

SECTION II
STANDARD TERMS & CONDITIONS FOR COMMERCIAL ITEMS

PART A. APPLICABLE TO ALL TRANSACTIONS

A1 DEFINITIONS

- (a) "Government" means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- (b) "Sandia" means Sandia National Laboratories, operated by Sandia Corporation under Contract No. DE-ACO4-94AL-85000 with the U.S. Department of Energy.
- (c) "Seller" means the person or organization that has entered into this agreement.
- (d) "Item" means commercial items, commercial services and commercial components as defined in FAR 52.202-1.
- (e) "Agreement" means Purchase Order, Contract, Price Agreement, Subcontract, As Ordered Agreement, or modifications thereof.
- (f) "SCR" means Sandia Contracting Representative, the only person authorized to execute and/or administer this Agreement for Sandia.

A2 APPLICABLE LAW

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

A3 ORDER OF PRECEDENCE

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

A4 TITLE AND ADMINISTRATION

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

A5 ACCEPTANCE OF TERMS AND CONDITIONS

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

A6 WARRANTY

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

A7 ASSIGNMENT

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

A8 NEW MATERIALS

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

A9 TRANSPORTATION

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

A10 RISK OF LOSS

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

A11 PAYMENT

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

A12 COMPLIANCE WITH LAWS

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

A13 CANCELLATION OR TERMINATION FOR CONVENIENCE. (UCC 2-106)

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

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

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

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

A14 BANKRUPTCY

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

A15 TAXES

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

A16 INCORPORATION BY REFERENCE

For FAR and DEAR clause provisions incorporated into this Agreement by reference, "Contractor" means Seller and "Contracting Officer" means the SCR. The FAR and DEAR clauses may be found in Title 48 of the Code of Federal Regulations. The following clauses are incorporated into this Agreement by reference thereto as if reprinted here in their entirety:

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

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

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

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

PART B. APPLICABLE WHEN ITEMS INCLUDE SERVICES

B1 CHANGES

(a) The SCR may at any time, by written notice, make changes within the general scope of this Agreement in any one or more of the following: (1) description of the services to be performed; (2) place of performance and (3) the amount of services to be furnished. If any such change causes a difference in the cost of, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Agreement signed by both parties. Any claim for adjustment by Seller must be made within 20 days from the date of receipt of Sandia's change notice, although Sandia in its sole discretion may receive and act upon any claim for

adjustment at any time before final payment. Nothing in this clause, including any disagreement with Sandia about the equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

PART C. APPLICABLE WHEN SELLER PERSONNEL WORK ON DOE SITE

C1 INCORPORATED BY REFERENCE

The following clauses are incorporated into this Agreement by reference thereto as if reprinted here in their entirety:

DEAR 970.5204-58 Workplace Substance Abuse Programs at DOE sites

DEAR 970.5204-59 Whistleblower Protection for Contractor employees

PART D. APPLICABLE WHEN WORK MAY INVOLVE ACCESS TO CLASSIFIED INFORMATION

D1 INCORPORATION BY REFERENCE

The following clauses are incorporated into this Agreement by reference thereto as if reprinted here in their entirety:

DEAR 952.204-2 Security Requirements

DEAR 952.204-70 Classification

PART E. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$500,000

E1 INCORPORATION BY REFERENCE

The following clauses are incorporated into this Agreement by reference thereto as if reprinted here in their entirety:

FAR 52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns

FAR 52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan