

SANDIA CORPORATION

SF 6432-CI (10-99)

SECTION II

STANDARD TERMS AND CONDITIONS FOR COMMERCIAL ITEMS

THE FOLLOWING CLAUSES APPLY TO THIS CONTRACT AS INDICATED UNLESS SPECIFICALLY DELETED, OR EXCEPT TO THE EXTENT THEY ARE SPECIFICALLY SUPPLEMENTED OR AMENDED IN WRITING IN THE COVER PAGE OR SECTION I

CI10 – DEFINITIONS

The following terms shall have the meanings set forth below for all purposes of this contract.

(a) GOVERNMENT means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.

(b) SANDIA means Sandia Corporation, the management and operating contractor for the Sandia National Laboratories under Contract No. DE-ACO4-94-AL85000 with the U.S. Department of Energy.

(c) SELLER means the person or organization that has entered into this agreement.

(d) ITEM means commercial items, commercial services and commercial components as defined in FAR 52.202-1.

(e) AGREEMENT means Purchase Order, Contract, Price Agreement, Subcontract, Ordering Agreement, or modifications thereof.

(f) SCR means Sandia Contracting Representative, the only person authorized to execute and/or administer this Agreement for Sandia.

CI11 - APPLICABLE LAW

The rights and obligations of the parties hereto shall be governed by this Agreement and construed in accordance with federal law for FAR or DEAR clauses and Article 2 of the Uniform Commercial Code as enacted in the State of delivery of Items giving rise to the claim. The parties agree to jurisdiction in the Federal District Court, with venue in the District closest to the delivery point of the Items giving rise to the claim. In the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in the State Court closest to the delivery point of the Items giving rise to the claim.

CI12 - ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Order Item descriptions, prices, quantities, delivery dates and other statements on the order, (2) SF 6432-CI, Section II Standard Terms and Conditions For Commercial Items, and (3) incorporated by reference provisions of Section II.

CI13 - TITLE AND ADMINISTRATION

All property rights and interests resulting from this Agreement shall pass directly from the Seller to the Government.

CI14 - ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement and/or delivering Items or services ordered under this Agreement, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporated by reference or attachment. Sandia hereby objects to any terms and conditions contained in any acknowledgment of this Agreement that are different from or in addition to those mentioned in this document. Failure of Sandia to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor of the right of Sandia to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement.

CI15 – WARRANTY

Seller expressly warrants that Items delivered under this Agreement shall be in accordance with Sandia's affirmation, description, sample, or model and compliant with all requirements of this Agreement. Seller expressly warrants that no counterfeit Items or components in Items shall be delivered to Sandia on this Agreement. Seller expressly warrants that all Items provided under this agreement shall have a rightful transfer of good title thereto and are delivered free of any rightful claims of any third person by way of infringement of any intellectual property right. The warranty shall begin upon receipt of conforming Items and extend for a period of: (1) the manufacturer's warranty period or six months, whichever is longer, if the Seller is not the manufacturer and has not modified the Item, or (2) one year or the manufacturer's warranty period, whichever is longer, if the Seller is the manufacturer of the Item or had modified it. If any nonconformity with Item appears within that time, Seller shall promptly repair, replace, or reperform such Items at Seller's election. Transportation of replacement Items and return of nonconforming Items and repeat performance of services shall be at Seller's expense. Sandia shall notify Seller of such nonconformity within a reasonable time after discovery, and Seller shall notify Sandia of whether it chooses to make repairs or replacements within three working days after Sandia's notice of nonconformity. If repair or replacement or reperformance of services is not timely, Sandia may elect to return the nonconforming Items or repair or replace them or reprocur the services at Seller's expense. Seller disclaims the implied warranties of merchantability or fitness for a particular purpose.

CI16 – ASSIGNMENT

Seller shall not assign rights or obligations to third parties without the prior written consent of Sandia. However, the Seller may assign rights to be paid amounts due or to become due to a financing institution if Sandia is promptly furnished written notice and a signed copy of such assignment. Payments to an assignee shall be subject to setoff or recoupment for any present or future claims of Sandia against the Seller. Administration of this Agreement may be transferred from Sandia to DOE or its designee, and in case of such transfer and notice thereof to the Seller, Sandia shall have no further responsibilities hereunder.

CI17 - NEW MATERIALS

Unless otherwise specified in this Agreement, all Items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property.

CI18 – TRANSPORTATION

If transportation is specified "FOB Origin,": (a) no insurance cost shall be allowed unless authorized in writing, and (b) the bill of lading shall indicate that transportation is for DOE and the actual total transportation charges paid to the carrier(s) shall be reimbursed by the Government pursuant to Contract No. DE-ACO4-94-AL85000. Confirmation will be made by Sandia National Laboratories.

CI19 - RISK OF LOSS

If Sandia is responsible for the risk of loss during transportation of compliant Items, Sandia shall compensate Seller the lesser of: (1) the agreed price of such Items, or (2) the Seller's cost of replacing such Items; and such loss shall entitle the Seller to an equitable adjustment in delivery schedule obligations.

CI20 – PAYMENT

Unless otherwise provided, terms of payment shall be net 30 days from the latter of: (1) receipt of Seller's proper invoice, if required, or (2) delivery of Items/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Seller indicates. Payments may be made either by check or electronic funds transfer, at the option of Sandia. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

CI21 - COMPLIANCE WITH LAWS

Seller shall comply with all applicable Federal, State, and Local laws and ordinances and all pertinent lawful orders, rules, and regulations and such compliance shall be a material requirement of this Agreement.

CI22 - CANCELLATION OR TERMINATION FOR CONVENIENCE

(a) Sandia may cancel this Agreement, in whole or in part, if the Seller fails to comply with any of the terms of this Agreement, or fails to provide adequate assurance of future performance. In that event, Sandia shall not be liable for any amount for Items or services not yet accepted by Sandia.

(b) Sandia may terminate for the convenience of Sandia or the Government this Agreement, in whole or in part, for any Items or services not yet accepted by Sandia. In that event Sandia shall not be liable for the purchase price of Items or services already completed or identified to this Agreement but not yet accepted by Sandia.

(c) Seller shall not be liable for delays in performance occasioned by causes beyond Seller's reasonable control and without Seller's fault or negligence.

(d) The rights and remedies of Sandia in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

CI23 – BANKRUPTCY

If the Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the SCR responsible for this Agreement within five days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the agreement numbers for which final payment has not been made.

CI24 – TAXES

By reason of Sandia's Nontaxable Transaction Certificate, the Seller should not include in the price any state and local taxes except those which were paid by the Seller to third parties in acquiring the Items which are the subject matter of this Agreement. The price does include all applicable Federal taxes.

CI25 – CHANGES

The SCR may at any time, by written notice, make changes within the general scope of this Agreement in any one or more of the following: (1) description of the services to be performed; (2) place of performance; and (3) the amount of services to be furnished. If any such change causes a difference in the cost of, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Agreement signed by both parties. Any claim for adjustment by Seller must be made within 20 days from the date of receipt of Sandia's change notice, although Sandia in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. Nothing in this clause, including any disagreement with Sandia about the equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

CI26 - ADDITIONAL TERMS AND CONDITIONS

This contract incorporates Federal Acquisition Regulation (FAR) clauses found at 48 CFR 52. et seq. and Department of Energy Acquisition Regulation (DEAR) clauses found at 48 CFR 952. et seq. by reference with the same force and effect as if they were given in full text. Where the FAR/DEAR clauses refer to Government and Contracting Officer, substitute Sandia and Sandia Contracting Representative (SCR). Upon request the SCR will make the full text available.

APPLY TO CONTRACTS AT ANY VALUE

FAR 52.222-26 Equal Opportunity (E.O. 11246),

FAR 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 2012(a),

FAR 52.222-36 Affirmative Action for Handicapped Workers (29 U.S.C. 793)

FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components

APPLY TO CONTRACTS EXCEEDING \$500,000

FAR 52.219-9 Small Business Subcontracting Plan

FAR 52.219-16 Liquidated Damages-Subcontracting Plan

APPLY TO ALL CONTRACTS WHERE ANY WORK WILL BE PERFORMED ON A GOVERNMENT SITE

DEAR 952.204-2 Security

FAR 52.223-2 Clean Air and Water

FAR 52.223-11 Ozone Depleting Substances

FAR 52.223-12 Refrigeration Equipment and Air Conditioners

DEAR 952.223-72 Radiation Protection and Nuclear Criticality

DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure Records

DEAR 970.5204-2 Integration of Environment, Safety, and Health into Work planning and Execution

DEAR 970.5204-58 Workplace Substance Abuse Programs at DOE sites

DEAR 970.5204-59 Whistleblower Protection for Contractor Employees

CI27 - VISITOR ACCESS TO GOVERNMENT SITES

The organizations listed below are responsible for coordinating and administering the provisions of visitor access and control for the sites as listed. Sandia National Laboratories, Albuquerque, New Mexico - Visitor Access and Administration Section, Sandia Corporation, Building 801. Sandia National Laboratories, Livermore, California - Visitor Control and Administration Section, Sandia Corporation, Building 911. Tonopah Test Range, Tonopah, Nevada - Office of the Tonopah Test Range Manager.

