

SECTION II
STANDARD TERMS AND CONDITIONS FOR CONSULTANT AND OTHER PROFESSIONAL PROVIDER SERVICE AGREEMENTS
INDEX OF CLAUSES

THE FOLLOWING CLAUSES APPLY TO REQUESTS FOR QUOTATION AND AGREEMENTS AS INDICATED UNLESS SPECIFICALLY DELETED, OR EXCEPT TO THE EXTENT THEY ARE SPECIFICALLY SUPPLEMENTED OR AMENDED IN WRITING IN THE SIGNATURE PAGE OR SECTION I.

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

The following "A" Clauses apply to Requests for Quotation and Agreements at any value.

CLAUSE A10 - DEFINITIONS

As used throughout this Agreement, the following terms shall have the meaning 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 person authorized to execute and/or administer this Agreement on behalf of Sandia or the authorized successor to such person.
- (c) **GOVERNMENT**
The United States of America.
- (d) **DOE**
The United States Department of Energy, the Secretary of Energy or any duly authorized representative of the Secretary.
- (e) **CONSULTANT/PROVIDER**
The individual who is the other party to the Agreement with Sandia.
- (f) **AGREEMENT**
Agreement for services between Sandia and Consultant or other Provider.
- (g) **SDR - SANDIA DELEGATED REPRESENTATIVE**
The person(s) who has been delegated limited authority as defined in Section I of this Agreement. THE SDR'S AUTHORITY IS LIMITED SOLELY TO THE AUTHORITY ENUMERATED IN SECTION I OF THIS AGREEMENT. THE SDR HAS NO AUTHORITY TO CHANGE ANY TERM OR CONDITION CONTAINED IN THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO: STATEMENT OF WORK, PRICE, SCHEDULE, AND DRAWINGS AND SPECIFICATIONS INCORPORATED THEREIN.

CLAUSE A12 - ASSIGNMENT

This Agreement is assignable by Sandia to the Government or its designee. Any assignment by the Consultant/Provider 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 Consultant/Provider in all matters pertaining hereto, including the negotiation of amendments or settlements of amounts due.

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 A30 - PAYMENTS

Payment for services will be made within thirty days after receipt of Consultant's/Provider's invoice. Request for reimbursement of travel expense shall be made on Sandia Forms SF 4009-K, "Payment for Consultant and Nonconsultant Services," and SF 4601-C, "Nonemployee's Expense Voucher."

CLAUSE A31 - TAXES

The parties agree that the compensation stated herein includes all applicable taxes, and that the compensation will not be changed hereafter as the result of failure to include therein any applicable tax, or as the result of any change in the Consultant's/Provider's tax liabilities.

- (a) Except as may be otherwise provided in this contract, the daily rate includes all applicable Federal, State, and Local taxes and duties.
- (b) Notwithstanding the provisions of (a) above, if the Consultant/Provider intends to collect from Sandia under this agreement 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 daily rate provisions of this agreement and in the Consultant/Provider's invoices or vouchers. The Consultant/Provider warrants that, except as separately stated in the daily rate provision in accordance with this paragraph (b), the daily rate 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 daily rate provisions of this agreement and on Consultant/Provider's invoices or vouchers in accordance with paragraph (b), Sandia agrees either (1) to furnish to the Consultant/Provider a Nontaxable Transaction Certificate or (2) to pay to the Consultant/Provider any portion of such separately stated amount that the Consultant/Provider is required to pay to the New Mexico Bureau of Revenue because of Sandia's inability to furnish such certificate.

CLAUSE A38 - PERIOD OF SERVICE AND TERMINATION

The period during which the services are to be rendered as stated in the Agreement may be extended upon the mutual consent of all parties hereto. Either Sandia or the Consultant/Provider may terminate the Agreement on 10 days advance written notice.

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 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 A48 - COMPENSATION

(a) Daily Rate

Sandia will pay the Consultant/Provider the daily rate, if any, stipulated in the Agreement for each full day of service the Consultant/Provider renders hereunder, including authorized travel time as specified in paragraph 4(c), below. "Full day of service" means the rendering of services for an amount of time which effectively interrupts the individual's ordinary pursuits for substantially an entire day. The standard "day" for work or travel is eight hours. Where parts of a day are involved and the individual can follow his usual business or profession during the rest of the day, Sandia will pay for the period of service approximating the number of hours he is kept from his ordinary pursuits. Payment for eight hours in any one day including travel time is the maximum allowed, even though the Consultant/Provider's work is in excess of eight hours.

The Consultant/Provider shall furnish with each invoice a statement (on Sandia form) or such other reasonable proof as Sandia may require setting forth actual time spent in the performance of services under this Agreement.

Should Consultant/Provider require assistance of any kind necessitating the expenditure of funds while rendering services under this Agreement, Sandia shall be advised thereof in advance. If Sandia concurs with his/her recommendation, Sandia will either supply what is needed directly or agree in writing to reimbursement for materials purchased by the Consultant/Provider.

(b) Living Expenses

Consultant/Provider will be reimbursed for costs incurred for lodging, meals and incidental expenses. These costs shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as prescribed by the Federal Civilian Employee and Contractor Travel Expense Act of 1985 (P.L. 99-234). Per diem rate schedules prescribed above, shall be made available to the Consultant/Provider by the SCR when the Agreement is finalized.

(c) Travel

- (1) Any travel outside the United States by the Consultant/Provider, in connection with work under this Agreement, requires advance written approval by the SCR.
- (2) Authorized Travel: Reimbursement will be limited to airfare costs of the lowest customary standard, coach or equivalent airfare offered during normal business hours.
- (3) Authorized travel time for which Consultant/Provider fee will be paid is defined as follows:
 - (i) When Scheduled Airline Transportation is Available, Whether or Not it is Utilized.

Payment will be based on scheduled air travel time by most direct route between airport at point of origin and airport at destination where service will be performed, and return; time to be calculated upward to the nearest half hour. In addition, actual time for travel to and from the airports, calculated upward to the nearest half hour, may be added not to exceed four hours for the entire round trip.

- (ii) When Scheduled Airline Transportation is Not Available.

One hour of time will be allowed for each forty miles of distance traveled between points where air travel is not regularly scheduled, not to exceed actual time enroute.

- (iii) Delay Enroute.

Delay enroute, for any reason, will not be considered in computing payment for travel time.

CLAUSE A50 - RELEASE OF INFORMATION

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

CLAUSE A53 - SANDIA PROVIDED INFORMATION

- (a) All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto (hereinafter called "material"), furnished by Sandia to the Consultant/Provider shall remain the property of the Government.
- (b) If any material furnished by Sandia to the Consultant/Provider is of special significance in the sense that its use by the Consultant/Provider for other than performance of the Agreement or its disclosure to others might give competitive advantage to the Consultant/Provider or the recipient or be prejudicial to the best interests of the Government, then such material shall be used only for the purpose of enabling performance of the Agreement and the Consultant/Provider shall use its best efforts to prevent disclosure to others except when necessary in the performance of the Agreement.
- (c) Technical data, as defined in Department of Energy Acquisition Regulation 927.401, may contain patentable or proprietary information and is not to be disclosed to others or used for other than quotation purposes or Agreement performance.

CLAUSE A58 - SECURITY AND CLASSIFICATION

- (a) Consultant/Provider shall, in accordance with DOE's security regulations and requirements, be responsible for safeguarding all classified information or material and protecting against sabotage, espionage, loss and theft of the classified documents and material in the Consultant's/Provider's possession in connection with the performance of work under the Agreement. Except as otherwise expressly provided in the Agreement, the Consultant/Provider shall, upon completion or termination of the Agreement, transmit to Sandia any classified information or material in his/her possession or of any person under his/her control in connection with performance of the Agreement. If retention by the Consultant/Provider of any classified information or material is required after the completion or termination of the Agreement and such retention is approved by the SCR, the Consultant/Provider will complete a certificate of possession to be furnished to Sandia specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter and the period of retention, if known. If the retention is approved by the SCR, the security provisions of the Agreement will continue to be applicable to the matter retained.
- (b) Consultant/Provider agrees to conform to all security regulations and requirements of DOE.
- (c) The Term "classified information or material," as used herein, means classified information, documents, drawings, materials, equipment, etc.
- (d) The term "classified information" means Restricted Data, Formerly Restricted Data, and National Security Information.
- (e) The term "Restricted Data," as used herein, means all data concerning (i) the design, manufacture, or utilization of atomic weapons; (ii) the production of special nuclear material; or (iii) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (f) The term "Formerly Restricted Data," as used herein, means all data removed from the Restricted Data category under Section 142d. of the Atomic Energy Act of 1954, as amended.
- (g) The term "National Security Information" means information or material which is owned by, produced for (by the Consultant/Provider) or by, or under the control of the United States Government, which has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (h) Consultant/Provider shall not permit any individual to have access to any classified information or material except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and DOE's regulations or requirements applicable to the particular level and category of classified information or material to which access is required.
- (i) Criminal Liability. It is understood that disclosure of any classified information or material relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information or material that may come to the Consultant/Provider or any person under his/her control in connection with work under the Agreement, may subject Consultant/Provider, his/her agents, employees or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011, et seq.; 18 U.S.C. Sections 793 and 794; and Executive Order 12356.)
- (j) In the performance of the work under the Agreement, the Consultant/Provider shall assign classifications to all documents, material and equipment originated or generated by the Consultant/Provider in accordance with classification guidance furnished to him/her by DOE and Sandia.
- (k) Except as otherwise authorized in writing by the SCR, the Consultant/Provider shall insert provisions similar to the foregoing in all subcontracts and purchase orders under the Agreement.
- (l) No classified work or information may be transferred to another location of the Consultant/Provider or his/her agents, employees or subcontractors without the written consent of the SCR.

