

SECTION II  
 STANDARD TERMS AND CONDITIONS FOR ALL  
 COST REIMBURSEMENT CONTRACTS  
 INDEX OF CLAUSES

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 SIGNATURE PAGE OR SECTION I.

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CLAUSE A10 - DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

- (a) SANDIA  
Sandia Corporation, a prime contractor of the United States Department of Energy, which operates Sandia National Laboratories under Contract No. DE-AC04-76DP00789, as amended.
- (b) SCR - SANDIA CONTRACTING REPRESENTATIVE  
The only person authorized to execute and/or administer this contract on behalf of Sandia or the authorized successor to such person.
- (c) GOVERNMENT  
The United States of America.
- (d) DOE  
The United States Department of Energy, the Secretary of Energy, or any duly authorized representative of the Secretary.
- (e) CONTRACTOR  
The Seller or the other party to the contract with Sandia.
- (f) SUBCONTRACTS  
Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.
- (g) SDR - Sandia Delegated Representative  
The person(s) who has been delegated limited authority as defined in Section I of this contract. THE SDR'S AUTHORITY IS LIMITED SOLELY TO THE AUTHORITY ENUMERATED IN SECTION I OF THIS CONTRACT. THE SDR HAS NO AUTHORITY TO CHANGE ANY TERM OR CONDITION CONTAINED IN THIS CONTRACT.
- (h) FAR - The Federal Acquisition Regulation
- (i) DEAR - The Department of Energy Acquisition Regulation

CLAUSE A11 - UNCLASSIFIED CONTRACT

This contract is not classified; therefore, there is no expressed or implied approval for origination, transmission, or receipt of classified documents under this contract.

CLAUSE A12 - ASSIGNMENT

This contract is assignable by Sandia to the Government or its designee. Any assignment by the Contractor of the work to be performed, in whole or in part, or of any other interest hereunder without Sandia's written consent, except an assignment confined solely to moneys due or to become due, shall be void. It is expressly agreed that any such assignment of moneys shall be void to the extent that it attempts to impose upon Sandia obligations to the assignee additional to the payment of such moneys, or to preclude Sandia from dealing solely and directly with the Contractor in all matters pertaining hereto, including the negotiation of amendments or settlements of amounts due.

CLAUSE A13 - RELEASES VOID

Sandia's and the Government's representatives shall not be required to waive or release any personal rights in

connection with any visits to Contractor's premises and Contractor agrees that no such waiver or release shall be pleaded by Contractor in any action or proceeding.

Contractor will include the provisions of this clause in every subcontract under this contract.

CLAUSE A14 - NOTICE OF LABOR DISPUTES

- (a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately give notice, including all relevant information, to the SCR.
- (b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

CLAUSE A16 - CONTRACTOR'S INFORMATION

No specifications, drawings, sketches, models, samples, tools, technical information or data, written, oral or otherwise, furnished by Contractor to Sandia hereunder, or in contemplation hereof, shall be considered by Contractor to be company sensitive or proprietary.

CLAUSE A17 - DELEGATED REPRESENTATIVES

The SCR may delegate personnel as authorized representatives for such purposes as and to the extent specified in the delegation. Such delegation shall be in writing to the Contractor, and shall designate by name the personnel so delegated as authorized representatives. The Sandia Delegated Representatives (SDR) shall exercise no supervision over the Contractor's employees. THE SDR'S AUTHORITY IS LIMITED SOLELY TO THE AUTHORITY ENUMERATED IN SECTION I OF THIS CONTRACT. THE SDR HAS NO AUTHORITY TO CHANGE ANY TERM OR CONDITION CONTAINED IN THIS CONTRACT.

CLAUSE A18 - DEFENSE PRIORITY AND ALLOCATION SYSTEM

(This Clause applies only if the Signature Page designates a Government Priority.)

- (a) The Contractor shall follow the rules, regulations and procedures of Defense Priorities and Allocation System Regulation and all other applicable regulations and orders of the Office of the Industrial Resource Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed to perform this contract.
- (b) DX-rated contracts take precedence over all nonrated and DO-rated contracts. Between DX-rated contracts, precedence must be given in the sequence of receipt, then earliest required delivery date. Contractor's responsibilities, briefly summarized, are:
  - (1) Written notification of acceptance or rejection of rated contracts must be made within five working days after receipt of DX-rated contracts and ten days for DO-rated contracts. The notice of rejection shall clearly set forth the reasons.

- (2) If acceptance of a DX-rated contract will prevent Contractor from fulfilling a DO-rated contract on time, Contractor must so notify the party which placed the DO-rated contract within five working days after acceptance of the DX-rated contract.
- (3) Contractor's purchase orders or subcontracts over \$5,000 under a DX-rated contract shall contain the DX rating and a statement that reads in substance: "This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System Regulations (15 CFR Part 700)."

CLAUSE A27 - ORDER OF PRECEDENCE

This contract is subject only to the terms and conditions set forth in the following documents: Signature Page, Section I, and Section II of this contract and the specifications and drawings or other documents, if any, referenced therein. In case of conflict or inconsistency between or among one or more provisions of the above documents, the provisions of each document shall take precedence over the provisions of the other documents in the following order of priority: Section I, Signature Page, Section II, specifications, drawings, and other documents, if any.

Copies of the Regulations may be obtained from the nearest office of the U. S. Department of Commerce.

CLAUSE A29 - IDENTIFICATION OF UNCOMPENSATED OVERTIME

The use of uncompensated overtime is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an Offeror's/Contractor's written policies and practices, Sandia will consider it in proposal evaluation, including the evaluation of cost and of professional compensation (see 48 CFR (FAR) subpart 22.11).

CLAUSE A19 - TERMS AND CONDITIONS

The terms and conditions stated in this contract are the only ones governing this transaction and cannot be changed or terminated orally. No terms and conditions appearing on any form originated by the Contractor shall be applicable.

- (a) Definitions. As used in this provision: Uncompensated overtime means the hours worked in excess of an average of 40 hours per week, by direct charge employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

CLAUSE A20 - PERMITS

Except as otherwise directed by the SCR, the Contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the State, territory, and political subdivision in which the work under this contract is performed.

Effective hourly rate is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20.00 per hour would be converted to an effective hourly rate of \$17.78 per hour [(\$20.00x40) divided by 45 = \$17.78.]

CLAUSE A23 - APPLICABLE LAW

The rights and obligations of the parties hereto shall be governed by, and this contract shall be interpreted in accordance with, federal law.

- (b) For any hours proposed against which an effective hourly rate is applied, the Offeror/Contractor shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the effective hourly rate, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct. The proposal shall include the rationale and methodology used to estimate the proposed amount of uncompensated overtime.

CLAUSE A24 - CONTRACTOR RECORDS RETENTION

**Definition:** Records include all books, paper, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of the data in them (44 U.S.C. 3301).

- (c) The Offeror's/Contractor's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.
- (d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a technical and cost risk assessment and evaluated for award in accordance with that assessment.
- (e) Upon request the Offeror/Contractor shall provide a copy of its policy addressing uncompensated overtime, a description of timekeeping and accounting systems used to record all hours worked by FLSA-exempt employees, and the historical basis for the uncompensated overtime hours proposed.

- (a) Except as provided in (b) below, all records created in the performance of the contract shall be property of the Government, shall be retained in accordance with the General Records Schedules, DOE 1324.2A, and Records Management, DOE 1324.5A and shall be delivered to Sandia anytime as directed by Sandia.

- (b) Financial and cost accounting, pay administration, and acquisitions and supply records as defined in 48 CFR 4.7 and other records incidental to the statement of work such as management information shall not be delivered to Sandia unless otherwise requested.

CLAUSE A25 - COMMERCE IN EXPLOSIVES, FIREARMS AND AMMUNITION - EXEMPTION

Commerce in Explosives, 27 CFR Subpart H, Section 55.141, exempts establishments owned by, or operated by or in behalf of, the United States. 18 U.S.C. Section 925 (a)(1) provides the exemption for commerce in firearms and ammunition.

CLAUSE A30 - PAYMENTS

- (a) Payments on Account of Allowable Costs.

Once each month (or at more frequent intervals, if approved by the SCR) the Contractor may submit to Sandia National Laboratories Supplier Services, Department, in such form and reasonable detail as may be required by the SCR, an invoice or voucher supported by a statement of costs incurred by the Contractor in the performance of this contract and claimed to constitute allowable costs. "Allowable costs" includes, but is not limited to, actual indirect rate cost experience during the period of performance unless Section I of this contract indicates otherwise. Promptly after receipt of each invoice or voucher Sandia shall, subject to the provisions of (b) below, make payment thereon in accordance with contract provisions.

Costs for items of Capital Property (defined in Clause A60, Property) if applicable, shall be separately listed in invoices. Discount time will be computed from the date correct invoice or voucher is received in the office specified in the contract, or date of completion of work under this contract, whichever is later. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing of Sandia's check.

Sandia may take contract or invoice prompt payment discount.

Any travel outside the United States by Contractor personnel, in connection with work under this contract, requires advance written approval by the SCR.

(b) Payments on Account of Fee, if Any.

The fee shall become due and payable in periodic installments in amounts based on the proportion of the work then completed as determined by the SCR. In making such periodic payments there shall be retained fifteen percent (15%) from each payment which retained amounts shall be paid upon completion and acceptance of all work under this contract; provided however, that the SCR may at any time the amount of the retained fee equals One Hundred Thousand Dollars (\$100,000), make payments of any of the remaining periodic installments of the fee in full.

(c) Audit Adjustments.

At any time or times prior to settlement under this contract the SCR may have invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the SCR, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(d) Completion Voucher.

On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and provisions of (e) below) Sandia shall promptly pay to the Contractor any balance of allowable cost, and any part of the fee which has been withheld pursuant to (b) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (unless within the year the SCR grants a further specific period of time) from the date of such completion.

(e) Applicable Credits.

The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to Sandia to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by Sandia under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the SCR.

(f) Financial Settlement.

Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver: (1) an assignment to Sandia in form and substance satisfactory to the SCR of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by Sandia under this contract; and (2) a release discharging Sandia and the Government, their officers, agents and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions: (i) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor; (ii) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the SCR not more than six (6) years after the date of the release or the date of any notice to the Contractor that Sandia is prepared to make final payment, whichever is earlier; and (iii) claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of Sandia or the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

The Contractor and each such assignee hereby agree that the failure to execute and deliver the aforesaid assignment and release within sixty (60) days of a written request therefor by the SCR shall be deemed to be and shall have the same effect as a release as set forth above in item (2), including a release of all claims set forth in subitems (i)-(iii) of such item (2).

(g) The provisions of this clause relating to Fee are inapplicable to educational institutions or if this contract does no include a fee.

CLAUSE A31 - TAXES

(a) Except as may be otherwise provided in this contract, the price includes all applicable Federal, State, and Local taxes and duties.

(b) Notwithstanding the provisions of (a) above, if the Contractor intends to collect from Sandia under this contract any amount attributable to taxes imposed by the New Mexico Gross Receipts and Compensating Tax Act or New Mexico Municipal Gross Receipts and Compensating Tax Act, such amount shall be separately stated in the Allowable Charges provisions of this contract and in the Contractor's invoices or vouchers. The Contractor warrants that,

except as separately stated in the Allowable Charges provision in accordance with this paragraph (b), the Allowable Charges does not include any amounts attributable to taxes imposed by the New Mexico Gross Receipts and Compensating Tax Act or New Mexico Municipal Gross Receipts and Compensating Tax Act or contingencies for such taxes.

- (c) With respect to any taxes separately stated in the Allowable Charges provisions of this contract and on Contractor's invoices or vouchers in accordance with paragraph (b), Sandia agrees either (1) to furnish to the Contractor a Nontaxable Transaction Certificate for purchase of tangible personal property and services, or (2) to pay to the Contractor any portion of such separately stated amount that the Contractor is required to pay to the New Mexico Bureau of Revenue because of Sandia's inability to furnish such certificate.
- (d) Sandia holds California Seller's Permit Number OH-98033576. Purchases made under this contract are exempt from California Sales and Use Taxes.

CLAUSE A32 - ESTIMATES OF COST AND LIMITATION OF OBLIGATION, IF APPLICABLE

- (a) Initial Estimate of Cost and Obligation of Funds.  
The presently estimated cost and the obligation of funds for the work under this contract are set forth in Section, if applicable.
- (b) Revised Estimates of Cost and Obligation of Funds.  
The presently estimated cost and the obligation of funds for the work under this contract may be increased unilaterally by the SCR by written notice to the Contractor and may be increased or decreased by written agreement of the parties.
- (c) Limitation of Obligation.  
Payments on account of costs shall not in the aggregate exceed the amount of funds presently obligated hereunder.
- (d) Notice of Costs Approaching Funds Obligated - Contractor Excused Pending Increase When Obligation is Reached.

Whenever the Contractor has reason to believe that the total cost of the work under this contract will be greater or substantially less than the presently estimated cost of the work, the Contractor shall promptly notify the SCR in writing. The Contractor shall also notify the SCR in writing when the aggregate of expenditures, liabilities, and outstanding commitments allowable under this contract is equal to seventy five percent (75%) (or such other percentage as the SCR may from time to time establish by notice to the Contractor) of the amount of funds presently obligated hereunder. When such expenditures and outstanding commitments equal one hundred percent (100%) of such amount, the Contractor shall make no further commitments or expenditures (except to meet existing commitments) and shall be excused from further performance of the work unless and until the SCR thereafter shall have notified the Contractor in writing that such amount has been increased. No notice, communication or representation in any other form or from any person other than the SCR shall affect the estimated cost or funds obligated hereunder. In the absence of the specified notice, Sandia shall not be obligated to reimburse the Contractor for any costs in excess of the funds obligated hereunder, whether those excess costs were incurred during the course of the contract or as a result of termination. In the event the Contractor incurs cost in excess of the

funds obligated hereunder without receiving a prior notice from the SCR increasing such funds, the funds obligated hereunder may be increased at the sole discretion of the SCR to permit the Contractor to be reimbursed for all or a portion of such costs. However the SCR is not obligated to increase funding due to an after-the-fact indirect rate adjustment determined by a Government audit agency. When and to the extent that the funds obligated hereunder have been increased, any costs incurred by the Contractor in excess of the funds obligated hereunder prior to such increase shall be allowable to the same extent as if such costs had been incurred after such increase, unless the SCR issues a termination notice and directs that the increase is solely for the purpose of covering termination expenses. Changes ordered pursuant to the Changes Clause of this contract shall not entitle the Contractor to an increase in the funds obligated hereunder in the absence of a statement to the contrary in the written directions effecting the change, or in a contract modification. In the event this contract is terminated or the funds obligated hereunder are not increased enough to cover all costs, the Government shall be entitled to all property produced or purchased under the contract except that property which the Contractor shall demonstrate to have been produced or purchased solely with Contractor's funds in excess of the funds obligated hereunder and which can be severed from the Government property without damage thereto.

