

SANDIA CORPORATION
SF 6432-TM (04-08)
Section II

STANDARD TERMS AND CONDITIONS FOR TIME AND MATERIALS LABOR-HOUR CONTRACTS THE FOLLOWING CLAUSES APPLY TO THIS CONTRACT AS INDICATED UNLESS SPECIFICALLY DELETED, OR EXCEPT TO THE EXTENT THEY ARE SPECIFICALLY IDENTIFIED AS BEING CHANGED SUPPLEMENTED OR AMENDED IN WRITING ISSUED BY THE SANDIA CONTRACTING REPRESENTATIVE .

TM01 - ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

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

TM02 - APPLICABLE LAW

The rights and obligations of the parties hereto shall be governed by this contract and construed in accordance with the law of the state of delivery, except for Federal Acquisition Regulation (FAR) and FAR supplement clauses which shall be in accordance with federal law. The parties agree to jurisdiction in the Federal District Court, with venue in the district closest to the delivery point of the items or services giving rise to the claim. In the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in the State Court closest to the delivery point of the items or services giving rise to the claim.

TM03 – ASSIGNMENT

Contractor shall not assign rights or obligations to third parties without the prior written consent of the Sandia Contracting Representative (SCR). However, the Contractor may assign rights to be paid amounts due or to become due if the SCR is promptly furnished an executed Assignment of Payments form. Administration of this contract may be transferred from Sandia to the U.S. Department of Energy/National Nuclear Security Administration (DOE/NNSA) or its designee, and in case of such transfer and notice thereof to the Contractor, Sandia shall have no further responsibilities hereunder.

TM04 - AUTHORIZED DISTRIBUTORS

Unless specifically authorized in this contract, in writing, the contractor shall only furnish items/components provided by authorized distributors and not independent distributors. Any item/components furnished from an independent distributor shall meet all OEM specifications and industry standards.

TM05 – BANKRUPTCY

If the Contractor enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the SCR responsible for this contract within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court, and a listing of the agreement numbers for which final payment has not been made.

TM06 - BREACH OF CONTRACT

Any Contractor personnel who personally violate any requirements of this contract may be denied access to any government site and Contractor may be terminated for default of this contract.

TM07 - CLAIM OF COSTS INCURRED

Contractor shall provide a claim of costs incurred (Electronic Cost Claim or "ECC") to the Sandia National Laboratories Contract Audit Department annually within ninety (90) days after end of the Contractor's fiscal year. An ECC is prepared by the Contractor and provided to Sandia Contract Audit in preparation for an audit of the costs incurred and claimed by the Contractor.. It is used to compare and reconcile previously billed and paid amounts that are shown in Sandia's accounting system. It also provides the Contractor with an additional opportunity to review previous billings to ensure there have not been omissions or errors. The ECC serves as the Contractor's representation of incurred costs against a government-funded contract. The ECC shall include all costs incurred on this contract during the fiscal year just ended. Additionally, an ECC shall be submitted for any adjustment to any previously reported cost for any prior year. The format and acceptability for an ECC shall be determined by the Contract Audit Department. The Contractor may obtain templates and instructions for submission of the ECC from the Contract Audit Department upon request and at the following website: http://www.sandia.gov/bus-ops/scm/Contractor/AuditDocs/Sand2007_8015_P_ElectronicCostClaim.doc With the agreement of the Sandia Auditor assigned to perform the audit, the Contractor may provide the required information in a different manner or format.

TM08 - COMPLIANCE WITH LAWS

Contractor shall procure all necessary permits or licenses and abide by all applicable federal, state and local laws, ordinances, or regulations, in which any work under this contract is performed which are in any way applicable to the Statement of Work (SOW) of this contract.

TM09 – DEFINITIONS

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

(a)) AUTHORIZED DISTRIBUTORS – distributors who have contractual agreements with manufacturer to represent them in the sales of their parts

(b) CONTRACT means Purchase Order, Contract, Price Agreement, Subcontract, Ordering Agreement, or modifications thereof.

(c) GOVERNMENT means the United States of America and includes the Department of Energy/National Nuclear Security Administration (DOE/NNSA) or any duly authorized representative thereof.

(d) COMMERCIAL ITEM means commercial items, commercial services, and commercial components as defined in FAR Part 2.101.

(e) CONTRACTOR means the person or organization that has entered into this contract to sell something to Sandia.

(f) CONTRACTOR-DIRECTED WORK means work under a contract for which the Contractor is accountable for the outcome of the work performed and routinely provides work direction to the Contractor's work force

(g) Independent distributors (often called brokers) – distributors who buy and sell parts (note: they have no contractual agreement with manufacturers and get parts where they can)

(h) SANDIA means Sandia Corporation, the management and operating Contractor for the Sandia National Laboratories under Contract No. DE-ACO4-94AL-85000 with the U.S. Department of Energy/National Nuclear Security Agency (DOE/NNSA).

(i) SANDIA-DIRECTED WORK means work under a contract for which Sandia retains accountability for the outcome of the work performed and routinely provides work direction to the Contractor's work force.