CLAUSE A59 - PATENTS AND DATA

Patent Rights

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

The patent rights clause contained in Department of Energy Acquisition Regulation 952.227-71 is hereby incorporated into the Agreement. The Consultant/Provider shall incorporate the following statement in the first paragraph of any U.S. Patent Application filed by the Consultant/Provider on any invention or discovery made or conceived in the course of the Agreement.

"The invention described herein was made in the course of, or under, a subcontract under Prime Contract DE-AC04-76DP00789 with the U.S. Department of Energy."

CLAUSE A60 - PROPERTY

Sandia reserves the right to furnish any property or services required for the performance of the work under the Agreement. Consultant/Provider is directly responsible and accountable for all Government property in accordance with Federal Acquisition Regulation Subpart 45.5 as in effect on the date of the Agreement. Contractor/Expert will be responsible for loss or damage to the property other than normal wear and tear or acts of God provided that such loss or damage was due to the Consultant's/Provider's negligence.

Upon completion of the work or termination of the work, as provided in paragraph 3, the Consultant/Provider shall promptly return such property to Sandia without cost to him/her.

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 the Agreement requires the Consultant/Provider or his/her agents, employees, or subcontractors to have access to Sandia or Government-controlled premises, or operate Government-owned vehicles. The Consultant/Provider 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.

