

Approved For Release 2002/06/11 : CIA-RDP66B00728R000400040035-4

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REPORT OF INVENTIONS AND SUBCONTRACTS

(Pursuant to "Patent Rights" Contract Clause)

Form Approved
Budget Bureau No. 22-R160

INSTRUCTIONS TO CONTRACTOR

This form may be used for INTERIM and FINAL reports, and when used shall be completed and forwarded to the Contracting Officer in triplicate.

An INTERIM report shall be submitted at least every twelve months, commencing with the date of the contract, and should include only those inventions and subcontracts for which complete information has not previously been reported.

A FINAL report shall be submitted as soon as practicable after the work under the contract is complete and shall include (a) a summary of all inventions required by the contract to be reported, including all inventions previously reported and any inventions since the last INTERIM report; and (b) any required information for subcontracts which has not previously been reported.

1. NAME AND ADDRESS OF CONTRACTOR

2. CONTRACT NUMBER

GA-1853

3. TYPE OF REPORT (check one)

a. INTERIM b. FINAL

SECTION I - INVENTIONS ("Subject Inventions" required to be reported by the "Patent Rights" clause)

4. INVENTION DATA (check one)

a. THERE WERE NO INVENTIONS WHICH REASONABLY APPEAR TO BE PATENTABLE

b. LISTED BELOW ARE INVENTIONS WHICH REASONABLY APPEAR TO BE PATENTABLE. ANY INVENTION DISCLOSURES WHICH HAVE NOT BEEN PREVIOUSLY SUBMITTED TO THE CONTRACTING OFFICER ARE ATTACHED TO THIS REPORT.

(i) NAME OF INVENTOR	(ii) TITLE OF INVENTION	(iii) PATENT APPLICATION SERIAL NUMBER AND CONTRACTOR'S DOCKET NO.	(iv) CONTRACTOR HAS FILED OR WILL FILE U.S. PATENT APPLICATION		(v) CONFIRMATORY LICENSE OR ASSIGNMENT HAS BEEN FORWARDED TO CONTRACTING OFFICER	
			YES	NO	YES	NO
N/A						

SECTION II - SUBCONTRACTS (Containing a "Patent Rights" clause)

5. LISTED BELOW IS INFORMATION REQUIRED BUT NOT PREVIOUSLY REPORTED FOR SUBCONTRACTS. (If not applicable, write "None".)

(i) NAME AND ADDRESS OF SUBCONTRACTOR	(ii) SUBCONTRACT NUMBER	(iii) DATE CLAUSE FURNISHED TO CONTRACTING OFFICER	(iv) DATE SUBCONTRACT COMPLETED
N/A			

SECTION III - CERTIFICATE

CONTRACTOR CERTIFIES THAT THIS REPORT OF INVENTIONS AND SUBCONTRACTS, INCLUDING ANY ATTACHMENTS, IS CORRECT TO THE BEST OF THE CONTRACTOR'S KNOWLEDGE AND BELIEF.

DATE

31 March 1965

NAME AND TITLE OF AUTHORIZED OFFICIAL (Print or Type) SIGNATURE

Contract *FML*

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Basic Agreement No. 33(657)-5117

Initiator:

/lef/ASKPC
AFSC Aeronautical Systems Division

Classes A - All
D - All
D - 1, 6, 8, 45
E - 1

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Cost-Reimbursement Basic Agreement with

STATINTL

BASIC AGREEMENT BETWEEN THE UNITED STATES AIR FORCE AND

[Redacted]

This memorandum agreement made this 10th day of May 1963 which replaces and supersedes Basic Agreement AF 33(657)-5048, without retroactive effect has for its purpose simplification and increased efficiency in the negotiation and execution of Cost-Reimbursement Contracts between [Redacted]

STATINTL

a corporation incorporated under the laws of the State of NEW YORK. The Terms and provisions of Sections A, B, C, D and E hereinafter set forth have been agreed upon by the parties hereto. The clauses set forth in Section A are mandatory clauses. The clauses set forth in Section B, and provisions of Section C, D and E are for mutual selection as applicable to each contract. Contracts executed after the date hereof and prior to the termination hereof shall refer to all clauses and provisions of this agreement applicable to the contract and by such reference incorporate the same. Such contracts shall consist of the incorporated clauses and provisions, and any additional clauses and provisions which may be specifically set forth in such contracts.