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

(k) SDR means Sandia Delegated Representative. 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 SDR shall exercise no supervision over the Contractor's employees. **THE SDR'S AUTHORITY IS LIMITED SOLELY TO THE AUTHORITY ENUMERATED IN SUCH WRITTEN DELEGATION. THE SDR HAS NO AUTHORITY TO CHANGE ANY TERM OR CONDITION CONTAINED IN THIS CONTRACT.**

(l) SUBCONTRACT means any lower tier contract under this contract.

TM10 – DISPUTES Contractor and Sandia agree to use the Sandia Acquisition Conflict Resolution Process Guideline 5.8 set forth at: <http://www.sandia.gov/bus-ops/scm/Contractor/Contractor-info.html> for resolving any and all disputes arising from this contract.

TM11 - 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.

TM12 - EXTRAS AND VARIATION IN QUANTITY

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

TM13 - GOVERNMENT PROPERTY MATERIAL AND EQUIPMENT

Except as provided for in Section I, Contractor must list the government material/equipment Contractor will use in the performance of the SOW in this contract and provide details concerning its use. Identification, inspection, maintenance, protection, and disposition of government property shall conform with the policies and principles of FAR Part 45, 48 CFR (DEAR) 945, the Federal Property Management Regulations 41 CFR 101, the DOE Property Management Regulations 41 CFR 109, and DEAR 970.5245-1 Property.

TM14 INDEPENDENT CONTRACTOR RELATIONSHIP

(a) Contractor is an independent contractor in all its operations and activities related to this contract. The employees used by Contractor to perform Work under this Contract shall be Contractor's employees without any relation whatsoever to Sandia Corporation.

(b) Contractor shall be responsible for all losses, costs, claims, causes of action, damages, liabilities, and expenses, including attorneys' fees, all expenses of litigation and/or settlement, and court costs, arising from any act or omission of Contractor, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this Contract.

(c) Contractor shall indemnify and hold harmless Sandia from and against any actual or alleged liability, loss, costs, damages, fees of attorneys, and other expenses which Sandia may sustain or incur in consequence of:

(i) Contractor's failure to pay any employee for the Work rendered under this Contract, or

(ii) any claims made by Contractor's personnel against Sandia.

The Contractor shall flow down the requirements of this clause to any applicable subcontracts for services.

TM15 - NOTICE OF POTENTIAL DELAY

Whenever the Contractor has knowledge of 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 SCR. Such notice shall not relieve the Contractor from complying with all of the requirements of this contract.

TM16 - ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Section I; (2) SF 6432-TM (12-04), Section II.

TM17 – PAYMENT

(a) Hourly Rate. Subject to approval by the SCR of individual invoices or vouchers, and pursuant to FAR Part 31 as supplemented by DEAR Part 931 in effect on the date of this contract, the Contractor shall be paid as follows: (1) The amounts computed by multiplying the appropriate hourly rate, or rates, set forth in Section I by the number of direct labor hours performed, which rates shall include wages, indirect cost, general and administrative expense and profit; provided, however, that the fractional parts of an hour shall be payable on a prorated basis. Invoices or vouchers may be submitted once each month (or at more frequent intervals, if approved by the SCR), to the SCR or SCR's designee. Unless otherwise specified in this contract, the hourly rate only applies to employees of the Contractor and not to employees of subcontractors performing subcontracts as defined herein. For the purposes of this clause, employees of the Contractor are defined as individuals who are treated as its employees with respect to federal or state income or employment taxes to the extent such individuals are so employed and are so treated. (2) Total time paid for all of Contractor's personnel chargeable to Sandia in those occupational classifications set forth in the clause of Section I of this contract entitled "Allowable Charges," shall be recorded on readily auditable and certified correct time records. Each time record shall bear the name of the individual, occupational classification, dates and hours worked, and shall segregate total hours worked between: (1) those hours worked hereunder, identified by reference to this contract, and (2) each suborder, if any, issued hereunder, and those hours worked on all other contracts. In addition, when work is performed on Sandia-controlled premises, the time involved shall be recorded on Sandia's form (or equivalent Contractor-supplied form acceptable to the SCR) which shall be certified by Contractor's representative and approved by a delegated Sandia representative as authorized by the SCR, and (3) Unless provisions of Section I hereof otherwise specify, the hourly rate or rates set forth in Section I shall not be varied by virtue of the Contractor having performed work on an overtime basis. If Section I provides rates for overtime work, the overtime work will be reimbursable at over-time rates only to the extent the overtime work is authorized in writing by the SCR or his/her delegate and any unauthorized overtime work will be reimbursable at the standard time rates.