CI28 - REQUIREMENTS FOR ACCESS TO GOVERNMENT SITES

Permission to enter Government sites shall at all times be subject to all laws, regulations, and site access rules for the site. The Government requirements include but are not limited to, all of the requirements set forth in this section for any work to be performed on a Government site. To obtain access to such premises, the Contractor shall write a letter to the SDR or the SCR stating the company designation to be used by the Contractor and each subcontractor and furnishing the following information on each individual requiring access to such premises: name, date of birth, and citizenship status, completed ES&H training requirements set forth in the SOW. Access will be granted for the period of performance of the work only. Contractor shall withdraw and replace any individual, including any subcontractor employee, assigned to perform work under this contract, who in the judgment of Sandia or DOE, is to be denied access to any Government site. Contractor shall submit to the SDR or the SCR proposed working schedules for its personnel and the personnel of each of its subcontractors. The schedules will show proposed daily working hours and proposed workweeks. Schedules that deviate from Sandia's normal workday or workweek must be approved by the responsible SDR. In the absence of a written authorization from the SCR or DOE, use of Government sites by the Contractor and its subcontractors of any tier, pursuant to access granted under this Clause, shall be limited to work required by this contract to be performed on such premises. **THE USE OF THE ACCESS PRIVILEGE FOR ANY PURPOSE OTHER THAN TO PERFORM WORK UNDER THIS CONTRACT IS PROHIBITED AND MAY BE GROUNDS FOR TERMINATING THIS CONTRACT DEFAULT OR FOR FINDING THAT AN INDIVIDUAL IS UNACCEPTABLE FOR FUTURE ACCESS.**

CI29 - CITIZENSHIP STATUS

All personnel of the Contractor and its subcontractors who require access must be United States citizens, or foreign nationals who are legal aliens or have the required authorization to perform work in the United States.

CI30 - TERMINATION OR REASSIGNMENT OF PERSONNEL

The Contractor shall: (i) notify immediately the SCR and the Sandia Access Control and Administration Division at Albuquerque (Sandia Physical Security Division at Livermore; Tonopah Test Range Manager at Tonopah) if any Contractor employees assigned to work under this contract are terminated for any reason or are assigned to other Contractor non-Sandia work and will not work under this contract in the future, and (ii) ensure that any Contractor employees identified under this paragraph surrender to the Sandia Access Control and Administration Division (Sandia Physical Security Division at Livermore; Tonopah Test Range Manager at Tonopah) any Sandia badge, Kirtland Air Force Base decals or other access documents within two days of termination or reassignment.

CI31 - ES&H TRAINING

Any Contractor personnel who will enter a Government site to perform work shall have completed all of the ES&H training required by the Statement of Work prior to any attempts to enter a Government site as shown by written records of such training furnished to the SDR or to the Requester if no SDR is named in Section I of this Contract. Contractor shall certify to Sandia completion of all required training on the Completion Record for Contractor Administered Training form. This form is located on the Web at <http://www.sandia.gov/bus-ops/scm/Contractor/Contractor-info.html> or obtained from the SDR. Contractor shall provide the completion record form for the initial ESH100 training to the SDR on the first day of work. Contractor shall provide the completion records for any other training required above to the SDR before starting the affected work activity. Any person not having completed all ES&H training requirements may be denied access to any Government site and Contractor may be terminated for default of this contract as well as every other contract the Contractor has with Sandia.

CI32 - ES&H SERVICES

For Contractor employees performing Sandia-Directed work, Sandia shall provide those workers with any and all necessary safety authorization documents, personal protective equipment, industrial hygiene monitoring, medical surveillance, and radiation protection services. For Contractor employees performing Contractor-Directed work, Contractor shall provide its workers with all ES&H services, with the exception of Contractor employees performing Contractor-Directed work on Government sites for whom Sandia shall provide radiation dosimetry services and survey of record, as appropriate.

CI33 - HANDLING OF HAZARDOUS MATERIALS

For contracts that require the performance of work on Government sites, the Contractor shall coordinate with the SDR all activities associated with the acquisition (including reporting hazardous materials used on Government sites), handling, storage, accidental spills, and/or disposal of hazardous materials and/or waste. The Contractor shall notify the SDR of all hazardous and/or radioactive waste generated during performance of work. Such materials become Sandia-owned waste and the Contractor shall notify the SDR for proper disposal by Sandia. Contractor's assistance in disposal may be required by Sandia.

CI34 - REMOVAL OF HAZARDOUS MATERIALS

Those hazardous materials brought onto Sandia-controlled premises by the Contractor which are job related consumables and have not been removed from their original packaging and which have not been purchased by Sandia, shall remain the property of the Contractor and shall be removed from Sandia after completion of the work. Hazardous materials in the original, labeled container are not hazardous waste if the material is usable and the full or partially full container is intact and properly closed. Those scrap items which are not hazardous and which have not become hazardous through co-mingling with hazardous items are owned by the Contractor and shall also be removed.

