

SECTION II
STANDARD TERMS AND CONDITIONS FOR PURCHASE ORDERS
INDEX OF CLAUSES

AWARD BASIS (Applicable only to the Request for Quotation). Unless otherwise specified in Section I of the RFQ, award will be on the basis of low net cost to Sandia. Low net cost includes price, transportation charges, and payment discount terms.

The terms and conditions stated for this Purchase Order, referred herein as "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.

<u>No.</u>	<u>Title</u>	<u>Page</u>	<u>No.</u>	<u>Title</u>	<u>Page</u>
"A" Clauses apply to Purchase Orders at any value			"B" Clauses Apply to Purchase Orders that Exceed \$2,500		
A10	Definitions	2			
A12	Assignment	2	*B11	Contract Work Hours and Safety Standards Act - Overtime Compensation	15
*A15	Delivery of Excess Quantities of \$250 or Less	2	*B21	Service Contract Act of 1965 - as Amended Contracts of \$2,500 or Less	16
*A18	Defense Priority and Allocation System	2	*B22	Service Contract Act of 1965, as Amended	16
*A23	Applicable Law	2			
*A24	Contractor Records Retention	2			
A25	Commerce in Explosives, Firearms and Ammunition - Exemption	3			
*A26	Officials Not to Benefit	3			
*A30	Payments	3			
*A31	Taxes	3			
*A36	Excess Freight Charges	3			
*A39	Notice of Potential Delay	3			
*A40	Inspection and Correction of Defects	3			
*A41	Changes	5			
*A45	Termination for Default	5			
*A46	Termination for Convenience	6			
*A49	Safety, Health, Environment, Government or Sandia-Furnished Property and Fire Protection -	8			
*A56	Order Against ADP or Federal Supply Schedule Contract - Total	9			
*A57	Reimbursement for Travel and Living Expenses	9			
*A60	Property	9			
*A67	(I) Safety, Health, Environment, Property and Fire Protection; (II) Access to Sandia and Government- Controlled Premises; (III) Liability; (IV) Contractor or Subcontractor Use of Government-Owned Vehicles	11			
*A69	Manufacturing and Testing Standards	13			
*A70	Extras	14			
*A71	Variation in Quantity	14			
*A72	Responsibility for Supplies	14			
*A73	Commercial Warranty	14			
*A74	Workmanship and Materials	14			
*A75	Labor Disputes	14			
*A80	Sandia Policy on Equal Opportunity	14			
*A98	Hazardous Material Identification and Material Safety Data	15			
*A99	Additional Terms and Conditions	15			

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

"A" CLAUSES APPLY AT ANY VALUE

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-AC04-94AL85000 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. Where the FAR clauses are referenced substitute SCR for Contracting Officer.
- (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 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 A15 - DELIVERY OF EXCESS QUANTITIES OF \$250 OR LESS

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and Sandia receives quantities of any item in excess of the quantity called for (after

considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. Sandia may retain such excess quantities up to \$250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of \$250 will, at the option of Sandia, either be returned at the Contractor's expense or retained and paid for by Sandia at the contract unit price.

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)."

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

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.

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 USC 3301).

- (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 USC Section 925 (a)(1) provides the exemption for commerce in firearms and ammunition.

CLAUSE A26 - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

CLAUSE A30 - PAYMENTS

- (a) The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided.
- (b) Invoices or vouchers requesting payment for item(s) of Government Property as defined in Clause A60, Property, shall be separately listed on such invoices or vouchers.
- (c) For the purpose of computing discounts and other terms of payment, time will be computed from the date of receipt by Sandia of Contractor's correct invoice or voucher, or the date of delivery of the supplies or services, 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(s).
- (d) Sandia may take contract or invoice prompt payment discount.

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 price provisions of this contract and in the Contractor's invoices or vouchers. The Contractor warrants that, except as separately stated in the price provision in accordance with this paragraph (b), the price 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 price 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, 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 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 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 AND CORRECTION OF DEFECTS

- (a) Applies to Supplies
 - (1) All supplies (which term throughout this Clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by Sandia and DOE to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.
 - (2) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, Sandia shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the SCR, corrected in place by and at the expense of the Contractor promptly

after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, Sandia either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the costs occasioned Sandia thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Termination for Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the SCR may require the delivery of such supplies at a reduction in price which is equitable under the circumstances.

(3) If Sandia or DOE inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of Sandia except as otherwise provided in this contract; provided, that in case of rejection, Sandia shall not be liable for any reduction in value of samples used in connection with such inspection or test.

(4) Sandia reserves the right to charge to the Contractor any additional cost of Sandia inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect or accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on Sandia therefor.

(5) The inspection and test by Sandia or DOE of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(b) Applies to Services

(1) All services performed by the Contractor under this contract shall be subject to inspection and test by Sandia and DOE to the extent practicable at all times (including the period of performance) and places, and in any event prior to acceptance. Sandia and DOE through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. Except as otherwise provided in this contract, acceptance of services performed under this contract shall be made at the

place of performance as promptly as practicable after performance and shall be deemed to have been made no later than 60 days after the date of such performance, if acceptance has not been made earlier within such period.

(2) At any time during performance of this contract, but not later than six months (or such other period as may be provided in Section I) after acceptance of the services in accordance with the requirements of this contract, Sandia may require the Contractor to remedy by correction, as directed by the SCR, any services which at the time of performance thereof failed to comply with the requirements of this contract. Corrected services shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such correction and if such correction may be performed within the contract price, or the contract price as increased by Sandia, Sandia (i) may by contract or otherwise perform such correction and charge to the Contractor any increased cost occasioned Sandia or the Government thereby, and may deduct such increased cost from any amounts due the Contractor under this contract (or require repayment of any payments theretofore made), or (ii) may terminate this contract as provided in the "Termination for Default" clause of this contract.

(c) Applies to Supplies and Services

(1) Notwithstanding the provisions of paragraph (b)(2) above, Sandia may at any time require the Contractor to remedy by correction or replacement, without cost to Sandia, any failure by the Contractor to comply with the requirements of this contract, if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of the Contractor's managers, superintendents, or other 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 operations at any one plant or separate location in which this contract is being performed; (iii) a separate and complete major industrial operation in connection with the performance of this contract; or (iv) all or substantially all of the Contractor's operations under this contract. Sandia may at any time also require the Contractor to remedy by correction or replacement, without cost to Sandia or the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory person has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(2) The provisions of this clause shall apply to any corrected or replacement services or materials.

- (3) The Contractor shall provide and maintain an inspection system acceptable to Sandia covering the supplies, materials, fabrication methods, and the work and services hereunder. Records of all inspection work by the Contractor shall be complete and available to Sandia and DOE at all reasonable times during performance of this contract and for such longer period as may be specified in this contract.
- (4) Except as provided in this clause and as may be provided in Section I, the Contractor shall have no obligation or liability to correct or replace materials furnished and services performed under this contract which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.
- (5) Except as otherwise provided in Section I, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by Sandia or the Government, and delivered or otherwise made available to the Contractor) shall be governed by the provisions of Clause A60, "Property," of this contract.
- (6) If any inspection or test is made by Sandia or DOE on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Sandia or DOE inspectors in the performance of their duties.
- (7) All inspections and tests by Sandia and DOE shall be performed in such a manner as not to unduly delay the work under this contract.

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) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for Sandia in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the

SCR shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

- (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) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the SCR shall have the right to prescribe the manner of the disposition of the property.
- (e) Nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

CLAUSE A45 - TERMINATION FOR DEFAULT

- (a) Termination for Default
 - (1) Sandia may, subject to paragraphs (c) and (d) below by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:
 - (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
 - (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below; or
 - (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).
 - (2) Sandia's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the SCR) after receipt of the notice from the SCR specifying the failure.
- (b) If Sandia terminates this contract in whole or in part, it may acquire, under the terms and in the manner the SCR considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to Sandia for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) acts of Sandia, (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.

- (d) If the failure to perform is caused by the default of a subcontractor of any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- (e) If this contract is terminated for default, Sandia may require the Contractor to transfer title and deliver to Sandia, as directed by the SCR, (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the SCR, the Contractor shall also protect and preserve property in its possession in which Sandia or the Government has an interest.
- (f) Sandia shall pay contract price for completed supplies, delivered and accepted. The Contractor and SCR shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Sandia may withhold from these amounts any sum the SCR determines to be necessary to protect Sandia against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued under the "Termination for Convenience" clause of this contract.
- (h) The rights and remedies of Sandia or the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.
- (5) terminated, in which case Sandia shall have the right to settle or to pay any termination settlement proposal(s) 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 approval or ratification will be final for purposes of this clause.
- (6) As directed by the SCR, transfer title to the Government and 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, and (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.
- (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 under this contract, credited to the price or cost of the work, or paid in any other manner directed by the SCR.