(b) Materials (Including Subcontracts). Subject to approval by the SCR of individual invoices or vouchers, and pursuant to FAR Part 31 as supplemented by DEAR Subpart 931 in effect on the date of this contract, the Contractor shall be paid as follows: (1) Net invoice cost or charges for direct materials as provided in this contract. The Contractor

shall maintain records which will support all material costs claimed by paid invoices or storeroom requisitions, or by other substantiation acceptable to Sandia. Direct materials as referenced by this clause are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including when appropriate, general and administrative expense, allocated to direct materials. (2) The cost of subcontracts which are authorized pursuant to the "Subcontracts" clause hereof shall be reimbursable costs hereunder, provided such costs are consistent with subparagraph (3) below. Reimbursable cost in connection with subcontracts shall be limited to the amounts actually required to be paid by the Contractor to the subcontractor and shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract if the costs are included in the hourly rates payable under (a) (1) above. The term "subcontracts" does not include the purchase of raw material or commercial stock items. Cost for items of capital property as defined herein if applicable, shall be separately listed in invoices. (3) The Contractor shall, to the extent of its ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, it shall promptly notify the SCR to that effect, and give the reason therefore. Credit shall be given to Sandia for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of the Contractor, or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of Sandia or the government, shall not be deducted from gross costs. (4) When the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding (b) (1), above, shall be on the basis of an established catalog or list price in effect when the material is furnished, less all applicable discounts to Sandia or the government. (5) Where under the clause of Section I entitled "Allowable Charges," any equipment usage time is chargeable to this contract, the Contractor shall record the total working time of such equipment on readily auditable and certified correct time records. Each time record shall identify the equipment, shall show dates and time used, and shall segregate total usage time between that used hereunder, identified by reference to this contract and applicable suborder number or numbers, and all other usage.

(c) Notice of Cost Approaching Ceiling Price. It is estimated that the total cost to Sandia for the performance of this contract will not exceed the ceiling price set forth in Section I and the Contractor agrees to use its best efforts to perform the work specified in Section I and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe the hourly rate payments and material costs which will accrue in the performance of this contract in the next succeeding thirty (30) days, when added to all other payments and costs previously accrued, will exceed seventy-five (75) percent of the ceiling price then set forth in Section 1, the Contractor shall notify the SCR to that effect giving its revised

estimate of the total price to Sandia for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to Sandia for the performance of this contract will be substantially greater or less than the then-stated ceiling price, the Contractor shall so notify the SCR, giving its revised estimate of the total price for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, Sandia has reason to believe that the work to be required in the performance of this contract will be substantially greater or less than the stated ceiling price, the SCR, will so advise the Contractor, giving the then-revised estimate of the total amount of effort to be required under the contract and the ceiling amount shall be revised accordingly.

(d) Limitation of Obligation. Sandia shall not be obligated to pay the Contractor any amount in excess of the ceiling price set forth in Section I and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in Section I, unless and until the SCR shall have notified the Contractor in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall thereupon constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in Section I has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs had been incurred after such increase in the ceiling price.

(e) Audit of Invoices or Vouchers. At anytime or times, as deemed necessary by the SCR, but not later than three (3) years after final payment under this contract, Sandia may perform an audit of the invoices or vouchers submitted for labor, material, travel, and any other charges. Each payment theretofore made shall be subject to reduction to the of amounts which are found by Sandia not to have been properly payable, and shall also be subject to reduction for overpayments, or to increase for underpayments, on preceding invoices or vouchers. Prior to final payment under this contract, the Contractor shall execute and deliver to Sandia a release in form and substance satisfactory to the SCR, discharging Sandia and the government, their officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

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

(g) Method of Payments. Payments may be made either by check or electronic funds transfer, at the option of Sandia. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

(h) Prompt Payment Discounts. Sandia may take contract or invoice prompt payment discount. 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 or the date on which the electronic funds transfer was made.

(i) Travel and Other Direct Costs. The Contractor shall be paid net invoice cost or

charge for travel and other direct cost as provided in this contract subject to approval by the SCR of individual invoices or vouchers and pursuant to FAR Part 31 as supplemented by DEAR Part 931 in effect on the date of this contract.

TM18 - PERFORMANCE EVALUATION PROGRAM

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

TM19 - PRICING OF CONTRACT AND SUBCONTRACT MODIFICATIONS

The cost principles and procedures set forth in FAR Part 31 as modified by DEAR Part 931 shall be used to price contract and subcontract modifications, if any, whenever cost analysis is performed to negotiate the price of any such modification.

TM20 - RECYCLED AND/OR NEW MATERIALS

Unless otherwise specified in this contract, all Items delivered shall consist of recycled and/or new materials. New is defined as previously unused which may include residual inventory or unused former government surplus property. Contractor shall give preference to the use of recycled materials as set forth in DEAR 970.5204-39 ACQUISITION AND USE OF ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES (OCT 1995).

TM21 - RELEASE OF INFORMATION

(a) No invention, export control, or classified 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 the SOW of this contract without advance written approval of the SCR. In no event shall the interest of Sandia or the DOE/NNSA or the government in this contract be indicated in any advertising or publicity without advance written approval of the SCR. This shall not be construed to prohibit Contractor from fulfilling routine internal or external reporting of its activities, including the disclosure of the existence and nature of this contract as required by law. External reporting as used in this clause refers to reports submitted to state or federal government offices. **(b)** The Contractor shall closely coordinate with the SCR regarding any proposed scientific, technical, or professional publication of the results of the work performed or any data developed under this contract. The Contractor shall provide Sandia an opportunity to review any proposed manuscripts describing, in whole or in part, the results of the work performed or any data developed under this contract at least forty-five (45) days prior to their submission for publication. Sandia will review the proposed publication and provide comments. A response shall be provided to the Contractor within forty-five (45) days; otherwise, the Contractor may assume that Sandia has no comments. Subject to the security requirements of this contract, the

Contractor agrees to address any concerns or issues identified by Sandia prior to submission for publication. **(c)** The Contractor may acknowledge the Contractor and government sponsorship of the work as appropriate. **(d)** The Contractor shall insure that the recipient of any information provided be the Contractor complies with the provisions of this clause

TM22 - RELEASES VOID

Representatives from Sandia and the government 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.

TM23 - REPORTS REQUIRED BY THIS CONTRACT

Final reports following completion of the work required by this contract and interim reports as may be required by this contract constitute deliverables under this contract and shall be submitted in an electronic format such as Microsoft Word or other format commonly used at Sandia along with any paper format required by this contract and shall be submitted on a CD ROM, DVD ROM or other media requested by the SDR.

TM24 - RIGHTS AND INTERESTS

Any rights and interests that may result from this contract shall pass directly from the Contractor to the government. FAR 52.227-17 applies to all deliverables which are copyrightable works produced as part of the performance of this contract.

TM25 - RISK OF LOSS

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

TM26 – SANDIA PROVIDED INFORMATION

Any and all physical forms of designs, design data, specifications, technical, scientific data, and other information furnished by Sandia to the Contractor shall remain the property of the government. Any and all such information provided by Sandia to the Contractor 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. The provisions of this clause shall be included in any subcontract where information provided by Sandia shall be made available to the lower tier subcontractor(s).

TM27 – SUBCONTRACTS

All subcontracts shall be made in the name of the contractor and shall not bind nor purport to bind Sandia or shall not relieve Contractor of any obligation under this purchase order/contract If Contractor subcontracts any work in the performance of this contract, Contractor shall incorporate into every such contract an appropriate set of Sandia Ts&Cs found at: <http://www.sandia.gov/bus-ops/scm/Contractor/Contractor-info.html> or may use the latest revision of SF 6432-CI

for the purchase of Commercial Items that are products or SF 6432-CS for commercial services , into any such subcontract.

TM28 - Suspect/Counterfeit Items (S/CI)

Suspect/counterfeit items or services are a serious concern to Sandia because they present a potential threat to personal safety, equipment and system reliability and/or compliance with regulatory environmental standards. Failure of a safety or mission critical system due to an S/CI could also have security implications at DOE facilities. Notwithstanding other warranty provisions of this Contract, Contractor expressly warrants that all items provided under this Contract are suitable for the intended or specified use and that no suspect or suspect counterfeit items, component parts or materials have been furnished or delivered to Sandia under this Contract.

Contractor's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Sandia. In the event that a suspect or suspect counterfeit item, as defined herein, is identified and/or delivered to Sandia, Contractor agrees to comply all requirements stated in this Clause.

Definitions

Suspect Item: A suspect item is an item in which there is an indication by visual inspection, testing, or other verifiable information, that the item may not conform to established U.S. Government or industry-accepted specifications and national consensus standards.

Suspect/Counterfeit Item: A counterfeit item is an item that is suspected to be a copy or substitute without legal right or authority to do so, or its material, performance, characteristics or identity do not appear to be authentic and/or is knowingly misrepresented by the supplier, manufacturer or distributor.

Contractor shall only provide items and services that meet or exceed all requirements specified in this Contract including verifiable compliance with all applicable quality, safety and manufacturing standards including all U.S. Government or industry-accepted specifications and national consensus standards. Examples of such standards include, but are not limited to: Underwriter's Laboratory (UL) Listing, National Fire Protection Association (NFPA), Standard of Mechanical Engineers (ASME), Institute of Electrical and Electronics Engineers (IEEE), Occupational Safety and Health Act (OSHA), American Society for Testing Material (ASTM), Nationally Recognized Testing Laboratory (NRTL), etc.

Types of material, parts, and components known to have been misrepresented include (but are not limited to) fasteners, hoisting, rigging, and lifting equipment; cranes, hoists, valves, pipe and fittings, electrical equipment and devices plate, bar, shapes, channel members, and other heat treated materials and structural items, welding rod and electrodes, and computer memory modules. Additional detailed information is available

at the Department of Energy (DOE) Training Manual on Suspect/Counterfeit Awareness

http://hss.energy.gov/CSA/CSP/sci/SCI_TrainingManual_100306_rev5.pdf.

Contractor is responsible to have a quality assurance program that detects and prevents suspect/counterfeit items from being furnished or used in the performance of work under this Contract. If requested by Sandia, Contractor shall furnish a certificate of compliance with delivery stating that all items fully comply with all requirements of this Contract.

In the event that the Contractor identifies or suspects that a suspect/counterfeit item may have been delivered under this Contract, Contractor shall immediately notify the Sandia Contracting Representative and the Sandia end-user or delegated representative identified in the Contract. Contractor shall document and provide all available information regarding any item or service furnished under this Contract that is suspected to be a suspect/counterfeit item, component, subcomponent part or material. Sandia shall impound the item(s) and notify the local Department of Energy and will comply with all other applicable notification and reporting requirements.

The Contractor may be required to replace such item(s) with item(s) acceptable to Sandia and shall be liable for all costs relating to the impoundment, removal, and replacement of the item(s). Contractor shall indemnify Sandia, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

Detection of any suspect or suspect/counterfeit item(s) leading to evidence of deliberate misrepresentation of any supplied item(s), including components, subcomponent parts or materials used in the item(s), may result in an investigation into the validity of certification, fraud, and/or forgery. Because falsification of information or documentation may constitute criminal conduct, the Contractor will notify cognizant Department of Energy officials and the Office of the Inspector General.

Note: If this Contract provides for the use of credit cards, their use in no way relieves the Contractor from complying with all requirements of this Clause.

TM29 – TAXES

By reason of Sandia's Nontaxable Transaction Certificate, the Contractor should not incur nor include in the price any state and local taxes. FAR 52.229-10 State of New Mexico Gross Receipts and Compensating Tax is applicable. Sandia holds California Contractor's Permit Number OH-98033576. Purchases made under this contract are exempt from California Sales and Use Taxes if performance occurs in California.

TM30 – TRANSPORTATION

All transportation shall be "FOB Origin" unless otherwise specified in this contract. If

transportation is specified "FOB Origin": (a) no insurance cost shall be allowed unless authorized in writing, and (b) the bill of lading shall indicate that transportation is for DOE/NNSA and the actual total transportation charges paid to the carrier(s) shall be reimbursed by the government pursuant to Contract No. DE-ACO4-94-AL-85000. Sandia National Laboratories will make confirmation.

TM31 – WARRANTY

Contractor expressly warrants that no counterfeit items or components in items shall be delivered to Sandia on this contract. Contractor expressly warrants that all items provided under this contract shall have a rightful transfer of good title thereto and are delivered free of any rightful claims of any third person by way of infringement of any intellectual property right. The warranty shall begin upon receipt of conforming items and extend for a period of: (1) the manufacturer's warranty period or six (6) months, whichever is longer, if the Contractor is not the manufacturer and has not modified the item, or (2) one (1) year or the manufacturer's warranty period, whichever is longer, if the Contractor is the manufacturer of the item or had modified it. If any nonconformity with item appears within that time, Contractor shall promptly repair, replace, or reperform such items at Contractor's election. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Contractor's expense. Sandia shall notify Contractor of such nonconformity within a reasonable time after discovery, and Contractor shall notify Sandia of whether it chooses to make repairs or replacements within three (3) working days after Sandia's notice of nonconformity. If repair or replacement or reperformance of services is not timely, Sandia may elect to return the nonconforming items or repair or replace them or reprocur the services at Contractor's expense.

TM32 - ADDITIONAL TERMS AND CONDITIONS

This contract incorporates by reference with the same force and effect as if they were given in full text, the following cited Federal Acquisition Regulation (FAR) clauses and Department of Energy Acquisition Regulation (DEAR) clauses. The full text of these clauses may be found at Title 48 of the Code of Federal Regulations (CFR). 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. Deviations to clauses can be found at <http://www.sandia.gov/bus-ops/scm/Contractor/Contractor-info.html>

TM33 - APPLY TO CONTRACTS AT ANY VALUE

FAR 52.208-8 Required Sources For Helium And Helium Usage Data (Apr 2002)

FAR 52.222-1 Notice to the Government of Labor Disputes

FAR 52.223-3 Hazardous Material Identification And Material Safety Data with Alt.I

FAR 52.225-13 Restrictions on Certain Foreign Purchases

FAR 52.227-3 Patent Indemnity

FAR 52.227-23 Rights to Proposal Data (Technical). (This clause applies only in any subcontract awarded based on consideration of a technical proposal.)

FAR 52.229-10 State Of New Mexico Gross Receipts and Compensating Tax as modified by DEAR 970.2904-1

FAR 52.244-6 Subcontracts for Commercial Items and commercial Components

FAR 52.246-1 Contractor Inspection Requirements

FAR 52.246-6 Inspection – Time and Material and Labor Hours
FAR 52.249-6 Termination (Cost-Reimbursement)
DEAR 952.204-71 Sensitive Foreign Nations Controls
DEAR 925.211-71 Priorities and Allocations (Atomic Energy). (This clause applies only if the cover page designates a government priority.)
DEAR 952.211-71 Priorities and Allocations (Domestic Energy Supplies) Alternate I (This clause applies only if the cover page designates a government priority.)
DEAR 952.247-70 Foreign Travel
DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (This clause is applicable to any subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) of the clause. However, this clause is not applicable to contracts in which the contractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under this contract)
DEAR 970.5204-2 Laws, Regulations, and DOE Directives
DEAR 970.5227-7 Royalty Information (Patent Counsel, as used in this clause, means the Patent Attorney, NNSA Service Center, P. O. Box 5400, Albuquerque, New Mexico 87185-5400.)
DEAR 970.5227-8 Refund of Royalties
DEAR 970.5232-3 Accounts, Records and Inspections -Alternate II
DEAR 970.5208-1 Printing
DEAR 970.5223-2 Affirmative Procurement Program (This clause applies to contracts for the operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet.)
DEAR 970.5243-1 Changes
DEAR 970.5245-1 Property

TM34 - APPLY TO CONTRACTS EXCEEDING \$2,500

FAR 52.222-41 Service Contract Act of 1965 as Amended

TM35 - APPLY TO CONTRACTS EXCEEDING \$10,000

FAR 52.222-21 Prohibition of Segregated Facilities

FAR 52.222-26 Equal Opportunity

FAR 52.222-29 Notification of Visa Denial

FAR 52.222-35 Equal Opportunity For Special Disabled Veterans, Veterans of the Viet Nam Era, and Other Eligible Veterans

FAR 52.222-36 Affirmative Action Workers With Disabilities

FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of The Viet Nam Era and Other Eligible Veterans

TM36 - APPLY TO CONTRACTS EXCEEDING \$25,000

FAR 52.225-1 Buy American Act-Supplies

TM37 - APPLY TO CONTRACTS EXCEEDING \$30,000

FAR 52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment

TM38 - APPLY TO CONTRACTS EXCEEDING \$100,000

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government

FAR 52.203-7 Anti-Kickback Procedures

FAR 52.203-10 Price or Fee Adjustment For Illegal or Improper Activity

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

FAR 52.215-2 Audit and Records--Negotiation

FAR 52.219-8 Utilization of Small Business Concerns

FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation

FAR 52.227-1 Authorization and Consent. (This clause is not applicable where both complete performance and delivery are outside the United States, its possessions or Puerto Rico.

FAR 52.227-2 Notice of Assistance Regarding Patent and Copyright Infringement

FAR 52.242-14 Suspension of Work

FAR 52.242-15 Stop Work Order

FAR 52.244-5 Competition in Subcontracting

FAR 52.246-16 Responsibility for Supplies

FAR 52.247-63 Preference for U.S. Flag Air Carriers

FAR 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels

DEAR 952.209-8 Organizational Conflicts of Interest-Disclosure.

DEAR 952.209-72 Organizational Conflicts of Interest (It is the responsibility of Contractor to determine if this clause is applicable and to report any potential conflicts to the SCR under DEAR 952.209-8)

DEAR 970.5227-4 Authorization and Consent

DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement

TM39 -THE FOLLOWING CLAUSES APPLY ONLY TO CONTRACTS EXCEEDING \$650,000 WHERE CERTIFIED COST/PRICE DATA IS REQUIRED.

FAR 52.230-2 Cost Accounting Standards

FAR 52.230-6 Administration of Cost Accounting Standards

Compliance with Cost Accounting Standards.

In accordance with DEAR 970.5232-5 Liability With Respect To Cost Accounting Standards the Contractor shall be liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards".

DEAR 952.226-74 Displaced Employee Hiring Preference

DEAR 970-5226-2 Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993

TM40 APPLY TO CONTRACTS EXCEEDING \$550,000 AWARDED TO A LARGE BUSINESS

FAR 52.219-9 Small Business Subcontracting Plan

FAR 52.219-16 Liquidated Damages - Subcontracting Plan

TM41 - APPLY TO CONTRACTS EXCEEDING \$650,000

[52.215-10 -- Price Reduction for Defective Cost or Pricing Data.](#)

[52.215-11 -- Price Reduction for Defective Cost or Pricing Data – Modifications.](#)

[52.215-12 -- Subcontractor Cost or Pricing Data.](#)

[52.215-13 -- Subcontractor Cost or Pricing Data – Modifications.](#)

FAR 52.215-15 Pension Adjustments and Asset Reversions

FAR 52.215-15 Pension Adjustments and Asset Reversions

TM42 - APPLY TO CONTRACTS EXCEEDING \$2,000,000

DEAR 970.5204-3 Access to and Ownership of Records

TM43 - APPLY TO ALL CONTRACTS THAT MAY INVOLVE ACCESS TO CLASSIFIED INFORMATION OR MATERIAL

DEAR 952.204-2 Security

DEAR 952.204-70 Classification/Declassification

DEAR 970.5204-1 Counterintelligence

TM44 - APPLY TO ALL CONTRACTS WHICH INCLUDE ANY EXPERIMENTAL, RESEARCH, DEVELOPMENTAL, OR DEMONSTRATION WORK

FAR 52.227-14 Rights in Data -Rights is modified in accordance with DEAR 927.409 and including Alternate V

FAR 52-227-16 Additional Data Requirements

FAR 52.246-8 -- Inspection of Research and Development -- Cost-Reimbursement

DEAR 952.227-11 Patent Rights, Retention by the Contractor (short form). (This clause is to be used in all contracts in which the Contractor is a domestic small business or nonprofit organization as defined at FAR, 48 CFR 27.301).

