

(k) Seller Licensing. Except as may be otherwise specified in this subcontract as data not subject to this paragraph, the Seller agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purposes of practicing a subject of this subcontract, a nonexclusive license in any limited rights data or restricted computer software on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, that the Seller shall not be obligated to license any such data if the Seller demonstrates to the satisfaction of the Secretary of Energy or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this subcontract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternative available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the Seller or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the Seller or its licensees have taken effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.