

## **TERMS AND CONDITIONS**

1. **ACCEPTANCE:** Acceptance of this Purchase Order (hereinafter called the “contract”) must be in accordance with and strictly limited to the Terms and Conditions contained herein. An attempted acknowledgement or acceptance which contains provisions conflicting or additional to the Terms and Conditions herein set forth or which varies any term or condition shall have no force or effect. Performance by the Contractor without an effective acknowledgement shall be deemed to be performance in accordance with the Terms and Conditions of this contract.
2. **PAYMENT:** Payment is contingent upon acceptance of materials and services. Cash discount period shall be calculated from date of receipt of acceptable materials or services or acceptable invoice whichever is received later. Drafts will not be honored.
3. **WARRANTY:** Unless otherwise agreed to in writing by the parties, the Contractor warrants (1) that all workmanship shall be first class; (2) the item or items purchased will be supplied according to specifications; and (3) except as otherwise provided in the specifications, all items incorporated in the work shall be new and of the most suitable grade of their respective kinds for the purpose. Such warranties together with the Contractor’s service warranties and guarantees, if any, shall survive inspection tests, acceptance of and payment for the articles and shall run to the Laboratory, its successors and assigns. The Contractor shall, within a reasonable time after receipt of written notice thereof, make good at its own expense and without cost to the Laboratory any defects in materials or workmanship which may appear during the period ending on a date twelve (12), months after delivery, unless a different warranty period is provided in this contract. The Laboratory, may, at its option either return for credit or require prompt correction or replacement of any defective or nonconforming article or part thereof. If the Contractor is unable to or refuses to promptly correct or replace such defective or nonconforming article or part thereof, the Laboratory, may, by contract or otherwise, repair or replace such work or materials and assess the Contractor the excess cost occasioned the Laboratory thereby. The one year warranty shall not operate to reduce the statutory period of limitations for suit for breach of contract nor is it intended to limit or eliminate any legal remedy, statutory or otherwise.
4. **DEFAULT-DELAYS:** The Laboratory may cancel this contract in whole or in part in the event that the Contractor fails or refuses to deliver any of the items purchased, within the time provided, or otherwise violates any of the conditions of this contract, or if it becomes evident that the Contractor is not conducting the work in accord with the specifications or with such diligence as to permit delivery on or before the delivery date. In the event the Laboratory cancels this contract in whole or in part as herein provided, the Laboratory may procure, upon such terms and in such manner as the Laboratory may deem appropriate, materials or services similar to those so cancelled and the Contractor shall be liable to the Laboratory for any excess costs for such similar materials or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this article. Delays in delivery due to causes beyond the control and without the fault or negligence of the Contractor will be

excused by the Laboratory if the Contractor notifies the Laboratory in writing of the cause of such delay within a reasonable time from the beginning thereof. When such excuse is given, the Laboratory, by written notice to the Contractor, will extend the time for performance by such period of time as the Laboratory determines to be commensurate with the period of such delay. The rights and remedies of the Laboratory provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. If, after notice of termination of this contract in whole or in part under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued under the clause entitled "Termination for Convenience."

5. **TAXES:** Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State and local taxes in effect on the date of this contract but does not include any Federal, State or local sales, use or other tax directly applicable to the completed materials or services covered by this contract from which the Contractor or this transaction is exempt nor any other tax from which the Contractor or this transaction is exempt.
6. **TITLE-GOVERNMENT PROPERTY:** All materials furnished under this contract are for the benefit of the United States Government and title thereto shall pass directly from the Contractor to the United States Government pursuant to the provisions of the contract between the Laboratory and the United States Government under which this contract is placed.
7. **RESPONSIBILITY-RISK OF LOSS:** The Contractor shall be responsible for the materials covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection. After delivery to the Laboratory at the designated point and prior to acceptance or notice of rejection by the Laboratory, the Laboratory shall be responsible for the loss or destruction of or damage to the materials only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Laboratory acting within the scope of their employment. The Contractor shall bear all risk as to rejected materials after notice of the rejection.
8. **CHANGES:** The Laboratory may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (a) drawings, designs, or specifications; (b) method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this section must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Laboratory, if it decides that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this

contract. Nothing in this section, Changes, shall excuse the Contractor from proceeding with the contract as changed. Except as otherwise provided herein no payment for extra work shall be made unless such extras and the price thereof have been authorized in writing by the Laboratory.