CLAUSE A46 - TERMINATION FOR CONVENIENCE

- (a) Sandia may terminate performance of work under this contract in whole or, from time to time, in part if the SCR determines that a termination is in Sandia's or the Government's interest. The SCR shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) 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) for materials, services, or facilities, 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, as directed by the SCR, all right, title, and interest of the Contractor under the subcontracts
- (c) After expiration of the plant clearance period as defined in FAR Subpart 45.6, 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 title to those items and remove them or enter 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.
- (d) 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 or 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.

(e) Subject to paragraph (d) above, the Contractor and the SCR may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, shall not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the SCR fail to agree on the whole amount to be paid the Contractor because of the termination of work, the SCR shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (e) above:

(1) The contract price for completed supplies or services accepted by Sandia (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of:

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(ii) 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 subdivision (i) above; and

(iii) A sum, as profit on subdivision (i) above, determined by the SCR under FAR Subpart 49.202, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the SCR shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(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 terminated inventory.

(g) Except for normal spoilage, and except to the extent that Sandia expressly assumed the risk of loss, the SCR shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by the SCR, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Sandia or to a buyer.

(h) The cost principles and procedures of the FAR Part 31 as modified by DEAR Part 931, 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 the provisions of this clause and not recovered by or credited to Sandia.

(j) If the termination is partial, the Contractor may file a proposal with the SCR for an equitable adjustment of the price(s) of the continued portion of the contract. The SCR shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the SCR.

(k) (1) Sandia 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 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) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to Sandia or the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the SCR, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

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 event 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.
- (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.

- (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.

Expiration Date: < >

Note: Schedule Contract No. and Expiration Date to be furnished by the SCR under a separate document.

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 (cumingtonite/grunelite), 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).

CLAUSE A57 - REIMBURSEMENT FOR TRAVEL AND LIVING EXPENSES

All travel and living expenses reimbursed under this order shall be in accordance with amounts prescribed under the Federal Civilian Employee and Contractor Travel Expense Act of 1985 (P.L. 99-234). All invoices for lodging, air travel and car rental reimbursement must have a copy of the lodging receipt, air line ticket, and priced rental agreement attached.

(a) Per Diem Allowances

Maximum allowable per diem rates are contained in the Federal Travel Regulation (FTR), Chapter 301, Appendix A.

Note: Maximum travel rates are available by contacting your SCR.

(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.

(b) Air Line Ticket Reimbursement

The cost of an air line ticket will be reimbursed at actual provided that the ticket is at less than first class. If first class travel is used, reimbursement will be limited to the cost of a less than first class ticket on the same or similar flight.

(c) Car Rental

Car rental expenses will be reimbursed at actual cost.

(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.

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) 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 any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Sandia-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Sandia-furnished property suitable for use (except for property furnished "as-is") 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.

(3) If Sandia-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the SCR, detailing the facts, and, as directed by the SCR and at Sandia expense, either repair, modify, return, or otherwise dispose of

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

CLAUSE A56 - ORDER AGAINST ADP OR FEDERAL SUPPLY SCHEDULE CONTRACT - TOTAL

If this order is placed pursuant to a General Services Administration Contract or Federal Supply Schedule, the following provision applies:

This order is placed pursuant to written authorization from the Director, Contracts and Procurement Division, Albuquerque Operations Office, U.S. Department of Energy, a copy of which is available on request. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule Contract or ADP Schedule Contract, the latter will govern.

Schedule Contract No. < >

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.

- (4) If Sandia-furnished property is not delivered to the Contractor by the required time, 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 such 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 the 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 this property, if provided under any other contract or lease.

(c) Title in Property

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

- (2) 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 Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

- (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Contractor for Sandia under this contract shall pass to and vest in the Government when its use in performing this contract commences or when Sandia has paid for it, whichever is earlier, whether or not title previously vested in the Government.

- (4) If this contract contains a provision directing the Contractor to purchase material for which Sandia will reimburse the Contractor as a direct item of cost under this contract:

- (i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
- (ii) Title to all other material shall pass to and vest in the Government upon:

- (A) Issuance of the material for use in contract performance;
- (B) Commencement of processing of the material or its use in contract performance; or
- (C) Reimbursement of the cost of the material by Sandia, whichever occurs first.