- (e) Sandia's Right to Terminate Not Affected.  
The giving of any notice by either party under this Clause shall not be construed to waive or impair any right of Sandia to terminate this contract under the provisions of the Clause entitled "Termination."
- (f) Cost Information.  
The Contractor shall maintain current actual cost information adequate to reflect the cost of performing the work under this contract at all times while the work is in progress, and shall prepare and furnish to Sandia such written estimates of cost and information in support thereof as the SCR may request.
- (g) Correctness of Estimates Not Guaranteed.  
Neither Sandia nor the Contractor guarantees the correctness of any estimate of cost for performance of the work under this contract, and Contractor shall invoice Sandia at actual cost unless Section I of this contract provides otherwise.

CLAUSE A33 - ALLOWABLE COSTS AND FEE

- (a) Payment for allowable cost as hereinafter defined, and of fee, if any, shall constitute full and complete compensation for the performance of the work under this contract.
- (b) The fee, if any, payable to the Contractor for the performance of the work under this contract is set forth in Section I.
- (c) "Allowable cost" of performing the work under this contract shall be the costs and expenses (less applicable income and other credits) that are actually incurred by the Contractor, are applicable and properly chargeable, either as directly incident or as allocable through appropriate distribution or apportionment, to the performance of the contract work in accordance with its terms, and are determined by the SCR to be allowable pursuant to this contract, including the additional provisions, if any, contained elsewhere in this contract relating to Advance Understanding on Particular Cost

Items, and pursuant to Federal Acquisition Regulation part 31 as supplemented by part 931 of the Department of Energy Regulations (DEAR) in effect on the effective date of this contract, subject to the following:

(1) With respect to billing for indirect cost, Contractor shall bill for indirect cost at rates as close as possible to costs being experienced during contract performance. Contractor understands that contract overruns, due to under recovered indirect cost, may not be reimbursed by Sandia; and, over recoveries of indirect cost shall be payable upon demand, at any time, by the SCR. Contractor may, with the SCR's approval, bill at predetermined overhead and general and administrative rates applied to bases agreed upon by any Government Agency, which are determined in accordance with FAR part 31 as supplemented by the DEAR in effect on the effective date of this contract; provided, however, that the Contractor shall adjust the indirect billing to conform to actual cost within 60 days or the Contractor's normal monthly accounting cycle, whichever is earlier.

(2) In the absence of predetermined overhead rates as provided for in subparagraph (1) above, if at any time prior to the final determination of costs hereunder there exists a rate or rates established by any Government agency, based on audit of actual costs for the period of performance of the work hereunder or any substantial portion thereof, such rate or rates may, at the SCR's option, be used (after adjustment by Sandia if deemed appropriate, to reflect the application of cost principles contained in this Allowable Costs Clause and the DEAR and FAR Subparts referred to above) in determining allowable indirect costs hereunder.

(3) In the absence of predetermined overhead rates as provided for in subparagraph (1) above and in the absence of a rate or rates acceptable to Sandia as provided for in subparagraph (2) above, indirect cost shall be determined in accordance with FAR part 31. as supplemented by part 931 of the DEAR by a Sandia audit.

(4) No overtime premium costs, shift differential, holiday, or other premium pay for time worked on direct labor are authorized as direct charges to this contract except when paid for work:

Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns, of production equipment, or occasional production bottlenecks of a sporadic nature;

By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

In the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or which will result in lower cost to Sandia

(5) As used in FAR Part 31 and DEAR 931 the words: "Contracting Officer" or "Field Office Manager" shall mean the SCR, "DOE" or "Sponsoring Agency" shall mean Sandia; "Federal Government" or "Government," in connection with Government agencies or Government property, shall mean the United States of America.

(6) Each individual Contractor employee salary amounting to \$100,000 or more annually is subject to advance approval of the SCR where 50 percent or more of such salary is to be reimbursed under DOE cost-type contracts for on site (Sandia/DOE premises) services.

(7) The provisions of this clause relating to fee are inapplicable if this contract is with an educational institution or does not include a fee.

#### CLAUSE A34 - ACCOUNTS AND RECORDS

(a) Accounts.

The Contractor shall maintain accounts, records, documents and other evidence showing and supporting all allowable costs incurred (or anticipated to be incurred if this contract includes the Clause entitled "Certified Cost or Pricing Data"), revenues or other applicable credits, fee accruals, and the receipt, use and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to Sandia and in accordance with generally accepted accounting principles consistently applied. No changes will be made during the course of this contract, in Contractor's practices of charging or allocating any direct or indirect costs, except upon advance written notice to the SCR.

(b) Inspection and Audit of Accounts and Records.

All books of account and records relating to this contract shall be subject to inspection and audit by Sandia and DOE at all reasonable times, before and during the period of retention provided for in (d) below, and the Contractor shall afford Sandia and DOE proper facilities for such inspection and audit.

(c) Audit of Subcontractors' Records.

The Contractor also agrees, with respect to any subcontracts (including lump-sum or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the Subcontractor of any tier, to conduct an audit of the costs of the Subcontractor in a manner satisfactory to the SCR or to have the audit conducted by the next higher tier Subcontractor in a manner satisfactory to the Contractor and the SCR, except when the SCR elects to waive such audit or approves other arrangements for the conduct of the audit.

(d) Disposition of Records.

Except as agreed upon by the SCR and the Contractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable and revenues and other applicable credits under this contract in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three (3) years after settlement of this contract or otherwise disposed of in such manner as may be agreed upon by DOE or the SCR and the Contractor.

(e) Reports.

The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the SCR may from time to time require.

(f) Subcontracts.

The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (f) of this Clause in all subcontracts (including lump-sum or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the Subcontractor.

(g) Freight and Parcel Bills.

The Contractor shall transmit to the SCR, each calendar quarter a legible copy of paid freight and parcel bills covering property transported to the Contractor during the quarter for the account of, and on which Sandia will assume the freight or parcel charges under the direct cost provisions of this contract; provided, however, that the following paid bills shall not be submitted to the SCR but shall be retained by the Contractor: rail freight forwarder, air, steamship, motor truck, and parcel bills amounting to less than \$500. All bills shall be marked on the face, "This shipment is for the U.S. Department of Energy. It is subject to the terms and conditions of the U.S. Government Bill of Lading form and to any available special rates or charges."

CLAUSE A36 - EXCESS FREIGHT CHARGES

When Sandia pays any amounts for freight charges in connection with this contract, Contractor is responsible for and shall pay to Sandia the amount of any excess freight charges if the routing specified in writing by the SCR is not used. If the specified routing cannot be used, Contractor shall promptly notify the SCR before shipment, and obtain new routing directions from the SCR.

CLAUSE A37 - LITIGATION AND CLAIMS

(a) Initiation of Litigation.

If DOE or the SCR requires the Contractor to initiate litigation, including proceedings before administrative agencies, in connection with this contract, the Contractor shall proceed with the litigation in good faith as directed from time to time by the SCR.

(b) Defense and Settlement of Claims.

The Contractor shall give the SCR immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, and (2) of any claim against the Contractor, the cost and expense of which is allowable under the Clause entitled "Allowable Costs." Except as otherwise directed by the SCR, in writing, the Contractor shall furnish immediately to the SCR copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may, with the SCR's approval, settle any such action or claim, shall effect at the SCR's request an assignment and subrogation in favor of DOE or Sandia of all the Contractor's rights and

claims (except those against DOE or Sandia) arising out of any such action or claim against the Contractor, and, if required by the SCR, shall authorize representatives of DOE or Sandia to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the Contractor is undertaken by DOE or Sandia, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the SCR, proceed with the defense of the action in good faith; and in such event the defense of the action shall be at the expense of DOE or Sandia; provided, however, that DOE or Sandia shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the SCR, but which the Contractor failed to secure through its own fault or negligence.

CLAUSE A39 - NOTICE OF POTENTIAL DELAY

CONTRACTOR shall strictly comply with the delivery requirements of this Contract. Whenever the CONTRACTOR has knowledge that any actual or potential delay or threatened delay in the timely performance of this Contract, the CONTRACTOR shall immediately give notice thereof, confirmed in writing, including all relevant information with respect thereto, to Sandia. The CONTRACTOR agrees to insert the substance of this provision, including this sentence, in any subcontract hereunder, except that each such subcontract shall require the subcontractor to notify his next higher tier contractor of all relevant information with respect to such delays. Such notice is for informational purposes only and shall not be construed to relieve the CONTRACTOR of CONTRACTOR's obligation to comply with the Contract delivery requirements.

CLAUSE A40 - INSPECTION

(a) Definitions.

"Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of--

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or
- (3) A separate and complete major industrial operation connected with performing this contract.

"Work," as used in this clause, includes data.

(b) The Contractor shall provide and maintain an inspection system acceptable to Sandia or the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to Sandia or the Government during contract performance and for as long afterwards as the contract requires.

(c) Sandia or the Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. Sandia or the Government may also inspect the plant or plants of the Contractor or its subcontractors engaged in the

contract performance. Sandia or the Government shall perform inspections and tests in a manner that will not unduly delay the work.

Government-furnished property shall be governed by the clause pertaining to "Property."

(d) If Sandia or the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise provided in the contract, Sandia or the Government shall accept work as promptly as practicable after delivery, and work shall be deemed accepted 90 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, Sandia or the Government may require the Contractor to replace or correct work not meeting contract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be determined as specified in the Allowable Costs and Payments Clauses, but no additional fee shall be paid. The Contractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, Sandia or the Government may--

- (1) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or make an equitable reduction in any fixed fee paid or payable under the contract;
- (2) Require delivery of any undelivered articles and shall have the right to make an equitable reduction in any fixed fee paid or payable under the contract; or
- (3) Terminate the contract for default.

(h) Notwithstanding paragraphs (f) and (g) above, Sandia or the Government may at any time require the Contractor to remedy by correction or replacement, without cost to Sandia or the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (2) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause shall apply in the same manner to a corrected or replacement end item or components as to work originally delivered.

(j) The Contractor has no obligation or liability under the contract to correct or replace articles not meeting contract requirements at time of delivery, except as provided in this clause or as may otherwise be specified in the contract.

(k) Unless otherwise provided in the contract, the Contractor's obligations to correct or replace

#### CLAUSE A41 - CHANGES

(a) The SCR may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for Sandia or the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the SCR shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the SCR decides that the facts justify it, the SCR may receive and act upon a proposal submitted before final payment of the contract.

(d) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds Clause of this contract.

#### CLAUSE A42 - STOP WORK ORDER

(a) The SCR may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop work order is delivered to the Contractor or within any extension of that period to which the parties shall have agreed, the SCR shall either -- (i) cancel the stop work order, or (ii) terminate the work covered by such order as provided in the "Termination" Clause of this contract.

(b) If a stop work order issued under this clause is canceled by the SCR or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made



in the delivery schedule, the estimated cost, or a combination thereof, and in any other provisions of the contract that may be affected, and the contract shall be modified in writing accordingly, if -- (i) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and (ii) the Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the SCR decides the facts justify such action, any such claim asserted may be received and acted upon by the SCR at any time prior to final payment under this contract.

- (c) If a stop work order is not canceled and the work covered by such order is terminated for the convenience of Sandia or the Government, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

#### CLAUSE A43 - STANDARDS OF WORK

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

#### CLAUSE A44 - TERMINATION

- (a) Sandia or the Government may terminate performance of work under this contract in whole or, from time to time, in part, if

- (1) The SCR determines that a termination is in Sandia's or the Government's interest; or
- (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the SCR) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

- (b) The SCR shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of Sandia or the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays Clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of Sandia or the Government.

- (c) After receipt of a Notice of Termination, and except as directed by the SCR, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause.

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to Sandia or the Government, as directed by the SCR, all right, title, and interest of the Contractor under the

subcontracts terminated, in which case Sandia or the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

- (5) With approval or ratification to the extent required by the SCR, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

- (6) Transfer title (if not already transferred) and, as directed by the SCR, deliver to Sandia (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to Sandia, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

- (7) Complete performance of the work not terminated.

- (8) Take any action that may be necessary, or that the SCR may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which Sandia or the Government has or may acquire an interest.

- (9) Use its best efforts to sell, as directed or authorized by the SCR, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the SCR. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Sandia or the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the SCR.

- (d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the SCR a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the SCR. The Contractor may request Sandia to remove those items or enter into an agreement for their storage. Within 15 days, Sandia will accept the items and remove them or enter them into a storage agreement. The SCR may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (e) After termination, the Contractor shall submit a final termination settlement proposal to the SCR in the form and with the certification prescribed by the SCR. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the SCR upon written request of the Contractor within this 1-year period. However, if the SCR determines that the facts justify it, a termination settlement proposal may be received and

acted on after 1 year of any extension. If the Contractor fails to submit the proposal within the time allowed, the SCR may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

number of articles (or amount of services) of a like kind required by the contract.

(f) Subject to paragraph (e) above, the Contractor and SCR may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(g) If the Contractor and the SCR fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the SCR shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the SCR; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subparagraph (1) above.

(3) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of Sandia or the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractor's termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by Sandia or the Government is to the total

(5) If the settlement includes only fee, it will be determined under subparagraph (g)(4) above.

(h) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which Sandia or the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to Sandia or the Government.

(j) The Contractor and the SCR must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The SCR shall amend the contract to reflect the agreement.

(k) (1) Sandia or the Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the SCR believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to Sandia or the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the SCR because of the circumstances.

(1) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

#### CLAUSE A47 - EXCUSABLE DELAYS

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of Sandia, (3) acts of the Government in either its sovereign or contractual capacity, (4) fires, (5) floods, (6) epidemics, (7) quarantine restrictions, (8) strikes,

- (9) freight embargoes, and (10) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless-
- (1) The subcontracted supplies or services were obtainable from other sources;
- (2) The SCR ordered the Contractor in writing to purchase these supplies or services from the other source; and
- (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, the SCR shall ascertain the facts and extent of the failure. If the SCR determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of Sandia or the Government under the Termination Clause of this contract.
- (4) Contractor shall, if required, assume at its own expense the defense of suits that may be instituted against Sandia or the Government on account of Contractor's failures to conform to the laws, rules and regulations set forth in Paragraph 1 of this clause.
- (5) Personal Protective Equipment. The Contractor shall furnish to his employees and require the use of personal protective equipment as needed. This equipment includes, but is not limited to, hard hats, gloves, eye protection, respirators, protective equipment and hearing protection devices. Contractor is responsible for insuring that the Contractor's employees properly use and maintain this equipment.
- (6) The Contractor certifies, by executing a signed acceptance of this contract, that all its employees to be provided for Hazardous Materials (HAZMAT) work are physically fit to perform the required duties as a HAZMAT volunteer. Additionally, the Contractor has provided appropriate training for its employees to participate as a HAZMAT volunteer.
- (7) If the Contractor will perform work on Sandia-controlled premises, or deliver material or product, the Contractor shall comply with the following:
- (a) Delivery of Hazardous Product:

If hazardous product is to be delivered under this contract, Contractor certifies that each item of product containing hazardous materials is covered by the appropriate material safety data sheet (MSDS) as applicable and accompanies the product being delivered. Under no conditions shall any product containing asbestos be delivered unless prior written approval is issued by the SCR. All packages containing hazardous materials shall have an MSDS packaged within each container, an MSDS attached to the outside of each package, and each MSDS will reference a contract number.