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

- (a) The Consultant/Provider shall take all reasonable precautions in the performance of the work under the Agreement to protect the environment and the property, safety and health of Consultants/Experts, 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, 5480.13, 5480.16, 5482.1B, 5483.1A, 5484.1, 5820.2A, and 5480.1B, as amended.
- (b) The Consultant/Provider shall determine and strictly adhere to any safety rules, regulations, access restrictions and emergency egress procedures which are unique to the Consultant's/Provider's Sandia work location. These unique rules, regulations, access restrictions and emergency egress procedures shall be determined through consultation with the SDR or the SCR.
- (c) The Consultant/Provider shall notify either the SCR or the Sandia Environment, Safety Engineering Department 7732 (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, Consultant/Provider 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 twenty-four hours of any such injury.
- (d) On all unusual occurrences, as defined in DOE Order 5000.3A, the Consultant/Provider 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 (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.
- (e) In the event that the Consultant/Provider 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 Agreement; thereafter a start work order for resumption of work may be issued at the discretion of the SCR. The Consultant/Provider 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, Bldg. 801.
- (2) Sandia National Laboratories, Livermore, California - Visitor Control and Administration Section, Sandia Corporation, Bldg. 911.
- (3) Tonopah Test Range, Tonopah, Nevada - Office of the Tonopah Test Range Manager.
- (b) Personnel Access
- All agents, employees or subcontractors of the Consultant/Provider who require access to Sandia or Government-controlled premises in performing work under the Agreement will be subject to security controls prescribed by the Government. All agents, employees or subcontractors of the Consultant/Provider 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 Consultant/Provider shall write a letter to the SDR or the SCR stating the company designation to be used by the Consultant/Provider and his/her agent, employee or 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) Contraband and Prohibited Item
- Contractor shall inform all of its employees and subcontractors that the possession, use or sale of nonprescription 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) Acceptance of Personnel
- Consultant/Provider shall withdraw and replace any individual, including any of his/her agents, employees or subcontractors, assigned to perform work under the Agreement, who in the judgment of Sandia or DOE, is not qualified or desirable for such purpose.
- (e) Work Schedules
- The Consultant/Provider shall submit to the SDR or the SCR proposed working schedules for his/her agents or employees and the personnel of each of his/her 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.
- (f) Vehicle Markings
- All vehicles used by either the Consultant/Provider or his/her agents, employees or 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 Consultant's/Provider's name or the name of his/her agent, employee or subcontractor 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.
- (g) **Vehicle Insurance**
- All vehicles, owned or operated by the Consultant/Provider or his/her agents, employees or subcontractors, 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.
- (h) **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 are 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.
- (i) **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 Consultant/Provider and his/her agents, employees or subcontractors of any tier, pursuant to access granted under this clause, shall be limited to work required by the Agreement to be performed on such premises. THE USE OF THE ACCESS PRIVILEGE FOR ANY PURPOSE OTHER THAN TO PERFORM WORK UNDER THE AGREEMENT IS PROHIBITED AND MAY BE GROUNDS FOR TERMINATING THE AGREEMENT OR FOR FINDING THAT AN INDIVIDUAL IS UNACCEPTABLE UNDER PARAGRAPH II(C) OF THIS CLAUSE.
- (j) **Notice Requirements for Employees Terminated or Reassigned by the Consultant/Provider**
- The Consultant/Provider 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 Consultant/Provider employees assigned to work under this contract are terminated for any reason or are assigned to other Consultant/Provider non-Sandia work and will not work under this contract in the future, and (ii) ensure that any Consultant/Provider 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 agreements/orders except those awarded under Federal Supply Schedule contracts.
- (a) The Consultant/Provider shall comply, at his/her own expense, with all Federal, State, County and Municipal laws, ordinances and regulations, if any, applicable to the work under the Agreement, and before starting work, to secure all local and/or state licenses or permits required for the performance of the work. Consultant/Provider 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 Consultant's/Provider's failure to do so.
- (b) All agents or employees furnished by Consultant/Provider for the performance of work under the Agreement shall, at all times and for all intents and purposes, be considered as Consultant's/Provider's agents or employees, and Consultant/Provider 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 agreement. Consultant/Provider 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 agreement, or accidents, injuries or damage to property occurring to Consultant's/Provider'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 Consultant's/Provider's agents or employees.
- (c) Consultant/Provider 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 Consultant/Provider of its obligation to carry the coverage involved.
- (d) Consultant/Provider shall, if requested, assume at its own expense the defense of suits that may be instituted against Sandia or the Government on account of Consultant's/Provider'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 Consultant/Provider certifies by acceptance of the Agreement that all work performed hereunder shall be in compliance with the applicable health and safety requirements, and pursuant to this clause of the Agreement, agrees to indemnify and save Sandia and the Government harmless from all liability and expenses, including attorneys' fees, on the account of the Consultant's/Provider'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 the Agreement requires Consultant/Provider, his/her agents, employees or subcontractor personnel to operate Government-owned vehicles either on or off Sandia or Government-controlled premises.
- (a) Consultant/Provider shall maintain, at Consultant's/Provider's expense, during the

period of performance of work under the Agreement, 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 Consultant's/Provider'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 Consultant/Provider 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. Consultant's/Provider's agents, employees and subcontractors shall assure that a GSA Form Packet 1627 is available in a GSA vehicle prior to accepting and driving a GSA vehicle.

CLAUSE A69 - INDEPENDENT CONTRACTOR

It is understood and agreed that Consultant/Provider has entered into the Agreement as an independent contractor and that nothing in the Agreement shall be construed as creating any other relationship between Consultant/Provider and Sandia. Accordingly, Consultant/Provider is not authorized to represent Sandia in any way or to bind Sandia by any promise, contract or obligation.

CLAUSE A75 - RECORDS

Consultant/Provider agrees to keep complete and accurate records of all time worked and of the expenses specified. Consultant/Provider shall preserve these original records after completion of the services under the Agreement, and agrees to submit them to Sandia or DOE, upon request, at any time within three years after final payment by Sandia.

CLAUSE A76 - ORGANIZATIONAL CONFLICTS OF INTEREST-DISCLOSURE OR REPRESENTATION

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

Therefore:

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

the organization and how that structure or system would avoid or mitigate such organizational conflict.

- (b) In the absence of any relevant interests referred to above, the Contractor shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to possible organizational conflicts of interest. Contractor's proposed consultants and subcontractors are responsible for submitting information and may submit it directly to the SCR in a sealed envelope.
- (c) The sealed envelope submitted to the SCR shall be forwarded to DOE for review of the Contractor's statement and DOE through the SCR may require additional relevant information from the Contractor. All information submitted, and any other known relevant information, will be used to determine whether an award by Sandia to the Contractor may create an organizational conflict of interest. If such organizational conflict of interest is found to exist, DOE through Sandia may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the Contractor, or (3) determine that it is otherwise in the best interest of the Government to contract with the Contractor by including appropriate conditions mitigating such conflict in the contract awarded.

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

- (d) The failure or refusal to provide the disclosure or representation and any additional information as required may result in disqualification of the Contractor for award of this Sandia contract. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the Contractor for award of this Sandia contract, or if such nondisclosure or misrepresentation is discovered after award, the resulting Sandia contract may be terminated for default. The Contractor may also be disqualified from subsequent related DOE or Sandia contracts or subcontracts, and be subject to such other remedial action by the Government as may be permitted or provided by law or in the resulting contract. The attention of the Contractor in complying with this provision is directed to 18 U.S.C. 1001.
- (e) Depending on the nature of the contract activities, the Contractor may, because of possible organizational conflicts of interest, propose to exclude specific kinds of work from the statement of work contained in an RFQ, unless the RFQ specifically prohibits such exclusion. Any such proposed exclusion by a Contractor will be considered by Sandia in the evaluation of proposals, and if Sandia considers the proposed excluded work to be an essential or integral part of the required work, the proposal may be rejected as unacceptable.
- (f) No award to the Contractor shall be made until the disclosure or representation required by this clause has been evaluated. Failure to provide the disclosure or representation may be deemed to be a minor informality and the Contractor may be permitted to correct the omission promptly.

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

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

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

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

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

"Notice to SCR: This envelope contains confidential information of the type required by the Organizational Conflicts of Interest Disclosure or Representation Clause in the referenced RFQ. Do not open this envelope; forward it to the Director, Management and Support Division (MSD), DOE Albuquerque Operations Office, for evaluation."

CLAUSE A77 - CHARACTER OF AGREEMENT AND EXTENT OF SERVICES

The Consultant/Provider shall personally render the required services (including written reports) on such matters and at such places and for such periods as requested by Sandia per the Agreement. No employee/ employer relationship between the Consultant/Provider and Sandia arises under the Agreement.

CLAUSE A78 - ORGANIZATIONAL CONFLICTS OF INTEREST - SHORT-TERM PROFESSIONAL SERVICES AGREEMENT

- (a) This Clause applies to short-term Professional Services Agreements only.
- (b) Purpose. It is DOE's policy to avoid situations which place a DOE or Sandia Professional Services Provider (PSP) in a position where the PSP's judgment may be biased because of any past, present, or currently planned interest, financial, contractual, organizational or otherwise, the PSP may have which relates to the work to be performed pursuant to this agreement or where the PSP's performance of such work may provide it with an unfair competitive advantage over other parties by virtue of its performance of this Sandia agreement.
- (c) Scope. The restrictions described herein shall apply to performance or participation by the PSP and any of its affiliates or their successors in interest (hereinafter in this Clause collectively referred to as the "Provider") in the activities covered by this Clause as a Contractor, subcontractor, cosponsor, joint venture, Consultant, or in any similar capacity.
- (d) Technical Consulting and Management Support Services. The Provider shall be ineligible to participate in any capacity in DOE or Sandia contracts, subcontracts, or proposals

therefore which stem directly from the Provider's performance of work under this agreement. Furthermore, unless so directed in writing by the Sandia Contracting Representative (SCR), the Provider shall not perform any technical consulting or management support services work under this agreement on any of its products or services or the products or services of another firm if the Provider is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Provider from competing for follow-on requirements for technical consulting and management support services.

If the Provider under this agreement prepares a complete or essentially complete statement of work or specification to be used in competitive procurements, the Provider shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Provider shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the SCR, in which case the restriction in this subparagraph shall not apply.