(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 this contract and shall comply with FAR Subpart 45.5 and DEAR Subpart 945.5, 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 industrial practice and the applicable provisions of FAR Subpart 45.5 and DEAR Subpart 945.5.

- (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.

- (4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which Sandia is responsible. Repair or replacement of property for which the Contractor is responsible shall be

accomplished by the Contractor at its own expense.

abandonment, disposition upon completion of need, or upon contract completion). However, if the Sandia-furnished property (listed in Section I) 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.

(f) Access

Sandia, or the Government, and all their 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) Risk of Loss

Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(k) Communications

All communications under this clause shall be in writing.

(l) Overseas Contracts

If this contract is to be performed outside of the United States of America, its territories, or possessions, the word "Government" (wherever it appears in this clause) shall be construed as the "United States Government".

(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. Neither Sandia or the Government, either jointly or severally, shall be liable to suit for breach of contract for:

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.

- (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 or the Government is responsible.

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.

(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 (including any resulting scrap) 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 contract price or shall be paid to Sandia as the SCR directs.

(j) Abandonment and Restoration of Contractor's 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.,

- (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 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 A73 - COMMERCIAL WARRANTY

(a) The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for the same or substantially similar supplies or services, and that the rights and remedies provided by this clause are in addition to and do not limit any rights afforded to Sandia by any other clause of this contract.

(b) The Contractor shall furnish to Sandia copies of the most favorable commercial warranties the Contractor gives to any customer for the same or substantially similar supplies or services, and such warranties shall be deemed a part of this contract.

CLAUSE A74 - WORKMANSHIP AND MATERIALS

(a) Grade or Workmanship and Materials. Unless otherwise directed by the SCR or expressly provided for by specifications issued under this contract:

- (1) All workmanship shall be first class; and
- (2) All articles, equipment, and materials incorporated in the work are to be:
 - (i) New and of the most suitable grade of their respective kinds for the purpose;
 - (ii) In accordance with any applicable drawings and specifications; and
 - (iii) Installed to the satisfaction and with the approval of the SCR.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the SCR shall decide the question of equality.

(b) Samples and Test Results. If the SCR so requires, the Contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

CLAUSE A75 - NOTICE OF LABOR DISPUTES

Whenever an actual or potential labor dispute is delaying or threatening the performance of the work, the Contractor shall immediately notify the SCR in writing. Such notice shall include all relevant information concerning the dispute and its background.

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.

purpose without the permission of.... This legend shall be marked on any reproduction of this data."
(End of legend)

CLAUSE A98 - HAZARDOUS MATERIAL IDENTIFICATIONS AND MATERIAL SAFETY DATA

- (a) The Contractor agrees to prepare Material Safety Data Sheet (Department of Labor Form OSHA-20), meeting the requirements of 29 CFR 1910.1200(g) and the version of Federal Standard No. 313 in effect on the date of this Contract, for all hazardous material before shipment of material, whether or not listed in Appendix A of the Standard and whether or not the Contractor is the actual manufacturer of the items. This obligation applies to all materials shipped 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

- (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 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 clauses apply top Purchase Orders at any value:

- FAR 52.222-3 - Convict Labor
- FAR 52.203-6 - Restrictions on Subcontractor Sales to the Government
- FAR 52.207- - Anti Kickback Act
- FAR 52.223-2 - Clean Air and Water
- FAR 52.203-3 - Gratuities
- DEAR 970.5203-3 - Buy American Act

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

- FAR 52.222-36 - Affirmative Action for Handicapped Workers

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

- 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 52.222-36 - Equal Opportunity
- FAR 52.222-37 - Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
- DEAR 970.5203-2 - Examination of Records by the Comptroller General

"B" CLAUSE APPLIES TO PURCHASE ORDERS 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.

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.

- (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.

(e) Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts.

(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.

CLAUSE B21 - SERVICE CONTRACT ACT OF 1965, AS AMENDED - CONTRACTS OF \$2,500 OR LESS

Except to the extent that an exemption, variation, or tolerance would apply pursuant to 29 CFR 4.6, if this were a contract in excess of \$2,500, the Contractor and any subcontractor, hereunder, shall pay all employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

CLAUSE B22 - SERVICE CONTRACT ACT OF 1965, AS AMENDED

Definitions for the purposes of this act--

(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 Federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime 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.

- (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.

- (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.

(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

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.

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 is 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.

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.

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.

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.

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.

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.

XIV. EXEMPTIONS

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

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.

- (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

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

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 an 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.