

## GOVERNMENT PROPERTY - TYPE B (4-82)

(a) Government-Furnished Property. The Company shall deliver to the Seller, for use in connection with and under the terms of this subcontract, the property described in this subcontract as Government-furnished property, together with such related data and information as the Seller may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Seller under this subcontract are based upon the expectation that Government-furnished property suitable for use (except for such property furnished "as is") will be delivered to the Seller at the times stated in this subcontract or, if not so stated, in sufficient time to enable the Seller to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Seller by such time or times, the Company shall, upon timely written request made by the Seller, make a determination of the delay, if any, occasioned the Seller thereby, and shall equitably adjust the delivery or performance dates or the subcontract price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the clause of this subcontract entitled "Changes." Except for Government-furnished property furnished "as is," in the event the Government-furnished property is received by the Seller in a condition not suitable for the intended use the Seller shall, upon receipt thereof, notify the Company of such fact and, as directed by the Company, either (i) return such property at the Company's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Company upon written request of the Seller shall equitably adjust the delivery or performance dates or the subcontract price, or both, and any other contractual provision affected by the return or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this subcontract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Company shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) Changes in Government-Furnished Property. (1) By notice in writing, the Company may (i) decrease the property provided or to be provided by the Company under this subcontract, or (ii) substitute other Government-owned property for property to be provided by the Company, or to be acquired by the Seller for the Government, under this subcontract. The Seller shall promptly take such action as the Company may direct with respect to the removal and shipping of property covered by such notice.

(2) In any event of any decrease in or substitution of property pursuant to subparagraph (1) above, or any withdrawal of authority to use property provided under any other contract, subcontract, or lease, which property the Company had agreed to make available for the performance of this subcontract, the Company, upon the written request of the Seller (or, if the substitution of property causes a decrease in the cost of performance, on its own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution, or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this subcontract.

(c) Title. Title to all property furnished by the Company shall remain in the Government. In order to define the obligations of the parties under this clause, title to all property acquired by the Seller for the Government pursuant to this subcontract shall pass to the Government when its use in the performance of this subcontract commences, or upon payment therefor by the Company, whichever is earlier, whether or not title previously vested. All Government-furnished property, together with all property acquired by the Seller title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) Property Administration. The Seller shall be responsible and accountable for all Government property provided under this subcontract. The Seller shall establish and maintain a system to control, protect, preserve, and maintain all Government property in accordance with applicable provisions of the DOE Property Management Regulations (DOEPMR) 41 CFR 109-60 as in effect on the date of this subcontract. This system shall, upon request by the Company, be submitted for review, and,

if satisfactory, approved in writing by the Company. The Seller shall maintain and make available such records as are required by the approved system and must account for all property until relieved of responsibility therefor in accordance with written instructions of the Company.

(e) Use of Government Property. The Government property shall, unless otherwise provided herein or approved by the Company, be used only for the performance of this subcontract.

(f) Utilization, Maintenance, and Repair of Government Property. The Seller shall maintain and administer, in accordance with sound industrial practice, and in accordance with applicable provisions of DOEPMR 109-60, a program for the utilization, maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this subcontract. In the event that any damage occurs to Government property the risk of which has been assumed by the Government under this subcontract, the Company shall replace such items or the Seller shall make such repair of the property as the Company directs; provided, however, that if the Seller cannot effect such repair within the time required, the Seller shall dispose of such property in the manner directed by the Company. The subcontract price includes no compensation to the Seller for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of Government property made at the direction of the Company, in accordance with the procedures provided for in the "Changes" clause of this subcontract. Any repair or replacement for which the Seller is responsible under the provisions of this subcontract shall be accomplished by the Seller at his own expense.

(g) Risk of Loss. (1) Except as provided in (2), below, the Seller shall not be liable for loss or destruction of or damage to the Government property provided under this subcontract:

(i) Caused by any peril while the property is in transit off the Seller's premises; or

(ii) Caused by any of the following perils while the property is on the Seller's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:

(A) Fire; lightning, windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Seller or any agent or employee of the Seller; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; nuclear reaction, nuclear radiation or radioactive contamination; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending, or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces; or by an agent of any such government, power, authority, or forces; or

(B) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Seller, or the prevailing practice in the industry in which the Seller is engaged with respect to similar property in the same general locale.

