contracting officer.
- (2) The Government agrees that the recipient of such title shall assume any remaining obligations and liabilities in connection with the patents and patent applications.
- (k) Facilities License. In addition to the rights of the parties with respect to