- (e) Access To and Use of Information. If the Provider, in the performance of this agreement, obtains access to information, such as DOE or Sandia plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released or otherwise made available to the public, the Provider agrees that without prior written approval of DOE or Sandia it shall not: (i) use such information for any private purpose unless the information has been released or otherwise made available to the public; (ii) compete for work directly or indirectly for DOE or Sandia based on such information for a period of six (6) months after either the completion of this agreement or until such information is released or otherwise made available to the public, whichever is first; (iii) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and (iv) release such information unless such information has previously been released or otherwise made available to the public by DOE or Sandia.

In addition, the Provider agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this agreement, it shall treat such information in accordance with any restrictions imposed on such information.

The Provider shall have, subject to patent, data, and security provisions of this agreement, the right to use technical data it first produces under this agreement for its private purpose provided that, as of the date of such use, all reporting requirements of this agreement have been met.

- (f) Acceptance. Through the acceptance of this agreement, the Provider has certified that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts which could give rise to organizational conflicts of interest, as defined in 48 CFR 909.570.
- (g) Disclosure After Award. The Provider agrees that if after award it discovers an organizational conflict of interest with respect to this agreement, or any modifications hereto, an immediate and full disclosure shall be made in writing. All statements, disclosures, and/or representations relative to a potential

conflict of interest, provided by the Provider pursuant to this Clause shall be enclosed in a sealed envelope addressed to the attention of the SCR. Clearly mark the following on the front of the envelope:

- current date,
- agreement number,
- Provider's name and address,
- name of the SCR, and
- statement reading substantially as follows:

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

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

In the event that the Provider was aware of an organizational conflict of interest prior to the award of this agreement and did not disclose the conflict, Sandia may terminate the agreement for default.

- (h) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this agreement, Sandia may terminate the agreement for default, disqualify the Provider for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this agreement.
- (i) Waiver. Requests for waiver under this Clause shall be directed in writing, in a sealed envelope addressed to the SCR, and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, such a waiver may be granted in writing.

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 Consultant/Provider is requested to support this policy.

CLAUSE A81 - ADDITIONAL TERMS AND CONDITIONS FOR CONSULTANT AND OTHER PROFESSIONAL SERVICE AGREEMENTS

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 Office, substitute Sandia and Sandia Contracting Representative (SCR). Upon request, the SCR will make the full text available:

Federal Acquisition Regulations (48 CFR) clauses

- 52.203-1 - Officials Not to Benefit
- 52.203-3 - Gratuities
- 52.203-7 - Anti Kickback Procedures
- 52.222-26 - Equal Opportunity
- 52.222-26 - Affirmative Action for Handicapped Workers

Department of Energy Acquisition Regulations

- 970-5203-1 - Covenant Against Contingent Fees
- 970-5203-2 - Examination of Records by the Comptroller General

SECTION III
SUPPLEMENTAL TERMS AND CONDITIONS FOR
CONSULTANT AND OTHER PROFESSIONAL PROVIDER SERVICE AGREEMENTS
INDEX OF CLAUSES

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

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

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

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

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

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

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

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

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

1. Definitions

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

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

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

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

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

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

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

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

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted

Rights Notice of subparagraph 7.c. if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

2. Allocations of Rights

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

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

b. The Contractor shall have the right to:

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

3. Copyright

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

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

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

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

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

c. Removal of copyright notices

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

4. Release, Publication and Use of Data

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

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

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

5. Unauthorized Marking of Data

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

(1) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(2) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

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

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

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

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

6. Omitted or Incorrect Markings

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

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

b. The Contracting Officer may also:

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

7. Protection of Limited Rights Data and Restricted Computer Software

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

b. Rights in Limited Rights Data.

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

LIMITED RIGHTS NOTICE

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

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

contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

- (c) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed.

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

c. Rights in Restricted Computer Software.