9. PATENT INDEMNITY: If the amount of this contract is in excess of \$10,000, the Contractor shall indemnify the Laboratory, the Government and their officers, agents, and employees against liability, including costs, for infringement of any United States letter patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:
  - (i) an infringement resulting from compliance with specific written instructions of the Laboratory or the Government directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
  - (ii) an infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or
  - (iii) a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.
10. ASSIGNMENT: The Contractor shall not assign or transfer this contract nor any claim or interest thereunder to any other party or parties except as authorized by the Laboratory. The Laboratory may assign the whole or any part of this contract to the Government or its designee.
11. TERMINATION FOR CONVENIENCE: The Laboratory reserves the right to terminate this contract in whole or in part for its convenience by written notice to the Contractor. If the contract is so terminated the Laboratory shall make an equitable adjustment in the contract price to compensate the Contractor for all reasonable costs incurred by him in connection with said contract plus a reasonable profit with respect to all necessary work performed by the Contractor to the date it received notice for such termination.
12. EXAMINATION OF RECORDS: If this contract is in excess of \$10,000 the Contractor agrees that the Comptroller General of the United States or any of his duly authorized

representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this contract unless the Department authorizes their prior disposition.

13. COVENANT AGAINST CONTINGENT FEES: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Laboratory or the United States Government shall have the right to annul this contract without liability or in their discretion to deduct from the contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
14. EQUAL OPPORTUNITY: All of the quoted provisions in Section 202 of Executive Order No. 11246, dated September 24, 1965, are incorporated in this contract by reference. As used therein the words "contracting agency" shall be deemed to mean "U.S. Department of Energy."
15. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVER TIME COMPENSATION: This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.
  - 15.1 Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchman, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his basic rates of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours.
  - 15.2 Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions of paragraph 15.1, the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of

paragraph 15.1 in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of his standard workweek of 40 hours without payment of the overtime wages required by paragraph 15.1.

15.3 Withholding for Unpaid Wages and Liquidated Damages. The Laboratory may withhold from the Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph 15.2.

15.4 Subcontracts. The Contractor shall insert paragraphs 15.1 through 15.4 of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

16. OFFICIALS NOT TO BENEFIT: No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

17. BUY AMERICAN ACT: The Contractor warrants that the material furnished under this contract will be mined or produced in the United States or manufactured from such material insofar as required by the Buy American Act (41 U.S.C. 10 a-d) and regulations thereunder.

18. RENEGOTIATION: If this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.) as amended, the contract shall be deemed to contain all the provisions required by Section 104 of said Act.

19. WALSH-HEALY PUBLIC CONTRACTS ACT: To the extent that this contract requires the Contractor to furnish necessary materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S.C. 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

20. INSPECTIONS AND ACCEPTANCE: All materials (which term throughout this section includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Laboratory, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. If the materials or work are found to be defective, the Contractor shall promptly repair or replace such materials or work, or if the Contractor is unable or refuses to do so, the Laboratory may by contract or otherwise repair or replace such

materials or work and assess the Contractor the excess cost occasioned the Laboratory thereby. Acceptance of all materials and services ordered hereunder shall be effected by the Laboratory within a reasonable time after delivery. Except as otherwise provided for in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

21. LABORATORY FURNISHED PROPERTY: The Laboratory may, from time to time, furnish Government owned property for use by the Contractor under this contract. If such property is furnished hereunder, the Contractor (i) shall maintain adequate property control records in accordance with sound industrial practice, (ii) shall, unless otherwise provided, be liable for any loss or damage thereto except for reasonable wear and tear, and (iii) shall upon completion of this contract and to the extent not consumed thereunder, make such disposition thereof as the Laboratory may direct.

22. NOTICE OF LABOR DISPUTES: Whenever an actual or potential labor dispute is delaying or threatens to delay delivery of materials or performance of services under this contract, the Contractor shall immediately notify the Laboratory in writing. Such notice shall include all relevant information concerning the dispute and its background.

23. CONVICT LABOR: In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082 (c) (2)) and Executive Order 11755, December 29, 1973.

#### 24. UTILIZATION OF SMALL BUSINESS CONCERNS

24.1 It is the policy of the Government as declared by the Congress that a fair proportion of the contracts for supplies and services for the Government be placed with small business concerns.

24.2 The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

25. UTILIZATION OF LABOR SURPLUS AREA CONCERNS. (The following clause is applicable if this contract exceeds \$5,000.)

25.1 It is the policy of the Government to award contracts to labor surplus area concerns that (1) have been certified by the Secretary of Labor (hereafter referred to as certified-eligible concerns with first or second preferences) regarding the employment of a proportionate number of disadvantaged individuals and have agreed to perform substantially (i) in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas or (ii) in other areas of the United States, respectively, or (2) are noncertified concerns which have agreed to perform substantially in persistent or substantial labor surplus areas, where this can be done consistent

with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

- 25.2 In complying with paragraph 25.1 of this clause and with paragraph 24.2 of the clause of this contract entitled "Utilization of Small Business Concerns" the Contractor in placing his subcontracts shall observe the following order of preference: (1) Certified-eligible concerns with a first preference which are also small business concerns. (2) other certified-eligible concerns with a first preference; (3) certified-eligible concerns with a second preference which are also small business concerns; (4) other certified eligible concerns with a second preference; (5) persistent or substantial labor surplus area concerns which are also small business concerns; (6) other persistent or substantial labor surplus area concerns; and (7) small business concerns which are not labor surplus area concerns.