CI35 - VEHICLE MARKINGS

All vehicles used by either the Contractor or its subcontractors on a Government site shall be marked clearly to indicate company name of user. Vehicles which do not bear permanent markings may be temporarily marked as follows: (1) Signs, no longer than the vehicle door is wide, with a white or lighter background, showing the Contractor's name in one inch high, or larger, dark colored letters, may be made from sheet metal, cardboard or other suitable material and temporarily attached to the vehicle's front door panels so that the signs appear in the approximate center of each door panel. Words such as "Company," "Corporation" or "Division" may be abbreviated; (2) No signs shall be attached to the vehicle's glass area for safety reasons.

CI36 - VEHICLE INSURANCE

All vehicles owned or operated by the Contractor, subcontractors or their agents and employees, having access to Government sites shall be covered by at least \$200,000/\$500,000 public liability and \$20,000 property damage insurance.

CI37 - CONTRACTOR OR SUBCONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES

The following provisions apply if work under this contract requires Contractor or subcontractor personnel to operate Government-owned vehicles either on or off Government sites. Contractor shall maintain, at

Contractor's expense, during the period of performance of work under this contract, third-party vehicle liability insurance which shall cover the use of such Government-owned vehicles with limits of at least \$200,000/\$500,000 public liability and \$20,000 property damage. Medical payments coverage, comprehensive and collision insurance, uninsured motorist, and personal injury protection will not be required under this Clause unless required by State statute. All Contractors' agents, employees and subcontractors of any tier shall obey all rules and regulations pertaining to the use of Government-owned vehicles. In the event of a motor vehicle accident, the Contractor shall submit a completed Motor Vehicle Accident Reporting Form SF 91 to the SCR together with any additional supplemental forms required by instructions given on the GSA Form Packet 1627. A GSA Form Packet 1627 normally is located either in the headliner or glovebox of the GSA vehicle. Contractor's personnel shall assure that a GSA Form Packet 1627 is available in a GSA vehicle prior to accepting and driving a GSA vehicle.

CI38 - ACCESS TO SANDIA COMPUTERS

Contractor personnel who are granted access to Sandia computers and word processors are subject to the computer security procedures outlined in this Clause. The procedures are applicable to Contractor personnel located at a Sandia facility or at the Contractor's facility. If the Contractor does not comply with the provisions of this Clause, Sandia may withdraw Contractor's access to Sandia computers and may also terminate this contract for default. Misuse of a Sandia computer may be a violation of law and could result in appropriate action including prosecution. Sandia computers may be used only to perform work authorized in the contract. Computer software or documentation developed on or for Sandia computer systems is the property of the Government unless provided otherwise in the contract. Information or data furnished by Sandia or obtained from a Sandia computer by Contractor personnel must be protected by the Contractor to prevent disclosure to any person other than Contractor's employees having a need to know unless such disclosure is authorized in advance in writing by the SCR. Classified material or information shall be protected in accordance with the security provisions of the contract. If this contract does not include security provisions and the Contractor is furnished or comes in contact with classified material or information, it shall be reported immediately to the SCR. Files of any other user shall not be accessed without specific permission from that user. Sandia monitors all use of all Sandia computers. Computer passwords are issued to individuals and must not be shared. Computer passwords must be protected by each Contractor employee to prevent disclosure to any other persons. If a computer password is disclosed or potentially disclosed, the Contractor must notify the SCR immediately so that a new password can be issued. Any Contractor who is granted access to a Sandia computer shall be required to complete initial and refresher "Computer Security Training" (COM100), to be provided by Sandia.

CI39 - PROTECTION OF GOVERNMENT PROPERTY

All facilities, property, equipment and materials at Sandia are Government-owned. Acts of theft, illegal possession and unlawful destruction or use of Government property violations punishable under Federal law, and may also result in administrative action. The Federal Bureau of Investigation is the investigative authority for all such incidents including cases involving the personal property of individuals when the incident occurs at a Government-owned installation. Every user of Government property is responsible for its physical protection and for reporting immediately the loss, theft, destruction, or damage of such property.

CI40 - APPLY TO ALL CONTRACTS THAT MAY INVOLVE ACCESS TO CLASSIFIED INFORMATION

DEAR 952.204-70 Classification/Declassification

DEAR 952.204-74 Foreign Ownership, Control, or Influence Over Contractor

CI41 - APPLIES TO ANY DELIVERABLE WHICH PROCESSES DATE RELATED DATA YEAR 2000 COMPLIANCE WARRANTY

Contractor expressly warrants that all product and/or service deliverables on this Contract will accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the deliverables being acquired, properly exchange date/time data.

CI 42 - PERFORMANCE EVALUATION PROGRAM

In keeping with SNL's goals of continuous improvement, and promoting and creating an environment for superior Contractor performance, SNL has established a collaborative feedback process through the Performance Evaluation Program. This program is intended to create an environment, which fosters dialog, provides feedback, and improves communication. Any contract awarded by SNL is a candidate for evaluation under this program