(b) Contractor Vehicles:

Contractor certifies that all Contractor vehicles delivering (or removing) products and/or materials under the contract are qualified to safely transport the items, and accepts full responsibility for adherence to all applicable laws and regulations. The vehicle driver shall possess a commercial driver's license if the vehicle is transporting placarded hazardous materials, or if the vehicle exceeds 26,000 pounds gross vehicle weight.

CLAUSE A49 - SAFETY, HEALTH, ENVIRONMENT, GOVERNMENT OR SANDIA FURNISHED PROPERTY AND FIRE PROTECTION

- (1) The Contractor shall take all reasonable precautions in the performance of the work under this contract to protect the environment and the property, safety and health of Contractors, Sandia and DOE employees, visitors to Sandia and members of the public, and shall comply with all applicable environmental, safety and health laws, rules and regulations, as amended, of the Federal, State, and local governments and DOE and Sandia. These rules and regulations include but are not limited to the (i) Clean Air Act; (ii) Clean Water Act; (iii) Resource Conservation and Recovery Act; (iv) Comprehensive Environmental Response, Compensation, and Liability Act; (v) Hazardous and Solid Waste Act; (vi) Toxic Substance Control Act; (vii) Emergency Planning and Community Right-to-Know Act; (viii) Federal Insecticide, Fungicide and Rodenticide Act; (ix) Safe Drinking Water Act; (x) Occupational Safety and Health Act; (xi) Hazardous Materials Transportation Act; and (xii) DOE Orders 1540.1, 4300.1B, 5000.3A, 5440.1D, 5482.1B, 5483.1A, 5484.1, 5820.2A, and 5480.1B, as amended.
- (2) In the event that the Contractor fails to comply with any law, rule or regulation described in Paragraph (1) herein, the SCR may, without prejudice to any other legal or contractual rights of Sandia, issue an order stopping all or any part of the work under the contract; thereafter a start work order for resumption of work may be issued at the discretion of the SCR. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of/or in connection with such work stoppage.
- (3) In the even that the Contractor fails to comply with any law, rule, or regulation described in Paragraph 1, herein, the Contractor shall assume full responsibility for and agrees to indemnify and save Sandia and the Government harmless from all losses, liability expenses, including attorneys' fees, on account of such violation.
- (8) If the Contractor will provide services performed on Sandia-controlled premises, the Contractor shall comply with the following:
- (a) Compliance With Safety Rules Required:
- Contractor shall assure that each Contractor employee assigned to work on Sandia-controlled premises has been instructed on and understands the safety requirements provided for in the contract. For example, if the contract requires Contractor adherence to Sandia Lock Out/Tag Out safety rules, Contractor shall instruct that no deviations from these safety rules will be tolerated and such deviations may lead to termination of the contract for default.
- (b) Qualification and Hazard Communication:
- Contractor certifies that employees shall not be utilized to perform the Sandia Statement of Work until properly educated, trained and qualified to perform job tasks as required in the Statement of Work. As applicable and appropriate, Contractor further certifies that no employee will be assigned

until Contractor has communicated to them potential hazards as identified in the Statement of Work. Any hazards encountered shall be reported in accordance with SNL ES&H Quick Reference Information Card to be provided to all picture badged personnel.

(c) Listing of Hazardous Materials:

For work on SNL premises, Contractor shall bring only materials or items to be used exclusively on Sandia contracts. In addition, and as applicable, a Material Safety Data Sheet (MSDS) shall accompany each item.

Contractor certifies that all products and materials used in the performance of the Statement of Work, and all line items for products or materials, are free of asbestos, unless specific written approval is issued by the SCR. Asbestos is defined as the asbestiform varieties of: chrysotile (serpentine), crocidolite (riebeckite), amosite (cumingtonitegrunelite), anthophyllite, tremolite, and actinolite. Free of asbestos shall mean free of trace amounts (less than 1 percent) when the material is tested using Polarized Light Microscopy/Dispersion Staining (PLM/DS 600/M4-82-020), or Transmission Electron Microscopy Level 2 Yamate Method (TEM).

(d) Disposal of Hazardous Materials:

The Contractor shall coordinate with the Sandia Delegated Representative (SDR) all activities associated with the handling, storage, accidental spills, and/or disposal of hazardous materials and/or waste. The Contractor shall notify the SDR of all hazardous and radioactive waste generated during performance of work. Such materials become Sandia-owned hazardous waste and the Contractor shall notify the SDR and the Sandia Generator Interface Department 7572 (Hotline-Waste Management, 505-848-0940) at SNL/NM, or Environmental Protection Department 8642 (ES&H Hotline, 510-294-3724) at SNL/CA for proper disposal by Sandia. Contractor's assistance in disposal may be required by Sandia.

(e) Removal of Contractor-Owned 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. Empty containers that contained hazardous materials not considered acute [as listed in 40 CFR 261.31, 261.32 or 261.33(e), e.g., acids, bases, solvents, corrosive salts and water treatment chemicals] are not hazardous materials. Those scrap items which are not hazardous and which have not become hazardous through commingling with hazardous items are owned by the Contractor and shall also be removed.

(9) Compliance with this clause shall be the sole responsibility of the Contractor.

CLAUSE A50 - RELEASE OF INFORMATION

No information relating to this contract shall be released other than to Contractor's employees or those of Contractor's subcontractors requiring the information for performance of their duties, without advance written approval of the SCR. In no event shall the interest of Sandia or the DOE or the Government in this contract be indicated in any advertising or publicity without advance written approval of the SCR.

CLAUSE A51 - AUTHORIZATION AND CONSENT

This clause is not applicable where both complete performance and delivery are outside the United States, its possessions or Puerto Rico.

(a) Sandia or the Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design and testing services) expected to exceed \$25,000; however, omission of this clause from any subcontract, under or over \$25,000, does not affect this authorization and consent.

CLAUSE A52 - PATENT INDEMNITY

If this contract is for supplies or services the clause pertains to this contract.

(a) The Contractor shall indemnify Sandia or the Government and its 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 Sandia or the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by Sandia or the Government 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 (1) an infringement resulting from compliance with specific written instructions of the SCR 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, (2) 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 (3) a claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

CLAUSE A53 - SANDIA PROVIDED INFORMATION

(a) All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto (hereinafter called "material"), furnished by Sandia to the Contractor shall remain the property of the Government.

(b) If any material furnished by Sandia to the Contractor is of special significance in the sense

that its use by the Contractor for other than performance of this contract or its disclosure to others might give competitive advantage to the Contractor or the recipient or be prejudicial to the best interests of the Government, then such material shall be used only for the purpose of enabling performance of this contract and the Contractor shall use its best efforts to prevent disclosure to others except when necessary in the performance of this contract.

- (c) Technical data, as defined in DEAR Subpart 927.401, may contain patentable or proprietary information and is not to be disclosed to others or used for other than quotation purposes or contract performance.

#### CLAUSE A60 - PROPERTY

This clause is applicable if this contract provides (i) that Sandia will furnish Government-owned property to the Contractor (hereinafter referred to as "Sandia-furnished property") or (ii) that the Contractor will acquire property, title to which vests in the Government.

##### (a) Sandia-Furnished Property.

- (1) The term "Contractor's managerial personnel," as used in paragraph (g) of this clause, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of-

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

- (2) Sandia shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Sandia-furnished property described in Section I, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "Sandia-furnished property").

- (3) The delivery or performance dates for this contract are based upon the expectation that Sandia-furnished property suitable for use will be delivered to the Contractor at the times stated in Section I or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

- (4) If Sandia-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the SCR, detailing the facts, and, as directed by the SCR and at Sandia expense, either effect repairs or modification or return or other-wise dispose of the property. After completing the directed action and upon written request of the Contractor, the SCR shall make an equitable adjustment as provided in paragraph (h) of this clause.

- (5) If Sandia-furnished property is not delivered to the Contractor by the required time or times, the SCR shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

##### (b) Changes in Sandia-furnished Property.

- (1) The SCR may, by written notice, (i) decrease the Sandia-furnished property provided or to be provided under this contract or (ii) substitute other Sandia-furnished property for the property to be provided by Sandia or to be acquired by the Contractor for Sandia under this contract. The Contractor shall promptly take such action as the SCR may direct regarding the removal, shipment, or disposal of the property covered by this notice.

- (2) Upon the Contractor's written request, the SCR shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if Sandia has agreed in Section I to make such property available for performing this contract and there is any-

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use property, if provided under any other contract or lease.

##### (c) Title.

- (1) The Government shall retain title to all Sandia-furnished property.

- (2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

- (3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon-

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property for use in contract performance; or

(iii) Reimbursement of the cost of the property by Sandia, whichever occurs first.

- (4) All Sandia-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Sandia property shall not be affected by its incorporation into or attachment to any property not owned by Sandia, nor shall Sandia property become a fixture or lose its identity as personal property by being attached to any real property.

##### (d) Use of Government Property.

The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the SCR.

(e) Property Administration.

- (1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.
- (2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.
- (3) If damage occurs to Government property, the risk of which has been assumed by Sandia under this contract, Sandia shall replace the items or the Contractor shall make such repairs as Sandia directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the SCR. When any property for which Sandia is responsible is replaced or repaired, the SCR shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) Access.

Sandia, or the Government, and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Limited Risk of Loss.

- (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
- (2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)-
  - (i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or the extent of insurance actually purchased and maintained, whichever is greater;
  - (ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
  - (iii) For which the Contractor is otherwise responsible under the express terms of this contract;
  - (iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(3) (i) If the Contractor fails to act as provided by subdivision (g)(2)(v) above, after being notified, (by certified mail addressed to one of the Contractor's managerial personnel) of Sandia's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage-

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for the loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the SCR, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provide under this contract, the Contractor shall so notify the SCR and shall communicate with the loss and salvage organization, if any, designated by the SCR. With the assistance of any such organization, the contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the SCR a statement of-

- (i) The lost, destroyed, or damaged Government property;
- (ii) The time and origin of the loss, destruction, or damage;
- (iii) All known interests in commingled property of which the Government property is a part; and
- (iv) The insurance, if any, covering any part of or interest in such commingled property.
- (6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the SCR directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor, may with the approval of and subject to any conditions imposed by the SCR, sell such property for the account of Sandia. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, Sandia may directly reimburse the loss and salvage organization for any of their charges. The SCR shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.
- (7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that Sandia may have expressly required the Contractor to carry such insurance under another provision of this contract.
- (8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property, or shall otherwise credit the proceeds to or equitably reimburse, Sandia, as directed by the SCR.
- (9) The Contractor shall do nothing to prejudice Sandia's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the SCR, the Contractor shall, at Sandia's expense, furnish to Sandia all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of Sandia) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of Sandia the liability of the subcontractor for such loss, destruction, or damage.
- (h) Equitable Adjustment.
- When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the SCR may initiate an equitable adjustment in favor of Sandia. The right to an equitable adjustment shall be the Contractor's exclusive remedy. Sandia shall not be liable to suit for breach of contract for-
- (1) Any delay in delivery of Sandia-furnished property;
- (2) Delivery of Sandia-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Sandia-furnished property; or
- (4) Failure to repair or replace Government property for which Sandia is responsible.
- (i) Final Accounting and Disposition of Government Property.
- Upon completing this contract, or at such earlier dates as may be fixed by the SCR, the Contractor shall submit, in a form acceptable to the SCR, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to Sandia. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the SCR. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to Sandia as directed by the SCR. The foregoing provisions shall apply to scrap from Government property; provided, however, that the SCR may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulting castings or forging or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.
- (j) Abandonment and Restoration of Contractor Premises.
- Unless otherwise provided herein, Sandia-
- (1) May abandon any Government property in place, at which time all obligations of Sandia regarding such abandoned property shall cease; and
- (2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or contract completion.) However, if the Sandia-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.
- (k) Communications.
- All communications under this clause shall be in writing.
- (1) Overseas Contracts.
- If this contract is to be performed outside the United States of America, its territories, or

possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

CLAUSE A67 - (I) SAFETY, HEALTH, ENVIRONMENT, PROPERTY AND FIRE PROTECTION; (II) ACCESS TO SANDIA OR GOVERNMENT-CONTROLLED PREMISES; (III) LIABILITY; (IV) CONTRACTOR OR SUBCONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES;

All provisions of this Clause shall apply when the work to be performed under this contract requires Contractor or Subcontractors to have access to Sandia or Government-controlled premises, or to operate Government-owned vehicles. The Contractor shall comply with the provisions set forth in Paragraphs (I) through (IV) of this Clause and shall include the provisions of this Clause including this preamble in any subcontracts of any tier. The Contractor shall be responsible for compliance by any subcontractor of any tier or lower tier subcontractor with the provisions of this Clause.

I. SAFETY, HEALTH, ENVIRONMENT, PROPERTY AND FIRE PROTECTION

- (a) The Contractor shall take all reasonable precautions in the performance of the work under this contract to protect the environment and the property, safety and health of Contractors, Sandia and DOE employees, visitors to Sandia and members of the public, and shall comply with all applicable environmental, safety and health laws, rules and regulations, as amended, of the Federal, State, and local governments and DOE and Sandia. These rules and regulations include but are not limited to the (i) Clean Air Act; (ii) Clean Water Act; (iii) Resource Conservation and Recovery Act; (iv) Comprehensive Environmental Response, Compensation, and Liability Act; (v) Hazardous and Solid Waste Act; (vi) Toxic Substance Control Act; (vii) Emergency Planning and Community Right-to-Know Act; (viii) Federal Insecticide, Fungicide and Rodenticide Act; (ix) Safe Drinking Water Act; (x) Occupational Safety and Health Act; (xi) Hazardous Materials Transportation Act; and (xii) DOE Orders 1540.1, 4300.1B, 5000.3A, 5440.1D, 5480.4, 5480.16 5482.1B, 5483.1A, 5484.1, 5820.2A, and 5480.1B, as amended.
- (b) The Contractor shall determine and strictly adhere to any safety rules, regulations, access restrictions and emergency egress procedures which are unique to the Contractor's Sandia work location. These unique rules, regulations, access restrictions and emergency egress procedures shall be determined through consultation with the Sandia Delegated Representative or the Sandia Contracting Representative (SCR).
- (c) Contraband and Prohibited Item  
Contractor shall inform all of its employees and sub-contractors that the possession, use or sale of non-prescription drugs or narcotics considered dangerous or illegal by the U.S. Department of Justice, or the possession, consumption, or use of intoxicants, such as alcoholic beverages, or being under the influence of dangerous drugs, narcotics, or intoxicants, is strictly prohibited.
- (d) The Contractor shall notify either the SCR or the Safety Engineering Department 7732 and Facilities Safety and Environmental Engineering Department 7953 on construction contracts (Health Protection Department 8641 at Livermore) as soon as possible if an incident or accident violating any rule or regulation described in Paragraph (a) herein occurs; furthermore, if the incident or accident results in an injury to any person, Contractor shall complete Sandia Form SF 2050-PC, "Contractors/Visitors Report

of Occupational Occurrences" and send the completed form to the SCR or the Sandia Safety Engineering Department II 7733 (Health Protection Department 8641 at Livermore) within four hours of any such injury.

- (e) On all unusual occurrences, as defined in DOE Order 5000.3A, the Contractor shall call the Non-Emergency Occurrences Hotline, listed on their ES&H Quick Reference green card, notify the SCR, and cooperate with representatives of the Safety Engineering Department 7732 and Facilities Safety and Environmental Engineering Department 7953 on construction contracts (Health Protection Department 8641 at Livermore) in preparing and submitting a written description of such occurrence to the DOE in accordance with DOE Order 5000.3A. Unusual occurrences are those events which could have (i) resulted in serious injury or substantial property loss, (ii) programmatic significance, or (iii) actual or potential public or news media interest.
- (f) In the event that the Contractor fails to comply with any law, rule or regulation described in Paragraph (a) herein, the SCR may, without prejudice to any other legal or contractual rights of Sandia, issue an order stopping all or any part of the work under the contract; thereafter a start work order for resumption of work may be issued at the discretion of the SCR. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of/or in connection with such work stoppage.

II. ACCESS TO SANDIA OR GOVERNMENT-CONTROLLED PREMISES

- (a) Permission to enter Sandia or Government-controlled premises shall at all times be subject to Sandia's discretion and control in accordance with its rules. The organizations listed below are responsible for coordinating and administering the provisions of this Paragraph.
- (1) Sandia National Laboratories, Albuquerque, New Mexico - Visitor Access and Administration Section, Sandia Corporation, Building 801.
  - (2) Sandia National Laboratories, Livermore, California - Visitor Control and Administration Section, Sandia Corporation, Building 911.
  - (3) Tonopah Test Range, Tonopah, Nevada - Office of the Tonopah Test Range Manager.
- (b) Personnel Access.  
All personnel of the Contractor and its subcontractors who require access to Sandia or Government-controlled premises in performing work under this contract are subject to security controls prescribed by the Government. 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. To obtain access to such premises, the Contractor shall write a letter to the Sandia Delegated Representative 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: (i) name, (ii) date of birth, and (iii) citizenship status. Access will be granted for the period of performance of the work.
- (c) Acceptance of Personnel.  
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 not qualified or desirable for such purpose.

(d) Work Schedules.

The Contractor shall submit to the Sandia Delegated Representative 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 work weeks. Schedules that deviate from Sandia's normal work day or work week must be approved by the responsible Sandia organization.

(e) Vehicle Markings.

All vehicles used by either the Contractor or its subcontractors 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.

(f) Vehicle Insurance.

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

(g) 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.

(h) Use of Sandia or Government-Controlled Premises.

In the absence of a written authorization from the SCR or DOE, use of Sandia or Government-controlled premises 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 OR FOR FINDING THAT AN INDIVIDUAL IS UNACCEPTABLE UNDER PARAGRAPH II(C) OF THIS CLAUSE.

(i) Notice Requirements for Employees Terminated or Reassigned by the Contractor.

The Contractor shall (i) notify immediately the SCR and the Sandia Personnel Security Department 7437 at Albuquerque (Sandia Physical Security Department 8531 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 Personnel Security Department 7437 at Albuquerque (Sandia Physical Security Department 8531 at Livermore; Tonopah Test Range Manager at Tonopah) any Sandia badge, Kirtland Air Force Base decals or other access documents within five days of termination or reassignment.

### III. LIABILITY

The following provisions apply to all contracts/orders except those awarded under Federal Supply Schedule contracts.

(a) The Contractor shall comply, at the Contractor's own expense, with all Federal, State, County and Municipal laws, ordinances and regulations, if any, applicable to the work under this contract, and before starting work, to secure all local and/or state licenses or permits required for the performance of the work. Contractor shall save Sandia and the Government harmless from all damages of any nature whatsoever that Sandia or the Government may suffer as a result of Contractor's failure to do so.

(b) All agents or employees furnished by Contractor for the performance of work under this contract shall, at all times and for all intents and purposes, be considered as Contractor's agents or employees, and Contractor shall be responsible for maintaining at all times suitable worker's compensation and occupational disease insurance, or self-insurance as permitted by law, covering each person whose services are furnished under this contract. Contractor shall assume full responsibility for and agrees to indemnify and save Sandia and the Government harmless from all losses, liability and expenses, including attorney's fees, on account of injuries or accidents covered by laws concerning worker's compensation and occupational disease for persons providing services under this contract, or accidents, injuries or damage to property occurring to Contractor's agents or employees or others (including Sandia, DOE, and their agents and employees) by reason of any negligent or willful acts or omissions of Contractor's agents or employees.

(c) Contractor shall carry suitable worker's compensation and occupational disease, public liability and property damage insurance, and shall, if requested, furnish the SCR with certificates evidencing this insurance or satisfactory proof of self-insurance.

The certificates shall each contain a provision that no cancellation or change in such insurance shall become effective except upon thirty (30) days advance written notice to Sandia. Cancellation of any insurance called for under this paragraph shall not relieve Contractor of its obligation to carry the coverage involved.

(d) Contractor shall, if requested, assume at its own expense the defense of suits that may be instituted against Sandia or the Government on account of Contractor's failure to conform to laws as hereinabove required or on account of accidents, injuries or property damage referred to in Paragraph (b) above.

- (e) The Contractor certifies by acceptance of this contract that all work performed hereunder shall be in compliance with the applicable health and safety requirements, and pursuant to this Clause of the contract, agrees to indemnify and save Sandia and the Government harmless from all liability and expenses, including attorneys' fees, on the account of the Contractor's failure to comply with such health and safety requirements.

IV. 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 Sandia or Government-controlled premises.

- (a) 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.
- (b) All Contractor's agents, employees and subcontractors of any tier shall obey all rules and regulations pertaining to the use of Government-owned vehicles.
- (c) 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.

CLAUSE A69 - MANUFACTURING AND TESTING STANDARDS

- (a) Unless excluded or modified elsewhere in this contract/order, Contractor warrants that all equipment, components, fasteners, tools and products of any nature whatsoever, furnished under this contract, shall be manufactured and/or tested in accordance with standards normally associated with such items when they are sold to users in the United States. Examples of such manufacturing and/or testing standards include, but are not limited to:
- o Underwriter's Laboratory (UL) Listing
  - o National Fire Protection Association Approval
  - o Occupational Safety and Health Act (OSHA) Approval
  - o American Society for Testing Material (ASTM) Certification
  - o Nationally Recognized Testing Laboratory (NRTL) Approvals
- (b) All items furnished under this contract shall be clearly marked and/or labeled, as appropriate; and, if applicable, all items shall be accompanied by installation and/or operating instruction normally associated with such items.

CLAUSE A70 - EXTRAS

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the SCR.

CLAUSE A71 - VARIATION IN QUANTITY

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

CLAUSE A72 - RESPONSIBILITY FOR SUPPLIES

- (a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where Sandia takes physical possession, unless the contract specifically provides for earlier passage of title.
- (b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to Sandia upon:
- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
  - (2) Acceptance by Sandia or delivery of the supplies to Sandia at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- (c) Paragraph (b) above shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) above shall apply.
- (d) Under paragraph (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of Sandia or the Government acting within the scope of their employment.

CLAUSE A74 - REQUIRED BONDS AND INSURANCE - EXCLUSIVE OF GOVERNMENT PROPERTY

The Contractor shall procure and maintain such bonds and insurance as required by law or by the written direction of the SCR. Where the costs of any such bond or insurance policy are charged directly to this contract, the terms of the bond or insurance policy shall be submitted to the SCR for transmittal to DOE for approval; if such costs are charged indirectly to this contract, the terms of any such bond or insurance policy shall be submitted to the SCR for approval, upon request. In view of the provisions of the Clause entitled "Property" the Contractor shall not procure or maintain for its own protection any insurance (including self-insurance or reserves) covering loss or destruction of or damage to Government-owned property.

CLAUSE A80 - SANDIA POLICY ON EQUAL OPPORTUNITY

Sandia is committed to equal opportunity. This policy extends to all of our activities including recruiting, employment, compensation, training, advancement, promotion, transfer, and termination without regard to race, color, religion, national origin, or sex, and in accordance with the laws and regulations concerning age, physical or mental handicap, and disabled or Vietnam Era veterans. Members of various religious and/or ethnic groups receive fair consideration for job opportunities. Sandia recognizes the need for affirmative action in filling executive, middle management and other job levels with members of various religious groups associated with an ethnic origin who continue to be excluded from such positions because of discrimination based on religion and/or national origin. We also accommodate to the religious observances and practices of employees and prospective employees where that

accommodation is reasonable and does not pose undue hardship on the conduct of company business. It is against the policy of Sandia for any employee or agent to harass another employee by making unwelcome sexual advances or requests for sexual favors or other verbal or physical conduct of a sexual nature. Any such conduct which creates an intimidating, hostile or offensive working environment is absolutely prohibited. Sandia will comply with all applicable laws, directives, and regulations of federal and state governments and their agencies pertaining to equal employment opportunities. The Contractor is requested to support this policy.

#### CLAUSE A81 - SUBSTANCE ABUSE PREVENTION AND TESTING

##### A. DRUG-FREE WORK PLACE

Sandia is committed to providing a safe working environment and to maintaining the security of our mission. Toward that end, each individual working on a Sandia project is entrusted to avoid misusing or abusing alcohol or licit drugs, and to abstain from using illicit drugs or intoxicants. Violation of this trust can result in removal from the contract, contract termination for default, and/or appropriate legal consequences.

Buying, selling, using, or possessing illegal drugs such as depressants, hallucinogens, or any other illegal substance is prohibited by law. Therefore, no individual working on Sandia projects may buy, sell, use, or possess illegal drugs such as depressants, stimulants, hallucinogens, and other illegal substances either on or off Sandia premises. The use or possession of alcohol on Sandia premises, or inappropriate use of alcohol while on Sandia business is similarly prohibited. Drug-related paraphernalia are not permitted on Kirtland Air Force Base or on any Sandia-controlled premises.

Any use of drugs (including misuse of prescribed substances) or alcohol that affects and individual's ability to perform his/her job can result in removal of the individual from the contracts and/or other corrective action including contract termination for default.

Sandia reserves the right to require any individual on Sandia premises to cooperate in testing for the use of illegal drugs or misuse of alcohol where there appears to be cause for such testing. Those individuals identified as having a problem related to substance abuse may be removed from performance of work under the contract.

##### B. PREASSIGNMENT DRUG TESTING

All Contractor personnel who have a requirement for independent access to sites controlled by Sandia National Laboratories and are requested to obtain an individualized Sandia contractor badge must be tested for illegal drugs.

These tests can either be conducted as part of the contractors normal preemployment screening process or if the contractor does not require preemployment drug testing it must be conducted within 30 days of Sandia's request for such testing. Testing should conform with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" issued by the Department of Health and Human Services (HHS), 53 FR 11970, April 11, 1988 and subsequent amendments thereto. Alternates to the above referenced testing guidelines must be submitted to and approved by the SCR in writing.

Within 45 days after Sandia's request the Contractor must submit a written certification in a form acceptable to the SCR identifying the individual by name and social security number and certifying that the individual has undergone the preassignment drug testing required under this clause and indicating the results of those tests. This certification must be signed by a principal or officer authorized to contractually obligate the Contractor. All costs associated with this preassignment testing are to be borne by the Contractor.

Any individual with a confirmed positive test may not be assigned to perform work at a Sandia controlled premises for a period of at least one year from the date of the confirmed test results. Assignment for work at Sandia controlled premises after the one year is contingent upon submission of evidence acceptable to the SCR of appropriate evaluation and treatment and documented abstinence from drugs including the misuse of prescribed substances for a period of 12 months. Contractor employees who do not consent to a Sandia requested drug test provided for under this Clause or other provisions of this contract (if any), must be removed from Sandia controlled premises and any further performance of work under the contract. Elimination of personnel under this clause will not be deemed to be an excusable delay or a termination for convenience on the part of Sandia.

##### C. APPLICATION TO LOWER TIER CONTRACTORS

The Contractor shall insert a clause containing all the provisions of this clause with the parties appropriately identified, including this paragraph, in all subcontracts where the subcontractor at any tier is to have access to Sandia-controlled premises.

#### CLAUSE A97 - HAZARDOUS MATERIAL IDENTIFICATIONS AND MATERIAL SAFETY DATA

- (a) The Contractor agrees to submit a Material Safety Data Sheet (MSDS) (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous material delivered under this contract, whether or not listed in Appendix A of the Standard. The MSDS shall accompany each item being delivered. This obligation applies to all materials delivered under this contract which will involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this clause, is as defined in Federal Standard No. 313B, in effect on the date of this contract.
- (c) Neither the requirements of this clause nor any act or failure to act by Sandia or the Government shall relieve the Contractor of any responsibility or liability for the safety of Sandia, Government, Contractor, or subcontractor personnel or property.
- (d) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (e) Sandia's and the Government's rights in data furnished under this contract with respect to hazardous material are as follows:
  - (1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous material; (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for Sandia or the Government for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (e)(1) above, in precedence over any other clause of this contract providing for rights in data.
  - (3) That Sandia or the Government is not precluded from using similar or identical data acquired from other sources.

- (4) That the data shall not be duplicated, disclosed, or released outside Sandia or the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies--

"This is furnished under United States Government Contract No. ....and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of..... This legend shall be marked on any reproduction of this data."  
(End of legend)

- (5) That the Contractor shall not place the legend or any other restrictive legend on any data which (i) the Contractor or any subcontractor previously delivered to Sandia or the Government without limitations or (ii) should be delivered without limitations under the conditions specified in the Federal Acquisition Regulation in the clause at 52.227-14, Rights in Data--General.-

- (f) The Contractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this contract involving hazardous material.

#### CLAUSE A98 - SECURITY

##### I. CONTRACTOR'S DUTY TO SAFEGUARD ALL CLASSIFIED INFORMATION

The Contractor shall, in accordance with DOE's security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss and theft, the classified documents and material to which the Contractor has access.

- (a) Regulations. The Contractor agrees to conform to all security regulations and requirements of the DOE.

