

SECTION II
STANDARD TERMS & CONDITIONS FOR PRODUCTION MATERIAL

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 Item" and "commercial component" as defined in FAR 52.202-1.
- (e) "Agreement" means Section I and these terms and conditions.
- (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, with regard to goods and/or services supplied, shall be governed and this Agreement shall be interpreted in accordance with federal law and Article 2 of the Uniform Commercial Code as enacted in the State of New Mexico. The parties agree to jurisdiction in the Federal District Court, with venue in the District of New Mexico. In the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in Bernalillo County, New Mexico.

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 in Section I and (2) SF 6432-PR, Section II Standard Terms and Conditions For Commercial Items, and (3) incorporated by reference provisions.

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 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, at seller's expense, including transportation. 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 any remedy set forth in the UCC 2-711 to 2-718. **Seller disclaims any implied warranty of merchantability or fitness for a particular purpose.**

A7 ASSIGNMENT

Seller shall not assign any interest in this agreement 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 TRANSPORTATION

Transportation shall be "FOB Origin," unless otherwise specified in section I, (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.

A9 RISK OF LOSS

For loss during transportation of compliant Items which are Sandia's obligation, Sandia shall 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.

A10 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. Payments shall be subject to setoff or recoupment for any present or future claims of Sandia against the seller.

A11 COMPLIANCE WITH LAWS

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

A12 CANCELLATION OR TERMINATION FOR CONVENIENCE (UCC 2-106)

- (a) Sandia may cancel this Agreement for cause, 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 accepted.
- (b) Sandia may terminate for convenience of itself or the Government, any order for items not accepted by Sandia. In that event Sandia shall only be liable for the purchase price of items already completed and identified to the agreement but not at that time accepted by Sandia.
- (c) Seller shall not be liable to Sandia for delays in performance occasioned by causes beyond Seller's reasonable control and without its 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.

A13 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.

A14 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.

A15 MANUFACTURING AND TESTING STANDARDS

- (a) Unless excluded or modified elsewhere in this contract/order, Contractor warrants that all items or components, thereof delivered under this contract, shall be manufactured and/or tested in accordance with standards normally associated

with such items when they are sold to commercial users in the United States. Examples of such manufacturing and/or testing standards include, but are not limited to:

Underwriter's Laboratory (UL) Listing
National Fire Protection Association Approval
Occupational Safety and Health Act (OSHA) Approval
American Society for Testing Material (ASTM) Certification
Nationally Recognized Testing Laboratory (NRTL) Approvals

(b) All items furnished under this contract shall be clearly marked and/or labeled, as appropriate; and, if applicable, all items shall be accompanied by installation and/or operating instruction normally associated with such items.

A16 WORKMANSHIP AND MATERIALS

(a) Grade or Workmanship and Materials. Unless otherwise specified in Section I or expressly provided for by specifications issued under this agreement:

All articles, equipment, and materials incorporated in the work are to be:

- (i) New and of the most suitable grade of their respective kinds for the purpose;
- (ii) In accordance with any applicable drawings and specifications; and
- (iii) Installed to the satisfaction and with the approval of the SCR.

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

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

A17 PRODUCTION SUPPLIER PERFORMANCE RATING SYSTEM

Supplier conformance to contractual requirements with respect to quality, delivery, and service will be documented by Sandia National Laboratories (SNL) for the purpose of Supplier Performance History Evaluation to be used for future purchasing activities.

Composite scores based upon weighted contributions of 50% quality, 40% delivery and 10% service will be derived for a rolling 12-month period. Performance within the most recent six months will be given greater consideration than that in the balance of the rolling period. Composite ratings shall remain on file for a period of three years. Contracted suppliers will be provided with more information upon request.

A18 PRODUCTION SUPPLIER RATING SYSTEM - SURVEYS AND AUDITS

The Contractor agrees to allow Sandia or the Government access to its facility for the purposes of surveying or auditing the Contractor's quality program with the objective of determining compliance to applicable contract requirements.

A19 PRODUCTION SUPPLIER RATING SYSTEM - CORRECTIVE ACTION REQUESTS

Sandia shall, when a nonconformance to contract requirements is observed, request corrective action from a Contractor. A nonconformance may not involve return of materials to the Contractor if Sandia determines that the material is "usable as is". The Contractor agrees to provide written response to a Corrective Action Request as coordinated by Sandia Procurement within 30 days of receipt of such a request. The Contractor shall determine appropriate corrective actions and implement them so as to preclude recurrence of that nonconformance. Sandia reserves the right to provide input for potential corrective action alternatives. The Contractor may be audited to assure that implementation of corrective actions was completed.

A20 INCORPORATION BY REFERENCE

For FAR and DEAR clause provisions incorporated by reference thereto into this Agreements if reprinted here in their entirety. For incorporated clause "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.

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).

PART B. APPLICABLE WHEN ITEMS INCLUDE SERVICES

B1 APPLICATION OF UNIFORM COMMERCIAL CODE

For the purposes of Items that include services, the Uniform Commercial Code Article 2, Parts 1,3,5,6, and 7 as enacted by the State of New Mexico at New Mexico shall apply to the services portion of this Agreement.

B2 CHANGES

(a) Sandia 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.

(b) Only the SCR is authorized on behalf of Sandia to issue changes, whether formal or informal. If the Seller considers that any direction or instruction by Sandia personnel constitutes such a change, Seller shall not rely upon such instruction or direction without confirmation from the SCR. 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 (AUG 1992)
DEAR 970.5204-59 Whistle blower Protection for Contractor employees (JAN 1993)

PART D. APPLICABLE WHEN WORK INVOLVES ACCESS TO CLASSIFIED INFORMATION, SPECIAL NUCLEAR MATERIAL OR AUTHORIZED UNRESTRICTED ACCESS TO AREAS CONTAINING THESE

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 (APR 1993 AL 92-2R)
DEAR 952.204-70 Classification (APR 1993 AL 92-2R)

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 (OCT 1995)
FAR 52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (OCT 1995)