This agreement may be terminated in its entirety by either party upon thirty (30) days notice in writing to the other party. This agreement may be terminated by the Government at any time if the parties fail to agree upon any deletion, modification or addition to this agreement which is required by statute, executive order, or the Armed Services Procurement Regulation. No deletion, modification or addition to, or termination of, this agreement shall affect any contracts theretofore entered into between the parties in which this agreement has been incorporated by reference.

This agreement shall be reviewed as a minimum annually on the anniversary of its effective date and revised to conform with all requirements of the Armed Services Procurement Regulation and any additional provisions, including applicable provisions of the Air Force Procurement Instruction, as mutually agreed to by the parties. Such revisions shall be evidenced by Supplemental Agreements hereto.

This agreement shall not be referred to by the Contractor in bids submitted in response to advertised invitations nor become a part of any contract placed through the process of formal advertisement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written:

[Redacted Signature Box]

UNITED STATES OF AMERICA

BY [Redacted Signature] CONTRACTING OFFICER

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GENERAL PROVISIONS COST REIMBURSEMENT

SECTION A

Except as otherwise provided in applicable clauses of other Sections hereof the following clauses shall be deemed to be incorporated in and form a part of every contract placed by the United States Air Force with the Contractor whenever such instrument or document states that this Basic Agreement applies.

1. DEFINITIONS. (Feb. 1962)

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, or 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 "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a 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.

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

(d) The term "this contract" wherever appearing herein, shall be deemed to mean the contractual instrument in which the terms of this Basic Agreement are incorporated by reference ~~except that the term "this contract" appearing in Clause 4(a)(1)(A), Clause 40, Clause 45(c), Clause B.19, Clause~~

(e) The term "the Schedule" wherever appearing herein, shall be deemed to mean the Schedule appearing in the contractual instrument in which the terms of this Basic Agreement are incorporated by reference.

(ASPR 7-203.1 (60 Ed.) revised 15 Feb. 1962 (ASPR Rev. No. 7) except (d) and (e) added thereto)

2. CHANGES (Jan. 1958)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment, shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fixed fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(ASPR 7-203.2 (60 Ed.) except the word and figures "thirty (30)" changed to "sixty (60)")

3. LIMITATION OF COST (Oct. 1953)

(a) It is estimated that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in the Schedule, or if at any time, the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving his revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

(ASPR 7-203.3) (60 Ed.)

*B.20 and/or Clause B.24(a)(1)(i)(A) as applicable to this contract shall be deemed to mean "this Basic Agreement" unless otherwise provided in the Schedule.

CR-BA
Feb 62

4. ALLOWABLE COST, FIXED FEE, AND PAYMENT ~~Maximum~~ (Sept. 1962)

- (a) For the performance of this contract, the Government shall pay to the Contractor—
- (i) the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—
 - (A) Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract; and
 - (B) the terms of this contract; and
 - (ii) such fixed fee, if any, as may be provided for in the Schedule.
- (b) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.
- (c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule; provided, however, that after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, further payment on account of the fixed fee shall be withheld until a reserve of either fifteen percent (15%) of the total fixed fee, or one hundred thousand dollars (\$100,000), whichever is less, shall have been set aside.
- (d) At any time or times prior to final payment under this contract the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.
- (e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.
- (f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver—
- (i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and
 - (ii) 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—
 - (A) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

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

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

(ASPR 7-203.4(a) (60 Ed.), revised ^{30 Sep 1962} ~~1-1-64~~ (ASPR Rev. No. ¹¹ ~~4~~)).

5. INSPECTION OF SUPPLIES AND CORRECTION OF DEFECTS (May 1960)

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of any supplies or lots of supplies shall be made as promptly as practicable after delivery thereof and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of the supplies or lots of supplies last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any supplies or lots of supplies which at the time of delivery thereof are defective in material or workmanship or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) hereof, the cost of any such replacement or correction shall be included in Allowable Cost determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Such supplies or lots of supplies shall not be tendered thereafter for acceptance unless the former requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to replace or correct such supplies or lots of supplies, the Government (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of supplies not delivered, may require the delivery of such supplies, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) hereof, the Government may at any time require the correction or replacement by the Contractor, without cost to the Government, of supplies or lots of supplies which are defective in material or workmanship, or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, ~~superintendents~~, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the ~~Contractor's operations at any plant or location in which this contract is being performed, or (iii) separate and complete major industrial operation~~. The Government may at any time also require correction or replacement by the Contractor, without cost to the Government, of any such defective supplies or lots of supplies if the defects or failures are caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) Corrected supplies or replaced supplies shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

(ASPR 7-203.5) (60 Ed.) except (c) modified)

* of a group, division, or department of the Contractor's business wherein the
 ** all or substantially all of one or more of the Contractor's plants or other
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 *** within a plant wherein the contract is being performed.

~~EXAMINATION OF RECORDS~~ EXAMINATION OF RECORDS (Nov. 1962)

(a) (1) The Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. ~~The Contractor's accounting procedures and practices shall be subject to the approval of the Contracting Officer provided, however, that no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs properly~~

(2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below a ~~copy~~ of the records for inspection, audit or reproduction by any authorized representative of the ~~Department of Defense~~ Comptroller General.

(3) In the event the Comptroller General or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within two years after reimbursement of charges covered by any such voucher, to such representative as may be designated for that purpose through the Contracting Officer such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available his records (i) for a period of three years from the date of final payment under this contract, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the Disputes clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in subparagraph (4)(B) above, the Contractor may in fulfillment of his obligation to retain his records as required by this clause substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a) (6) above, a provision to the effect that the subcontractor agrees that the Comptroller General ~~of the Department of Defense~~ or any of his duly authorized representatives, shall, until the expiration of three years after final payment under the subcontract, 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 paragraph (b) only, excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(ASPR 7-203.7) (60 Ed.) revised ~~EXAMINATION OF RECORDS~~ (Rev. No. 2)

7. SUBCONTRACTS ~~EXAMINATION OF RECORDS~~ (Nov. 1962)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract.

(b) In the case of a proposed subcontract which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of \$10,000, including any fee; or (ii) is proposed to exceed \$100,000; or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed \$100,000; the advance notification required by (a) above shall include:

(1) a description of the supplies or services to be called for by the subcontract;

(2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof, including current, complete and correct cost or pricing data accompanied, ~~except when the requirement is specifically waived by the Contracting Officer,~~ by a certificate from the subcontractor to the effect that all cost or pricing data has been considered by the subcontractor in preparing his proposal and that such data is current, and has been provided the Contractor; and

(4) identification of the type of contract proposed to be used.

(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (iv) is on a time and material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (c) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" provision set forth in paragraph (c) of the clause prescribed by paragraph 7-108 of the Armed Services Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

(i) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price types of subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraphs 503 and 514 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

(ASPR 7-203.8 (60 Ed.) revised 20 July 1962 (ASPR Rev. No. 10) 26 Nov. 1962 (ASPR Rev. No. 12))

8. UTILIZATION OF SMALL BUSINESS CONCERNS (Jan 1958)

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

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

(ASPR 7-203.9 (60 Ed.))

9. UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS (Feb. 1962)—(The provisions of this clause shall be applicable if this contract is in excess of \$5,000.00.) It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) persistent labor surplus area concerns which are also small business concerns; (ii) other persistent labor surplus area concerns; (iii) substantial labor surplus area concerns which are also small business concerns; (iv) other substantial labor surplus area concerns; and (v) small business concerns which are not labor surplus area concerns.

(ASPR 7-203.26) (60 Ed.) revised 15 Feb. 1962 (ASPR Rev. No. 7)

10. TERMINATION (Jul. 1962) (a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

(i) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the Contractor was not in default pursuant to (i), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(vi) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract.