(b) Definitions

- (1) Classified Information. The term "classified information," as used in this Clause, means Restricted Data, Formerly Restricted Data, and National Security Information.

- (2) Restricted Data. The term "Restricted Data," as used in this Clause, means all data concerning (i) design, manufacture, or utilization of atomic weapons; (ii) the production of special nuclear material; or (iii) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

- (3) Formerly Restricted Data. The term "Formerly Restricted Data," as used in this Clause, means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.

- (4) National Security Information. The term "National Security Information," as used in this Clause, means information or material which is owned by, produced for or by, or under the control of the United States Government, which has been determined pursuant to Executive Order 12356 or prior

Orders to require protection against unauthorized disclosure, and which is so designated.

- (c) Criminal Liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

- (d) Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the SCR, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

- (e) It has been determined that the Contractor does not have a need-to-know or a need to have access to specific classified information or material to perform the work required under this contract. In the event the Contractor believes there is a need-to-know or is presented with classified information or material in the performance of its work, the Contractor shall immediately notify the SCR.

#### Clause A99 - Additional Terms and Conditions

This document incorporates the following Federal Acquisition Regulation (FAR) or Department of Energy Acquisition Regulation (DEAR) clauses by references with the same force and effect as if they were given in full text. In general, 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.

The following clause applies to contracts at any value:

- DEAR 970.5203-3 - Buy American Act
- FAR 52.222-3 - Convict Labor
- FAR 52.207 - Anti Kickback Procedures
- FAR 52.223-2 - Clean Air and Water
- FAR 52.203-3 - Gratuities
- DEAR 952.250-70 - Nuclear Hazards Indemnity Agreement
- DEAR 970.5204-59 - Whistleblower Protection

The following clause applies to contracts exceeding \$2,500:

- FAR 52.222-36 - Affirmative Action for Handicapped Workers

The following clauses apply to contracts that exceed \$10,000:

- FAR 52.222-26 - Equal Opportunity
- FAR 52.219-8 - Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
- FAR 52.222-20 - Walsh Healy Public Contracts Act
- FAR 52.222-35 - Affirmative Action for Special Disabled and Vietnam Era Veterans
- FAR 52.222-37 - Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
- DEAR 970.5203-1 - Examination of Records by the Comptroller General
- DEAR 970.5204-62 - Environmental Protection

The following clauses apply to contracts exceeding \$25,000:

- FAR 52.227-2 - Notice of Assistance Regarding Patent and Copyright Infringement
- FAR 52.225-6 - Balance of Payments Program Certificate
- FAR 52.225-7 - Balance of Payments Program
- FAR 52.247-63 - Preference for U.S. Flag Air Carriers
- FAR 52.247-64 - Performance for Privately Owned U.S. Flag Commercial Vessels

FAR 52.220-3 - Utilization of Labor Surplus Area  
FAR 52.219-13 - Utilization of Women Owned Small Businesses

The following clauses apply to Request for Quotations/Proposals of any value:

FAR 52.203-9 - Requirement for Certificate of Procurement Integrity - Modification

FAR 52.203-12 - Limitation of Payments to Influence Certain Federal Transactions

"B" AND "C" CLAUSES APPLY TO REQUESTS FOR QUOTATION AND CONTRACTS THAT EXCEED \$2,500

CLAUSE B11 - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

This contract, to the extent that it is of the character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) Overtime requirements.

(1) The term "laborers and mechanics" as used herein includes apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include any employee employed as a seaman.

(2) No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages.

The SCR shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Sandia Contract with the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such

Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and basic records.

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representative of the SCR or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause.

"D" CLAUSES APPLY TO REQUESTS FOR QUOTATION AND CONTRACTS THAT EXCEED \$10,000

CLAUSE D41 - REPORTING OF ROYALTIES

If this contract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to Sandia or the Government, the Contractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the SCR) during the performance of this contract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of Sandia or of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made. ("Patent Counsel," as used in this clause, means the Patent Attorney, DOE, Albuquerque Operations Office, P. O. Box 5400, Albuquerque, New Mexico 87115.)

"E" CLAUSES APPLY TO REQUESTS FOR QUOTATION AND CONTRACTS THAT EXCEED \$25,000

CLAUSE E11 - BANKRUPTCY (APR 1991) FAR 52.242-13

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the

initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the SCR from records or documents in existence prior to the date of the contract award or modification.

CLAUSE E23 - PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY

(a) Sandia, at its election, may reduce the price of a fixed-price type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b)(5) of this clause.

(c) Sandia may, at its election, reduce a Contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, Sandia may terminate this contract for default. The rights and remedies of Sandia specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(e) The provisions of this clause are inapplicable if this contract is with an educational institution or does not include a fee.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, Sandia may--

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the SCR may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the

"F" CLAUSES APPLY TO REQUESTS FOR QUOTATION AND CONTRACTS THAT EXCEED \$500,000

CLAUSE F10 - CONTRACTOR/SUBCONTRACTOR CERTIFIED COST OR PRICING DATA

(This clause applies to all contracts and subcontracts, at any tier, where such contracts or subcontracts are over \$500,000, and any modification to such contracts or subcontracts, whose absolute value, which is a numerical value without regard to its sign, is over \$500,000, even though the original amount of the contract or subcontract is \$500,000 or less)

(a) (1) The Contractor shall require under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each subcontractor, at any tier, under this contract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete and current.

(2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (i) the award of each subcontract, at any tier, the price of which is expected to exceed \$500,000, and (ii) the negotiation of the price of each change or modification to a subcontract, at any tier, under this contract for which the price adjustment is expected to exceed \$500,000.

(3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the Contractor has not been required by the SCR to furnish cost or pricing data; or (ii) the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the Contractor states in writing the basis for apply this exception.

(4) In submitting the cost or pricing data, the subcontractor, at any tier, shall use the form of certificate set forth in paragraph (b) below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by subcontractors, at any tier, to the next higher-tier subcontractor or the Contractor, as applicable, for retention.

(b) The certificates required by this clause shall be in the form set forth below:

CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATE  
OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data submitted in writing, or specifically identified in writing if actual submission of the data is impracticable (see FAR 15.804-6(d)), to the contractor in support of \_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_\*\*.

Firm:  
Name:  
Title:  
Date of Execution:\*\*\*

\*Identify the proposal, quotation, request for price adjustment, or other submission involved.

\*\*Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

\*\*\*Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this contract change or other modification involving an amount in excess of \$500,000 were accurate, complete, and current, Sandia and/or DOE shall, until the expiration of 3 years from the date of final payment under this contract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) If the original price of this contract exceeds \$500,000 or the price of any change or other modification to this contract is expected to exceed \$500,000, the Contractor agrees to furnish Sandia certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any subcontract change or other modification, at any tier, where the subcontract is firm fixed-price or fixed-price with escalation unless such change or other modification result from a change or modification to the contract, nor does it apply to a subcontract change or modification, at any tier, where the contract is not firm fixed-price or fixed-price with escalation unless the price for such change or other modification becomes reimbursable under the contract.

(f) The Contractor agrees to insert paragraph (c) without change and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each subcontract, at any tier, hereunder in excess of \$500,000 and in each subcontract, at any tier, of \$500,000 or less, at the time of making a change or other modification thereto in excess of \$500,000.

(g) If Sandia determines that any price, including profit or fee, negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor, at any tier, pursuant to this clause or any subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the Contractor's certificate of current cost or pricing data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. It is also expected that subcontracts, at any tier, subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower-tier subcontractors.)

CLAUSE F11 - TERMINATION OF DEFINED BENEFIT PENSION PLANS

In the event this contract or any amendment, thereto, required Current Cost or Pricing Data to be submitted, the Contractor shall promptly notify the Sandia Contracting Representative (SCR) in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to Sandia or the Government for its equitable share. The Contractor shall include the substance of this clause in all subcontracts under this contract, which are subject to Current Cost or Pricing Data.

CLAUSE F20 - AUDIT

(a) Disclosure of Records.  
If Contractor's records, as defined in paragraph (b) of this clause, include technical data and other data, including trade secrets and/or privileged or commercial or financial information, which you do not want disclosed to the public or used by Sandia or the Government for any purpose other than an audit pursuant to this clause, Contractor shall specifically identify each page containing such data and mark the cover sheet of such data with the following notice.

NOTICE

The data contained in pages \_\_\_\_ of this disclosure have been submitted in confidence and contain trade secrets and/or privileged or confidential commercial or financial information, and such data shall be used or disclosed only for audit purposes. This restriction does not limit Sandia's or the Government's right to use or disclose data obtained without restriction from any source, including the Contractor.

Data, or abstracts of data marked with this notice will be retained in confidence and used by Sandia and DOE or DOE's designated representative (s) solely for audit purposes. The data so marked will not otherwise be disclosed or used without your prior written permission except to the extent required by law.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be available for 3 years after any resulting final termination settlement; and

(2) Records relating to appeals under the Disputes clause, if any, or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.

(b) Examination of Costs.

Contractor shall maintain - and the SCR or representatives of the SCR shall have the right to examine and audit - books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(f) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (f), in all subcontracts over \$10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties.

(c) Cost or Pricing Data.

If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, the SCR or representatives of the SCR who are employees of Sandia or the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

"R" CLAUSES APPLY TO REQUESTS FOR QUOTATION (RFQ) OF ANY VALUE

CLAUSE R10 - TAXES

By signing the RFQ, quoter certifies that all State or Local Sales and Use Taxes, or taxes upon or measured by receipts from sales, have been separately stated and that the price does not include any contingencies for such taxes. (Note: See Clause A31 entitled "Taxes" herein.)

CLAUSE R12 - NEW SUPPLIES

Except as otherwise provided in the Statement of Work or in Contractor's quotation, the quoter certifies that the supplies to be furnished are new (not used or reconditioned and not of such age or so deteriorated as to impair their usefulness or safety).

(d) Reports.

If the Contractor is required to furnish cost, funding, or performance reports, the SCR or representatives of the SCR who are employees of Sandia or the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

CLAUSE R13 - GOVERNMENT MATERIAL/EQUIPMENT

Except as provided for in Section I, quoter must list the Government material/equipment quoter will use in the performance of the Statement of Work in this RFQ and provide details concerning its use.

(e) Availability.

The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) and (c) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in FAR Subpart 4.7, Contractor Records Retention, or for any longer period required by statute or by other clauses of this contract. In addition:

CLAUSE R23 - FALSE STATEMENTS IN QUOTATIONS

Quoters must provide full, accurate, and complete information as required by this RFQ and its attachments. The penalty for making false statements in quotations is prescribed in 18 U.S.C. 1001.



SECTION III  
SUPPLEMENTAL TERMS AND CONDITIONS FOR  
COST REIMBURSABLE CONTRACTS

The Clauses specified herein apply to this contract only when specifically called out in Section I.

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\*Flow Down Provision Included - Inclusion of these clauses, suitably modified to identify parties, is required in subcontracts at any tier.

CLAUSE 206-CX (12-93) COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION

Note: This clause does not apply to small businesses or foreign governments.

A. COST ACCOUNTING STANDARDS NOTICES

Offerors/Quoters shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

I. DISCLOSURE STATEMENT--COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of \$500,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, will be subject to the requirements of 48 CFR, Parts 9903 and 9904, except for those contracts which are exempt as specified in 48 CFR, Subpart 9903.201-1.

(b) Any offeror/quoter submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Parts 9903 and 9904 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR, Subpart 9903.202. The Disclosure Statement must be submitted as a part of the offeror's/quoter's proposal under this solicitation unless the offeror/quoter has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror/quoter may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this clause.

CAUTION: A practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

[ ] (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer/quotation, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASE DS-1. Forms may be obtained from the cognizant ACO.)

Date of Disclosure Statement:

Name and Address of Cognizant ACO where filed:

The offeror/quoter further certifies that practices used in estimating costs in pricing this proposal/quotation are consistent with the cost accounting practices disclosed in the Disclosure Statement.

[ ] (2) Certificate of Previously Submitted Disclosure Statement.

The offeror/quoter hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement:

Name and Address of Cognizant ACO where filed:

The offeror/quoter further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable disclosure statement.

[ ] (3) Certificate of Monetary Exemption.

The offeror/quoter hereby certifies that the offeror/quoter, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated national defense prime contracts and subcontracts subject to CAS totaling more than \$25 million in the cost accounting period immediately preceding the period in which this proposal/quotation was submitted. The offeror/quoter further certifies that if such status changes before an award resulting from this proposal/quotation, the offeror/quoter will advise the SCR immediately.

[ ] (4) Certificate of Interim Exemption.

The offeror/quoter hereby certifies that (i) the offeror/quoter first exceeded the monetary exemption for disclosure, as defined in (3) above, in the cost accounting period immediately preceding the period in which this offer/quotation was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror/quoter is not yet required to submit a Disclosure Statement. The offeror/quoter further certifies that if an award resulting from this proposal/quotation has not been made within 90 days after the end of that period, the offeror/quoter will immediately submit a revised certificate to the SCR, in the form specified under subparagraphs (c)(1) or (c)(2) of Part I of this clause, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors/quoters currently required to disclose because they were awarded a CAS-covered national defense prime contract or subcontract of \$25 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals/quotations submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS -- EXEMPTION FOR CONTRACTS OF \$500,000 OR LESS

If this proposal is expected to result in the award of a contract of \$500,000 or less, the offeror shall indicate whether the exemption below is claimed. Failure to check the box below shall mean that the resultant contract is subject to CAS requirements or that the offeror elects to comply with such requirements.

[ ] The offeror hereby claims an exemption from CAS requirements under the provisions of 48 CFR Subpart 9903.201-1(b)(2).

III. COST ACCOUNTING STANDARDS--ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror/quoter is eligible to use the modified provisions of Federal Acquisition Regulation (FAR) 30.201-

2(b) and elects to do so, the offeror/quoter shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

[ ] The offeror/quoter hereby claims an exemption from the Cost Accounting Standards clause under the provisions of FAR 30.201-2(b) and certifies that the offeror/quoter is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because (i) during the cost accounting period immediately preceding the period in which this proposal/quotation was submitted, the offeror/quoter received less than \$25 million in awards of CAS-covered national defense prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of total sales during that cost accounting period. The offeror/quoter further certifies that if such status changes before an award resulting from this proposal/quotation, the offeror/quoter will advise the SCR immediately.

CAUTION: An offeror/quoter may not claim the above eligibility for modified contract coverage if this proposal/quotation is expected to result in the award of a national defense contract of \$25 million or more or if, during its current cost accounting period, the offeror/quoter has been awarded a single CAS-covered national defense prime contract or subcontract of \$25 million or more.

