PLAINTIFF'S EXHIBIT
UC-2060

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CONTRACT NO. W-7405-ENG-26
MODIFICATION M091

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Contract No. W-7405-ENG-26
UNION CARBIDE CORPORATION
Modification No. M091

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, entered into this 28th day of October, 1983, effective as of that date, by and between the UNITED STATES OF AMERICA (hereinafter referred to as the "Government"), acting through the SECRETARY OF ENERGY (hereinafter referred to as the "Secretary"), the statutory head of the DEPARTMENT OF ENERGY (hereinafter referred to as "DOE"), and UNION CARBIDE CORPORATION (hereinafter referred to as the "Corporation"), a corporation organized and existing under the laws of the State of New York, having an office on Old Ridgebury Road, Danbury, Connecticut;

WITNESSETH THAT:

WHEREAS, the Government and the Corporation have heretofore entered into Contract No. W-7405-ENG-26 and Modifications Nos. 1 through M090 thereto, pursuant to which the Corporation has undertaken the execution of certain functions and operation of certain facilities for DOE involved in and associated with the production of special nuclear material and the conduct of atomic energy research and development in the facilities of DOE hereinafter described; and

WHEREAS, the Corporation has expressed its intention not to continue with the functions and operations heretofore undertaken, and DOE has commenced the process of selecting a replacement contractor to assume those functions and operations; and

WHEREAS, DOE and the Corporation agree to keep the present contractual arrangement essentially in effect until a replacement contractor is selected and is in a position to assume responsibility under a separate contract for the functions and operations heretofore undertaken by the Corporation under this contract; and

WHEREAS, DOE and the Corporation are desirous of further amending the contract for the purposes of providing for continuing the present contract in effect until the replacement contractor assumes responsibility for the functions and operations, to provide a contractual basis for a smooth transition of functions and operations to the replacement contractor, to provide for the Corporation's continued assistance after transfer of functions and operations to the replacement contractor, and to provide for the Corporation's closeout of its affairs and activities that remain after the transfer of functions and operations; and

WHEREAS, this Supplemental Agreement is authorized by the Department of Energy Organization Act (P. L. 95-91); and other applicable law;

NOW, THEREFORE, in consideration of the mutual agreements and undertakings of the parties, the parties hereto do hereby agree that this Modification No. M091 states all of the provisions of this Contract No. W-7405-ENG-26 in effect subsequent to the effective date of this modification so that they shall read in their entirety as follows:

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ARTICLE I - DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Head of the Agency" or "Secretary" means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Head of the Agency or the Secretary.

(b) The term "DOE" means the U. S. Department of Energy.

(c) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(d) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

(e) The term "plants" shall be deemed to include all of the plants referred to in Article II of this contract and the Oak Ridge National Laboratory.

(f) The term "replacement contractor" means the firm which succeeds the Corporation as DOE's contractor for performance of the functions and operations similar to those described in Articles II and III below.

(g) The term "operations phase" means the period during which the Corporation continues to perform the functions and operations described in Articles II and III below.

(h) The term "transition phase" means the period between the time when DOE selects the replacement contractor and the time when the replacement contractor assumes responsibility under its contract with DOE for the functions and operations similar to those described in Articles II and III below.

(i) The term "Post Operations Phase" means the period after the replacement contractor assumes responsibility under its contract with DOE for the functions and operations similar to those described in Articles II and III below, and the Corporation's responsibility for the functions and operations described in Articles II and III below ceases.

ARTICLE II - ENGAGEMENT OF CORPORATION - DESCRIPTION OF FACILITIES

The Government expressly engages the Corporation to manage, operate and maintain (including standby maintenance) the plants and facilities described below and to perform the work and services described in this contract, including the utilization of information, material, funds, and other property of

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DOE, the collection of revenues, and the acquisition, sale or other disposal of property for DOE, subject to the limitations as hereinafter set forth. The Corporation undertakes and promises to manage, operate and maintain said plants and facilities, and to perform said work and services, upon the terms and conditions herein provided and in accordance with such directions and instructions not inconsistent with this contract which DOE may deem necessary or give to the Corporation from time to time. In the absence of applicable directions and instructions from DOE, the Corporation will use its best judgment, skill, and care in all matters pertaining to the performance of this contract. The Corporation will not be required to operate the plants described below in any manner which it deems unsafe to the plants or personnel (including any third parties and members of the public).

The facilities to be managed, operated and maintained by the Corporation hereunder consist of the following Government-owned buildings and facilities, together with the utilities and appurtenances thereto, located at Oak Ridge, Tennessee, and Paducah, Kentucky:

(a) At Oak Ridge, Tennessee

(1) Gaseous Diffusion Plant (excluding facilities of the Oak Ridge National Laboratory and including all Government-owned buildings and facilities and appurtenances), commonly known and hereinafter referred to as the ORGDP (also known as the K-25 Plant).

(2) The Y-12 Plant, excluding Oak Ridge National Laboratory facilities.

(3) Oak Ridge National Laboratory (including certain facilities at the Y-12 Plant and the ORGDP), hereinafter sometimes referred to as the Laboratory or ORNL.

(b) At Paducah, Kentucky.

Gaseous Diffusion Plant (which includes all Government-owned buildings and facilities together with the utilities and appurtenances thereto located in McCracken County, Kentucky, approximately 16 miles west of Paducah, Kentucky).

ARTICLE III - DESCRIPTION OF WORK AND SERVICES WITH RESPECT TO FACILITIES

(a) Plant Activities

With respect to the facilities described in Article II, the Corporation shall manage, operate and maintain them in accordance with programs approved in writing from time to time by DOE. The functions to be performed include, but are not necessarily limited to, the following:

(1) Production of uranium enriched in the Uranium-235 isotope by the gaseous diffusion method; the preparation of UF_6 feed for the gaseous diffusion plants; the reduction of UF_6 gaseous diffusion tails to the desired form (Paducah Plant only); the production of barrier materials

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(ORGDP only); and the recovery of uranium and other materials; all in the amount and at the rate and enrichment required, within the respective capacities of the ORGDP and Paducah Plant, by schedules to be provided by DOE.

(2) Participation in efforts related to the design, construction, and operation of additional enrichment facilities and the enrichment of uranium by the gas centrifuge method, including the responsibility for the Operating Contractor's Project Office.

(3) Processing of enriched uranium; separation of lithium isotopes; recovery of normal, depleted, and enriched uranium; fabrication of weapon components and services for miscellaneous programs.

(4) Carrying out of quality assurance programs in accordance with DOE's instructions.

(5) Production and/or distribution of radioisotopes, stable isotopes, transuranics, and special nuclear and source materials and other materials as DOE may authorize and direct.

(6) Research and development services with the objective of maintaining United States leadership in uranium enrichment technology and production of U-235 at minimum cost.

(7) Research and development services designed to promote efficient operations at minimum cost for the various Y-12 Plant Programs.

(8) Research and development in connection with and fabrication and operation of nuclear reactors as DOE may authorize or direct.

(9) Research and development in physical and biological sciences, engineering, nuclear reactor development, and related fields (at Oak Ridge, Tennessee, or elsewhere).

(10) Educational and training programs in fields of knowledge referred to above.

(b) Construction Services

Upon request of DOE and acceptance thereof by the Corporation, the Corporation shall procure for DOE the construction of new facilities or the alteration or repair of Government-owned facilities at the plants. Any subcontract entered into under this paragraph shall be subject to the written approval of DOE and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration and/or repair, including painting and decorating, of a public building or public work.

(c) Related Services

(1) In addition to the services specifically described in other provisions of this Article III, the Corporation shall perform such other

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services, incidental or related to the services described in this Article III, or to the programs of DOE (including, without limitation, engineering, design, procurement, inspection, testing, installation, and related services in connection with the construction of new facilities and additions to, or rearrangement of, existing facilities), as DOE and the Corporation shall agree in writing from time to time will be performed under this contract either for DOE or its contractors, at Oak Ridge or elsewhere. The costs incurred by the Corporation in performing such services shall be allowable costs hereunder in accordance with the provisions of Article VI.

(2) The Corporation, to the extent it is in a position to do so, will render such services, including transfers of property, to Federal agencies and to other cost-type contractors of DOE at Oak Ridge, Tennessee, or elsewhere, as the Corporation is able to render without interfering substantially with the performance of its other responsibilities hereunder and as may be requested by such other cost-type contractors who represent to the Corporation that such services are required in connection with the performance of their contracts, or, in the case of other Federal agencies, as approved or directed by DOE. Such services shall be rendered on mutually agreeable terms and conditions and funds therefor will be transferred from such Federal agencies and other cost-type contractors to the extent that such transfer is required by and in accordance with policies adopted from time to time by DOE. The funds transferred in exchange for such services shall be handled as provided in Article VIII or as otherwise directed by DOE. In the performance of such services, the Corporation is authorized to use facilities, materials and equipment in its custody under this contract. The costs incurred by the Corporation in the performance of any such services shall be allowable costs in accordance with the provisions of Article VI. With the approval of DOE, the Corporation may render the same services, including transfers of property, to lump-sum or unit-price DOE contractors under the terms and conditions herein stated, and the payments received therefor shall be for the account of the Government and will be received, held, and utilized as provided in Article VIII.

(d) General

(1) A competent full-time supervising representative of the Corporation, approved by DOE, shall be in direct charge of the work and services covered by this contract. All notices, instructions, and directions which DOE may give to the Corporation may be directed to such representative and shall constitute notice to the Corporation thereof.

(2) In carrying out the work under this contract, the Corporation shall, subject to the general control of DOE, do all things necessary in the best judgment of the Corporation in the management, operation and maintenance of the plants; provided that, whenever approval or other action by DOE is required with respect to any expenditure or commitment by the Corporation under the terms of this contract, the Government shall not be responsible unless and until such approval or action is obtained or taken.

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(3) In carrying out the work under this contract, the Corporation shall be responsible for the employment of all professional, technical, skilled and unskilled personnel engaged and to be engaged by the Corporation in the work hereunder, and for the training of personnel. Persons employed by the Corporation shall be and remain employees of the Corporation, and shall not be deemed employees of DOE or the Government; provided, that nothing herein shall require the establishment of an employer-employee relationship between the Corporation and consultants and others whose services are utilized by the Corporation for the work hereunder.

(4) The administration of all contracts made by the Corporation hereunder, including responsibility for payment hereunder, shall remain in the Corporation unless and until transferred to the Government or other designee of DOE, at the direction or with the approval of DOE.

(5) The Corporation shall exert its best efforts to acquire for the Government such materials, supplies, equipment and facilities, required in connection with the work under this contract, as are not furnished by the Government. The Corporation shall be free (but shall not be obligated) to furnish items of such materials, supplies, equipment and facilities of its own manufacture (or of the manufacture of its subsidiary corporations), provided it advises DOE in advance as to the respective prices and conditions connected with such furnishing, and provided, further, that DOE acquiesces therein.

(6) The Corporation shall provide for necessary repairs, alterations, additions or improvements to the buildings and facilities of the plants, to the extent such work is included in programs approved in writing by DOE. Projects which, under applicable procedures adopted by DOE from time to time, require the issuance of a directive therefor by the Manager of DOE's Oak Ridge Operations Office shall not be undertaken until such directive has been issued.

(7) The Corporation shall, to the extent requested by DOE and consented to by the Corporation, perform maintenance, protective and service functions in portions of the Oak Ridge Area outside the plant areas.

(8) Upon the prior approval of DOE, the Corporation's employees normally engaged in the performance of this contract may be retained on the allowable cost payroll and used intermittently by the Corporation on work other than in the performance of this contract; provided, however, that during the period of such intermittent use, including time spent in traveling to and from the site of such work, the employees shall not be deemed to be performing work under this contract, and insurance coverage of the Corporation, the premiums or costs of which are allowable costs under this contract (including Workmen's Compensation, employer's liability, and public liability insurance), shall not be applicable or used to defend against or pay any liability of the Corporation to such employees (or persons claiming through them), or to other persons. With respect to such intermittent services, the Corporation shall credit to

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the account of the Government, as provided in Paragraph (b) of Article VIII, or as otherwise directed by DOE, the amount or amounts paid by the Corporation to the employees or other persons, or contributed to any benefit plans for such employees, from Government funds, which relate to such employees' work for the Corporation not in the performance of this contract. Said amount or amounts shall include, but not be limited to, travel, per diem, and surviving spouse payments, if any, and the actual salaries and wages of the persons performing such services plus a percentage factor of such salaries and wages in lieu of direct payment for items in the following accounting categories:

Old Age and Survivor Insurance
Unemployment Compensation - Federal
Unemployment Compensation - State
Pension Plan
Group Insurance
Group Hospitalization
Group Major Medical Plan
Retirement Plan
Saving Plan
Safety Awards
Personal Leave
Holiday Pay
Jury Duty
Disability - Occupational
Voting Time
Death in Family - Hourly
Election Official
Moving - Inbound
Court Witness
Blood Donors
Security Suspensions
Military Duty
Meal Allowances
Work Schedule Changes
Layoff Allowances
Death Allowance Payments
Educational Assistance Payments
Pension Plan Disability Benefits
25-Year Service Awards
Travel Accident Insurance
Weekend Bonus Payments
Civil Defense and Community Service
Vacations and Pay in Lieu of Vacations
Variable Compensation
Special Early Retirement Allowance
Disability - Nonoccupational Payments
Moving - Outbound

The aforementioned percentage factor shall be 40% until DOE and the Corporation shall have agreed that, on the basis of the Corporation's actual expenses for the said accounting categories for all work performed

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under this contract during the immediately preceding year, a different factor should be applicable for any ensuing year.

ARTICLE IV - DESCRIPTION OF SERVICES WITH RESPECT TO TRANSITION AND POST OPERATIONS PHASES

(a) Transition Phase. The Corporation shall provide the replacement contractor and its representatives with access to such facilities information, records and employees of and in the possession of the Corporation as the replacement contractor may request and as the Contracting Officer may approve. To the extent requested by the Contracting Officer or the replacement contractor, as approved by the Contracting Officer, the Corporation shall assist the replacement contractor in developing and implementing plans and procedures needed for the smooth transition of functions and responsibilities from the Corporation to the replacement contractor.

(b) Post Operations Phase.

(1) To the extent reasonably required, the Corporation shall maintain in the Oak Ridge vicinity a staff of officials and employees who will:

(i) Provide for the orderly closeout of the Corporation's contract affairs not associated with functions and responsibilities that are assumed by the replacement contractor; such as, matters related to personnel benefits, financial records, records of other types, litigation, and other appropriate affairs.

(ii) Provide advice and assistance to the replacement contractor and DOE, as requested by DOE.

(2) To the extent reasonably required, the Corporation shall utilize home office personnel, consultants, or others not at its Oak Ridge location, such as, but not limited to, legal, tax, accounting, finance, procurement, employee relations, and environmental personnel, to handle or assist in closeout operations or the disposition of claims or the defense of litigation arising out of the performance of work under this contract.

(3) The Post Operations Phase shall be conducted under terms and conditions described in Article LXI of this contract.

ARTICLE V - TERM AND TERMINATION

(a) This contract shall continue until September 30, 1986, unless sooner terminated by either party in accordance with the provisions of this article. The performance periods for phases of work under the contract shall be as follows:

(1) Operations Phase. Conduct of work and services described in Article II and Article III shall continue as before and shall terminate upon notice to be given by the Contracting Officer in writing that the Corporation's responsibilities under Article II and Article III have

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ceased and similar responsibilities have been assumed by the replacement contractor under a separate contract. Such notice shall be given on or about April 1, 1984.

(2) Transition Phase. Conduct of activities during the Transition Phase, described in Article IV(a), shall commence upon written notice being given the Corporation by the Contracting Officer and shall continue until the Corporation is notified, in accordance with subparagraph (a)(1) above, that the replacement contractor has assumed responsibility under a separate contract for the functions and operations similar to those described in Article II and Article III of this contract. Notice of commencement of the Transition Phase shall be given on or about January 1, 1984. The Transition Phase will occur concurrently with the final months of the Operations Phase.

(3) Post Operations Phase. Conduct of activities under the Post Operations Phase shall commence upon the written notice being given by the Contracting Officer under subparagraph (a)(1) above that the Corporation's responsibilities under Article II and Article III of this contract have ceased. The Post Operations Phase shall continue for the remainder of the term of this contract or unless sooner terminated by either party in accordance with the provisions of this article. Notice of commencement of the Post Operations Phase shall be given on or about April 1, 1984.

(b) Conditions under which this contract may be terminated are as follows:

(1) The performance of work under this contract may be terminated by DOE in whole, or from time to time in part, (i) whenever the Corporation shall default in performance, and shall fail to cure the fault or failure within such period as DOE may allow after receipt from DOE of a written notice specifying the fault or failure, or (ii) whenever, but upon not less than six (6) months' prior written notice to the Corporation, for any reason DOE shall determine any such termination is for the best interest of the Government. Termination of the work hereunder shall be effected by delivery of a notice of termination specifying whether termination is for default of the Corporation or at the option of DOE, for convenience of the Government, the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. Any such termination shall be without prejudice to any claim which either party may have against the other.

(2) The Corporation may terminate this contract at any time by giving not less than six (6) months' prior written notice to DOE.

(3) Upon receipt (or giving) of notice of termination, in accordance with subparagraph (b)(1) or (b)(2), above, respectively, the Corporation shall, to the extent directed in writing by DOE, discontinue the terminated work and the placing of orders for materials, facilities, supplies, and services in connection therewith, and shall proceed, if, and to the extent required by DOE, to cancel promptly, and settle with

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the approval (or ratification) of DOE, existing orders, subcontracts, and commitments insofar as such orders, subcontracts, and commitments pertain to this contract.

(c) Upon the termination of this contract, full and complete settlement of all claims of the Corporation arising out of this contract shall be made as follows:

(1) The Government shall assume sole responsibility for all obligations, commitments, and claims that the Corporation may have undertaken or incurred, the cost of which are allowable in accordance with the provisions of this contract; and the Corporation shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and take all such steps as DOE may require for the purpose of fully vesting in the Government, or assigning to a replacement contractor as requested by DOE, any rights and benefits the Corporation may have under or in connection with such obligations, commitments or claims.

(2) The Government shall treat as allowable costs all expenditures made by the Corporation in accordance with Article VI and not previously so allowed, reimbursed or otherwise credited.

(3) The Government shall treat as allowable costs such further expenditures made by the Corporation after the date of termination for the protection of Government property, for accounting services in connection with the settlement of this contract as are required or approved by DOE and, in accordance with the article entitled "Litigation and Claims," for the defense or (with the Contracting Officer's approval) settlement of any claim against the Corporation arising out of the performance of this contract, regardless of when the claim is brought, whether during the term of this contract or after the contract expires, the cost and expense of ~~which~~ is ~~not~~ expressly made unallowable under other provisions of this contract.

(4) If performance of work under this contract is terminated in whole for the convenience of the Government, the fixed fee of the Corporation shall be prorated to and including the effective date of such termination. In addition, the Corporation shall be paid a fixed fee in an amount to be agreed upon as compensation to the Corporation for its services in closing out the work under this contract after the effective date of such termination. In the event of a partial termination for the convenience of the Government during the operations phase of this contract, an equitable adjustment shall be made in the fixed fee if such termination results in a material change in the amount or character of the work described in Articles II and III hereof. Any claim by the Government for such an adjustment must be asserted in writing within ninety (90) days after the effective date of such partial termination. Any failure to agree on the right to or the amount of such adjustment shall be deemed a dispute within the purview of Article XIII hereof entitled "Disputes." If the contract is terminated due to fault of the Corporation, no additional payments on account of the fee will be made.

(d) Prior to final settlement the Corporation shall furnish a release as required in Article VII hereof.

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ARTICLE VI - ALLOWABLE COSTS AND FIXED FEE

(a) Compensation for Corporation's Services. Payment for the allowable cost, as hereinafter defined, and of the fixed fee, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.

(b) Fixed Fee.

(1) The fixed fee for the period of this contract beginning October 1, 1983, and ending with the conclusion of the Operations and Transition Phases of this contract, on or about April 1, 1984, shall be $5.6 million. Should the Operations and Transition Phases be extended or curtailed by one or more months, a pro rata adjustment to or from the fee of one-sixth will be made for each month of additional or less work during the Operations and Transition Phases.

(2) The fixed fee for the period of this contract beginning with commencement of the Post Operations Phase, on or about April 1, 1984, and ending September 30, 1984, shall be $93,314.00.

Prior to September 30, 1984, the parties will undertake in good faith to negotiate an agreement covering the fixed fee for the performance of the work and services under the Post Operations Phase for one or more years subsequent to FY 1984. Such agreements shall be set forth in written modifications to this contract. Pending the determination of the fixed fee as aforesaid, the Corporation shall receive monthly a provisional fee in the sum equivalent to the fixed fee specified in this Article VI for the period of this contract immediately preceding the period for which the amount of the fixed fee has not been determined; and upon determination of such fixed fee the sums so received by the Corporation on account of its provisional fixed fee shall be adjusted by payment or refund of the amount of the difference, if any, between the total sum so received on account and the amount of fixed fee so determined.

(3) If, as a result of any instruction or direction given by DOE pursuant to the provisions of this contract, the level of the Corporation's management effort is materially increased or decreased, the fee provided for in this Article VI will be equitably adjusted. In the event either party deems that an adjustment in the fee is appropriate, it will, after issuance of the instruction or direction, so notify the other party in writing and the parties will attempt to agree upon the amount by which the fee should be increased or decreased. Failure of the parties to so agree shall constitute a "dispute" within the meaning of Article XIII.

(4) Services pursuant to mutual agreement under the provisions of this contract shall be performed without additional fee unless DOE and the Corporation shall mutually agree in writing that they will constitute a material increase in the level of the Corporation's management effort under this contract, in which event the parties hereto will negotiate in good faith to agree upon an equitable fee for such additional services. Failure of the parties so to agree shall constitute a "dispute" within the meaning of Article XIII.

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(c) Allowable Cost. The allowable cost of performing the work under this contract shall be the costs and expenses (less applicable income and other credits) that are actually incurred by the Corporation, in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and are determined to be allowable pursuant to this Paragraph (c). The determination of the allowability of cost hereunder shall be based on: (1) Reasonableness, including the exercise of prudent business judgment, (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work, and (3) recognition of all exclusions and limitations set forth in this article or elsewhere in this contract as to types or amounts of items of cost. Allowable cost shall not include cost of any item described as unallowable in Paragraph (e) of this article, except as indicated therein. Failure to mention an item of cost specifically in Paragraph (d) or Paragraph (e) shall not imply that it is allowable or that it is unallowable.

(d) Examples of Items of Allowable Cost. Subject to the other provisions of this article, the following examples of items of cost of work under this contract shall be allowable to the extent indicated:

(1) Bonds and insurance (including self-insurance) as provided in the article entitled "Required Bonds and Insurance--Exclusive of Government Property."

(2) Communication costs, including telephone services, local and long-distance telephone calls, telegrams, cablegrams, radiograms, postage, and similar items.

(3) Consulting services (including legal and accounting), and related expenses, as approved by the Contracting Officer, except as made unallowable by subparagraph (e)(22).

(4) Litigation expenses, including reasonable Counsel fees, incurred in accordance with the article of this contract entitled "Litigation and Claims."

(5) Losses and expenses (including losses and expenses arising out of or based on claims by third parties resulting from DOE's program of furnishing uranium enriching services to the public; and including settlements made with the consent of DOE) actually sustained by the Corporation in connection with the work, except any such loss and expense or item expressly made unallowable under other provisions of this contract.

(6) Materials, supplies, and equipment, including freight, transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use, and disposition thereof, subject to approvals required under other provisions of this contract.

(7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as

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approved by the Contracting Officer; and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with the Patent article of this contract.

(8) Personnel costs and related expenses (incurred in accordance with Appendix A hereof, or amendments thereto) such as:

(i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (Corporation) committees;

(ii) Legally required contributions to old-age and survivors' insurance, unemployment compensation plans and workmen's compensation plans (whether or not covered by insurance); voluntary or agreed-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) Travel (except foreign travel, which requires specific approval by the Contracting Officer on a case-by-case basis); incidental subsistence and other allowances of Corporation employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects, and the travel and subsistence of their dependents);

(iv) Employee relations, welfare, morale, etc., programs, including incentive or suggestion awards, employee counseling services, health or first-aid clinics, and house or employee publications;

(v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis), including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and technical personnel in specialized fields required in the contract work;

(vi) Recruitment of personnel (including help-wanted advertisement), including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the Corporation for employment interviews; and

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(vii) Net cost of operating plant-site cafeterias, dining rooms, and canteens attributable to the performance of the contract.

Appendix A may be modified from time to time, in writing, without execution of an amendment to this contract for the purposes of effecting any changes in or additions to Appendix A as may be agreed upon by the parties.

(9) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or cleanup of site and facilities to the extent directed or approved by the Contracting Officer.

(10) Subcontracts and purchase orders, including procurements from Corporation-controlled sources, subject to approvals required by other provisions of this contract.

(11) Subscriptions to trade, business, technical and professional periodicals, as approved by the Contracting Officer.

(12) Taxes, fees, and charges levied by public agencies which the Corporation is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.

(13) Utility services, including electricity, gas, water, steam and sewerage.

(14) Indemnification of the Pension Benefit Guaranty Corporation pursuant to the Employee Retirement Income Security Act of 1974.

(15) Establishment and maintenance of bank accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments to employees are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the Contracting Officer.

(16) Expenditures and disbursements made in connection with the provisions of the article entitled "Guard and Fire-Fighting Forces."

(e) Examples of Items of Unallowable Costs. The following examples of items of costs are unallowable under this contract to the extent indicated:

(1) Advertising, except (i) help-wanted advertising, and (ii) other advertising (such as costs of participation in exhibits) approved by the Contracting Officer as clearly in furtherance of work performed under the contract.

(2) Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the Corporation.

(3) Bidding expenses and costs of proposals.

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(4) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the Corporation and employee prior to the rendering of the services or an established plan consistently followed by the Corporation, (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(5) Central and branch office expenses of the Corporation, except those incurred during the Post Operations Phase, or as otherwise specifically set forth in the contract, or as otherwise approved by DOE.

(6) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the Corporation for the purpose of obtaining Government business.

(7) Contingency reserves, provisions for.

(8) Contributions and donations.

(9) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profits.

(10) Entertainment costs, except the costs of such recreational activities for onsite employees as may be approved by the Contracting Officer or provided for elsewhere in this contract.

(11) Fines and penalties, including assessed interest, resulting from violations of, or failure of, the Corporation to comply with Federal, State, or local laws or regulations, except when incurred in accordance with the written approval of the Contracting Officer, or as a result of the failure or refusal of DOE to obtain funds for a reasonable Nuclear Division capital budget request covering equipment or facilities needed to put the Corporation in compliance, or the failure of the Nuclear Division to submit such a request with the concurrence of the Contracting Officer, or as a result of compliance with the provisions of this contract.

(12) Insurance (including any provision of a self-insurance reserve) on any person where the Corporation under the insurance policy is the beneficiary directly or indirectly, and insurance against loss of or damage to Government property as defined in the article entitled "Property."

(13) Interest, however represented (except interest incurred in compliance with the article entitled "State and Local Taxes"), bond discounts and expenses, and costs of financing and refinancing operations.

(14) Legal, accounting, and consulting services and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or reorganization, prosecution

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or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and prosecution or defense of patent infringement litigation.

(15) Losses (including litigation expenses, counsel fees, and settlements) on, or arising from the sale, exchange, or abandonment of the Corporation's capital assets, including investments; losses on other contracts, including the Corporation's contributed portion under cost-sharing contracts; losses in connection with price reductions to and discount purchases by employees and others from any source; and losses or expenses which:

(i) Are compensated for by insurance or otherwise, or which would have been compensated by insurance required by law or by written direction of the Contracting Officer but which the Corporation failed to procure or maintain through the willful misconduct or lack of good faith on the part of any of the Corporation's directors, corporate officers, or a supervising representative of the Corporation, as defined in the article entitled "Description of Work and Services";

(ii) Result from willful misconduct or lack of good faith on the part of any of the Corporation's directors, corporate officers, or a supervising representative of the Corporation, as defined in the article entitled "Description of Work and Service"; or

(iii) Represent liabilities to third persons for which the Corporation has expressly accepted responsibility under other terms of this contract.

(16) Membership in trade, business, and professional organizations, except as approved by the Contracting Officer.

(17) Precontract costs, except as expressly made allowable under other provisions in this contract.

(18) Research and development costs, unless specifically provided for elsewhere in this contract.

(19) Storage of records pertaining to this contract after completion of operations under this contract, irrespective of contractual or statutory requirement of the preservation of records.

(20) Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including the listing of securities on exchanges; taxes which are paid contrary to the article entitled "State and Local Taxes"; and taxes on net income and excess profits;

(21) Travel expenses of the officers, proprietors, executives, administrative heads and other employees of the Corporation's central office or branch office organizations concerned with the general management, supervision and conduct of the Corporation's business as a whole, except to the extent that particular travel is in connection with the

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contract and approved by the Contracting Officer, or except in connection with the performance of work under this contract during the Post Operations Phase.

(22) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedures of DOE applicable to the borrowing of such an individual from another cost-type contractor.

(23) First-class air travel in excess of the cost of less than first-class air accommodations, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as, where less than first-class accommodations would:

(i) Require circuitous routing,

(ii) Require travel during unreasonable hours,

(iii) Greatly increase the duration of the flights,

(iv) Result in additional costs which would offset the transportation savings, or

(v) Offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(f) The Corporation shall take all known and permissible cash and trade discounts, rebates, allowances, credits, salvage, commissions and bonifications.

(g) All revenue received by the Corporation from its operations hereunder including, but not limited to, proceeds from the distribution of isotopes, the operation of hospitals, commissaries, or other facilities, and rebates, discounts, refunds, etc., shall be for the account of the Government and shall be received and deposited in the Special Bank Accounts described in Article VIII.

ARTICLE VII - PAYMENTS

(a) (1) Payment for Allowable Costs. Payment for allowable costs shall be made by the Corporation from funds authorized by DOE to be provided under Letter of Credit by the Federal Reserve Bank of Atlanta to the special bank account or accounts which are described in Article VIII below. DOE may approve the Corporation's temporary use of its own funds in emergencies or other special circumstances. The Corporation shall also be paid the amount of any allowable costs and expenses which may be or become due and payable subsequent to the liquidation of or final accounting of all Government funds in its custody and the closing of the special bank account or accounts referred to above.

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(2) The Corporation shall prepare and submit annually a certified voucher, for the total of net expenditures accrued (i.e., net costs incurred), for the period covered by the voucher, and DOE, after audit and appropriate adjustment, will approve such voucher. This approval will be based on periodic audits made by DOE during the year and the Corporation will be advised of the results of these audits. The approval by DOE will constitute an acknowledgement by DOE that the net costs incurred were allowable under the contract and that they have been recorded in the Corporation's accounts in accordance with DOE accounting policies, but will not relieve the Corporation of responsibility for DOE's assets in its care, or for errors later becoming known to DOE; nor will such approval affect the audit responsibilities of the General Accounting Office.

(b) Payment of Fixed Fee. The fixed fee provided for in Article VI shall be paid in monthly installments as it accrues.

(c) Direct Payment of Charges. The Government reserves the right to pay directly to the persons concerned all sums due from the Corporation for labor, materials, or other charges.

(d) Final Payment. Upon completion of the work and services hereunder, the Government shall pay to the Corporation the unpaid balance of the Corporation's fee, less any claim the Government may have against the Corporation, and the Corporation and DOE shall thereupon settle or agree upon the manner for settling outstanding items of allowable costs to the extent not otherwise provided for by the provisions of this contract. Prior to final payment and as a condition thereto, the Corporation shall furnish the Government with a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Corporation;

(ii) claims, together with reasonable expenses incidental thereto based upon liabilities of the Corporation to third parties arising out of the performance of this contract; provided that such claims are not known to the Corporation on the date of the execution of the release; and provided further that the Corporation gives notice of such claims in writing to the Contracting Officer; and

(iii) claims for reimbursement of costs (other than expenses of the Corporation by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Corporation under the provisions of this contract relating to patents.

ARTICLE VIII - GOVERNMENT FUNDS

(a) Letter of Credit. It is the intent of the parties that the Corporation shall not be required to utilize its own funds in making payments

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for allowable costs under this contract. Accordingly, the Government shall make available to the Corporation under Letter of Credit issued by the Federal Reserve Bank of Atlanta, in accordance with such procedures as DOE may prescribe from time to time, funds to enable the Corporation to continue to make payments for allowable costs under this contract in furtherance of its performance. It is understood that such funds are not loans to the Corporation and will not require interest payments by the Corporation, and that the Corporation will acquire no right, title or interest in or to such funds.

(b) Special Bank Accounts. All funds made available under Paragraph (a) of this article will be used to cover overdrafts written by the Corporation on the strength of the Letter of Credit in payment of allowable costs under this contract. All revenues and other moneys received for the account of the Government in the performance of the work (not including the Corporation's fixed fees) shall be deposited in a special bank account or accounts (hereinafter referred to as "special accounts") at a bank or banks satisfactory to DOE, separate from the Corporation's own funds; and the special accounts shall be so designated as to indicate clearly to the bank their special character, purpose and title.

(c) Title - Rights and Liabilities of Bank. All funds deposited in special accounts shall remain the property of the Government. The Government's title to such funds shall be superior to any claim or lien of the bank or any other party upon the special accounts irrespective of the basis of such latter lien. Any written directions received by the bank in due course, upon DOE stationery, and purportedly signed by or at the direction of said DOE, shall, insofar as the rights, duties and liabilities of the bank are concerned, be conclusively deemed to have been properly issued and filed with the bank by said DOE.

(d) Liquidation of Special Accounts. If, upon expiration of this contract, or upon its termination by either party, such special accounts have not been fully liquidated, the unliquidated balance thereof shall be returned or accounted for to the Government in such manner as DOE directs.

(e) Advances to Subcontractors and Materialmen. Subject to the prior written approval of DOE, the Corporation may make advances of Government funds to subcontractors and materialmen, upon such terms and conditions as DOE approves in writing.

ARTICLE IX - OBLIGATION OF FUNDS

(a) The amount presently obligated by the Government with respect to this contract is Twelve Billion, Seven Hundred Sixty-nine Million, Four Hundred Twenty-four Thousand, Eight Hundred and Two Dollars ($12,769,424,802). Such amount may be increased unilaterally by DOE by written notice to the Corporation and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated revenues and receipts from others for work and services to be performed under this contract are not included in the amount obligated with respect to this contract. Such revenues and receipts, to the extent actually received by the Corporation, shall be deposited in one of the special accounts referred to in the article of this contract entitled "Government Funds." Nothing in this

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Paragraph (a) is to be construed as authorizing the Corporation to exceed limitations stated in financial plans established by DOE and furnished to the Corporation from time to time under this contract.

(b) Except as otherwise provided in this contract and except for costs which may be incurred by the Corporation pursuant to the article of this contract entitled "Term and Termination" or costs of claims allowable under the contract accruing after completion or termination and not released by the Corporation at the time of financial settlement of the contract in accordance with the article entitled "Payments," payment by the Government under this contract on account of allowable costs shall not in the aggregate exceed the amount obligated with respect to this contract, less the Corporation's fixed fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of funds which DOE may legally use for such purpose: Provided, DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) (1) The Corporation shall notify DOE in writing when (i) the amount of funds obligated under Paragraph (a) above, less the amount of the Corporation's fixed fee accrued at the end of the period hereinafter stated, plus (ii) receipts and revenues (other than advances) deposited to the Government's account as provided in Article VIII, and the Corporation's estimate of the amount to be received, less (iii) the aggregate of expenditures to date and the Corporation's estimate of the amount required to liquidate outstanding liabilities and claims at the end of the period hereinafter specified, are in the Corporation's best judgment sufficient only to continue operations at the programmed rate for sixty (60) days.

(2) At such time after the giving of such notice as the Corporation's aggregate expenditures and the Corporation's then current estimate of the amount required to liquidate outstanding liabilities are, in its best judgment, equal to the total of the amounts computed as provided in (1)(i) and (1)(ii) above, the Corporation shall be excused from further performance (except such as is necessary in connection with termination by the Government) and (unless the parties otherwise agree) the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government.

(d) Financial Plans; Cost and Commitment Limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through Financial Plans or other directives issued to the Corporation, establish controls on the costs to be incurred and commitments to be made in the performance of the contract work. Such plans and instructions may be amended or supplemented from time to time by DOE. The Corporation hereby agrees to comply with the specific limitations (ceilings) on costs and commitments set forth in such plans and directives, to use its best efforts to comply with the other requirements of such plans and directives, and to promptly notify DOE in writing whenever it has reason to believe the authorized financial levels of costs and commitments will be exceeded or substantially underrun.

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(e) The giving of any notice under this article shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the article of this contract entitled "Term and Termination."

ARTICLE X - NUCLEAR HAZARDS INDEMNITY - RESPONSIBILITY OF CORPORATION - CONTINGENCY

(a) This Paragraph (a) is incorporated into this contract pursuant to the authority contained in subsection 170(d) of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).

(1) Nuclear Hazards Indemnity.

(A) The definitions set out in the Act shall apply to this Paragraph (a).

(B) The term "contract location" means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any Corporation-owned or -controlled facility, installation, or site at which the Corporation is engaged in the performance of contractual activity under this contract.

(C) The term "extraordinary nuclear occurrence" means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in Subpart E of 10 CFR 840.

(2) Except as hereafter permitted or required in writing by DOE, the Corporation will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. DOE may at any time require in writing that the Corporation provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, provided that the costs of such financial protection will be reimbursed to the Corporation by DOE.

(3) (A) To the extent that the Corporation and other persons indemnified are not compensated by any financial protection permitted or required by DOE or the Nuclear Regulatory Commission (NRC), DOE will indemnify the Corporation and other persons indemnified against (i) claims for public liability as described in subparagraph (3)(B) of this Paragraph (a); and (ii) the reasonable costs of investigating and settling claims and defending suits for damage for such public liability, provided that DOE's liability, excluding such reasonable costs, under all indemnity agreements entered into by DOE under Section 170 of the Act, including this contract, shall not exceed $500 million in the aggregate for each nuclear incident occurring within the United States or $100 million in

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the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(B) The public liability referred to in subparagraph (3)(A) of this paragraph is public liability which (i) arises out of or in connection with the contractual activity; and (ii) arises out of or results from:

(i) A nuclear incident which takes place at a contract location; or

(ii) A nuclear incident which takes place at any other location and arises out of or in the course of the performance of contractual activity under this contract by the Corporation's employees, individual consultants, borrowed personnel or other persons for the consequences of whose acts or omissions the Corporation is liable, provided that such incident is not covered by any other indemnity agreement entered into by DOE or the Nuclear Regulatory Commission pursuant to Section 170 of the Act; or

(iii) A nuclear incident which arises out of or in the course of transportation of source, special nuclear, or by-product materials to or from a contract location, provided such incident is not covered by any indemnity agreement entered into by DOE or the Nuclear Regulatory Commission with the transporting carrier, or with a carrier's organization acting for the benefit of the transporting carrier, or with a licensee of the Nuclear Regulatory Commission, pursuant to Section 170 of the Act; or

(iv) A nuclear incident which involves items (such as equipment, material, facilities, or design or other data) produced or delivered under this contract, provided such incident is not covered by any other indemnity agreement entered into by DOE or the Nuclear Regulatory Commission pursuant to Section 170 of the Act.

(4) In the event of an extraordinary nuclear occurrence which:

(A) Arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, or

(B) Arises out of or results from or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility, or

(C) During the course of the contract activity arises out of or results from the possession, operation, or use by the Corporation

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or a subcontractor of a device utilizing special nuclear material or by-product material.

DOE and the Corporation on behalf of itself and other persons indemnified, insofar as their interests appear, each agrees to waive:

(i) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

(1) Negligence;

(2) Contributory negligence;

(3) Assumption of the risk; or

(4) Unforeseeable intervening causes;

whether involving the conduct of a third person or an act of God. As used herein, "conduct of the claimant" includes conduct of persons through whom the claimant derives his cause of action;

(ii) Any issue or defense as to charitable or governmental immunity;

(iii) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than 20 years after the date of the nuclear incident.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

(5) The waivers set forth in subparagraph (4) of this paragraph:

(A) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(B) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(C) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the

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extraordinary nuclear occurrence takes place if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

(D) Shall not apply to any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law;

(E) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(F) Shall be effective only with respect to those obligations set forth in this contract and in insurance policies, contracts, or other proof of financial protection; and

(G) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the limit of liability provisions under subsection 170e. of the Atomic Energy Act of 1954, as amended, and (ii) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(6) The Corporation shall give immediate written notice to DOE of any known action or claim filed or made against the Corporation or other person indemnified for public liability as defined in subparagraph (3)(B) of this paragraph. Except as otherwise directed by DOE, the Corporation shall furnish promptly to DOE copies of all pertinent papers received by the Corporation or filed with respect to such actions or claims. When DOE shall determine that the Government will probably be required to make indemnity payments under the provisions of subparagraph (3) above, DOE shall have the right to, and shall, collaborate with the Corporation and any other person indemnified in the settlement or defense of any action or claim and shall have the right (A) to require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder, and (B) to appear through the Attorney General on behalf of the Corporation or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Corporation or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(7) The indemnity provided by this Paragraph (a) shall not apply to public liability arising out of or in connection with any activity that is performed at a licensed facility, and that is covered by a Nuclear Regulatory Commission indemnity agreement authorized by Section 170 of the Act.

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(8) The obligations of DOE under this Paragraph (a) shall not be affected by any failure on the part of the Corporation to fulfill its obligation under this contract, and shall be unaffected by the death, disability, or termination of existence of the Corporation or by the completion, termination or expiration of this contract.

(9) The parties to this contract enter into this Paragraph (a) upon the condition that this Paragraph (a) may be amended at any time by the mutual written agreement of DOE and the Corporation and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.

(10) The provisions of this Paragraph (a) shall not be limited in any way by, and shall be interpreted without reference to, any other article of this contract, including Article XIII, Disputes: provided, however, That the following provisions of this contract: Article XVI, Officials Not to Benefit; Article XVII, Covenant Against Contingent Fees; Article XXII, Assignment; and Article XXX, Examination of Records; and any provisions later added to this contract which under applicable Federal Law, including statutes, Executive orders and regulations, are required to be included in agreements of the type contained in this article, shall apply to this Paragraph (a).

(b) Responsibility of Corporation - Contingencies.

(1) If the performance of any work under this contract is interrupted or prevented by reason of inability to obtain materials or equipment to be used in the performance of this contract, or by reason of labor shortage or labor disputes, from whatever cause arising, and whether or not the demands of the employees involved shall be reasonable and within the Corporation's power to concede, or by reason of fire, explosion, or accident, sabotage, or any cause beyond its control, whether of a similar or dissimilar nature, the Corporation shall be excused from performing said work while or to the extent that it is prevented from doing so by one or more of such causes, and all such work shall be performed as soon as practicable after such disability is removed. It is further understood and agreed that the Corporation shall be liable for any failure or delays in the performance of this contract if, and only if and to the extent that, the same is due to the willful misconduct or bad faith on the part of any of the corporate officers of the Corporation or the full-time supervising representative of the Corporation in the performance of the work under this contract.

(2) The Corporation makes no representation or warranty whatsoever, and assumes no responsibility or obligation, that the plants can be successfully operated (including but not limited to the successful prevention of dangers to person or property which may be involved in such operation of the plants), but the Corporation shall exert its best efforts successfully to operate the plants and otherwise to perform the work provided to be performed by it under this contract.

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ARTICLE XI - EMPLOYEES' BENEFIT PLAN

(a) (1) It is recognized that the performance of the work under this contract may subject employees of the Corporation to special hazards of a serious or unusual nature. Accordingly, DOE agrees that the Corporation shall, with the approval of DOE, have the right to make payments in accordance with Paragraph (b) of this article, to or on account of employees, whenever the Corporation shall determine, and such determination has been approved by DOE, that the employee has died or become disabled as a result of exposure to certain special hazards, to the extent hereinafter in this article provided.

(2) As used in this article, the term "special hazards" shall mean those hazards connected with the work under this contract and defined from time to time by mutual agreement in writing between DOE and the Corporation. Such agreement may be made or modified without the execution of an amendment to this contract.

(3) As used in this article, the term "disability" shall mean death, injury or disease resulting from exposure on or after January 18, 1943, to a special hazard in the course of work under this contract.

(4) As used in this article, the term "employee" shall mean any person (including borrowed personnel and experts and consultants, with or without fee) employed or utilized by the Corporation or any subcontractor in the performance of work under this contract.

(b) (1) Payments in an amount not to exceed Ten Thousand Dollars ($10,000.00) may be made by the Corporation to or on account of an employee, subject to the approval of DOE as to the payment and the amount thereof, for the following:

(A) Death - or a disability resulting in death.

(B) Permanent Disability - For any permanent total or permanent partial disability whenever the Corporation shall determine, and such determination shall have been approved by DOE, that such permanent disability has substantially impaired the earning or physical capacity of the employee disabled. DOE may require such waiting period prior to payment as in its judgment may be required to ascertain the extent and permanency of disability.

(C) Temporary Disability - For any temporary total or temporary partial disability (to the extent not covered by Workmen's Compensation or by payments pursuant to other provisions of this contract) whenever the Corporation shall determine, and such determination shall have been approved by DOE, that such temporary disability has impaired the earnings of the employee disabled.

(D) Medical Expenses - For medical expenses (to the extent not covered by Workmen's Compensation) in connection with any temporary or permanent disability sustained by an employee. Unless otherwise

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authorized or approved by DOE, payments for medical treatment and care hereunder shall be at reasonable rates not to exceed those prevailing in the locality for comparable medical treatment and care.

(2) Aggregate payments under this article to or on account of any employee shall in no event exceed Ten Thousand Dollars ($10,000.00).

(3) Payments under this article shall (except as otherwise provided in subparagraphs (b)(1)(C) and (b)(1)(D) of this paragraph) be in addition to payments of claims pursuant to Workmen's Compensation or Occupational Disease statutes; provided, that DOE may require as a condition of payment a release in form and substance satisfactory to DOE of all other claims by the employee against the Corporation or the Government on account of the disability for which payment under this article is made.

(c) (1) Payments pursuant to this article may be made by the Corporation during the term of this contract and during a period of ten years (or such longer period as DOE may approve) following the termination or expiration of work under this contract.

(2) Payments made by the Corporation pursuant to this article, together with the Corporation's costs of investigating and handling all cases of asserted disability by employees (whether or not payment is made), shall be treated as allowable costs by DOE.

(3) Whenever disability shall be asserted by an employee, the Corporation may, with the approval of DOE, establish from such available funds as DOE may then designate a reserve not to exceed Ten Thousand Dollars ($10,000.00) with respect to such employee, for payments under this article on account of such disability. Upon the expiration of ten (10) years (or such longer period as DOE may approve) following the expiration or termination of this contract, or at such earlier time as the amount of the payment to the employee shall be agreed upon by DOE and the Corporation, the unexpended balance of any such reserve shall be returned to the Government or shall be held and applied as a part of the advances under Article VIII as DOE may direct.

(4) Whenever DOE and the Corporation shall agree that adequate insurance coverage for disabilities is available, and DOE shall determine that it is in the best interests of the Government to obtain such insurance, the Corporation will at the request of DOE obtain such insurance and DOE will treat as allowable costs all costs, including premiums, incurred by the Corporation in connection therewith. Such insurance shall, to the extent agreed upon by DOE and the Corporation, be in lieu of the provisions for payments otherwise specified in this article.

(d) Nothing contained in this article shall be construed to grant, vest, or allow any right to be given, to any employee or other third party, or to the legal representative of any of them, insofar as payments by the Corporation or the Government under this article are concerned.

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ARTICLE XII - ACCOUNTS, RECORDS, AND INSPECTION

(a) Accounts. The Corporation shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the Corporation under this contract. The system of accounts employed by the Corporation shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

(b) Inspection and Audit of Accounts and Records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE at all reasonable times, before and during the period of retention provided for in (d) below and the Corporation shall afford DOE proper facilities for such inspection and audit.

(c) Audit of Subcontractors' Records. The Corporation also agrees, with respect to any subcontracts (including lump-sum or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to conduct an audit of the costs of the subcontractor in a manner satisfactory to DOE or to have the audit conducted by the next higher tier subcontractor in a manner satisfactory to the Corporation and DOE, except when DOE elects to waive such audit or approves other arrangements for the conduct of the audit.

(d) Disposition of Records. Except as agreed upon by the Government, all medical records, books of account and supporting documents relating to this contract, and other data evidencing costs allowable and revenues received, earned or accrued under this contract, and any notebooks, photographs, negatives, reports, findings, recommendations, data, and memoranda of every description and any copies of the foregoing relating to the foregoing or the work under this contract, and the information contained therein shall be the property of the Government, and, subject to the rights of the Corporation to retain a copy of any such material for its own use, shall be delivered to the Government or otherwise disposed of by the Corporation either as DOE may from time to time direct during the progress of the work or, in any event, as DOE shall direct upon completion or termination of this contract and final audit of all accounts hereunder. The Government shall have the right to use all or any part of said material and information which is the property of the Government for any purpose whatsoever including but not limited to the right to reproduce said material and disseminate it to the public. All other records in the possession of the Corporation relating to this contract shall be preserved by the Corporation for a period of three (3) years after settlement of the contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Corporation. The Corporation's right of retention and use shall be subject to the security, patent and use of information provisions, if any, of this contract.

(e) Reports. The Corporation shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.

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(f) Inspections. DOE shall have the right to inspect the work and activities of the Corporation under this contract at such time and in such manner as it shall deem appropriate.

(g) Subcontracts. The Corporation further agrees to require the inclusion of provisions similar to those in Paragraphs (a) through this Paragraph (g) of this article in all subcontracts (including lump-sum or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Internal Audit. The Corporation agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to DOE.

ARTICLE XIII - DISPUTES

(a) This contract is subject to the Contract Disputes Act of 1978, 41 U.S.C. 601, et seq. (Pub. L. 95-563).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved in accordance with this article.

(c) (1) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract.

(2) A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim pursuant to the Act.

(3) A claim by the Corporation shall be made in writing and submitted to the Contracting Officer for decision. A claim by the Government against the Corporation shall be subject to a decision by the Contracting Officer.

(d) For Corporation claims of more than $50,000, the Corporation shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the Corporation's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which the Corporation believes the Government is liable. The certification shall be executed by the Corporation if an individual. When the Corporation is not an individual, the certification shall be executed by a senior company official in charge at the Corporation's plant or location involved, or by an officer or general partner of the Corporation having overall responsibility for the conduct of the Corporation's affairs.

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(e) For Corporation claims of $50,000 or less, the Contracting Officer must render a decision within 60 days. For Corporation claims in excess of $50,000, the Contracting Officer must decide the claim within 60 days or notify the Corporation of the date when the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Corporation appeals or files a suit as provided in the Act.