## 26. UTILIZATION OF MINORITY BUSINESS ENTERPRISES

- 26.1 It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.
- 26.2 The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly owned business, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

## 27. DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

- (a) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- (b) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required.

State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e).

- (c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.
- (d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the Laboratory or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment, and placement.
- (e) Whenever the Contractor becomes contractually bound to the listing provisions

of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

- (f) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.
- (g) The provisions of paragraphs (b), (c), (d), and (e) of this clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.
- (h) As used in this clause:
  - (1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and non-production; plant and office; laborers and mechanics; supervisory and nonsupervisory technical; and executive, administrative, and professional openings that are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.
  - (2) "Appropriate office of the State employment service system" means the local office of the Federal/State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.
  - (3) "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration

will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.

- (4) "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.
- (i) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
  - (j) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
  - (k) The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices in a form to be prescribed by the Director, provided by or through the Laboratory. Such notice shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.
  - (l) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Contractor is bound by terms of the Vietnam Era Veteran's Readjustment Assistance Act and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era
  - (m) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

## 28. EMPLOYMENT OF THE HANDICAPPED

- (a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor

agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- (b) The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, Public Law 93-112, as amended (hereinafter referred to as the "Act").
- (c) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor, provided by or through the Laboratory. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- (e) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Act and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- (f) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

29. FEDERAL SUPPLY SERVICE CONTRACTS: The following clause is applicable if this contract is placed in accordance with a Federal Supply Service Contract:

"This contract is placed by Nat. Sup. Cyc. Laboratory as agent for and on behalf of the Department of Energy under your Federal Supply Service contract for furnishing the above materials, supplies, equipment or nonpersonal services. In the event of any inconsistency between the terms and conditions stated hereon and the terms and conditions of your Federal Supply Service contract, the latter shall govern."

30. **PRICING OF ADJUSTMENTS:** When costs are a factor in any determination of a contract price adjustment pursuant to the “Changes” clause or any other provision of this contract, such costs shall be in accordance with the contract cost principles and procedures in Part 9-15 of the Federal Procurement Regulations (41 CFR 1-15) as supplemented or modified by DOE-PR Part 9-15.2 (41 CFR a 9-15.2) in effect on the date of this contract.
31. **REPORTING OF ROYALTIES:** If this contract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to the Laboratory, the Contractor agrees to report in writing to the Government through the Laboratory during the performance of this contract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of DOE or the Laboratory of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.
32. **AUTHORIZATION AND CONSENT:** The Government has given its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government or the Laboratory under this contract or (ii) utilized in the machinery, tools or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provision now or hereafter forming a part of this contract, or (b) specific written instructions given by the Laboratory or the Government directing the manner of performance. The entire liability of the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
33. **NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT:** The provisions of this clause shall be applicable only if the amount of this contract exceeds \$10,000.
- a) The Contractor shall report to the Government through the Laboratory promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

- b) In the event of any claim or suit against the Laboratory or the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government when requested by the Government or the Laboratory, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government or the Laboratory.
- c) This clause shall be included in all subcontracts.

#### 34. PREFERENCE FOR U.S. FLAG AIR CARRIERS

- (a) Public Law 93-623 requires that all Federal Agencies and Government contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditure from appropriated funds for international air transportation on other than a U.S. flag air carrier in the absence of satisfactory proof of the necessity therefore.
- (b) The Contractor agrees to utilize U.S. flag air carriers for international air transportation of personnel (and their personal affects) or property to the extent service by such carriers is available.
- (c) In the event that the Contractor selects a carrier other than a U.S. flag air carrier for international air transportation, he will include a certification on vouchers involving such transportation which is essentially as follows:

##### CERTIFICATION OF UNAVAILABILITY OF U. S. FLAG AIR CARRIERS

I hereby certify that transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reasons (see Federal Procurement Regulations (41 CFR 1-1.323-3)): (state reasons).

- (d) The terms used in this clause have the following meanings:
  - (1) "International air transportation" means transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States.
  - (2) "U.S. flag air carrier" means one of a class of air carriers holding a

certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.

(3) The term "United States" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase hereunder which may involve international air transportation.

35. CLEAN AIR AND WATER (Applicable only if the contract exceeds \$100,000, or the Laboratory has determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c) (1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319 (c)) and is listed by EPA, or the contract is not otherwise exempt.)

1. The Contractor agrees as follows:

- a) To comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.
- b) That no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency list of violating facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- c) To use his best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.
- d) To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph d.

2. The terms used in this clause have the following meanings:

- (a) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

- (b) The term “Water Act” means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).
- (c) The term “Clean Air Standards” means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Clear Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).
- (d) The term ‘Clean Water Standards’ means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a state under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).
- (e) The term ‘compliance’ means compliance with Clean Air or Water Standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirement of the Air Act or Water Act and regulations issued pursuant thereto.
- (f) The term ‘facility’ means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

36. APPLICABLE LAW: To the extent that Federal law does not exist and State law should become applicable to this contract, the laws of the State of Michigan shall apply.