IV. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror/quoter shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

[ ] YES [ ] NO

CLAUSE 207-CB (12-93) COST ACCOUNTING STANDARDS CLAUSES - FULL COVERAGE

I. COST ACCOUNTING STANDARDS

(a) Unless the contract is exempt under 48 CFR, Subparts 9903.201-1 and 9903.201-2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall--

(1) (CSA-covered Contract Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by CFR 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the SCR that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of Sandia or the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data

concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR, Part 9904 (Appendix B, FAR loose-leaf edition), in effect on the date of award of this contract, or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the SCR to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause, provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

(b) The Contractor shall permit any authorized representatives of Sandia or the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(c) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on--

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1.

Note (1): New or modified CAS shall be applicable to both national defense and nondefense CAS-covered contracts upon award of a new national defense CAS-covered contract containing the new or modified Standard. The award of a new nondefense CAS-covered contract shall not trigger application of new CAS or modification to CAS.

Note (2): Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Contractor the date of the Statement and the address of the ACO.

Note (3): In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in subparagraph (a)(5) of this clause. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations and Standards as specified in FAR Subparts 30.3 and 30.4 in connection with covered subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor.

However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with Sandia. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (4): If the subcontractor is a business unit which, pursuant to FAR 30.201-2(b), is entitled to elect modified contract coverage and to follow 30.401 and 30.402, the clause in Sandia Form SF6432-STD entitled "Disclosure and Consistency of Cost Accounting Practices" shall be inserted in lieu of this clause.

Note (5): The terms defined in FAR 30.301, and 31.001 shall have the same meanings herein. As there defined "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two persons not associated with each other or with such Contractor or subcontractor, providing (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

## II. ADMINISTRATION OF COST ACCOUNTING STANDARDS

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

(a) Submit to the cognizant SCR a description of any accounting change, the potential impact of the change on contracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change which displays the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should display the potential impact of funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the CAS clause, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (a)(4)(iii) of the CAS clause or with subparagraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices clause in Sandia Form SF6432-STD, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the CAS clause or by subparagraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause, within 60 days (or such other date as may be mutually agreed to) after the date of agreement of noncompliance by the Contractor.

(i) Within 60 days (or such other date as may be mutually agreed

to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the SCR of the determination of noncompliance.

(b) Submit a cost impact proposal in the form and manner specified by the SCR within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the CAS clause, shall identify each additional standard and all contracts and subcontracts containing the clause in this contract entitled Cost Accounting Standards, which have an award date before the effective date of that standard.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the CAS Cost Accounting Standards or with subparagraph (a)(3) of the CAS clause, Disclosure and Consistency of Cost Accounting Practices, shall identify all contracts and subcontracts containing the clause, Cost Accounting Standards, and Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by this CAS article, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the compliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this article are not submitted within the specified time, or any extension granted by the SCR, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contract, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the SCR.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause or with subparagraphs (a)(3) or (a)(4) of the CAS Disclosure and Consistency of Cost Accounting Practices clause.

(e) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause--

(1) so state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(f) Notify the SCR in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contractor's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

CLAUSE 208-CZ (12-93) COST ACCOUNTING STANDARDS CLAUSES MODIFIED COVERAGE

I. DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES

(a) The Contractor, in connection with this contract, shall--

(1) Comply with the requirements of 48 CFR, Subpart 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, and 48 CFR Subpart 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract as indicated in 48 CFR, Part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR, Subparts 9903.202-1 through 9903.202-5. If the Contractor has notified the SCR that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of Sandia or the Government.

- (3) (i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either Sandia or the Contractor, and the Contractor agrees to negotiate with the SCR the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.
- (ii) Price set by law or regulation; or
- (3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in FAR 30.201-1.

II. ADMINISTRATION OF COST ACCOUNTING STANDARDS

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

- (a) Submit to the cognizant SCR a description of any accounting change, the potential impact of the change on contracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change which displays the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should display the potential impact of funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:
  - (1) For any change in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the CAS clause, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.
  - (2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (a)(4)(iii) of the CAS clause or with subparagraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices clause, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
  - (3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the CAS clause or by subparagraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause, within 60 days (or such other date as may be mutually agreed to) after the date of agreement of noncompliance by the Contractor.
- (4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, from the time the payment by the United States was made to the time the adjustment is effected.
- (b) The Contractor shall permit any authorized representatives of Sandia or the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.
- (c) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, and shall require such inclusion in all other subcontracts of any tier, except that--
  - (1) If the subcontract is awarded to a business unit which pursuant to FAR 30.201 is required to follow all CAS, the clause entitled "Cost Accounting Standards," set forth in Sandia Form SF6432-STD shall be inserted in lieu of this clause; or
  - (2) This requirement shall apply only to negotiated subcontracts in excess of \$100,000 where the price negotiated is not based on--
    - (i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
    - (ii) Submit a cost impact proposal in the form and manner specified by the cognizant SCR within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. If the cost impact proposal is not submitted within the specified time, or any extension granted by the cognizant SCR, an amount not to exceed 10 percent of each payment made after that date may be withheld until such time as a proposal has been provided in the form and manner specified by the cognizant SCR.
    - (c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause or with subparagraphs (a)(3) or

(a)(4) of the CAS Disclosure and Consistency of Cost Accounting Practices clause.

(d) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause--

(1) so state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(e) Notify the SCR in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contractor's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(f) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

CLAUSE 301-RN (12-93) PATENT RIGHTS PROVISIONS

Note: Copies of clauses incorporated by reference in this clause are available upon request from the SCR. As used throughout this clause and the incorporated clauses, the phrase "Patent Counsel" means the Patent Counsel, DOE, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87115; the phrase "Agency" means the Department of Energy (DOE); the phrase "Contracting Officer" means the Sandia Contracting Representative.

I. PATENT RIGHTS PROVISIONS FOR OTHER THAN SMALL BUSINESS FIRMS AND DOMESTIC NONPROFIT ORGANIZATIONS

The following patent rights provisions are applicable to other than small business firms and domestic nonprofit organizations. The patent rights clause contained at 41 CFR 9-9.107-5(a) is hereby incorporated into this contract.

II. PATENT RIGHTS PROVISIONS FOR SMALL BUSINESS FIRMS AND DOMESTIC NONPROFIT ORGANIZATIONS

The patents rights clause at 48 CFR 952.227-71 dated April 1987 is hereby incorporated into this contract unless exceptional circumstances apply to this contract.

CLAUSE 302-RD (12/93) RIGHTS-IN-DATA

1. Definitions

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formula, and flowcharts of the software.

"Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

"Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph 7.b. if included in this clause.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph 7.c. if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

2. Allocations of Rights

a. Except as provided in paragraph 3. below regarding copyright, the Government shall have unlimited rights in:

- (1) Data first produced in the performance of this contract;
- (2) Form, fit, and function data delivered under this contract;
- (3) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair items, components, or processes delivered or furnished for use under this contract; and
- (4) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph 7. below.

b. The Contractor shall have the right to:

- (1) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph 4. below;
- (2) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph 7. below;
- (3) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs 5. and 6. below; and
- (4) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph 3.a. below.

### 3. Copyright

#### a. Data first produced in the performance of this contract.

Unless provided otherwise in subparagraph 4. below, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer

software, the Contractor grants to the Government and others acting in its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

#### b. Data not first produced in the performance of this contract

The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 and 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph a. above; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph 7.c. below if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

#### c. Removal of copyright notices

The Government agree not to remove any copyright notices placed on data pursuant to this paragraph 3., and to include such notices on all reproductions of the data.

#### 4. Release, Publication and Use of Data

a. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided below in this paragraph or expressly set forth in this contract.

b. The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer

c. The Contractor agrees not to establish claim to copyright in computer software first produced in the performance of this contract without prior written permission of the Contracting Officer. When such permission is granted, the Contracting Officer shall specify appropriate terms to assure dissemination of the software. The Contractor shall promptly deliver to the Contracting Officer or to the Patent Counsel designated by the Contracting Officer, a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and other terms pertaining to the computer software to which claim to copyright is made.

#### 5. Unauthorized Marking of Data

a. Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraphs 7.b. or 7.c. below, and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the



following procedures shall apply prior to canceling or ignoring the markings.

- (1) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
- (2) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
- (3) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (1) above, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the Head of the Contracting Activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, such determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (3) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

b. The time limits in the procedures set forth in subparagraph a. above may be modified in accordance with Agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

c. This paragraph 5. does not apply if this contract is for a major system or for support of a major system by a civilian agency other than the National Aeronautics and Space Administration and the U.S. Coast Guard subject to the provisions of Title III of the a Federal Property and Administrative Services Act of 1949.

d. Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph 5. from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring

authorized markings on data delivered under this contract.

6. Omitted or Incorrect Markings

a. Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph 7. below, or the copyright notice required by paragraph 3. above, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor--

- (1) Identifies the data to which the omitted notice is to be applied;
- (2) Demonstrates that the omission of the notice was inadvertent;
- (3) Establishes that the use of the proposed notice is authorized; and
- (4) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

b. The Contracting Officer may also:

- (1) Permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or
- (2) Correct any incorrect notices.

7. Protection of Limited Rights Data and Restricted Computer Software

a. When data other than that listed in subparagraphs 2.a.(1), (2), and (3) above are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

b. Rights in Limited Rights Data.

Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of

initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice":

LIMITED RIGHTS NOTICE

These data contain "limited rights data," furnished under Contract No. \_\_\_\_\_ with the United States Department of Energy (and Purchase Order/Subcontract No. \_\_\_\_\_ if applicable) which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (b) This "limited rights data" may be disclosed to other Contractors participating in the Government's program of which this Contract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed.

This Notice shall be marked on any reproduction of this data in whole or in part.  
(END OF NOTICE)

c. Rights in Restricted Computer Software.

- (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

RESTRICTED RIGHTS NOTICE--LONG FORM

- (a) This computer software is submitted with restricted rights under Government Contract No. \_\_\_\_\_ and Subcontract No. \_\_\_\_\_, if appropriate). It may not be used, reproduced, or

disclosed by the Government except as provided in paragraph (b) of this notice.

- (b) This computer software may be:
  - (1) Used, or copied for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
  - (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
  - (3) Reproduced for safekeeping (archives) or backup purposes;
  - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
  - (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.  
(END OF NOTICE)

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

(RESTRICTED RIGHTS NOTICE--SHORT FORM)

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Contract No. \_\_\_\_\_ (Subcontract No. \_\_\_\_\_ if appropriate) with \_\_\_\_\_ (name of Contractor or Subcontractor).  
(END OF NOTICE)

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
- (4) If restricted rights computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted software licensed to the Government without disclosure prohibitions, with unlimited rights, unless the Contractor includes the following statement with such copyright notice:

"Unpublished -- rights reserved under the Copyright Laws of the United States."

CLAUSE 303-RA (12-93) ADDITIONAL DATA REQUIREMENTS - (FAR 52-227-16) (6/87)

- (a) In addition to the data (as defined in the clause "Rights in Data" or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the SCR may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.
- (b) The "Rights in Data-General" clause, or other equivalent included in this contract is applicable to all data ordered under this "Additional Data Requirements" clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data-General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.
- (c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.
- (d) The SCR may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

CLAUSE 304-SW Rights in Data - Special Works (DEAR 952.227-76) (4/84)

- (a) The term "Data" as used herein means recorded information regardless of form or characteristic, such as SOFTWARE, writings, sound recordings, pictorial reproductions, drawings, or other graphic representations, and works of similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term includes data such as management studies and data produced under support services contracts but does not include financial reports, cost analyses, and other information incidental to contract administration.
- (b) All data first produced or composed in the course of or under this contract shall be the sole property of the Government. Except with the prior written permission of the contracting officer, the Contractor agrees not to assert any rights at common law or in equity or establish any claim to statutory copyright in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner of form, or authorize others so to do, without the written consent of the contracting officer or until such time as the Government may have released such data to the public.
- (c) The Contractor hereby grants to or will obtain for the Government a royalty-free, nonexclusive and irrevocable license throughout the world (1) to publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data which are not first produced or composed in the performance of this contract but which are incorporated in the work furnished under this contract; and (2) to authorize others so to do.

(d) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this contract; or (2) based upon any libelous, defamatory, or other unlawful matter contained in such data.

(e) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

CLAUSE 408-LS (04-91) LABOR STANDARDS PROVISION

I. DAVIS-BACON ACT (40 U.S.C. 276-276A-7)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (1) The SCR shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The SCR shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination.
- (ii) The classification is utilized in the area by the construction industry.
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the SCR agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the SCR, through DOE, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U. S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the SCR or will notify the SCR within the 30-day period that additional time is necessary.
- (3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the SCR do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the SCR shall refer the questions, including the views of all interested parties and the recommendation of the SCR, through DOE, to the Administrator of the Wage and Hour Division for Determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the SCR or will notify the SCR within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraph (b)(2) and (b)(3) of this clause shall be paid for all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor
- to set aside in a separate account assets for the meeting of obligations under the plan or program.
- II. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -OVERTIME COMPENSATION
- (a) Overtime Requirements
- No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics (see FAR 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) Violation; Liability for Unpaid Wages; Liquidated Damages
- In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanics employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.
- (c) Withholding for Unpaid Wages and Liquidated Damages
- The SCR shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Sandia Contract with the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) Payrolls and Basic Records
- (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representative of the SCR or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause.

III. WITHHOLDING OF FUNDS

The SCR shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Sandia contract with the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SCR may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

IV. PAYROLLS AND BASIC RECORDS

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls, including the payrolls of all subcontractors, to the SCR. The payrolls

submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Form WH-347 that is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 may be used to meet this requirement.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the SCR or authorized representatives of the SCR or the Department of Labor. The Contractor or subcontractor shall permit the SCR or representatives of the SCR or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the SCR may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments. Furthermore, failure to submit the required records upon request or to make such records available may be

grounds for debarment action pursuant to 29 CFR 5.12.

## V. APPRENTICES AND TRAINEES

### (a) Apprentices

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

### (b) Trainees

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the

Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

### (c) Equal Employment Opportunity

The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, and 29 CFR Part 30.

## VI. COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

## VII. SUBCONTRACTS (LABOR STANDARDS)

(a) The Contractor or subcontractor shall insert in any subcontracts the provisions entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination - Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations and Certification of Eligibility, and such other clauses as the SCR may, by appropriate instruction, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b) (1) Within 14 days after award of the contract, the Contractor shall deliver to the SCR a completed statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

- (2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the SCR an updated completed SF 1413 for such additional subcontract.

- (d) "United States," as used, includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.) i.e., American Samoa, Guam, Northern Mariana Islands, Wake Island, and Johnston Island but does not include any other territory under U.S. jurisdiction or any U.S. base or possession within a foreign country.

#### VIII. CONTRACT TERMINATION - DEBARMENT

A breach of the contract provisions entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

This contract, to the extent that it is of the character to which the Service Contract Act of 1965, as amended (41 U.S.C. 351-357) applies, is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor thereunder.