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

RESTRICTED RIGHTS NOTICE--LONG FORM

- (a) This computer software is submitted with restricted rights under Government Contract No. _____ and Subcontract No. _____, if appropriate. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.
- (b) This computer software may be:
 - (1) Used, or copied for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
 - (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.
(END OF NOTICE)

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

(RESTRICTED RIGHTS NOTICE--SHORT FORM)

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

(END OF NOTICE)

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

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

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

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

- (a) The term "Data" as used herein means recorded information regardless of form or characteristic, such as SOFTWARE, writings, sound recordings, pictorial reproductions, drawings, or other graphic representations, and works of similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term includes data such as management studies and data produced under support services contracts but does not include financial reports, cost analyses, and other information incidental to contract administration.
- (b) All data first produced or composed in the course of or under this contract shall be the sole

property of the Government. Except with the prior written permission of the contracting officer, the Contractor agrees not to assert any rights at common law or in equity or establish any claim to statutory copyright in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner of form, or authorize others so to do, without the written consent of the contracting officer or until such time as the Government may have released such data to the public.

- (c) The Contractor hereby grants to or will obtain for the Government a royalty-free, nonexclusive and irrevocable license throughout the world (1) to publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data which are not first produced or composed in the performance of this contract but which are incorporated in the work furnished under this contract; and (2) to authorize others so to do.
- (d) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this contract; or (2) based upon any libelous, defamatory, or other unlawful matter contained in such data.
- (e) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

CLAUSE 600-KCL (03-91) CLASSIFIED MATTER

I. SECURITY

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

in this clause, refer to the classification levels defined in Executive Order 12356.

the Contractor or subcontractor without the written consent of the SCR.

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

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

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

(5) National Security Information. The term "National Security Information," as used in this Clause, means information or material which is owned by, produced for or by, or under the control of the United States Government, which has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(6) Definition of Special Nuclear Material (SNM). SNM means: (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be SNM, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(7) Authorized Original Classifier or Derivative Classifier. The terms Authorized Original Classifier and Derivative Classifier, as used in this clause, refer to the classification authorities defined in Executive Order 12356.

(d) Security Clearance of Personnel. The Contractor shall not permit any individual to have access to any classified matter, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and DOE's regulations or requirements applicable to the particular level and category of classified matter to which access is required.

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

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

(g) Transfer of Classified Matter. No classified matter may be transferred to another location of

II. CLASSIFICATION

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

III. SHIPMENTS

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

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

Address: (To be completed at time of award)

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

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

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

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

IV. FILING OF PATENT APPLICATIONS - CLASSIFIED SUBJECT MATTER

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject material of this contract classified "Secret" or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the SCR. DOE shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the SCR regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the SCR shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

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

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed,

in any country other than in the United States as provided in paragraphs (a) and (b) of this Clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the SCR.

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

V. MODIFICATION TO SECTION II

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

VI. CLASSIFICATION LISTING

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

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

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

ITEM	IDENTIFICATION	CLASSIFICATION
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VII. USE OF CONTRACTOR/SUBCONTRACTOR FACILITIES

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

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

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

- (a) Contractor personnel who are granted access to Sandia computers and word processors are subject to the computer security procedures outlined in this Clause. The procedures are applicable to Contractor personnel located at a Sandia facility or at the Contractor's facility. If the Contractor does not comply with the provisions of this Clause, Sandia may withdraw Contractor's access to Sandia computers and may also terminate this contract for default. Misuse of a Sandia computer may be a violation of law and could result in appropriate action including prosecution.
- (b) Access to Sandia computing facilities by Contractor personnel may be permitted as required to perform the contract Statement of Work. Sandia computers may be used only to perform work authorized in the contract.
- (c) Computer software or documentation developed on or for Sandia computer systems is the property of Sandia and the Government unless provided otherwise in the contract.

- (d) Information or data furnished by Sandia or obtained from a Sandia computer by Contractor personnel must be protected by the Contractor to prevent disclosure to any person other than Contractor's employees having a need to know unless such disclosure is authorized in writing by the Sandia Contracting Representative.
- (e) Classified material or information shall be protected in accordance with the security provisions of the contract, if applicable. If this contract does not include security provisions and the Contractor is furnished or comes in contact with classified material or information, it shall be reported immediately to the SCR.
- (f) Files of any other user may not be accessed without specific permission from that user.
- (g) Sandia reserves the right to monitor computer use by reviewing the contents of all files on Sandia computers.
- (h) Computer passwords are issued to individuals and must not be shared. Computer passwords must be protected by each Contractor employee to prevent disclosure to any other persons. If a computer password is disclosed or potentially disclosed, the Contractor must notify the SCR immediately so that a new password can be issued.