The perils as set forth in (i) and (ii), above, are hereinafter called "excepted perils."

If the Seller transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Seller for loss or destruction of or damage to the property as set forth above. However, the Seller shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Company, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this subcontract.

(2) Notwithstanding (1), above, the Seller shall be responsible for any loss or damage (a) to the extent specifically provided in this subcontract, or (b) which results from:

(i) Willful misconduct or lack of good faith of any of the Seller's managerial personnel; or

(ii) A failure on the part of the Seller, due to willful misconduct or lack of good faith of the Seller's managerial personnel, (aa) to maintain and administer the program for maintenance, repair, protection, and preservation of the Government property as required by paragraph (f) hereof, or (bb) to establish, maintain, and administer a system for control of Government property as required by paragraph (d) of this clause.

Any failure of the Seller to act, as provided in this (ii), shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of one of the Seller's managerial personnel if the Seller is notified by the Company by registered or certified mail addressed to one of the Seller's managerial personnel, of the Company's disapproval, withdrawal of approval, or nonacceptance of the Seller's program or system. In such event, it shall be presumed that any loss of or damage to Government property resulted from such failure. The Seller shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

The term "Seller's managerial personnel" as used herein means the Seller's directors, officers, and any of his managers, superintendents, or other equivalent representatives who have supervision or direction of:

(A) All or substantially all of the Seller's business;

(B) All or substantially all of the Seller's operation at any one plant or separate location at which this subcontract is being performed; or

(C) A separate and complete major industrial operation in connection with the performance of this subcontract.

(3) The Seller represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Company or the Government, any charge or reserve for insurance (including any self-insurance funds or reserve) covering loss or destruction of or damage to the Government property caused by any excepted peril.

(4) Upon the happening of loss or destruction of or damage to any Government property caused by an excepted peril, the Seller shall notify the Company thereof, shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Company a statement of:

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Seller shall be entitled to an equitable adjustment for the expenditures made by him in performing his obligations under this subparagraph (4), in accordance with the procedures provided for in the "Changes" clause of this subcontract.

(5) With the approval of the Company after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Company, the Seller may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Seller, that separation is impracticable.

(6) Except to the extent of any loss or destruction of or damage to Government property for which the Seller is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this subcontract, the Seller assumes the risk of, and shall be responsible for, any loss or destruction of or damage to the Government property, and such property (other than that which is permitted to be sold) shall be returned to the Government in as good condition as when received by the Seller in connection with this subcontract, or as repaired under paragraph (f), above.

(7) In the event the Seller is reimbursed or compensated for any loss or destruction of or damage to the Government property, caused by an excepted peril, he shall equitably reimburse the Government. The Seller

shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction, or damage, and, upon the request of the Company, shall at the Company's or the Government's expense furnish to the Company and the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Company or the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government property, the Seller shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(h) Access. The Company, the Government, and any persons designated by them, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(i) Final Accounting and Disposition of Government Property. Upon the completion of this subcontract, or at such earlier dates as may be fixed by the Company, the Seller shall submit, in a form acceptable to the Company, inventory schedules covering all items of Government property not consumed in the performance of this subcontract (including any resulting scrap) or not theretofore delivered to the Company, and shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Company. The net proceeds of any such disposal shall be credited to the subcontract price or shall be paid in such other manner as the Company may direct.

(j) Restoration of Seller's Premises and Abandonment. Unless otherwise provided herein, the Company and the Government: (i) may abandon any Government property in place, and thereupon all obligations of the Company and the Government regarding such abandoned property shall cease; (ii) have no obligation to the Seller with regard to restoration or rehabilitation of the Seller's premises, neither in case of abandonment (paragraph (j)(i) above), disposition on completion of need or of the subcontract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph (b) above.

(k) Communications. All communications issued pursuant to this clause shall be in writing.