#### IX. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

#### I. COMPENSATION

Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wage and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or an authorized representative, as specified in any attachment to this contract. As specified in the attached Wage Determination, any class of service employees which in not listed therein, but which is to be employed under this contract, shall be classified by the Contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment, and shall be paid such monetary wages and furnished such fringe benefits as are determined by agreement of the interested parties who shall be deemed to be Sandia/DOE, the Contractor, and the employees who will perform on the contract or their representatives. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable, DOE shall submit the question, together with its recommendation, to the office of Special Wage Standards, Employment Standards Administration (ESA), Department of Labor for final determination. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by the Administrator or an authorized representative shall be a violation of this contract. No employee engaged in performing work on this contract shall in any event be paid less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

#### X. DISPUTES CONCERNING LABOR STANDARDS

The U. S. Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and Sandia, the U. S. Department of Labor, or the employees or their representatives.

#### II. ADJUSTMENT

If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965, as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Employment Standards Administration, Department of Labor as provided in the Act.

#### XI. CERTIFICATION OF ELIGIBILITY

- (a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (b) No part of this contract shall be subcontracted by any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

#### III. OBLIGATION TO FURNISH FRINGE BENEFITS

The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in 29 CFR Part 4.

#### CLAUSE 412-SC (03-91) SERVICE CONTRACT ACT OF 1965, AS AMENDED

Definitions for the purposes of this act--

- (a) "Secretary" means Secretary of Labor.
- (b) "Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.
- (c) The term "compensation" means any of the payments or fringe benefits described in section 2 of the Act.

#### IV. MINIMUM WAGE

In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any of its employees performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this provision shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

#### V. OBLIGATIONS ATTRIBUTABLE TO PREDECESSOR CONTRACTS

If this contract succeeds a contract, subject to the Service Contract Act of 1965, as amended, under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then in the absence of a minimum wage attachment for this contract neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work less than the wages and fringe benefits, provided for in such collective bargaining agreements, to which such employee would be entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement.

No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the Secretary of Labor or an authorized representative determines that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations or finds, after a hearing as provided in Department of Labor regulations, 29 CFR 4.10, that the wages and fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a similar character in the locality.

#### VI. NOTIFICATION TO EMPLOYEES

The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum wage and any fringe benefits required to be paid pursuant to this contract, or shall post a notice of such wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

#### VII. SAFE AND SANITARY WORKING CONDITIONS

The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

#### VIII. RECORDS

The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in subparagraphs (a) through (e) of this paragraph for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Employment Standards Administration (ESA), Department of Labor.

- (a) Employee's name and address.
- (b) Employee's work classification or classifications, rate or rates of monetary wages and fringe

benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation.

- (c) Employee's daily and weekly hours so worked.
- (d) Any deductions, rebates, or refunds from employee's total daily or weekly compensation.
- (e) A list of monetary wages and fringe benefits for those classes of service employees not included in the minimum wage attachment to this contract, but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator (as defined in 41 CFR 1-12.902-2(c) or an authorized representative pursuant to Paragraph (I) of this Clause. A copy of the report required in paragraph XII(a) of this Clause shall be deemed to be such a list.

#### IX. WITHHOLDING OF PAYMENT AND TERMINATION OF CONTRACT

Sandia/DOE shall withhold or cause to be withheld from the Contractor under this or any other Government contract with the prime Contractor such sums as DOE, or an appropriate officer of the Department of Labor, decides may be necessary to pay underpaid employees. Additionally, any failure to comply with the requirements of this Clause relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the contract work. In such event, Sandia may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

#### X. SUBCONTRACTORS

The Contractor agrees to insert this Clause relating to the Service Contract Act of 1965 in all subcontracts. The term "Contractor" as used in this Clause in any subcontract shall be deemed to refer to the subcontractor.

#### XI. COMPARABLE RATES

The classes of service employees expected to be employed under the contract with Sandia would be subject, if employed by the Government, to the provisions of 5 U.S.C. 5341 or 5332 and would, if so employed, be paid not less than the rates of wages and fringe benefits listed in the Wage Rate Schedules established by the Government, when available.

#### XII. CONTRACTOR'S REPORT

- (a) If there is a wage determination attachment to this contract and one or more classes of service employees which are not listed thereon are to be employed under the contract, the Contractor shall report to the Sandia Contracting Representative the monetary wages to be paid and the fringe benefits to be provided each such class of service employee. Such report shall be made promptly as soon as such compensation has been determined, as provided in paragraph I of this Clause.
- (b) If wages to be paid or fringe benefits to be furnished any service employees employed by the Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Contractor shall report such fact to the Sandia Contracting Representative, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the



collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

#### XIII. REGULATIONS INCORPORATED BY REFERENCE

All interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4, Subpart C, are hereby incorporated by reference in this contract.

#### XIV. EXEMPTIONS

This Clause relating to the Service Contract Act of 1965 shall not apply to the following:

- (a) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;
- (b) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45);
- (c) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect, or where such carriage is subject to rates covered by section 22 of the Interstate Commerce Act;
- (d) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;
- (e) Any contract for public utility services including electric light and power, water, steam, or gas;
- (f) Any employment contract providing for direct services to a Federal agency by an individual or individuals;
- (g) Any contract with the Post Office Department (U.S. Postal Service), the principal purpose of which is the operation of postal contract stations;
- (h) Any services to be furnished outside the United States. For geographic purposes, the "United States" is defined in section 8 (d) of the Service Contract Act of 1965 to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands, as defined in the Outer Continental Shelf Lands Act, (43 U.S.C. 1331, et. seq.) i.e. American Samoa, Guam, Northern Mariana Islands, Wake Island, and Johnston Island but does not include any other territory under U.S. jurisdiction or any base or possession within a foreign country;
- (i) Any of the following contracts exempted from all provisions of the Service Contract Act of 1965, pursuant to section 4 (b) of the Act, which exemptions the Secretary of Labor, prior to amendment of such section by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:
  - (1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel,

where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom;

- (2) Any contract entered into by the U.S. Postal Service with an individual owner operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness or accident.

#### XV. SPECIAL EMPLOYEES

Notwithstanding any of the provisions in paragraphs I through XII of this Clause relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

- (a) (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act of 1965, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, (29 U.S.C. 201 et seq.) in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
- (2) The Administrator will issue certificates under the Service Contract Act of 1965 for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two Acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525);
- (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.
- (b) An employee engaged in an occupation in which employee customarily and regularly receives more than \$30 a month in tips may have the amount of tips credited by employee's employer against the minimum wage required by section 2(a)(1) or section 2 (b) (1) of the Act, in accordance with

the regulations in 29 CFR Part 531: Provided, however, that the amount of such credit may not exceed \$1.34 per hour.

CLAUSE 421-SD (12-93) SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN

- (a) This clause does not apply to small business concerns.
- (b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the SCR, differs only insignificantly from the Contractor's commercial product.  
  
"Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by Sandia or a subcontractor calling for supplies or services required for performance of the contract or subcontract.
- (c) The offeror/quoter, upon request by the SCR, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns and with small disadvantaged business concerns. If the offeror/quoter is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the SCR. Failure to submit and negotiate the subcontracting plan shall make the offeror/quoter ineligible for award of a contract.
- (d) The offeror's/quoter's subcontracting plan shall include the following:
  - (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns and small disadvantaged business concerns as subcontractors. The offeror/quoter shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
  - (2) A statement of--
    - (i) Total dollars planned to be subcontracted;
    - (ii) Total dollars planned to be subcontracted to small business concerns; and
    - (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.
  - (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns and (ii) small disadvantaged business concerns.

- (4) A description of the method used to develop the subcontracting goals in (1) above.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, Sandia Small and Small Disadvantaged Business Liaison, or small and small disadvantaged business concerns trade associations).
- (6) A statement as to whether or not the offeror/quoter included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns and (ii) small disadvantaged business concerns.
- (7) The name of the individual employed by the offeror/quoter who will administer the offeror's/quoter's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror/quoter will make to assure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror/quoter will include the clause in this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror/quoter will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror/quoter.
- (10) Assurances that the offeror/quoter will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow Sandia to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit, not later than the 25th day of the succeeding month, Standard Form (SF 294) only, on a quarterly basis current as of the last day of March, June, September and December, and upon contract completion, in accordance with the instructions on the form except the report shall be submitted quarterly rather than semi-annually and additionally shall indicate at the remarks block the number and dollar amount of awards made to labor surplus area concerns to the extent such reporting is required by the terms of their contract, and (iv) ensure that its subcontractors agree to submit SF 294 in accordance with the instructions at (iii) above.

- (11) A recitation of the types of records the offeror/quoter will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small and small disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists, guides, and other data that identify small and small disadvantaged business concerns.
  - (ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns.
  - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, and (C) if applicable, the reason award was not made to a small business concern.
  - (iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small and small disadvantaged business sources.
  - (v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.
  - (vi) On a contract-by-contract basis, records to support award data submitted by the offeror/quoter to Sandia, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
- (1) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
- (2) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.
- (3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.
- (4) Provide notice to subcontractors concerning penalties, listed below, for misrepresentations of business status as small business or small disadvantaged business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
- Penalties:
- 1. be punished by imposition of a fine, imprisonment or both
  - 2. be subject to administrative remedies, including suspension and debarment; and
  - 3. be ineligible for participation in programs conducted under the authority of the Small Business Act
- (f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror/quoter by this clause; provided, (1) the master plan has been approved, (2) the offeror/quoter provides copies of the approved master plan and evidence of its approval to the SCR, and (3) goals and any deviations from the master plan deemed necessary by the SCR to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) (1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's/quoter's production generally, for both commercial and noncommercial products, rather than solely to Sandia's contract. In these cases, the offeror/quoter shall, with the concurrence of the SCR, submit one company-wide or division-wide annual plan.
- (2) The annual plan shall be reviewed for approval by the agency awarding the offeror/quoter its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the SCR.
- (3) The approved plan shall remain in effect during the offeror's/quoter's fiscal year for all of the offeror's/quoter's commercial products.
- (h) Prior compliance of the offeror/quoter with other such subcontracting plans under previous contracts will be considered by the SCR in determining the responsibility of the offeror/quoter for award of the contract.
- (i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

CLAUSE 422-LM (2-91) LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

I. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(a) Policy. It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.

(b) Order of Preference. In complying with paragraph (a) above and with paragraph (b) of the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Contractor shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(c) Definitions

(1) "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

(2) "Labor surplus area concern," as used in this clause means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

II. LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

(a) The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the contract at prices no higher than obtainable elsewhere. The Contractor shall--

(1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns clause, and (iii) administer the Contractor's labor surplus area subcontracting program;

(2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;

(3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;

(4) Include the Utilization of Labor Surplus Area Concerns clause in subcontracts that offer substantial LSA subcontracting opportunities, and

(5) Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this clause. The records will be kept available for review by Sandia or the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulations.

(b) The Contractor further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns clause, terms that conform substantially to the language of this clause, including this paragraph (b), and to notify the SCR of the names of subcontractors.

CLAUSE 423-SB NOTICE OF SMALL BUSINESS SET-ASIDE (FAR 52.219-6)

(a) Definition

"Small business concern," as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) General

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) Agreement

A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts or in situations in which the SEB has established a waiver of the nonmanufacturers rule.

CLAUSE 424-DB NOTICE OF SMALL DISADVANTAGED BUSINESS SET-ASIDE (FAR 52.219-6)

(a) Definition

"Small disadvantaged business concern," as used in this provision, means a small business that (a) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged individuals and (b) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian

Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR part 124.

(b) General

- (1) Offers are solicited only from small disadvantaged business concerns. Offers received from concerns that are not small disadvantaged business concerns shall be considered nonresponsive and will be rejected.
- (2) Any award resulting from this solicitation will be made to a small disadvantaged business concern.

(c) Agreement

A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts or in situations in which the SBA has established a waiver of the nonmanufacturers rule.

CLAUSE 600-KCL (03-91) CLASSIFIED MATTER

I. SECURITY

- (a) Contractor's Duty to Safeguard all Classified Matter. The Contractor shall, as directed by and in accordance with DOE's security regulations and requirements, be responsible for safeguarding all classified matter (documents, drawings, information, material, etc.) and protecting against sabotage, espionage, loss and theft, the classified documents and material in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to Sandia (see Section "III") any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract and submit to Sandia a properly completed Certificate of Nonpossession/Retention of Classified Matter, SF 2902-T. If retention by the Contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the Sandia Contracting Representative (SCR), the Contractor will complete a Certificate of Nonpossession/Retention of Classified Matter, SF 2902-T, to be furnished to Sandia specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter and the period of retention, if known. If retention is approved by the SCR, the security provisions of the contract will continue to be applicable to the matter retained. Special Nuclear Material (SNM) shall not be retained after the contract completion or termination of the contract.

(b) Regulations. The Contractor agrees to conform to all security regulations and requirements as directed by DOE.

(c) Definitions

- (1) Classified Levels. The terms top secret, secret and confidential, as used in this clause, refer to the classification levels defined in Executive Order 12356.
  - (2) Classified Information. The term "classified information," as used in this Clause, means Restricted Data, Formerly Restricted Data, and National Security Information.
  - (3) Restricted Data. The term "Restricted Data," as used in this Clause, means all data concerning (a) design, manufacture, or utilization of atomic weapons; (b) the production of special nuclear material; or (c) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954 as amended.
  - (4) Formerly Restricted Data. The term "Formerly Restricted Data," as used in this Clause, means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.
  - (5) National Security Information. The term "National Security Information," as used in this Clause, means information or material which is owned by, produced for or by, or under the control of the United States Government, which has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
  - (6) Definition of Special Nuclear Material (SNM). SNM means: (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be SNM, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
  - (7) Authorized Original Classifier or Derivative Classifier. The terms Authorized Original Classifier and Derivative Classifier, as used in this clause, refer to the classification authorities defined in Executive Order 12356.
- (d) Security Clearance of Personnel. The Contractor shall not permit any individual to have access to any classified matter, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and DOE's regulations or requirements applicable to the particular level and category of classified matter to which access is required.
- (e) Criminal Liability. It is understood that disclosure of any classified matter relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to

safeguard any classified matter that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

- (f) Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the SCR, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.
- (g) Transfer of Classified Matter. No classified matter may be transferred to another location of the Contractor or subcontractor without the written consent of the SCR.

## II. CLASSIFICATION

In the performance of the work under this contract the Contractor shall ensure that an Authorized Classifier shall assign classifications to all documents, material and equipment originated or generated under the contract, if any, in accordance with classification regulations and guidance furnished to the Contractor by Sandia. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material or equipment shall include a provision to the effect that in the performance of such subcontract or purchase order the subcontractor or supplier shall ensure that an Authorized Classifier shall assign classifications to all such documents, material and equipment in accordance with classification regulations and guidance furnished to such subcontractor or supplier by the Contractor.