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

- (a) For purposes of this clause, a foreign interest is defined as any of the following:
 - (1) A foreign government or foreign government agency;
 - (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
 - (3) Any form of business enterprise organized or incorporated under the laws of the U. S., or a State or other jurisdiction within the U. S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or
 - (4) Any person who is not a U. S. citizen.
- (b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, classified material, or special nuclear material as defined in 10 CFR Part 710, may result.
- (c) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "SCR" shall mean the Sandia Contracting Representative. When this clause is included in a subcontract, the term "Contractor" shall mean subcontractor and the term "contract" shall mean subcontract.
- (d) The Contractor shall immediately provide the SCR written notice of any changes in the extent and nature of FOCI over the Contractor which would affect the answers to the questions presented in 48 CFR 952.204-73 (Sandia Form SF 6432-QS). Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the SCR.
- (e) In those cases where a Contractor has changes involving FOCI, the Department of Energy (DOE) must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the DOE shall consider proposals made by the Contractor to avoid or mitigate foreign influences.

- (f) If the SCR at any time determines that the Contractor is, or is potentially, subject to FOCI, the Contractor shall comply with such instructions as the SCR shall provide in writing to safeguard any classified information, classified material, or significant quantity of special nuclear material.
- (g) The Contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information, classified material, or a significant quantity of special nuclear material. Additionally, the Contractor shall require such subcontractor to submit a completed certification required in 48 CFR 952.204-73 (Sandia Form SF 6432-QS) prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the SCR.
- (h) Information submitted by the Contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE and Sandia to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (i) The requirements of this clause are in addition to the requirement that a Contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on Sandia's or DOE's rights, including Sandia's right to terminate this contract.
- (j) The SCR may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the SCR's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if in the SCR's judgment, the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The SCR may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

CLAUSE 708-TA (04-91) TECHNICAL REPORTS

I. FINAL REPORT

(a) Requirements

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

(b) Report Content

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

(c) Specifications

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

The report cover shall include: Report title; Sandia contract number; Sandia Requester name and organization number; SCR name and organization number; Sandia report (SAND) number stated in

Section I; and, if classified Secret, Reference Symbol.

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

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

(d) Transmittal

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

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

(e) Distribution

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

II. INTERIM REPORTS

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

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

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

DISCLOSURE OR REPRESENTATION

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

(b) In the absence of any relevant interests referred to above, the Contractor shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to possible organizational conflicts of interest. Contractor's proposed consultants and

subcontractors are responsible for submitting information and may submit it directly to the SCR in a sealed envelope.

- (c) The sealed envelope submitted to the SCR shall be forwarded to DOE for review of the Contractor's statement and DOE through the SCR may require additional relevant information from the Contractor. All information submitted, and any other known relevant information, will be used to determine whether an award by Sandia to the Contractor may create an organizational conflict of interest. If such organizational conflict of interest is found to exist, DOE through Sandia may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the Contractor, or (3) determine that it is otherwise in the best interest of the Government to contract with the Contractor by including appropriate conditions mitigating such conflict in the contract awarded.

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

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

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

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

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

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

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

- (g) All statements, disclosures and/or representations relative to a potential conflict of interest, provided by the Contractor pursuant

to this Clause should be enclosed in a sealed envelope addressed to the attention of the responsible SCR. Clearly mark the following on the front of the envelope:

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

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

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

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

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

(1) Technical Consulting and Management Support Services

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

- (ii) If the Contractor under this contract prepares a complete or essentially complete statement of work or specification to be used in competitive procurements, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of

work or specifications unless so directed in writing by the SCR, in which case the restriction in this subparagraph shall not apply.

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

(2) Access To and Use of Information

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

(c) Disclosure after Award

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

Sandia may, however, terminate the contract for convenience if it deems

such termination to be in the best interests of the Government or Sandia.

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

(d) Subcontracts

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

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

- (e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, Sandia may terminate the contract for default, disqualify the contractor for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.
- (f) Waiver. Requests for waiver under this Clause shall be directed in writing, in a sealed envelope addressed to the SCR, and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, such a waiver may be granted in writing.
- (g) Modifications. Prior to a contract amendment, when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the contract are changed, the Contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.
- (h) All statements, disclosures and/or representations relative to a potential conflict of interest, provided by the Contractor pursuant to this Clause should be enclosed in a sealed envelope addressed to the attention of the responsible SCR. Clearly mark the following on the front of the envelope:

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

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