(g) The authority of the Contracting Officer under the Act does not extend to claims or disputes which by statute or regulation other agencies are expressly authorized to decide.

(h) Interest on the amount found due on a Corporation claim shall be paid from the date the claim is received by the Contracting Officer until the date of payment.

(i) Except as the parties may otherwise agree, pending final resolution of a claim by the Corporation arising under the contract, the Corporation shall proceed diligently with the performance of the contract in accordance with the Contracting Officer's decision.

ARTICLE XIV - CONVICT LABOR

In connection with the performance of work under this contract, the Corporation 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.

ARTICLE XV - SAFETY AND HEALTH

The Corporation shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of DOE. In the event that the Corporation fails to comply with said regulations or requirements of DOE, the Contracting Officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work as to which there has been such failure; thereafter, a start order for resumption of work may be issued at the discretion of the Contracting Officer.

ARTICLE XVI - 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.

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ARTICLE XVII - COVENANT AGAINST CONTINGENT FEES

(a) Warranty--Termination or Deduction for Breach. The Corporation 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, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Corporation for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

(b) Subcontracts and Purchase Orders. Unless otherwise authorized by the Contracting Officer in writing, the Corporation shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this contract.

ARTICLE XVIII - SECURITY

(a) Corporation's Duty to Safeguard All Classified Information. The Corporation shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the Corporation's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Corporation shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the Corporation or any person under the Corporation's control in connection with performance of this contract. If retention by the Corporation of any classified matter is required after the completion or termination of the contract and such retention is approved by the Contracting Officer, the Corporation will complete a certificate of possession to be furnished to DOE specifying the classified matter to be retained. The certification shall identify the items and types or categories of material retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the Contracting Officer, the security provisions of the contract will continue to be applicable to the matter retained.

(b) Regulations. The Corporation agrees to conform to all security regulations and requirements of DOE.

(c) Definition of Classified Information. The term "classified information" means Restricted Data, Formerly Restricted Data, and National Security Information.

(d) Definition of Restricted Data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) 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.

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

(f) Definition of National Security Information. The term "National Security Information" 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 12065 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) Security Clearance of Personnel. The Corporation shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12065, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(h) Criminal Liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Corporation or any person under the Corporation's control in connection with work under this contract, may subject the Corporation, 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 12065.)

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

ARTICLE XIX - LITIGATION AND CLAIMS

(a) Initiation of Litigation. The Corporation may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The Corporation shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.

(b) Defense and Settlement of Claims. The Corporation shall give the Contracting Officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the Corporation arising out of the performance of this contract, and (2) of any claim against the Corporation the cost and expense of which is allowable under any provision of this contract. Except as otherwise directed by the Contracting Officer, in writing, the Corporation shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Corporation with respect to such action or claim. To the extent not in conflict

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with any applicable policy of insurance, the Corporation may with the Contracting Officer's approval settle any such action or claim, shall effect at the Contracting Officer's request an assignment and subrogation in favor of the Government of all the Corporation's rights and claims (except those against the Government) arising out of any such action or claim against the Corporation, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the Corporation in, or to take charge of, any action. If the settlement or defense of an action or claim against the Corporation is undertaken by the Government, the Corporation shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Corporation is not covered by a policy of insurance, the Corporation shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith; and in such event the defense of the action shall be at the expense of the Government: Provided, however, That the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the Corporation failed to secure through its own fault or negligence.

ARTICLE XX - NOTICE OF LABOR DISPUTES

Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the work, the Corporation shall immediately notify the Contracting Officer in writing. Such notice shall include all relevant information concerning the dispute and its background.

ARTICLE XXI - SOURCE AND SPECIAL NUCLEAR MATERIALS

The Corporation shall comply with all regulations and instructions of DOE relative to the control of and accounting for source and special nuclear materials (as these terms are defined in the Atomic Energy Act of 1954). The Corporation will make such reports and permit such inspections as DOE may require with reference to source and special nuclear materials. The Corporation shall take all reasonable steps and precautions to protect such materials against theft and misappropriation and to minimize all avoidable losses of such materials.

ARTICLE XXII - ASSIGNMENT

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Corporation, except as expressly authorized in writing by the Contracting Officer.

ARTICLE XXIII - PERMITS

Except as otherwise directed by the Contracting Officer, the Corporation shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the State, territory, and political subdivision in which the work under this contract is performed.

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ARTICLE XXIV - PROPERTY

(a) Title to Property. Title to all Government-owned property in the care, custody or possession of the Corporation in connection with the performance of this contract shall remain vested in the Government throughout the term hereof, except for such as may be transferred or disposed of in accordance with this contract; and upon the completion or termination of this contract, the Corporation shall return care, custody, and possession of all of the same not so transferred or disposed of or consumed to the Government. Except as otherwise directed by DOE, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Corporation, the cost of which is allowable under this contract, shall pass directly from the vendor to the Government and not to the Corporation.

(b) Identification. To the extent directed by the Contracting Officer, the Corporation shall identify Government property coming into the Corporation's possession or custody by marking or segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

(c) Disposition. The Corporation shall make such disposition of Government property which has come into the possession or custody of the Corporation under this contract as DOE shall direct. When authorized in writing by DOE during the progress of the work or upon completion or termination of this contract, the Corporation may, upon such terms and conditions as DOE may approve, sell or exchange such property, or acquire such property at a price agreed upon by DOE and the Corporation as the fair value thereof. The proceeds of any disposition shall be received for the account of the Government, and shall be received, held, and utilized as a part of the advances of Government funds pursuant to the article hereof entitled "Advances of Government Funds" or otherwise credited to the account of the Government as DOE may direct. Upon completion of the work or the termination of this contract, the Corporation shall render an accounting, as prescribed by DOE, of all Government property which had come into the possession or custody of the Corporation under this contract.

(d) Protection of Government Property - Classified Material. The Corporation shall take all reasonable precautions, as directed by the Contracting Officer, or in the absence of such directions in accordance with sound industrial practice, to safeguard and protect Government property in the Corporation's possession or custody. Special measures shall be taken by the Corporation in the protection of and accounting for any classified or special materials involved in the performance of this contract, in accordance with the regulations and requirements of DOE.

(e) Risk of Loss of Government Property. The Corporation shall not be liable for loss or destruction of or damage to any property in the Corporation's possession unless the same is due to the willful misconduct or bad faith on the part of any of the corporate officers of the Corporation, the

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full-time supervising representative of the Corporation, or the Corporation's Plant Superintendent at Paducah, in the performance of the work under this contract, or unless such loss, destruction or damage is due to a failure on the part of the corporate officers of the Corporation, the full-time supervising representative of the Corporation, or the Corporation's Plant Superintendent at Paducah, in the performance of the work under this contract to take reasonable steps to comply with any appropriate written directives of DOE to safeguard such property.

(f) Steps to Be Taken in Event of Loss. Upon the happening of any loss or destruction of or damage to Government property in the possession or custody of the Corporation, the Corporation shall immediately inform the Contracting Officer of the occasion and extent thereof, shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property, if and as directed by the Contracting Officer, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(g) Government Property for Government Use Only. Government property shall be used only for the performance of this contract.

ARTICLE XXV - STATE AND LOCAL TAXES

(a) The Corporation agrees to notify DOE of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Corporation with respect to the contract work, any transaction thereunder, or property in the custody or control of the Corporation and constituting an allowable item of cost if due and payable, but which the Corporation has reason to believe, or DOE has advised the Corporation, is or may be inapplicable or invalid; and the Corporation further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by DOE. Any State or local tax, fee, or charge paid with the approval of DOE or on the basis of advice from DOE that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

(b) The Corporation agrees to take such action as may be required or approved by DOE to cause any State or local tax, fee, or charge referred to above to be paid under protest and to take such actions as may be required or approved by DOE to seek recovery of any payment made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Corporation in any proceeding for the recovery thereof or to sue for recovery in the name of the Corporation. If DOE directs the Corporation to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Corporation for a tax, fee, or charge it has refrained from paying in accordance with this

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article, the procedures and requirements of the article entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the Corporation shall be allowable items of cost, as provided in this contract, together with the amount of any judgment rendered against the Corporation.

(c) The Government shall save the Corporation harmless from penalties and interest incurred through compliance with this article. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

ARTICLE XXVI - GUARD AND FIRE-FIGHTING FORCES

During the performance of any and all phases of the work under this contract, the Corporation shall maintain guard and fire-fighting forces to the extent aporoved by DOE. In the interests of maintaining the efficiency and morale of the guard force, the Corporation shall, subject in each instance to the approval in writing of DOE, provide legal counsel and pay all reasonable and incidental costs (including the premium for bail bond) which may be necessary to defend adequately any member of said guard force against whom a civil or criminal action is brought, where such action is based upon an act or acts of the guard, undertaken by him in good faith, for the purpose of accomplishing and fulfilling the official duties of his employment.

ARTICLE XXVII - WALSH-HEALEY PUBLIC CONTRACTS ACT

To the extent that this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U. S. Code 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.

ARTICLE XXVIII - EQUAL OPPORTUNITY

(The following article is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, Ch. 60).)

During the performance of this contract, the Corporation agrees as follows:

(a) The Corporation will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or naticnal origin. The Corporation will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and

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selection for training, including apprenticeship. The Corporation agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity article.

(b) The Corporation will, in all solicitations or advertisements for employees placed by or on behalf of the Corporation, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Corporation will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of the Corporation's commitments under this Equal Opportunity article, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Corporation will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and orders of the Secretary of Labor.

(e) The Corporation will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by DOE and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Corporation's noncompliance with the Equal Opportunity article of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Corporation may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Corporation will include the provisions of Paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Corporation will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Corporation becomes

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involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by DOE, the Corporation may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE XXIX - UTILIZATION OF WOMEN-OWNED BUSINESS CONCERNS

(a) It is the policy of the United States Government that women-owned businesses shall have the maximum practicable opportunity to participate in the performance of contracts awarded by any Federal agency.

(b) The Corporation agrees to use its best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, a "woman-owned business" concern means a business that is at least 51% owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management. "Women" means all women business owners.

ARTICLE XXX - EXAMINATION OF RECORDS

(a) The Corporation 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 (unless DOE authorizes their prior disposition), have access to and the right to examine any directly pertinent books, documents, papers, and records of the Corporation involving transactions related to this contract.

(b) The Corporation further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor 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 the subcontract (unless DOE authorizes their prior disposition), have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this article excludes (1) purchase orders not exceeding $10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(c) The periods of access and examination described in (a) and (b) above, for records which relate to (1) appeals under the "Disputes" article of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

(d) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

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ARTICLE XXXI - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME 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.

(a) Overtime Requirements. No Corporation or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, 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 rate 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.

(b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions of Paragraph (a), the Corporation and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Corporation 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 (a) 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 (a).

(c) Withholding for Unpaid Wages and Liquidated Damages. The Contracting Officer may withhold from the Corporation and, where appropriate, direct the Corporation to withhold from its subcontractors, from any moneys payable on account of work performed by the Corporation or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Corporation or subcontractor for unpaid wages and liquidated damages as provided in the provisions of Paragraph (b).

(d) Subcontracts. The Corporation shall insert Paragraphs (a) through (d) of this article in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

ARTICLE XXXII - BUY AMERICAN ACT

(a) In acquiring end products, the Buy American Act (41 U. S. Code 10a-10d) provides that the Government give preference to domestic source end products. For the purpose of this article:

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(i) "Components" means those articles, materials, and supplies which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and

(iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the costs of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this article shall be treated as components mined, produced, or manufactured in the United States.

(b) The Corporation agrees that there will be used under this contract by the Corporation, subcontractors, materialmen, and suppliers, only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

ARTICLE XXXIII - STATE UNEMPLOYMENT COMPENSATION CONTRIBUTIONS

(a) It is recognized that, as a direct result of the merger of Carbide and Carbon Chemicals Corporation into Union Carbide and Carbon Corporation on December 31, 1949, and the employment since that date of persons required for the performance of this contract, the contributions under the Tennessee and Kentucky unemployment compensation laws paid or to be paid hereafter by the Corporation in respect of its employees pursuant to said laws may be greater or less than the amount that the Corporation would have been required to pay under said laws had the work under this contract not been undertaken by the Corporation. Accordingly, it is agreed that, as soon as practicable after the date of execution of Modification No. 37, the parties shall compute and mutually agree upon the amounts representing the net saving or expense to the Corporation under each of said laws during the period from January 1, 1950, through December 31, 1954, representing the net amounts by which the contributions by the Corporation under each of said laws during such period

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have been greater or less than amounts the Corporation would have been required to pay had the work under this contract not been performed. If such computation and agreement show a net saving under either law or net savings under both laws accrued to the Corporation, such saving or savings shall be considered a credit or credits to the Government for the purposes hereinafter provided (such credit or credits being hereinafter referred to as "Government Tennessee credit" and/or "Government Kentucky credit," as applicable). Conversely, if such computation and agreement show a net expense under either law or net expenses under both laws to the Corporation, the amount or amounts of such expense or expenses shall be considered a credit or credits to the Corporation for the purposes hereinafter provided (such credit or credits being hereinafter referred to as "Corporation Tennessee credit" and/or "Corporation Kentucky credit," as applicable).

(b) For the period beginning January 1, 1955, and ending five (5) years following the expiration or total termination of this contract:

(1) The Corporation will be compensated, as allowable costs under this contract, for the amounts, if any, that the contributions paid by it under the Tennessee and Kentucky unemployment compensation laws during such period in respect of employees in its regular business (which term for the purpose of this contract shall mean all business conducted by the Corporation, its subsidiaries or affiliated corporations under common control other than the work performed under this contract) are greater than the contributions the Corporation would have been required to pay except for the performance of this contract. Provided, however, that the Corporation shall receive no such compensation in respect to either law until the total payments due under this subparagraph (1) in respect to that law less payments due to the Government under subparagraph (2), below, in respect to that law exceed the amount of any "Government Tennessee credit" or "Government Kentucky credit," as applicable.

(2) The Corporation will pay to the Government or, by mutual agreement, will credit against any fee payments due to the Corporation under this contract the amounts, if any, that the contributions paid by it under the Tennessee and Kentucky unemployment compensation laws during such period in respect of employees in its regular business are less than the contributions the Corporation would have been required to pay except for the performance of this contract. Provided, however, that no such payments or credits to the Government in respect to either law shall be due until the aggregate amount payable to the Government under this subparagraph (2) in respect to that law less the aggregate amount payable to the Corporation under subparagraph (1) above, in respect to that law exceeds the amount of any "Corporation Tennessee credit" or "Corporation Kentucky credit," as applicable.

(3) The "Government Tennessee credit" and "Corporation Tennessee credit" shall be used only for the purpose of reducing amounts payable by either party in respect to the Tennessee Employment Security Act under the provisions of subparagraphs (1) and (2), above, and the "Government Kentucky credit" and "Corporation Kentucky credit" shall be used only for the purpose of reducing amounts payable by either party in respect to the

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Kentucky Unemployment Compensation Act under the provisions of subparagraphs (1) and (2), above. To the extent that these credits are not applied to the reduction of such payments, there shall be no obligation on the part of either party to pay to the other party the balance of any such credit.

(c) (1) The initial computation of payments due under subparagraphs (b) (1) and (b) (2), above, in respect to the Tennessee Employment Security Act shall be made as soon as practicable after June 30, 1955, for the period January 1, 1955, through June 30, 1955. Thereafter, computations shall be made as soon as practicable after each June 30 for the annual period then expiring. As used in this Paragraph (c), "adjustment period" means January 1, 1955 - June 30, 1955, and thereafter a twelve (12) months' period ending on June 30 for each calendar year.

(2) In order to determine the applicability in respect to the Tennessee Employment Security Act of subparagraph (b) (1) or subparagraph (b) (2), above, the following formulas shall be employed: (i) to determine the reserve ratio of the Corporation under the Tennessee Employment Security Act for its entire operations (regular business and performance of this contract) for each adjustment period; and (ii) to determine the reserve ratio of the Corporation under the Tennessee Employment Security Act in its regular business for each adjustment period:

(i) $$\frac{TC - TB}{TP}$$

(ii) $$\frac{(TC - TB) - (TC_c + MP_T - MR_T - TB_c)}{(TP - TP_c)}$$

(3) The letters appearing in the above formulas are defined as follows:

TC - Total contributions made by Corporation under the Tennessee Employment Security Act for all employees including employees under this contract through January 31st following each adjustment period and based upon wages paid through the December 31st preceding each adjustment period.

TB - Total benefits charged to Corporation under the Tennessee Employment Security Act of all employees including employees under this contract through the December 31st preceding each adjustment period.

TP - Total taxable payroll of Corporation for all employees covered by the Tennessee Employment Security Act including employees under this contract during the calendar year prior to each adjustment period.

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TC_c - Total contributions made by Corporation for all employees covered by the Tennessee Employment Security Act on account of its total taxable payroll for employees under this contract through the January 31st following each adjustment period and based upon wages paid through the December 31st preceding each adjustment period.

TB_c - Total benefits charged to Corporation under the Tennessee Employment Security Act on account of employees under this contract through the December 31st preceding each adjustment period.

TP_c - Total taxable payroll for employees under this contract covered by the Tennessee Employment Security Act during the calendar year prior to each adjustment period.

MP_T - Total prior payments in respect to the Tennessee Employment Security Act made to the Corporation under subparagraph (b) (1), above.

MR_T - Total prior payments in respect to the Tennessee Employment Security Act made by the Corporation under subparagraph (b) (2), above.

(4) Upon determining the reserve ratio applicable in subparagraph (c) (2) (i) and (ii), above, in accordance with the pertinent formula, such ratio shall then be converted in accordance with the current table of the Tennessee Employment Security Act, as amended, to the applicable rate of contribution which would be paid in the case of each reserve ratio. Thereupon the resulting difference in rates of contribution, if any, shall be applied to the taxable payroll of the Corporation in its regular business during the adjustment period and the monetary sum thus determined shall be paid in accordance with either subparagraph (b) (1) or (b) (2), above, as applicable.

(d) (1) The initial computation of payments in respect to the Kentucky Unemployment Compensation Act due under subparagraphs (b) (1) and (2), above, shall be made as soon as practicable after December 31, 1955, for the period January 1, 1955, through December 31, 1955. Thereafter computations shall be made as soon as practicable after each January 1 for the annual period then expiring. As used in this Paragraph (d), "adjustment period" means January 1, 1955, through December 31, 1955, and thereafter a twelve (12) months' period ending on December 31 of each calendar year.

(2) In order to determine the applicability in respect to the Kentucky Unemployment Compensation Act of subparagraphs (b) (1) or (b) (2), above, the following formula shall be employed to determine for each adjustment period the balance of the reserve account of the Corporation under the Kentucky Unemployment Compensation Act for its regular business:

$$B - (TC_{cK} - MP_K - MR_K - TB_{cK})$$

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(3) The letters appearing in the above formula are defined as follows:

B - The balance in the employer's reserve account actually used for the computation of the Kentucky unemployment compensation tax during the adjustment period.

TC_{CK} - Total contributions made by the Corporation under the Kentucky Unemployment Compensation Act on account of its total taxable payroll under this contract up to the computation date (as defined in the Kentucky Unemployment Compensation Law) preceding the beginning of each adjustment period.

TB_{CK} - Total benefits charged to the Corporation under the Kentucky Unemployment Compensation Act on account of its total taxable payroll under this contract up to the computation date (as defined in the Kentucky Unemployment Compensation Law) preceding the beginning of each adjustment period.

MP_K - Total prior payments in respect to the Kentucky Unemployment Compensation Act made to the Corporation under subparagraph (b) (1), above.

MR_K - Total prior payments in respect to the Kentucky Unemployment Compensation Act made by the Corporation under subparagraph (b) (2), above.

(4) Upon determining the reserve account balance in accordance with the above formula, such reserve account balance shall then be converted in accordance with the current applicable section or sections of the Kentucky Unemployment Compensation Act as amended to the applicable rate of contribution which would be paid in case of such reserve account balance. Thereupon the difference, if any, between the rate so found and the rate actually imposed during the adjustment period shall be applied to the taxable payroll of the Corporation covered by the Kentucky Unemployment Compensation Act in its regular business during the adjustment period and the monetary sum thus determined shall be paid in accordance with either subparagraphs (b) (1) or (b) (2), above, as applicable.

(e) During the term of this contract, and until the expiration of the period provided for in Paragraph (b), above, it is further agreed that:

In the event any portion or all of the Corporation's experience rating account under the Tennessee Employment Security Act or of the Corporation's reserve account under the Kentucky Unemployment Compensation Act is transferred to any successor employer or successor employers not engaged in the performance of the work under this contract or the same work under another contract with DOE, the Corporation and the Government shall negotiate to agree upon an equitable adjustment of the obligations of the Corporation and the Government under this article, and to agree upon the benefit, if any, which such successor employer or

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employers may realize by reason of the Government's contributions in the account so transferred; provided, that none of the Government's contributions in the Corporation's account shall be transferred without the express written approval of DOE. Any benefit agreed upon as attributable to any such transfer shall be paid over or credited to the Government as DOE may direct. In the event the parties are unable to agree upon an equitable adjustment of the obligations of the parties under this article, or upon the benefit inuring to any successor employer or employers by reason of the inclusion of all or part of the Government's contributions, such disagreement shall be deemed a dispute covered under the provisions of Article XIII - "Disputes."

ARTICLE XXXIV - NUCLEAR SAFETY

(a) The activities under this contract include the operation of nuclear reactors and the Corporation recognizes that such operation involves the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety. In the operation of nuclear reactors, the Corporation will exercise a degree of care commensurate with the risk involved.

(b) The Corporation shall comply with all applicable regulations of DOE concerning nuclear reactor safety and with those requirements (including reporting requirements and instructions) of DOE concerning nuclear reactor safety of which it is notified in writing by the Contracting Officer.

(c) Prior to the initial startup of any nuclear reactor under this contract and prior to any subsequent startup following a change which represents a significant deviation from the procedures, equipment, or analyses described in the hazards summary report for that reactor, the Corporation shall:

(1) Prepare a safety analysis report and detailed plans and procedures designed to assure the safe operation and maintenance of the reactor. These will generally cover, but not be limited to: Prestartup checklists; normal operation of the reactor and supporting auxiliaries; maintenance operation; emergency situations; and technical standards for equipment and systems.

(2) Establish nuclear safety control procedures to be used within the Corporation's organization to insure appropriate review and internal approval of the detailed plans and procedures specified in (1) above.

(3) Submit to the Contracting Officer for his approval such procedures relating to nuclear safety as may be designated by him;

(4) Carry out a training program designed to assure that all personnel who will be engaged in the operations or maintenance of a nuclear reactor understand the approved plans and procedures for nuclear safety pertinent to their assignments.

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(5) Obtain the approval of the Contracting Officer prior to such startup of the reactor.

(d) In the operation and maintenance of any nuclear reactor under this contract, the Corporation shall:

(1) Use all reasonable efforts to assure that all operational and maintenance activities are performed by qualified and adequately trained personnel and, except as otherwise agreed in writing, are conducted under the supervision of personnel who are qualified to appraise any emergency condition and take prompt effective action with respect thereto.

(2) Operate the reactors within the operating limits which may be prescribed by the Contracting Officer. The Contracting Officer will consult with the Corporation in formulating and revising such operating limits.

(3) Follow strictly the procedures relating to nuclear safety approved by the Contracting Officer as specified in (c)(3) above, and submit to the Contracting Officer for his approval any proposed changes in such procedures.

(4) Establish a system of inspection approved by the Contracting Officer (including review of inspection reports by competent technical personnel) that will (i) provide frequent and periodic checks of reactor performance and of the qualifications and training of operating and maintenance personnel, and (ii) provide for investigation of any unusual or unpredicted reactor conditions that might affect the safe operation of the reactor.

(5) Report promptly to the Contracting Officer any change in the physical condition of the reactor or its operating characteristics that might, in the judgment of the Corporation, affect the safe operation of the reactor.

(6) Shut down the reactor immediately whenever so instructed by the Contracting Officer, or whenever, in the judgement of the Corporation, the risk of a nuclear incident endangering persons or property warrants such action.

(7) Prepare, in cooperation with other services and facilities available at the site and with the approval of the Contracting Officer, a plan for minimizing the effects of a nuclear incident upon the health and safety of all persons on the site; cooperate with the Contracting Officer in his preparation of a plan to protect the public off the site; instruct its personnel as to their participation in such plans and any personal risk to such personnel that may be involved; and participate in such practice exercises as may be desirable to assure the effectiveness of such plans.

(8) At an appropriate time as determined by the Contracting Officer, prepare and submit to the Contracting Officer for his approval, shutdown, decommissioning, decontamination and property management plans

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leading to orderly and safe program disposition of the nuclear facility and any associated nuclear wastes or other hazardous material.

ARTICLE XXXV - SUBCONTRACTS - CORPORATION PROCUREMENT

(a) Subcontracts. The Corporation shall, when ordered by DOE, and may, but only when authorized by DOE, enter into subcontracts in writing for the performance of the work described in the article entitled "Description of Work and Services" or any part of the work under this contract.

(b) Corporation Procurement. DOE reserves the right at any time to require that the Corporation submit for approval any or all procurements under this contract. The Corporation shall not procure any item whose purchase is expressly prohibited by the written direction of DOE and shall use such special and directed procurement sources as may be expressly required by DOE. The Corporation shall provide information concerning procurement methods, practices, and procedures used or proposed to be used and shall use methods, practices, and procedures which are acceptable to DOE. Procurement arrangements under this contract shall not relieve the Corporation of any obligation under this contract (including, among other things, the obligation properly to supervise, administer, and coordinate the work of subcontractors) and shall be in such form and contain such provisions as are required by this contract or as DOE may prescribe.

(c) In addition to, and without derogation of any rights under Paragraph (a) of this article and any other provision in this contract, the Corporation shall require subcontractors to furnish cost or pricing data, and shall include in such subcontracts the article set forth in DOE-PR 9-50.704-24, except as otherwise directed or approved by DOE.

(d) Procurement or transfer of equipment, materials, supplies, or services from a Corporation-controlled source (any division or other organizational component of the prime contractor [exclusive of the contracting component] and any subsidiary or affiliate of the Corporation under a common control) shall be considered a procurement for the purposes of this article.

ARTICLE XXXVI - REQUIRED BONDS AND INSURANCE--EXCLUSIVE OF GOVERNMENT PROPERTY

The Corporation shall procure and maintain such bonds and insurance as are required by law or by the written direction of the Contracting Officer subject to the conditions set forth in DOE-PR § 9-7.204-5. The terms and conditions of any such bonds and insurance shall conform to the directions of the Contracting Officer. In view of the provisions of the article entitled "Property," the Corporation shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government-owned property.

ARTICLE XXXVII - CORPORATION'S ORGANIZATION

(a) Organization Chart. As promptly as possible after the execution of this contract, the Corporation shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel to be

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employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.

(b) Supervising Representative of Corporation - Approval of Assignment of Certain Employees. Unless otherwise directed or approved by DOE, competent full-time resident supervising representative of the Corporation shall be in charge of the work at all times. No person shall be assigned to service by the Corporation as its Supervising Representative, as Vice President - Operations, Vice President - Engineering and Development, or as Director of Oak Ridge National Laboratory, unless DOE approval has been given to the assignment.

(c) Control of Employees. The Corporation shall be responsible for maintaining satisfactory standards of employee competency, conduct and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. The Corporation shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in DOE Procurement Regulations 9-50.12, and such standards and procedures shall be subject to the approval of the Contracting Officer.

(d) Organizational Conflicts of Interest.

(1) General.

a. It is DOE policy to avoid situations which place the Corporation in a position where its judgment may be biased because of any past, present or currently planned interest, financial or otherwise, the Corporation may have which relates to the work to be performed under its contract or where the Corporation's performance of such work may provide it with an unfair competitive advantage. Accordingly, the Corporation agrees that it will exercise its best efforts (i) to conduct its activities to avoid bias in performance of work under this contract, and (ii) to avoid any unfair competitive advantage by virtue of its performance of work under this contract. The Corporation, however, is entitled to the normal flow of benefits from performance of this contract.

b. Except as otherwise approved by DOE, information and other data developed or acquired by or furnished the Corporation in the performance of this contract shall be used only in connection with the work under this contract.

(2) Subcontracts. The Corporation shall include the clause set forth at DOE-PR 9-1.5408-2 in subcontracts of any tier which involve performance or work of the type specified in DOE-PR 9-1.5403(d). The terms "contract," "Contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.

ARTICLE XXXVIII - CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES OF CORPORATION EMPLOYEES

The Corporation shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time

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annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the Corporation all consultant or other comparable employment services which the employees propose to undertake for others. The Corporation shall transmit to the Contracting Officer all information obtained from such disclosures. The Corporation will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE cost-type contractor or related energy field for another organization except with the prior approval of the Corporation. If the Corporation believes, with respect to any employee who is employed full-time on the contract work, that any proposed consultant or other comparable employment service for an organization in the energy field other than a DOE cost-type contractor may involve: (i) a rate of remuneration significantly in excess of the employee's regular rate of remuneration; (ii) a significant question concerning possible conflict with DOE's policies regarding conduct of employees of DOE contractors; (iii) the Corporation's responsibility to report fully and promptly to DOE all significant research and development information; or (iv) the patent provisions of the Corporation's contract with DOE, the Corporation shall obtain the prior approval of the Contracting Officer for such consultant or other comparable employment service.

ARTICLE XXXIX - UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The Corporation hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The Corporation further agrees to cooperate in any studies or surveys as may be conducted by the Small Business Administration or the Department of Energy which may be necessary to determine the extent of the Corporation's compliance with this article.

(c) (1) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(2) The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern--

(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

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(ii) whose management and daily business operations are controlled by one or more of such individuals.

The Corporation shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

ARTICLE XL - SUBCONTRACTING PLAN FOR SMALL BUSINESS CONCERNS AND SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS

(a) The Corporation agrees to comply in good faith with the small and small disadvantaged business concerns subcontracting plan which is hereby incorporated in and made a part of this contract. In this connection, the Corporation shall:

(1) Use its best efforts to attain such percentage goals as may be set forth in the plan.

(2) Designate an individual who will:

(i) Maintain liaison with the Government on matters relating to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals;

(ii) Monitor compliance with the article entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals"; and

(iii) Administer the Corporation's plan.

(3) Provide adequate and timely consideration of the potentialities of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in all "make-or-buy" decisions.

(4) Assure that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals will, consistent with efficient performance of the contract, have the maximum practicable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of such concerns. Where the Corporation's lists of potential subcontractors which are small business and small business concerns owned and controlled by socially and economically disadvantaged individuals are excessively long, reasonable effort shall

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be made to give all such concerns an opportunity to compete over a period of time.

(5) Maintain records showing:

(i) Whether each subcontractor is a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals; and

(ii) Procedures which have been adopted to comply with the plan and the policies set forth in this article.

(6) Notify the Contracting Officer before soliciting bids, quotations or proposals on any subcontract (including purchase orders) in excess of $10,000 if:

(i) No small business concern or small business concern owned and controlled by socially and economically disadvantaged individuals is to be solicited, and

(ii) The Contracting Officer's consent to the subcontract is required by a "Subcontracts" article in this contract. Such notification will state the Corporation's reasons for nonsolicitation of small business and small business concerns owned and controlled by socially and economically disadvantaged individuals and will be given as early in the procurement cycle as possible so that the Contracting Officer may suggest potentially qualified small business concerns or small business concerns owned and controlled by socially and economically disadvantaged individuals. In no case will the procurement action be held up when to do so would, in the Corporation's judgment, delay performance under the contract and the Corporation's notification shall specify that it is proceeding with the solicitation.

(7) Include the "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals" article in all subcontracts over $10,000 which offer further subcontracting opportunities.

(8) Cooperate in any studies or surveys of the Corporation's subcontracting procedures and practices as may be required by the Department of Energy or the Small Business Administration.

(9) Submit quarterly reports of subcontracting to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals on such forms as may be specified elsewhere in this contract.

(b) The Corporation agrees that failure to comply in good faith with the article entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals," or the terms of the subcontracting plan incorporated into the contract will be a material breach of the contract and the contract may be terminated, in whole or in part, for default.

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(c) The Corporation further agrees to insert in all subcontracts hereunder (except those with small business concerns) which contain the article entitled "Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals," which offer further subcontracting opportunities, and which may exceed $1,000,000 in the case of a subcontract for the construction of any public facility or in excess of $500,000 in the case of all other subcontracts, provisions which shall conform substantially to the language of this article, including this Paragraph (c), and to notify the Contracting Officer of the names of such subcontractors.

(d) The provisions of this article shall not apply to small business concerns.

ARTICLE XLI - UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(a) It is the policy of the Government to award contracts to labor surplus area concerns that agree to perform substantially in 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 Corporation agrees to use its best efforts to place its subcontracts in accordance with this policy.

(b) In complying with Paragraph (a) of this article and with Paragraph (b) of the article of this contract entitled "Utilization of Small Business Concerns," the Corporation in placing its subcontracts shall observe the following order of preference: (1) Small business concerns that are labor surplus area concerns, (2) other small business concerns, and (3) other labor surplus area concerns.

(c) (1) The term "labor surplus area" means a geographical area identified by the Department of Labor as an area of concentrated unemployment and underemployment or an area of labor surplus.

(2) The term "labor surplus area concern" means a concern that together with its first-tier subcontractor will perform substantially in labor surplus areas.

(3) The term "perform substantially in a labor surplus area" means that the costs incurred on account of manufacturing, production, or appropriate services in labor surplus areas exceed 50 percent of the contract price.

ARTICLE XLII - LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

(a) The Corporation agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Corporation shall--

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns article, and (iii) administer the Corporation's "Labor Surplus Area Subcontracting Program";

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(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this article and report subcontract awards (see 41 CFR 1-16.804-5 regarding use of Optional Form 61). Records maintained pursuant to this article will be kept available for review by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other article of this contract or by applicable law or regulations; and

(5) Include the Utilization of Labor Surplus Area Concerns article in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) (1) The term "labor surplus area" means a geographical area identified by the Department of Labor as an area of concentrated unemployment or underemployment or an area of labor surplus.

(2) The term "concern located in a labor surplus area" means a labor surplus area concern.

(3) The term "labor surplus area concern" means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.

(4) The term "perform substantially in labor surplus areas" means that the costs incurred on account of manufacturing, production or appropriate services in labor surplus areas exceed 50 percent of the contract price.

(c) The Corporation further agrees to insert, in any subcontract hereunder which may exceed $500,000 and which contains the Utilization of Labor Surplus Area Concerns article, provisions which shall conform substantially to the language of this article, including this Paragraph (c), and to notify the Contracting Officer of the names of such subcontractors.

ARTICLE XLIII - PRIORITIES, ALLOCATIONS, AND ALLOTMENTS

The Corporation shall follow the provisions of Defense Materials System Regulation 1 and all other applicable regulations and orders of the Industry and Trade Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed to fill this order.

ARTICLE XLIV - CLASSIFICATION

In the performance of the work under this contract, the Corporation shall ensure that an Authorized Original Classifier or Derivative Classifier shall

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assign classifications to all documents, material, and equipment originated or generated under the contract in accordance with classification regulations and guidance furnished to the Corporation by the DOE. 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 Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and equipment in accordance with classification regulations and guidance furnished to such subcontractor or supplier by the Corporation.

ARTICLE XLV - AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

(a) The Corporation 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 Corporation 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 Corporation agrees that all suitable employment openings of the Corporation 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 Corporation 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 Corporation 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 article 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 Corporation from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

(d) RESERVED

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(e) Whenever the Corporation becomes contractually bound by the listing provisions of this article, it shall advise the employment service system in each State where it has establishments of the name and location of each such hiring location in the State. As long as the Corporation 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 Corporation may advise the State system when it is no longer bound by this contract article.

(f) This article 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 article do not apply to openings which the Corporation proposes to fill from within its 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 its own organization or employer-union arrangement for that opening.

(h) As used in this article:

(1) "All suitable employment openings" includes, but is not limited to, openings, which occur in the following job categories: Production and nonproduction; 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 three days' duration, and part-time employment. It does not include openings which the Corporation proposes to fill from within its 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 Corporation proposes to fill from within its own organization" means employment openings for which no consideration will be given to persons outside the Corporation's own organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Corporation proposes to fill from regularly established "recall" lists.

(4) "Openings which the Corporation proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means

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employment openings for which the Corporation proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Corporation and representatives of its employees.

(i) The Corporation 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 Corporation's noncompliance with the requirements of this article, 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 Corporation 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 Contracting Officer. Such notice shall state the Corporation'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 Corporation will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Corporation 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 Corporation will include the provisions of this article 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 Corporation 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.

ARTICLE XLVI - AFFIRMATIVE ACTION FOR EMPLOYMENT OF THE HANDICAPPED

(a) The Corporation 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 Corporation 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.

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(b) The Corporation agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, as amended.

(c) In the event of the Corporation's noncompliance with the requirements of this article, 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 Corporation 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 Contracting Officer. Such notices shall state the Corporation'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 Corporation will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Corporation 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 Corporation will include the provisions of this article 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 Corporation 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.

ARTICLE XLVII - COST ACCOUNTING STANDARDS

(a) Unless the Cost Accounting Standards Board has prescribed rules or regulations exempting the Corporation or this contract from standards, rules, and regulations promulgated pursuant to 50 U.S.C. App. 2168 (Pub. L. 91-379, August 15, 1970), the Corporation, in connection with this contract, shall:

(1) By submission of a Disclosure Statement, disclose in writing its cost accounting practices as required by regulations of the Cost Accounting Standards Board. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Corporation and which contain a Cost Accounting Standards article. If the Corporation has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the Government.

(2) Follow consistently his cost accounting practices in accumulating and reporting contract performance cost data concerning this

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contract. If any change in disclosed practices is made for purposes of any contract or subcontract subject to Cost Accounting Standards Board requirements, the change must be applied prospectively to this contract, and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5), below, as appropriate.

(3) Comply with all Cost Accounting Standards in effect on the date of award of this contract or if the Corporation has submitted cost or pricing data, on the date of final agreement on price as shown on the Corporation's signed certificate of current cost or pricing data. The Corporation shall also comply with any Cost Accounting Standard which hereafter becomes applicable to a contract or subcontract of the Corporation. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (A) Agree to an equitable adjustment as provided in the Changes article of this contract if the contract cost is affected by a change which, pursuant to (3) above, the Corporation is required to make to his cost accounting practices.

(B) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of this subparagraph (a)(4); Provided, That no agreement may be made under this provision that will increase costs paid by the United States.

(C) When the parties agree to a change to a cost accounting practice, other than a change under (4)(A), above, negotiate an equitable adjustment as provided in the Changes article of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if it or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to P. L. 92-41, 85 Stat. 97, or 7 percent per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Corporation or a subcontractor has complied with an applicable Cost Accounting Standard, rule, or regulation of the Cost Accounting Standards Board and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes article of this contract.

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(c) The Corporation shall permit any authorized representatives of the Head of the Agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this article.

(d) The Corporation shall include in all negotiated subcontracts which it enters into the substance of this article except Paragraph (b), and shall require such inclusion in all other subcontracts of any tier, including the obligation to comply with all Cost Accounting Standards in effect on the date of award of the subcontract, or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of $100,000 where the price negotiated is not based on:

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a Cost Accounting Standards article by reason of § 331.30(b) of Title 4, Code of Federal Regulations (4 CFR 331.30(b)).

(e) The terms defined in Sec. 331.20 of Part 331 of Title 4, Code of Federal Regulations (4 CFR 331.20) shall have the same meanings herein. As there defined "negotiated subcontract" means "any subcontract except a firm fixed-price subcontract made by a Corporation or subcontractor after receiving offers from at least two firms not associated with each other or such Corporation or subcontractor, providing (i) the solicitation to all competing firms is identical, (ii) price is the only consideration in selecting the subcontractor from among the competing firms solicited, and (iii) the lowest offer received in compliance with the solicitation from among those solicited is accepted."

ARTICLE XLVIII - CORPORATION COMPLIANCE - COST ACCOUNTING STANDARDS

Reference is made to Article XLVII - Cost Accounting Standards. Notwithstanding the provisions of that article, the Corporation shall not be liable to the Government for any increased costs or interest thereon resulting from any failure of the Corporation, with respect to activities carried on at the site of the work, or of a subcontractor to comply with applicable cost accounting standards or to follow any practices disclosed pursuant to the requirements of such article: Provided, That, the Corporation shall include in each covered subcontract a clause making the subcontractor liable for any increased costs or interest thereon resulting from any failure of the subcontractor to comply with prescribed standards or disclosed practices.

ARTICLE XLIX - ADMINISTRATION OF COST ACCOUNTING STANDARDS

For the purpose of administering Cost Accounting Standards requirements under this contract, the Corporation shall:

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(a) Submit to the cognizant Contracting Officer a description of the accounting change and the general dollar magnitude of the change to reflect the sum of all increases and the sum of all decreases for all contracts containing the Cost Accounting Standards article or the Disclosure and Consistency of Cost Accounting Practices article:

(1) For any change in cost accounting practices required to comply with a new cost accounting standard in accordance with subparagraphs (a)(3) and (a)(4)(A) of the Cost Accounting Standards article within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring such change;

(2) For any change to cost accounting practices proposed in accordance with subparagraph (a)(4)(B) or (a)(4)(C) of the Cost Accounting Standards article or with subparagraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices article not less than 60 days (or such other date as may be mutually agreed to) prior to the effective date of the proposed change; or

(3) For any failure to comply with an applicable Cost Accounting Standard or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the Cost Accounting Standards article of this contract or with subparagraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices article within 60 days (or such other date as may be mutually agreed to) after the date of agreement of such noncompliance by the Corporation.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to subparagraphs (a)(1), (2), or (3), above.

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) or (a)(5) of the Cost Accounting Standards article or with subparagraphs (a)(3), (a)(4) or (a)(5) of the Disclosure and Consistency of Cost Accounting Practices article.

(d) When the subcontract is subject to either the Cost Accounting Standards article or the Disclosure and Consistency of Cost Accounting Practices article so state in the body of the subcontract and/or in the letter of award. Self-deleting articles shall not be used.

(e) Include the substance of this article in all negotiated subcontracts containing either the Cost Accounting Standards article or the Disclosure and Consistency of Cost Accounting Practices article. In addition, within 30 days after award of such subcontract, submit the following information to the Contract Administration Office cognizant of the Corporation's facility for transmittal to the Contract Administration Office cognizant of the subcontractor's facility:

(1) Subcontractor's name and subcontract number;

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(2) Dollar amount and date of award;

(3) Name of Corporation making the award; and

(4) A statement as to whether the subcontractor has made or proposes to make any changes to accounting practices that affect prime contracts or subcontracts containing the Cost Accounting Standards article or the Disclosure and Consistency of Cost Accounting Practices article because of the award of this subcontract unless such changes have already been reported. If award of the subcontract results in making a cost accounting standard(s) effective for the first time this shall also be reported.

(f) For negotiated subcontracts containing the Cost Accounting Standards article, require the subcontractor to comply with all Standards in effect on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data or date of award, whichever is earlier.

(g) In the event an adjustment is required to be made to any subcontract hereunder, notify the Contracting Officer in writing of such adjustment and agree to an adjustment in the price or estimated cost and fee of this contract, as appropriate, based upon the adjustment established under the subcontract. Such notice shall be given within 30 days after receipt of the proposed subcontract adjustment, or such other date as may be mutually agreed to, and shall include a proposal for adjustment to such higher tier subcontract or prime contract, as appropriate.

(h) When either the Cost Accounting Standards article or the Disclosure and Consistency of Cost Accounting Practices article and this article are included in subcontracts, the term "Contracting Officer" shall be suitably altered to identify the purchaser.

ARTICLE L - WOMEN-OWNED BUSINESS CONCERNS SUBCONTRACTING PROGRAM

(a) The Corporation agrees to establish and conduct a program which will enable women-owned business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Corporation shall:

(1) Designate a liaison officer who will administer the Corporation's "Women-Owned Business Concerns Program."

(2) Provide adequate and timely consideration of the potentialities of known women-owned business concerns in all "make-or-buy" decisions.

(3) Develop a list of qualified bidders that are women-owned businesses and assure that known women-owned business concerns have an equitable opportunity to compete for subcontracts, particularly by making information on forthcoming opportunities available, by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of women-owned business concerns.

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(4) Maintain records showing (i) procedures which have been adopted to comply with the policies set forth in this article, including the establishment of a source list of women-owned business concerns; (ii) awards to women-owned businesses on the source list by minority and non-minority women-owned business concerns; and (iii) specific efforts to identify and award contracts to women-owned business concerns.

(5) Include the "Utilization of Women-Owned Business Concerns" article in subcontracts which offer substantial subcontracting opportunities.

(6) Cooperate in any studies and surveys of the Corporation's women-owned business concerns procedures and practices that the Contracting Officer may from time-to-time conduct.

(7) Submit periodic reports of subcontracting to women-owned business concerns with respect to the records referred to in subparagraph (4) above, in such form and manner and at such time (not more often than quarterly) as the Contracting Officer may prescribe.

(b) The Corporation further agrees to insert, in any subcontract hereunder which may exceed $500,000 or $1,000,000 in the case of contracts for the construction of any public facility and which offers substantial subcontracting possibilities, provisions which shall conform substantially to the language of this article, including this Paragraph (b), and to notify the Contracting Officer of the names of such subcontractors.

(c) The Corporation further agrees to require written certification by its subcontractors that they are bona fide women-owned and controlled business concerns in accordance with the definition of a women-owned business concern as set forth in the Utilization of Women-Owned Business Concerns article at the time of submission of bids or proposals.

ARTICLE LI - CLEAN AIR AND WATER

The Corporation agrees to insert the following article in all nonexempt subcontracts:

(Applicable only if the subcontract exceeds $100,000, or the Corporation has determined that the orders under an indefinite quantity subcontract 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 subcontract is not otherwise exempt.)

(a) The Subcontractor agrees as follows:

(1) 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

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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 subcontract.

(2) That no portion of the work required by this subcontract 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.

(3) To use its best efforts to comply with clean air standards and clean water standards at the facilities in which the subcontract is being performed.

(4) To insert the substance of the provisions of this article in any nonexempt subcontract, including this subparagraph (a)(4).

(b) The terms used in this article have the following meanings:

(1) 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).

(2) The term "Water Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq., as amended by Public Law 92-500).

(3) 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 Clean 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)).

(4) 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).

(5) 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.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of

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operations, owned, leased, or supervised by a subcontractor, to be utilized in the performance of a 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 collocated in one geographical area.

ARTICLE LII - AUTHORIZATION AND CONSENT

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including all lower-tier subcontracts).

ARTICLE LIII - NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The provisions of this article shall be applicable only if the amount of this contract exceeds $10,000.

(a) The Corporation shall report to the Contracting Officer, 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 Corporation has knowledge.

(b) In the event of any claim or suit against 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 Corporation shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the possession of the Corporation pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Corporation has agreed to indemnify the Government.

(c) This article shall be included in all subcontracts.

ARTICLE LIV - 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 Government, the Corporation agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) 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 of any individual payments or royalties shall

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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.

ARTICLE LV - RIGHTS IN TECHNICAL DATA - FACILITY

(a) Definitions.

(1) "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work or be usable or used to define a design or process or to procure or produce material or to procure, construct, support, maintain, or operate a facility. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design-type documents, or computer software (including computer programs, computer software data bases and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification and related information. Technical data as used herein does not include financial reports, cost analyses and other information incidental to contract administration.

(2) "Proprietary Data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) Have not been made available by the owner to others without obligation concerning their confidentiality; and

(iii) Are not already available to the Government without obligation concerning their confidentiality.

(3) "Unlimited Rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have:

(i) Ownership in all technical data first produced in the performance of the contract;

(ii) The right to inspect technical data first produced or specifically used in the performance of the contract at all reasonable

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times (for which inspection the proper facilities shall be afforded DOE by the Corporation and its subcontractors);

(iii) The right to have all technical data first produced or specifically used in the performance of the contract delivered to the Government or otherwise disposed of by the Corporation, either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract, provided, that nothing contained in this paragraph shall require the Corporation to actually deliver any technical data, the delivery of which is excused by this Rights in Technical Data article;

(iv) Unlimited rights in technical data specifically used in the performance of this contract, except technical data pertaining to items of standard commercial design; the Corporation agrees to leave a copy of such technical data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the Contracting Officer; provided, that if such data are proprietary, the rights of the Government in such data shall be governed solely by the provisions of optional Paragraph (e) hereof - "Limited Rights in Proprietary Data";

(v) The right to remove, cancel, correct or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Corporation fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Corporation of the action taken.

(2) The Corporation shall have:

(i) The right to withhold its proprietary data in accordance with the provisions of this article; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract, technical data it first produces in the performance of this contract, provided the data requirements of this contract have been met as of the date of the private use of such data. The Corporation agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the Corporation shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

(3) Nothing contained in this article 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.

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(c) Copyrighted Material.

(1) The Corporation shall not, without prior written authorization of the Patent Counsel with notification to the Contracting Officer, establish a claim to statutory copyright in any technical data first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf a royalty-free, nonexclusive, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit and perform any such data copyrighted by the Corporation.

(2) The Corporation agrees not to include in the technical data delivered under the contract any material copyrighted by the Corporation and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in subparagraph (c)(1) above. If the Corporation believes that such copyrighted material for which the license cannot be obtained must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the Corporation shall obtain the written authorization of the Contracting Officer to include such material in the technical data prior to its delivery.

(d) Subcontracting.

(1) Unless otherwise directed by the Contracting Officer, the Corporation agrees to use in subcontracts having as a purpose the conduct of research, development or demonstration or in subcontracts for supplies, the contract article provisions of 41 CFR § 9-9.202-3(c) and 41 CFR § 9-9.202-3(e)(2) in accordance with the policy and procedures of 41 CFR § 9-9.202-1, 2 and 3.

(2) It is the responsibility of the Corporation to obtain from its subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the Corporation's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept an article affording the Government such rights, the Corporation shall:

(i) Promptly submit written notice to the Contracting Officer setting forth reasons for the subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(e) Limited Rights in Proprietary Data. Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the Corporation 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 proprietary data of the Corporation specifically used in the

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performance of this contract; provided, however, that to the extent that any proprietary data when furnished or delivered is specifically identified by the Corporation 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 Legend" set forth below. All such proprietary data shall be marked with the following "Limited Rights Legend":

LIMITED RIGHTS LEGEND

This "proprietary data," furnished under Contract No. W-7405-Eng-26 with the United States Department of Energy may be duplicated and used by the Government with the express limitations that the "proprietary data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Corporation, except that further disclosure or use may be made solely for the following purposes:

(a) This "proprietary 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 "proprietary data" be retained in confidence and not be further disclosed; or

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

This legend shall be marked on any reproduction of this data in whole or in part.

ARTICLE LVI - PATENT RIGHTS

(a) Definitions.

(1) "Subject Invention" means any invention or discovery of the Corporation conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.

(2) "Contract" means any contract, grant, agreement, understanding or other arrangement, which includes research, development, or demonstration work, and includes any assignment or substitution of parties.

(3) "States and domestic municipal governments" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

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(4) "Government agency" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the Executive Branch of the Government of the United States of America.

(5) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(6) "Patent Counsel" means the Department of Energy Patent Counsel, Oak Ridge.

(b) Allocation of Principal Rights.

(1) Assignment to the Government. The Corporation agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Corporation under subparagraph (b)(2) and Paragraph (c) of this article.

(2) Greater Rights Determinations. The Corporation or the employee-inventor with authorization of the Corporation may request greater rights than the nonexclusive license and the foreign patent rights provided in Paragraph (c) of this article on identified inventions in accordance with 41 CFR § 9-9.109-6d. Such requests must be submitted to Patent Counsel (with notification by Patent Counsel to the Contracting Officer) at the time of the first disclosure pursuant to subparagraph (e)(2) of this article, or not later than 9 months after conception or first actual reduction to practice, whichever occurs first, or such longer periods as may be authorized by Patent Counsel (with notification by Patent Counsel to the Contracting Officer) for good cause shown in writing by the Corporation.

(c) Minimum Rights to the Corporation.

(1) Corporation License. The Corporation reserves a revocable, non-exclusive, paid-up license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Corporation's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Corporation is a part and shall include the right to grant sub-licenses of the same scope to the extent the Corporation was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of DOE except when transferred to the successor of that part of the Corporation's business to which the invention pertains.

(2) Revocation Limitations. The Corporation's nonexclusive license retained pursuant to subparagraph (c)(1) of this article and sublicenses granted thereunder may be revoked or modified by DOE, either in whole or in

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part, only to the extent necessary to achieve expeditious practical application of the Subject Invention under DOE's published licensing regulations (10 CFR 781), and only to the extent an exclusive license is actually granted. This license shall not be revoked in that field of use and/or the geographical areas in which the Corporation, or its sublicensee, has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public, or is expected to do so within a reasonable time.

(3) Revocation Procedures. Before modification or revocation of the license or sublicense, pursuant to subparagraph (c)(2) of this article, DOE shall furnish the Corporation a written notice of its intention to modify or revoke the license and any sublicense thereunder, and the Corporation shall be allowed 30 days, or such longer period as may be authorized by the Patent Counsel (with notification by Patent Counsel to the Contracting Officer), for good cause shown in writing by the Corporation, after such notice to show cause why the license or any sublicense should not be modified or revoked. The Corporation shall have the right to appeal, in accordance with 10 CFR 781, any decision concerning the modification or revocation of its license or any sublicense.

(4) Foreign Patent Rights. Upon written request to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer), and subject to DOE security regulations and requirements, there shall be reserved to the Corporation, or the employee-inventor with authorization of the Corporation, the patent rights to a Subject Invention in any foreign country where the Government has elected not to secure such rights provided:

(i) The recipient of such rights, when specifically requested by DOE and three years after issuance of a foreign patent disclosing said Subject Invention, shall furnish DOE a report setting forth:

(A) The commercial use that is being made, or is intended to be made, of said invention, and

(B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, non-exclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary or his designee determines that it would not be in the public interest to acquire the license for the State and domestic municipal governments.

(iii) Subject to the rights granted in subparagraphs (c)(1), (2) and (3) of this article, the Secretary or his designee shall have the right to terminate the foreign patent rights granted in this subparagraph (c)(4) in whole or in part unless the recipient of such

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rights demonstrates to the satisfaction of the Secretary or his designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(iv) Subject to the rights granted in subparagraphs (c)(1), (2), and (3) of this article, the Secretary or his designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (c)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

(A) If the Secretary or his designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person, has had the opportunity to provide such relevant and material information as the Secretary or his designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or

(B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary or his designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(d) Filing of Patent Applications.

(1) With respect to each Subject Invention in which the Corporation or the inventor requests foreign patent rights in accordance with subparagraph (c)(4) of this article, a request may also be made for the right to file and prosecute the U. S. application on behalf of the U. S. Government. If such request is granted, the Corporation or inventor shall file a domestic patent application on the invention within 6 months after the request for foreign patent rights is granted, or such longer period of time as may be approved by Patent Counsel for good cause shown in writing by the requestor. With respect to the invention, the requestor shall promptly notify the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) of any decision not to file an application.

(2) For each Subject Invention on which a domestic patent application is filed by the Corporation or inventor, the Corporation or inventor shall:

(i) Within 2 months after the filing of a patent application or within 2 months after submission of the invention disclosure if the patent application has been filed previously, deliver to the Patent

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Counsel a copy of the application as filed including the filing date and serial number;

(ii) Within 6 months after filing the application or within 6 months after submitting the invention disclosure if the application has been filed previously, deliver to the Patent Counsel a duly executed and approved assignment to the Government, on a form specified by the Government;

(iii) Provide the Patent Counsel with the original patent grant promptly after a patent is issued on the application; and

(iv) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(3) With respect to each Subject Invention in which the Corporation or inventor has requested foreign patent rights, the Corporation or inventor shall file a patent application on the invention in each foreign country in which such request is granted in accordance with applicable statutes and regulations and within one of the following periods:

(i) Eight months from the date of filing a corresponding United States application, or if such an application is not filed, six months from the date the request was granted;

(ii) Six months from the date a license is granted by the Commissioner of Patents and Trademarks to file the foreign patent application where such filing has been prohibited by security reasons; or

(iii) Such longer periods as may be approved by the Patent Counsel for good cause shown in writing by the Corporation or inventor.

(4) Subject to the license specified in subparagraphs (c)(1), (2) and (3) of this article, the Corporation or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Corporation or inventor fails to have a patent application filed in accordance with subparagraph (d)(3) of this article, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Corporation or inventor shall, not less than 60 days before the expiration period for any action required by any Patent Office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention Identification, Disclosures, and Reports.

(1) The Corporation shall establish and maintain active and effective procedures to ensure that Subject Inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of

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laboratory notebooks or equivalent records and any other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Corporation shall furnish the Contracting Officer a description of these procedures so that he may evaluate and determine their effectiveness.

(2) The Corporation shall furnish the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) on a DOE-approved form:

(i) A written report containing full and complete technical information concerning each Subject Invention within 6 months after conception or first actual reduction to practice, whichever occurs first in the course of or under this contract, but in any event prior to any on sale, public use, or public disclosure of such invention known to the Corporation. The report shall identify the contract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any request for foreign patent rights under subparagraph (c)(4) of this article and any request to file a domestic patent application under (d)(1) of this article. However, such request shall be made within the period set forth in subparagraph (b)(2) of this article. When an invention is reported under this subparagraph (e)(2)(i), it shall be presumed to have been conceived or first actually reduced to practice in the course of or under the contract, unless the Corporation contends it was not so made, in accordance with subparagraph (g)(2)(ii) of this article.

(ii) Upon request, but not more than annually, interim reports on a DOE-approved form listing Subject Inventions and subcontracts awarded containing a Patent Rights article for that period and certifying that:

(A) The Corporation's procedures for identifying and disclosing Subject Inventions as required by this Paragraph (e) have been followed throughout the reporting period;

(B) All Subject Inventions have been disclosed or that there are no such inventions; and

(C) All subcontracts containing a Patent Rights article have been reported or that no such subcontracts have been awarded; and

(iii) A final report on a DOE-approved form within three months after completion of the contract work listing all Subject Inventions

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and all subcontracts awarded containing a Patent Rights article and certifying that:

(A) All Subject Inventions have been disclosed or that there were no such inventions; and

(B) All subcontracts containing a Patent Rights article have been reported or that no such subcontracts have been awarded.

(3) The Corporation shall obtain patent agreements to effectuate the provisions of this article from all persons in its employ who perform any part of the work under the contract except nontechnical personnel, such as clerical employees and manual laborers.

(4) The Corporation agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this article. If the Corporation is to file a foreign patent application on a Subject Invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures until the expiration of the time period specified in subparagraph (d)(1) of this article, but in no event shall the Government or its employees be liable for any publication thereof.

(f) Publication. It is recognized that during the course of the work under this contract, the Corporation or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Corporation, patent approval for release or publication shall be secured from Patent Counsel prior to any such release or publication.

(g) Forfeiture of Rights in Unreported Subject Inventions.

(1) The Corporation shall forfeit to the Government, at the request of the Secretary or his designee, all rights in any Subject Invention which the Corporation fails to report to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) within six months after the time the Corporation:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(2)(iii) of this article, whichever is later.

(2) However, the Corporation shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this Paragraph (g), the Corporation:

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(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the same to Patent Counsel (with notification by Patent Counsel to the Contracting Officer); or

(ii) Contending that the invention is not a Subject Invention, the Corporation nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer); or

(iii) Establishes that the failure to disclose did not result from the Corporation's fault or negligence.

(3) Pending written assignment of the patent application and patents on a Subject Invention determined by the Secretary or his designee to be forfeited (such determination to be a final decision under the Disputes article of this contract), the Corporation shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this Paragraph (g) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(h) Examination of Records Relating to Inventions.

(1) The Contracting Officer or his authorized representative, until the expiration of 3 years after final payment under this contract, shall have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Corporation which the Contracting Officer or his authorized representative reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this article.

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records and documents of the Corporation relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether any such inventions are Subject Inventions, if the Corporation refuses or fails to:

(i) Establish the procedures of subparagraph (e)(1) of this article; or

(ii) Maintain and follow such procedures; or

(iii) Correct or eliminate any material deficiency in the procedures within thirty days after the Contracting Officer notifies the Corporation of such a deficiency.

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(i) Withholding of Payment (Not Applicable to Subcontracts).

(1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Corporation fails to:

(i) Establish, maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to subparagraph (e)(1) of this article; or

(ii) Disclose any Subject Invention pursuant to subparagraph (e)(2)(i) of this article; or

(iii) Deliver the interim reports pursuant to subparagraph (e)(2)(ii) of this article; or

(iv) Provide the information regarding subcontracts pursuant to subparagraph (j)(5) of this article; or

(v) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each Subject Invention as required by this article.

(2) The reserve or balance shall be withheld until the Contracting Officer has determined that the Corporation has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this article.

(3) Final payment under this contract shall not be made by the Contracting Officer before the Corporation delivers to Patent Counsel all disclosures of Subject Inventions and other information required by subparagraph (e)(2)(i) of this article, the final report required by subparagraph (e)(2)(iii) of this article, and Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Corporation is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or 1 percent of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(j) Subcontracts.

(1) For the purpose of this paragraph the term "Corporation" means the party awarding a subcontract and the term "subcontractor" means the party being awarded a subcontract, regardless of tier.

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(2) The Corporation will include the clause "Patent Rights Clause - for Small Business Firms or Nonprofit Organizations - March 1982", suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed in the United States by a small business firm or a nonprofit organization. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Corporation will include the Patent Rights clause of 41 CFR § 9-9.107-5(a) or 41 CFR § 9-9.107-6 as appropriate, modified to identify the parties. In the event of refusal by a subcontractor to accept this article, or if in the opinion of the Corporation this article is inconsistent with DOE's patent policies, the Corporation:

(i) Shall promptly submit written notice to the Contracting Officer setting forth reasons for the subcontractor refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(3) Except as may be otherwise provided in this article, the Corporation shall not, in any subcontract by using a subcontract as consideration therefor, acquire any rights in its subcontractor's Subject Invention for the Corporation's own use (as distinguished from such rights as may be required solely to fulfill the Corporation's contract obligations to the Government in the performance of this contract).

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to DOE, under the provisions of a Patent Rights article in any subcontract hereunder, may, in the discretion of the Contracting Officer, be furnished to the Corporation for transmission to DOE.

(5) The Corporation shall promptly notify the Contracting Officer in writing upon the award of any subcontract containing a Patent Rights article by identifying the subcontractor, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon the request of the Contracting Officer, the Corporation shall furnish a copy of the subcontract.

(6) The Corporation shall identify all Subject Inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) promptly upon the identification of the inventions.

(7) It is understood that the Government is a third-party beneficiary of any subcontract article granting rights to the Government in Subject Inventions, and the Corporation hereby assigns to the Government all rights that the Corporation would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The

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Corporation shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(k) Atomic Energy.

(1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Corporation or its employees with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Corporation will obtain patent agreements to effectuate the provisions of subparagraph (1)(1) of this article from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(l) Limitation of Rights. Nothing contained in this Patent Rights article shall be deemed to give the Government any rights with respect to any invention other than a Subject Invention except as set forth in the Patent Rights article of this contract with respect to the Facilities License.

(m) Facilities License. The Corporation hereby grants to the Government a perpetual, royalty-free, nonexclusive license to practice in any of the plants designated in this contract and its supplemental agreements, in their present locations or any other location, and in other Government facilities for isotope separation or weapons production, all patented inventions of the Corporation which are incorporated in the construction or operation of any of said plants by the Corporation, provided, however, that with respect to patented inventions introduced into the construction of ORNL facilities or the operation of ORNL program work, the above license shall be limited to the practice of those inventions in the ORNL facilities, and shall not extend to other Government or private facilities without the written consent of the Corporation. This license shall not extend to any transferee of the plants or any part thereof, other than a Government agency or operating contractor for the Government, except for use by such transferee at the present plant sites for research or the production of products of substantially the same character as have been produced therein by the Corporation.

(n) Classified Inventions.

(1) The Corporation shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this contract, in any country other than the United States, an application or registration for a patent without first obtaining written approval of the Contracting Officer.

(2) When filing a patent application in the United States on any invention or discovery conceived or first actually reduced to practice in the course of or under this contract, the subject matter of which is classified for reasons of security, the Corporation shall observe all applicable security regulations covering the transmission of classified

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subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Corporation shall by separate letter identify by agency and number, the contract or contracts which require security classification markings to be placed on the application.

(3) The substance of this article shall be included in subcontracts which cover or are likely to cover classified subject matter.

ARTICLE LVII - PRINTING

To the extent that duplicating or printing services may be required elsewhere in this contract, the Corporation shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

ARTICLE LVIII - 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 therefor.

(b) The Corporation agrees to utilize U. S. flag air carriers for international air transportation of personnel (and their personal effects) or property under this contract to the extent service by such carriers is available.

(c) In the event that the Corporation selects a carrier other than a U. S. flag air carrier for international air transportation, it will include a certification on vouchers involving such transportation under this contract 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) or Section 1-336.2 of the Armed Services Procurement Regulations, as applicable):

(d) The terms used in this article 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.

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(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 Corporation shall include the substance of this article, including this Paragraph (e), in each subcontract or purchase order hereunder which may involve international air transportation.

ARTICLE LIX - COST AND SCHEDULE CONTROL SYSTEMS

(a) To the extent directed by the Contracting Officer, the Corporation shall establish, maintain, and use cost and schedule control systems (management control systems) meeting the criteria set forth in DOE/CR-0015 "Cost and Schedule Control Systems Criteria for Contract Performance Measurement - Implementation Guide," incorporated herein by reference and hereinafter referred to as the "Guide." For those systems designated by the Contracting Officer, the Corporation shall, within a reasonable period of time after the Contracting Officer designates the systems, provide a detailed description of the cost and schedule control systems to be used and demonstrate their operability and conformance with the criteria.

(b) The management control systems accepted in writing by the Contracting Officer, identified by title and date, shall be maintained and used by the Corporation in the performance of this contract. Deviations from the systems description identified during contract performance shall be corrected as directed by the Contracting Officer.

(c) Corporation changes to the reviewed systems shall be submitted for review and approval as required by the Contracting Officer. When Contracting Officer approval is required, the Contracting Officer shall advise the Corporation of the acceptability of such changes within sixty (60) days after receipt from the Corporation. When systems existing at the time of this contract modification do not comply with the designated criteria, adjustments shall be made as directed by the Contracting Officer.

(d) The Corporation shall require that each selected subcontractor, as mutually agreed to between the Government and the Corporation, meet the criteria for cost and schedule control systems as set forth in the subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of the subcontractor's systems to be carried out by the Corporation, or by the Government when requested by either the Corporation or a subcontractor.

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ARTICLE LX - COMPETITION IN SUBCONTRACTING

The Corporation shall select subcontractors (including suppliers) on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of the contract.

ARTICLE LXI - CONTRACT PROVISIONS FOR POST OPERATIONS PHASE

During the Post Operations Phase of this contract, only the provisions of this contract identified below shall apply to the services performed during that phase:

(a) Article I - Definitions.

(b) Article IV - Description of Services With Respect to Transition and Post Operations Phases (subparagraph (b) - Post Operations Phase, only).

(c) Article V - Term and Termination.

(d) Article VI - Allowable Costs and Fixed Fee. Paragraphs (a) and (b) shall apply; Paragraphs (c), (d), (e), (f) and (g) shall not. Allowable costs shall be controlled as follows:

The allowable cost of performing the work under the Post Operations Phase of this contract shall be the cost determined by the Contracting Officer to be allowable under:

(1) Subpart 1-15.2 of the Federal Procurement Regulations (41 CFR 1-15.2) as supplemented or modified by DOE-PR 9-15.2 (41 CFR 9-15.2) in effect on the effective date of Modification M091 to this contract; and

(2) The terms of Appendix B to this contract - Advance Understandings on Particular Items of Cost.

(e) Article VII - Payments. The Letter of Credit arrangement provided for in this article shall be discontinued upon commencement of the Post Operations Phase. Upon such event, the Corporation shall be reimbursed by treasury check(s) payable to the Corporation, or by transfer of funds electronically to the Corporation's account, upon submission of invoices monthly for its allowable costs. Corporation invoices shall include the Corporation's name and invoice date; contract number; cost amounts by elements of cost claimed currently; cumulative amounts of costs by element of cost amounts claimed from inception of the Post Operations Phase of the contract through the current period; total estimated Post Operations Phase contract cost amount, total Post Operations Phase contract amount, as appropriate; other substantiating documentation or information required by the contract; and name (where practicable), title, phone number, office name and complete mailing address of responsible official to whom payment is to be sent. Payment shall be due no more than fifteen (15) calendar days after receipt of a proper invoice by the Government office designated in

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this contract for invoice receipt provided the amounts claimed are reimbursable in accordance with other provisions of that clause. Notwithstanding the foregoing, invoices for extraordinary costs (major litigation awards, settlements and costs, etc.) will be presented to DOE prior to payment. Payment will be made simultaneously with reimbursement. All other provisions of Article VII will remain in effect.

(f) Article IX - Obligation of Funds.

(g) Article X - Nuclear Hazards Indemnity - Responsibility of Corporation - Contingency. Only the indemnity extended under subparagraphs (a)(3)(B)(iii) and (a)(4)(B) shall continue into the Post Operations Phase, and then only until all shipments initiated during the Operations Phase have been completed.

(h) Article XII - Accounts, Records, and Inspection. In addition to the provisions of Paragraph (d) of this Article XII, the Contracting Officer shall, unless restricted by law or regulation, provide the Corporation with unlimited access, at no cost, to all records generated under this contract which are still in existence under DOE's Record Retention Policies. DOE will arrange for the Corporation to have access to results of the on-going DOE Health and Mortality Study (or any future health or mortality study involving present or former employees of the Corporation's Nuclear Division) as they are developed from time to time and will provide the Corporation with a copy of each report of such results as published from time to time. DOE will cause the replacement contractor (or any successor) to notify the Corporation's Corporate Medical Department of each death of a present or former employee of the Corporation's Nuclear Division that comes to the attention of such contractor and at the request of such Department, to fill out a mortality survey questionnaire covering such employee (to the extent the requested information is available to such contractor) and forward the same to such Department along with a copy of such employee's death certificate. The availability to the Corporation of information on the death of former employees shall be subject to the provisions of the Privacy Act and, on death certificates, subject to any confidentiality agreements DOE or its operating contractors may have with the states concerned. The provision of this paragraph will not be affected by the completion, termination or expiration of this contract but will continue indefinitely.

(i) Article XIII - Disputes.

(j) Article XIV - Convict Labor.

(k) Article XVI - Officials Not To Benefit.

(l) Article XVII - Covenant Against Contingent Fees.

(m) Article XVIII - Security.

(n) Article XIX - Litigation and Claims.

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(o) Article XXII - Assignment.

(p) Article XXIII - Permits.

(q) Article XXIV - Property.

(r) Article XXV - State and Local Taxes.

(s) Article XXVIII - Equal Opportunity.

(t) Article XXIX - Utilization of Women-Owned Business Concerns.

(u) Article XXX - Examination of Records.

(v) Article XXXI - Contract Work Hours and Safety Standards Act--Overtime Compensation.

(w) Article XXXIII - State Unemployment Compensation Contributions.

(x) Article XXXV - Subcontracts - Corporation Procurement.

(y) Article XXXVI - Required Bonds and Insurance--Exclusive of Government Property.

(z) Article XXXIX - Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.

(aa) Article XL - Subcontracting Plan for Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.

(bb) Article XLI - Utilization of Labor Surplus Area Concerns.

(cc) Article XLII - Labor Surplus Area Subcontracting Program.

(dd) Article XLIV - Classification.

(ee) Article XLV - Affirmative Action For Disabled Veterans and Veterans of the Vietnam Era.

(ff) Article XLVI - Affirmative Action For Employment of the Handicapped.

(gg) Article L - Women-Owned Business Concerns Subcontracting Program.

(hh) Article LX - Competition In Subcontracting.

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(ii) Disclosure and Consistency of Cost Accounting Practices.

(a) The Contractor, in connection with the Post Operations Phase of this contract, shall:

(1) Comply with the requirements of 4 C.F.R. Parts 401, Consistency in Estimating, Accumulating and Reporting Costs, and 402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of the commencement of the Post Operations Phase.

(2) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by regulations of the Cost Accounting Standards Board. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the Government.

(3) Follow consistently, its cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement if affected must be amended accordingly.

The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in § 332.51 of the Cost Accounting Standards Board's regulations, negotiate an equitable adjustment as provided in the changes clause of this contract. In the absence of the required finding no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if it or a subcontractor fails to comply with the applicable Cost Accounting Standards or to follow any cost accounting practice and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to P. L. 92-41, 85 Stat. 97, or 7 percent per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable Cost Accounting Standard, rule or regulation of the Cost Accounting Standards Board and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

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(c) The Contractor shall permit any authorized representatives of the head of the agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which it enters into the substance of this clause except paragraph (b) and shall require such inclusion in all other subcontracts of any tier, except that:

(1) If the subcontract is awarded to a business unit which pursuant to Part 331 is required to follow all Cost Accounting Standards, the clause entitled "Cost Accounting Standards" set forth in § 331.50 of the Board's regulations (see FPR § 1-3.1204-1(a)(1)) shall be inserted in lieu of this clause, or

(2) This requirement shall apply only to negotiated subcontracts in excess of $100,000 where the price negotiated is not based on

(i) established catalog or market prices of commercial items sold in substantial quantities to the general public or

(ii) price set by law or regulation, or

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a Cost Accounting Standards clause by reason of § 331.30(b) of the Board's regulation.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement.

UNITED STATES OF AMERICA

BY: SECRETARY OF ENERGY

BY: _____
(Contracting Officer)

UNION CARBIDE CORPORATION

BY: _____

TITLE: Vice President

CERTIFICATE

I, John Macdonald, certify that I am the Assistant Secretary of the corporation named as the Corporation herein; that R. E. Pyle, who signed this Supplemental Agreement on behalf of the Corporation was then Vice President of said Corporation; that this Supplemental

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Agreement was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

IN WITNESS WHEREOF, I have hereunto affixed by hand and the seal of said corporation this 27th day of October, 1983.

(Corporate Seal)

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Appendix B

ADVANCE UNDERSTANDINGS ON CERTAIN EMPLOYMENT BENEFITS, ACCOUNTING PROCEDURES, ITEMS OF COST, AND ACCESS TO RECORDS

Recognizing that the change from the Operating Phase to the Post Operating Phase of this contract involves unusual transfers of responsibilities for functions and costs not easily recorded in the main body of the contract, the parties agree as follows:

Employee Benefit Plans

(a) DOE will cause the replacement contractor to assume responsibility for administration of all retiree benefits as set forth in Appendix A extended to all employees who will have retired from the Corporation's Nuclear Division as of March 31, 1984, or as of such later date as the Operations Phase ends (the "transfer date"), including early, normal and disability retirees, and those who will have terminated as of such date and will be eligible under ERISA for a vested pension no later than one year from such date, along with the retiree benefits extended to all eligible survivors, current and future, of the above-mentioned employees and including all benefits extended as of the transfer date to eligible survivors of former employees of the Nuclear Division. The benefits encompassed by the foregoing include without limitation those provided under the Retirement Program of the Corporation's Nuclear Division (both contributory and noncontributory portions); Basic Hospital, Surgical and Major Medical/Special Medical Plans for early retirees, survivors and spouses (which will be kept in the same group as active employees of the replacement contractor); Major Medical Medicare Supplement Plan for retirees, survivors and spouses; Group Life Insurance, Basic and Supplemental for early retirees; and Reduced Basic Life Insurance for Retirees.

(b) To the extent that the replacement contractor does not adopt and assume the administrative responsibility for all other employee benefit plans set forth in Appendix A of this Contract on the transfer date, including without limitation the Dental Plan, the Group Life Insurance Plan, including Sickness and Accident Insurance for hourly employees, the Medical Plans, the Educational Assistance Plan, the Vacation Plan, the Salary Continuation Plan, and statutory benefits such as unemployment and worker's compensation, the Corporation will continue to administer such plans and process claims for benefits which were accrued under such plans prior to the transfer date. Without limiting the generality

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of other DOE reimbursement obligations under this Contract, all costs and expenses incurred by the Corporation in the administration of any such benefit plan during the Post Operations Phase will be an allowable cost under this Contract, as will all costs incurred at any time by the Corporation in handling or defending any claim or lawsuit arising out of the transfer, nontransfer or partial or total termination of any employee benefit plan of the Nuclear Division or the failure on the part of the Corporation or replacement contractor (whether or not accompanied by the approval or disapproval of DOE) to extend any improved or new benefit to any retired employee of the Nuclear Division.

(c) DOE will cause the replacement contractor to credit all employees of the Nuclear Division who become employees of the replacement contractor within ten days after the transfer date with past service with the Corporation under all benefits plans of the replacement contractor, provided such employees have not received a layoff allowance from the Corporation that is related to this contractor transition; and provided further that employees on the payroll of the Nuclear Division on the transfer date who have previously been employed by the Corporation prior to their current term of employment, but have not yet completed two years of service during their current employment, will receive credit for all past service with the Corporation at the end of two years continuous employment by the Corporation and the replacement contractor. The ten-day period referred to above may be extended for those employees who are absent on the transfer date due to occupational or nonoccupational disability, vacation, military leave, or jury duty to the first work day following expiration of their authorized absence.

(d) The Corporation will transfer or cause to be transferred to the replacement contractor or its designee administrative responsibility for a portion of the co-mingled open and unreported claims reserves of the Corporation's Dental Plan, Major Medical Medicare Supplement Plan for retirees, Group Life Insurance and hourly employee Sickness and Accident portion of Group Life Insurance Plan (provided that the replacement contractor has assumed responsibility for such plan with respect to both active and retired Nuclear Division employees), with the portion of each such reserve so transferred being determined by the ratio of (i) the total premiums paid to such reserve on behalf of Nuclear Division employees with respect to each of the last three policy years of such plan elapsing prior to the transfer date to (ii) the total premiums paid to such reserve with respect to such three policy years on behalf of all employees of the Corporation and such domestic subsidiaries as are included in the plan to which such reserve pertains. The amount for such reserves will be determined as of December 31, 1983. Starting January 1, 1984, premiums and claims paid for Nuclear Division employees will be separated in accounting for the cost of the plans to the Nuclear Division.

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(e) If the Corporation announces any enhancement in pension benefits to retirees, the Corporation will promptly notify DOE of such announcement and, subject to DOE's determination that sufficient funds are available and that payment would not be inconsistent with applicable laws and regulations, DOE will direct the replacement contractor to make the same enhancement in pension benefits available to all retired employees of the Corporation's Nuclear Division and the survivors who are described in paragraph (a) of this item of Appendix B. DOE will direct the replacement contractor to furnish the Corporation with a copy of any future financial reports issued with respect to the Retirement Program of the Corporation's Nuclear Division.

(f) If the replacement contractor and DOE agree to provide a savings plan, DOE will recommend to the replacement contractor either (i) that the latter agree to cause the replacement contractor's savings plan trustee to accept a clone of that portion of group annuity Contract 1583 between Manufacturers Hanover Trust Company, Trustee of Union Carbide Corporation Savings Plan, and Metropolitan Life Insurance Company, that pertains to the Fixed Income Fund accounts of Nuclear Division employees as of the date they transfer to the replacement contractor, which clone contract would initially have the same basic terms and reflect the same financial experience as the Fixed Income Fund portion of Contract 1583 up to the effective date of such clone contract or (ii) that the replacement contractor agree to arrange for the transfer from Metropolitan Life Insurance Company to the replacement contractor's savings plan trustee (or the latter's designee) of funds with respect to such Fixed Income Fund accounts at the lesser of market or book value of such accounts immediately preceding the transfer of such funds. At the request of DOE, the Corporation and DOE will endeavor to establish a clone contract between Manufacturers Hanover Trust Company, Trustee of Union Carbide Corporation Savings Plan, and Metropolitan Life Insurance Company, that has the above characteristics, that is assignable to the replacement contractor's savings plan trustee and that is effective as of January 1, 1984. If the replacement contractor does not arrange for a clone contract or fund transfer as described in (i) or (ii) above, or does not accept the clone contract referred to in the immediately preceding sentence, DOE will reimburse the Fixed Income Fund administered under Contract 1583 or any successor contract for the difference between market value and book value of all Fixed Income Fund accounts transferred to the replacement contractor's savings plan trustee or its designee or distributed by the Union Carbide savings plan trustee to Nuclear Division employees.

(g) Upon agreement by both parties to Mod 91 of this contract, the Corporation will initiate steps to convert the outstanding pension contract to a modified immediate participation guarantee (IPG) form effective October 1, 1983, with the stipulation that future annuities purchased will continue to be guaranteed by the assets of the insurance companies who are parties to the pension contract. Annuities purchased prior to the effective date of conversion will not be altered.

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Accounting Procedures

(a) As clarification of FPR 1-15.202 and FPR 1-15.203, which are made applicable to the Post Operations Phase by Article LXI(d) of this contract, the parties recognize that direct costs may include costs associated with home office personnel, consultants, and others who handle or assist in closeout operations, the administration of employee benefit plans, the defense of claims and litigation, and other services.

(b) In recognition of the scope and nature of administrative effort required, the parties agree that established costing practices for the corporate home office will not provide cost allocations commensurate with benefits received under this contract. Accordingly, under these circumstances, it is necessary to establish costing practices applicable to this contract which deviate from costing practices identified in the Corporation's CASB Disclosure Statement. Therefore, the parties agree, in accordance with Article LXI(ii)(a)(3), that during the Post Operations Phase of the contract a change in the Corporation's cost accounting practices is necessary with respect only to work performed under the Post Operations Phase of this contract, and that under that change the Corporation shall collect and distribute costs as follows:

1. Direct Labor - Will include direct effort of employees assigned to the law, industrial relations, HS&EA, and accounting departments at Danbury and employees of the Oak Ridge site office. Labor time records will be maintained to support hours of effort charged to the contract. Hours of effort will be costed to the contract on the basis of actual hourly rates paid for time worked.

2. Overhead - Includes employee benefit plan expenses (including expenses for paid absences), workers compensation insurance, all payroll taxes, other prime expense, and shared expense of departments identified under 1. above and all other allocable services from other corporate offices at Danbury.

   For the six-month period ending September 30, 1984, a rate of 105%, fixed for purposes of reimbusement under this contract, will be applied to the above-identified direct labor. Prior to September 30, 1984, and each succeeding fiscal year, the parties shall agree in writing on the rate to be applied to the next fiscal year.

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3. Other Direct Cost - Includes, but is not limited to, the following examples of costs:

A. Necessary travel performed in connection with this contract.

B. Litigation expense.

C. Losses and expenses actually sustained by the Corporation in connection with the work, except any such loss and expense or item expressly made unallowable under other provisions of this contract.

D. Oak Ridge Site Office:

(i) Consulting services (including legal and accounting) and services of temporary employees.

(ii) Rent and associated costs.

(iii) Utilities.

(iv) Office supplies.

Layoff Allowance

A layoff allowance will be paid to Post Operations Phase employees for their entire company service in the event the employees are laid off because of lack of work during or at the end of the Post Operations Phase, provided such employees have not received another layoff allowance during the Post Operations Phase from the Corporation. The vested layoff allowance for services accrued through 1965 will be paid to those Post Operations Phase employees who take a medical termination or retirement within the Post Operations Phase. These layoff allowances will be reimbursed by DOE.

Accounts, Records and Inspection

The parties understand at the time of execution of this modification that some question exists about DOE's ability to allow the Corporation complete access to records, as stated under the provisions of Article LXI(h), because of restrictions that may apply under the Privacy Act and its implementing regulations. DOE has agreed to seek, and is seeking, modification of the regulations to recognize that former contractors such as the Corporation may have access to records generated by them as a matter of routine use. In any event, the parties agree that access to such records for purposes of handling or assisting in closeout operations, the administration of employee benefit plans or the defense of claims

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and litigation constitute a permitted routine use by the Corporation in the performance of this contract for purposes of the Privacy Act. Should the above-referenced modification of the regulations to permit general access as a matter of routine use not occur before the transfer date, the parties will attempt to negotiate mutually agreeable terms for such other records access provisions as may be appropriate. In addition, the parties shall immediately commence negotiations in an attempt to mutually agree on terms for a separate contract covering the disclosure by the replacement contractor or its successor of information on the death of active or former employees of the Nuclear Division contemplated by Article LXI(h) of this contract that will serve to make such disclosure a permitted use under the restrictions of the last sentence of Article LXI(h) of this contract.

Outplacement Services

DOE will reimburse the Corporation for the cost of outplacement services for any of the 27 key personnel identified in DOE's Request for Proposals, who are not offered positions by the replacement contractor and who do not remain with the Corporation. Reimbursement will not exceed 25% of the individual's annualized salary on the transfer date.

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