## III. SHIPMENTS

In no event shall the Contractor make a classified shipment to a location other than the approved classified mail/document address specified here. Contractor shall follow mailing and shipping procedures for classified matter consistent with the requirements of their facilities as directed by DOE.

The Contractor is authorized to use the following address when sending classified items to Sandia in performance of the statement of work specified for this contract.

Address: (To be completed at time of award)

When using this address as part of a classified mailing, all classified matter should be in an inner envelope marked:

"For (To be completed at time of award)"

All classified shipments (material/hardware) shall be in accordance with Security regulations as directed by DOE. Sandia packaging specification SPS 230 applies in all cases involving Secret Restricted Data (SRD) shipments.

If SRD is involved, the Contractor shall notify the SCR of the number of strapping seals required in sufficient time prior to packaging for shipment.

## IV. FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER

- (a) Before filing or causing to be filed a patent application in the United States disclosing any subject material of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the SCR. DOE shall determine whether, for reasons of national security, the application should be placed under an order of

secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the SCR regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the SCR shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

- (b) Before filing a patent application in the United States disclosing any subject matter of this contract classified "Confidential," the Contractor shall furnish to the Sandia Contracting Representative a copy of the application for DOE determination whether, for reasons of national security, the application shall be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

- (c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this Clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the SCR.

- (d) When filing any patent application coming within the scope of this Clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the SCR the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency (DOE) and number the contract or contracts that require security classification markings to be placed on the application.

- (e) The Contractor agrees to include, and require the inclusion of, this Clause in all subcontracts at any tier that cover or are likely to cover classified matter.

## V. MODIFICATION TO SECTION II

"A" Clause entitled, "Unclassified Contract" is hereby deleted in its entirety.

## VI. CLASSIFICATION LISTING

This contract is unclassified, but requires the Contractor to have access to or generate classified matter as listed below.

Origination of or use of classified information or material of higher classification level or category than listed is prohibited. Origination or use of RESTRICTED DATA is permitted only as specifically authorized below.

No classified portion of the work under this contract may be subcontracted nor may any classified information be furnished to any proposed or actual subcontractor except as approved in writing by the SCR.

ITEM IDENTIFICATION CLASSIFICATION

## VII. USE OF CONTRACTOR/SUBCONTRACTOR FACILITIES

Unless specific facilities are listed below, the only location(s) wherein the Contractor or its subcontractors are authorized to perform work requiring access to classified information or material, or to have classified information or material in their possession, is on site at Sandia-controlled premises in secured areas.

FACILITY NAME AND ADDRESS: (to be completed by Sandia at time of award)

CLAUSE 605-PX (04-91) ACCESS TO SANDIA COMPUTERS

- (a) 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.
- (b) Access to Sandia computing facilities by Contractor personnel may be permitted as required to perform the contract Statement of Work. Sandia computers may be used only to perform work authorized in the contract.
- (c) Computer software or documentation developed on or for Sandia computer systems is the property of Sandia and the Government unless provided otherwise in the contract.
- (d) 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 writing by the Sandia Contracting Representative.
- (e) Classified material or information shall be protected in accordance with the security provisions of the contract, if applicable. 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.
- (f) Files of any other user may not be accessed without specific permission from that user.
- (g) Sandia reserves the right to monitor computer use by reviewing the contents of all files on Sandia computers.
- (h) 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.

CLAUSE 610-FO (02-91) FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE OVER CONTRACTOR

- (a) For purposes of this clause, a foreign interest is defined as any of the following:
  - (1) A foreign government or foreign government agency;

- (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
- (3) Any form of business enterprise organized or incorporated under the laws of the U. S., or a State or other jurisdiction within the U. S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or
- (4) Any person who is not a U. S. citizen.

- (b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, classified material, or special nuclear material as defined in 10 CFR Part 710, may result.
- (c) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "SCR" shall mean the Sandia Contracting Representative. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- (d) The Contractor shall immediately provide the SCR written notice of any changes in the extent and nature of FOCI over the Contractor which would affect the answers to the questions presented in 48 CFR 952.204-73 (Sandia Form SF 6432-QS). Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the SCR.
- (e) In those cases where a Contractor has changes involving FOCI, the Department of Energy (DOE) must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the DOE shall consider proposals made by the Contractor to avoid or mitigate foreign influences.
- (f) If the SCR at any time determines that the Contractor is, or is potentially, subject to FOCI, the Contractor shall comply with such instructions as the SCR shall provide in writing to safeguard any classified information, classified material, or significant quantity of special nuclear material.
- (g) The Contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information, classified material, or a significant quantity of special nuclear material. Additionally, the Contractor shall require such subcontractor to submit a completed certification required in 48 CFR 952.204-73 (Sandia Form SF 6432-QS) prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the SCR.
- (h) Information submitted by the Contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE and Sandia to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (i) The requirements of this clause are in addition to the requirement that a Contractor obtain and retain the security clearances required by the

contract. This clause shall not operate as a limitation on Sandia's or DOE's rights, including Sandia's right to terminate this contract.

- (j) The SCR may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the SCR's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if in the SCR's judgment, the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The SCR may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

#### CLAUSE 708-TA (04-91) TECHNICAL REPORTS

##### I. FINAL REPORT

(a) Requirements

A final report following completion of the work required by this contract shall be submitted in the number of copies specified in Section I and one set of reproducible masters. It shall be preceded by a draft for approval. The draft is due 30 days after completion of work. The final report is due 30 days after approval of the draft. Reporting requirements need to be coordinated with the Sandia Delegated Representative, if one is specified in the contract, or, if not, the Sandia Contracting Representative (SCR).

(b) Report Content

The final report shall cover: work accomplished; results obtained; problem areas; and recommended solutions for actions. This report shall be a summary of technical activities during the entire contract performance and a comprehensive evaluation of progress in the area of research, study or development supported by this contract.

(c) Specifications

The report shall consist of: an original reproducible set (by typewriter or word processor) comprising a cover; the written matter; and illustrations as appropriate.

The report cover shall include: Report title; Sandia contract number; Sandia Requester name and organization number; SCR name and organization number; Sandia report (SAND) number stated in Section I; and, if classified Secret, Reference Symbol.

The original reproducible master, charts, line drawings and sketches are to be in black on white.

Photographs are to be glossy prints any size between 4 x 5 and 8 x 10 (8 x 10 preferred).

(d) Transmittal

Unclassified matter is to be sent by First Class Mail. Classified matter is to be mailed in accordance with DOE approved security requirements to the address stated in the "Classified Matter, 600-RCL" clause.

When drafts or final reports are mailed, Contractor shall also provide written notification of the mailing to the SCR.

(e) Distribution

Except as otherwise provided in this contract (which exception includes DOE Patent Representative requests) no distribution or dissemination of a report in whole or in part may be made by the Contractor without specific prior written approval by the SCR.

##### II. INTERIM REPORTS

Monthly or quarterly Interim Reports, as specified in Section I in a form acceptable to the SCR, are due 15 days after the reporting period. These reports shall cover the work accomplished during the reporting period and that planned for the subsequent period. Such report shall indicate: compliance with contract requirements and any failures to comply; the current status and technical effort expected to be devoted to the next period; and the best estimate of probable events during the remainder of the contract.

#### CLAUSE 824-DR (07-92) ORGANIZATIONAL CONFLICTS OF INTEREST - DISCLOSURE OR REPRESENTATION

It is Department of Energy (DOE) policy to avoid situations which place a DOE or Sandia Contractor in a position where the Contractor's judgment may be biased because of any past, present, or currently planned interest, financial, contractual, organizational or otherwise, the Contractor may have which relates to the work to be performed pursuant to this Request for Quotation (RFQ) or where the Contractor's performance of such work may provide it with an unfair competitive advantage. (As used in this Clause, "Contractor" means the offeror or any of its affiliates, successors in interest or proposed consultants or subcontractors of any tier.)

##### DISCLOSURE OR REPRESENTATION

- (a) The Contractor shall, in a sealed envelope, provide the Sandia Contracting Representative (SCR), a statement which describes in a concise manner all relevant facts concerning any past, present, or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the Contractor has a possible organizational conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. The Contractor may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

- (b) In the absence of any relevant interests referred to above, the Contractor shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to possible organizational conflicts of interest. Contractor's proposed consultants and subcontractors are responsible for submitting information and may submit it directly to the SCR in a sealed envelope.

- (c) The sealed envelope submitted to the SCR shall be forwarded to DOE for review of the Contractor's statement and DOE through the SCR may require additional relevant information from the Contractor. All information submitted, and any other known relevant information, will be used to determine whether an award by Sandia to the Contractor may create an organizational conflict of interest. If such organizational conflict of



interest is found to exist, DOE through Sandia may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the Contractor, or (3) determine that it is otherwise in the best interest of the Government to contract with the Contractor by including appropriate conditions mitigating such conflict in the contract awarded.

To the extent that the Contractor's statement contains matter so marked, it shall be treated by DOE as proprietary or trade secret under applicable law and shall not be disclosed except as permitted by such law.

(d) The failure or refusal to provide the disclosure or representation and any additional information as required may result in disqualification of the Contractor for award of this Sandia contract. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the Contractor for award of this Sandia contract, or if such nondisclosure or misrepresentation is discovered after award, the resulting Sandia contract may be terminated for default. The Contractor may also be disqualified from subsequent related DOE or Sandia contracts or subcontracts, and be subject to such other remedial action by the Government as may be permitted or provided by law or in the resulting contract. The attention of the Contractor in complying with this provision is directed to 18 U.S.C. 1001.

(e) Depending on the nature of the contract activities, the Contractor may, because of possible organizational conflicts of interest, propose to exclude specific kinds of work from the statement of work contained in an RFQ, unless the RFQ specifically prohibits such exclusion. Any such proposed exclusion by a Contractor will be considered by Sandia in the evaluation of proposals, and if Sandia considers the proposed excluded work to be an essential or integral part of the required work, the proposal may be rejected as unacceptable.

(f) No award to the Contractor shall be made until the disclosure or representation required by this clause has been evaluated. Failure to provide the disclosure or representation may be deemed to be a minor informality and the Contractor may be permitted to correct the omission promptly.

A suggested format for the Contractor to furnish a list of past, present, and currently planned activities (including contracts) which relate to the work to be performed under this RFQ is a columnar format showing:

- (1) The company (or agency) for which the work is being, has been, or will be performed;
- (2) Nature of the work (a brief description);
- (3) Period of performance for the work;
- (4) Dollar value of the work; and
- (5) Sales and marketing activity.

Similar information should be provided by the Contractor's subcontractors and consultants relating to the work to be performed by them under this RFQ.

(g) All statements, disclosures and/or representations relative to a potential conflict of interest, provided by the Contractor pursuant to this Clause should be enclosed in a sealed envelope addressed

to the attention of the responsible SCR. Clearly mark the following on the front of the envelope:

- (1) Current date;
- (2) Solicitation (RFQ) number;
- (3) Contractor's name and address;
- (4) Name of the SCR; and
- (5) A statement reading substantially as follows:

"Notice to SCR: This envelope contains confidential information of the type required by the Organizational Conflicts of Interest Disclosure or Representation Clause in the referenced RFQ. Do not open this envelope; all statements, disclosures, and/or representations should be forwarded to the Area Manager, DOE Kirtland Area Office, for evaluation."

CLAUSE 826-OS (07-92) ORGANIZATIONAL CONFLICTS OF INTEREST - SPECIAL

(a) Purpose. The primary purpose of this Clause is to aid in ensuring that the Contractor (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this Sandia contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter in this Clause collectively referred to as the "Contractor") in the activities covered by this Clause as a Contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity.

(1) Technical Consulting and Management Support Services

(i) The Contractor shall be ineligible to participate in any capacity in DOE or Sandia contracts, subcontracts, or proposals therefore which stem directly from the Contractor's performance of work under this contract. Furthermore, unless so directed in writing by the Sandia Contracting Representative (SCR), the Contractor shall not perform any technical consulting or management support services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for technical consulting and management support services.

(ii) If the Contractor under this contract prepares a complete or essentially complete statement of work or specification to be used in competitive

procurements, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the SCR, in which case the restriction in this subparagraph shall not apply.

- (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard commercial items to Sandia or the Government.

(2) Access To and Use of Information

- (i) If the Contractor, in the performance of this contract, obtains access to information, such as DOE or Sandia plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of DOE or Sandia it shall not: (A) use such information for any private purpose unless the information has been released or otherwise made available to the public; (B) compete for work directly or indirectly for DOE or Sandia based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and (D) release such information unless such information has previously been released or otherwise made available to the public by DOE or Sandia.
- (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
- (iii) The Contractor shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produces

under this contract for its private purpose provided that, as of the date of such use, all reporting requirements of this contract have been met.

(c) Disclosure after Award

- (1) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract, an immediate and full disclosure shall be made in writing in a sealed envelope to the SCR which shall include a description of the action which the Contractor has taken or proposes to take to avoid or mitigate such conflicts.

Sandia may, however, terminate the contract for convenience if it deems such termination to be in the best interests of the Government or Sandia.

- (2) In the event that the Contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict, Sandia may terminate the contract for default.

(d) Subcontracts

- (1) The Contractor shall include this Clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) above or access to information of the type covered in (b)(2) above. The terms "Contract", "Contractor", and "Sandia Contracting Representative" shall be appropriately modified to preserve Sandia's and the Government's rights.
- (2) If a subcontract is to be issued for evaluation services or activities, or technical consulting and management support services, as defined at 48 CFR 909.570, the Contractor shall obtain for Sandia in a sealed envelope a disclosure statement or representation, in accordance with DOE regulations in effect at the time, from each intended subcontractor or consultant. The Contractor shall not enter into any subcontract nor engage any consultant unless the SCR shall have first notified the Contractor that it has been determined there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of the Government.

For purposes of this Clause the term "Department" as used in the above-cited definition includes "Sandia".

- (e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, Sandia may terminate the contract for default, disqualify the contractor for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.

- (f) Waiver. Requests for waiver under this Clause shall be directed in writing, in a sealed envelope addressed to the SCR, and shall include a full

description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, such a waiver may be granted in writing.

(g) Modifications. Prior to a contract amendment, when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the contract are changed, the Contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.

(h) All statements, disclosures and/or representations relative to a potential conflict of interest, provided by the Contractor pursuant to this Clause should be enclosed in a sealed envelope addressed to the attention of the responsible SCR. Clearly mark the following on the front of the envelope:

- (1) Current date;
- (2) Contract Number;
- (3) Contractor's name and address;
- (4) Name of the SCR; and

"Notice to SCR: This envelope contains confidential information of the type required by the Organizational Conflicts of Interest Clause in the referenced contract. Do not open this envelope; forward it to the Area Manager, DOE Kirtland Area Office, for evaluation."