DEAR 952.227-13 Patent Rights Acquisition by the Government. (This clause shall be used in all that are not covered by the provisions of DEAR 952.227-11.

DEAR 970.5227-12 Patent Rights Management and Operating Contracts For-Profit Contractor, Advance Class Waiver Alternate I (Deviation)

TM45 - APPLIES TO ANY WORK WHICH WILL BE PERFORMED ON A GOVERNMENT SITE UNDER THIS CONTRACT

DEAR 970.5223-1 Integration of Environment, Safety, and Health into Work planning and Execution

DEAR 970-5223-4 Workplace Substance Abuse Programs at DOE sites
DEAR 952.203-70 Whistleblower Protection For Contractor Employees
**CLAUSES TM46 THROUGH TM55 APPLY TO ALL WORK PERFORMED ON A
GOVERNMENT SITE UNDER THIS CONTRACT.**

TM46 - CITIZENSHIP STATUS

All personnel of the Contractor and its subcontractors who require access must be United States citizens, or foreign nationals who are legal aliens or have the required authorization to perform work in the United States and must meet rules of the site for access to the work areas in place at the time of performance of this contract.

TM47 - CONTRACTOR OR SUBCONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES

The following provisions apply if work under this contract requires Contractor or subcontractor personnel to operate government-owned vehicles either on or off government sites. Contractor shall maintain, at Contractor's expense, during the period of performance of work under this contract, third-party vehicle liability insurance which shall cover the use of such government-owned vehicles with limits of at least \$200,000/\$500,000 public liability and \$20,000 property damage. Medical payments coverage, comprehensive and collision insurance, uninsured motorist, and personal injury protection will not be required under this clause unless required by State statute. All Contractor's agents, employees and subcontractors of any tier shall obey all rules and regulations pertaining to the use of government-owned vehicles. In the event of a motor vehicle accident, the Contractor shall submit a completed Motor Vehicle Accident Reporting Form SF 91 to the SCR together with any additional supplemental forms required by instructions given on the GSA Form Packet 1627. A General Services Agreement (GSA) Form Packet 1627 normally is located either in the headliner or glove box 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.

TM48 – Environmental Safety and Health (ES&H) REQUIREMENTS (a) Service Providers.

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

TM49 -Training Requirements.

Any Contractor personnel who will enter a government site to perform work shall have completed all of the ES&H training required by the SOW prior to any attempts to enter a government site as shown by written records of such training furnished to the SDR or to the Requester if no SDR is named in Section I of this contract. Contractor shall certify to Sandia completion of all required training on the Completion Record for Contractor Administered Training form. This form is located on the Web at <http://www.sandia.gov/bus-ops/scm/Contractor/Contractor-info.html>

or obtained from the SDR. Contractor shall provide the completion record form for the initial ESH100 training to the SDR on the first day of work. Contractor shall provide the completion records for any other training required above to the SDR before starting the affected work activity. Any person not having completed all ES&H training requirements may be denied access to any government site and Contractor may be terminated for default of this contract as well as every other contract the Contractor has with Sandia.

TM50 - HAZARDOUS MATERIALS (a) Handling Requirements.

For contracts that require the performance of work on government sites, the Contractor shall coordinate with the SDR all activities associated with the acquisition (including reporting hazardous materials used on government sites), handling, storage, accidental spills, and/or disposal of hazardous materials and/or waste. The Contractor shall notify the SDR of all hazardous and/or radioactive waste generated during performance of work. Such materials become Sandia-owned waste and the Contractor shall notify the SDR for proper disposal by Sandia. Contractor's assistance in disposal may be required by Sandia. **(b) Removal Requirements.** Those hazardous materials brought onto Sandia-controlled premises by the Contractor which are job-related consumables and have not been removed from their original packaging and which have not been purchased by Sandia, shall remain the property of the Contractor and shall be removed from Sandia after completion of the work. Hazardous materials in the original, labeled container are not hazardous waste if the material is usable and the full or partially full container is intact and properly closed. Those scrap items which are not hazardous and which have not become hazardous through co-mingling with hazardous items are owned by the Contractor and shall also be removed.

TM51 - PROTECTION OF GOVERNMENT PROPERTY

All Sandia National Laboratories information, information technologies, and information systems are United States government property. Please read the notice at: <http://www.sandia.gov/bus-ops/scm/Contractor/Contractor-info.html> All facilities, personal property, existing vegetation, structures, equipment, utilities, improvements, materials and work at Sandia National Laboratories are United States government property. Acts of theft, improper use and/or unlawful destruction of United States government property are punishable under one or more Federal Criminal Laws.

TM52 - REQUIREMENTS FOR ACCESS

(a) Government Sites. Permission to enter government sites shall at all times be subject to all laws, regulations, and site access policies for the site. The government requirements include but are not limited to, all of the requirements set forth in this section for any work to be performed on a government site. To obtain access to such premises, the Contractor shall write a letter to the SDR or the SCR stating the company designation to be used by the Contractor and each subcontractor and furnishing the following information on each individual requiring access to such premises: name, date of birth, and citizenship status, completed ES&H training requirements set forth in the SOW. Access will be granted for the period of performance of the work only. Contractor

shall withdraw and replace any individual, including any subcontractor employee, assigned to perform work under this contract, who in the judgment of Sandia or DOE/NNSA, is to be denied access to any government site. Contractor shall submit to the SDR or the SCR proposed working schedules for its personnel and the personnel of each of its subcontractors. The schedules will show proposed daily working hours and proposed workweeks. Schedules that deviate from Sandia's normal workday or workweek must be approved by the responsible SDR. In the absence of a written authorization from the SCR or DOE/NNSA, use of government sites by the Contractor and its subcontractors of any tier, pursuant to access granted under this Clause, shall be limited to work required by this contract to be performed on such premises. **THE USE OF THE ACCESS PRIVILEGE FOR ANY PURPOSE OTHER THAN TO PERFORM WORK UNDER THIS CONTRACT IS PROHIBITED AND MAY BE GROUNDS FOR TERMINATING THIS CONTRACT DEFAULT OR FOR FINDING THAT AN INDIVIDUAL IS UNACCEPTABLE FOR FUTURE ACCESS.** **(b) Control and Removal of Contractor Employees Working on Site**

(1) The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, integrity, and compliance with contract requirements including site-specific requirements (i.e. ES&H, Security, etc.) for its employees. Should the SCR or SDR determine that an employee of the contractor or its lower-tier subcontractors fails to meet any of these standards, the Contractor shall immediately remove such person from the work site, and that person shall not again, without written permission of the SCR, be allowed back on the work site. (2) Sandia, in its sole discretion, may temporarily or permanently bar from the work site or any Sandia controlled premises any employee of the Contractor or its lower-tier subcontractors who does not work in a safe and secure manner, as demonstrated either by repeated violations or a single serious violation of safety or security requirements applicable to the contract. (3) The contractor will not be compensated for any costs resulting from its removal of employees from the work site or from Sandia barring an employee from the work site and any Sandia controlled premises. (4) The contractor shall include this clause, in its entirety in all lower-tier subcontracts which require work to be performed at Sandia controlled premises. **(c)** 5) Contractor will ensure that its personnel assigned to work on Sandia's or Customer's premises comply with any on-premises requirements and shall:

- 1) not bring weapons of any kind onto Sandia's or Customer's premises;
- 2) not manufacture, sell, distribute, possess, use or be under the influence of controlled substances or alcoholic beverages while on Sandia's or Customer's premises;
- 3) not possess hazardous materials of any kind on Sandia's or Customer's premises without Sandia's authorization;
- 4) remain in authorized areas only;
- 5) not conduct any non-Sandia related business activities (such as interviews, hires, dismissals or personal solicitations) on Sandia's or Customer's premises;
- 6) not send or receive non-Sandia related mail through Sandia's or Customer's mail systems; and
- 7) not sell, advertise or market any products or memberships, distribute printed, written or graphic materials on Sandia's or Customer's premises without Sandia's written permission or as permitted by law.

(d) All persons, property, and vehicles entering or leaving Sandia's or Customer's premises are subject to search. (e) **Sandia Sites.** The organizations listed below are responsible for coordinating and administering the provisions of visitor access and control for the sites as listed. Sandia National Laboratories, Albuquerque, New Mexico - Visitor Access and Administration Section, Sandia Corporation, Innovation Parkway Building Sandia National Laboratories, Livermore, California - Visitor Control and Administration Section, Sandia Corporation, Building 911. Tonopah Test Range, Tonopah, Nevada - Office of the Tonopah Test Range Manager

TM53 - TERMINATION OR REASSIGNMENT OF PERSONNEL

The Contractor shall (i) notify immediately the SCR and the Sandia Badge Office at Albuquerque (Sandia Physical Security Division at Livermore; Tonopah Test Range Manager at Tonopah) if any Contractor employees assigned to work under this contract are terminated for any reason or are assigned to other Contractor non-Sandia work and will not work under this contract in the future, and (ii) ensure that any Contractor employees identified under this paragraph surrender to the Badge Office (Sandia Physical Security Division at Livermore; Tonopah Test Range Manager at Tonopah) any Sandia badge, Kirtland Air Force Base decals or other access documents within two (2) days of termination or reassignment.

TM54 - VEHICLE INSURANCE

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

TM55 - 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.