(vii) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above, provided, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination, and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of Contractor in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same; provided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(i) if the settlement includes cost and fee—

(A) there shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer; provided, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(B) there shall be included therein so far as not included under (A) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (v) above, which are properly chargeable to the terminated portion of the contract;

(C) there shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; provided, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

(D) there shall be included therein a portion of the fee payable under the contract determined as follows—

(I) in the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fee payments previously made hereunder; or

(II) in the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract;

if the amount determined under this subparagraph (i) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount; or

(ii) if the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (i)(D) above.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(j) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

(ASPR 7-203.10) (8-702) (60 Ed.), revised 30 July 1962 (ASPR Rev. No. 10)

11. EXCUSABLE DELAYS (Jul. 1958)

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (ii) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (iii) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled "Termination."

(ASPR 7-203.11) (8-708) (60 Ed.)

12. DISPUTES (Jan. 1958)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(ASPR 7-203.12) (7-103.12) (60 Ed.)

13. BUY AMERICAN ACT (Jul. 1960)

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

(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 or Canada exceeds 50 percent of the cost 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 clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract 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.)

(ASPR 7-204.3) (6-104.5) (60 Ed.), revised 22 July 1960 (ASPR Rev. No. 1))

14. GOVERNMENT PROPERTY (Aug. 1961)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor 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 Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, 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 contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government 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) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, in whole or in part, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government Property."

(c) Title to the 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, become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall comply with the provisions of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation), as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

(d) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer in accordance with sound industrial practice, a program, for the maintenance, repair, protection and preservation of Government Property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government Property.

(f) (1) The Contractor shall not be liable for any loss of or damage to the Government Property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto)—

- (i) which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, ~~representatives~~, or other equivalent representatives, who has supervision or direction of.

- (A) all or substantially all of the Contractor's business, or
- (B) all or substantially all of the ~~Contractor's~~ operations ~~at any one plant or separate location in which~~ this contract is being performed, or
- (C) ~~any one or more~~ major industrial operation ~~in connection with the performance of this~~ ~~contract;~~ ~~***~~

(ii) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above:

(A) to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection and preservation of Government Property as required by paragraph (e) hereof, or

(B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (e) hereof;

(iii) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

provided that, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to Government Property in his possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide 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 the prime contract.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government Property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), 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 Contracting Officer 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 Contractor shall make repairs and renovations of the damaged Government Property or take such other action, as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government Property, he shall use the proceeds to repair, renovate or replace the Government Property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government Property, the Contractor 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.

(5) If this contract is for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

(g) The Government shall at all reasonable times have access to the premises where any of the Government Property is located.

(h) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the contract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

(i) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government Property as may

~~of a group, division, or department of the Contractor's business wherein the~~
~~***all or substantially all of one or more of the Contractor's plants or other~~
~~***within a plant wherein the contract is being performed;~~

be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government Property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(k) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

(ASPR 7-203.21. (13-503) (60 Ed.), revised 15 November 1961 (ASPR Rev. No. 6) except (f)(1) modified

15. INSURANCE—LIABILITY TO THIRD PERSONS (Jan. 1960)

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as the Contracting Officer may from time to time require with respect to performance under this contract; provided, that the Contractor may with the approval of the Contracting Officer, maintain a self-insurance program, and provided further, that with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as the Contracting Officer may from time to time require or approve, and with insurers approved by the Contracting Officer.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer, to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (i) for the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (ii) for liabilities to third persons for loss of or damage to property (other than property (A) owned, occupied or used by the Contractor or rented to the Contractor, or (B) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Contractor, his agents, servants or employees, provided such liabilities are represented by final judgments or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (I) for which the Contractor is otherwise responsible under the express terms of the clause or clauses if any, specified in the Schedule, or (II) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by the Contracting Officer or (III) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, ~~representatives, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) separate and complete major industrial operation in connection with the performance of this contract.~~ The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause, provided such cost would constitute Allowable Cost under the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment."

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith; provided, however, that the Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

(ASPR 7-203.22) (60 Ed.) except (c) modified)

16. MILITARY SECURITY REQUIREMENTS (Jun. 1958)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" including "Confidential—Modified Handling Authorized" or higher.

(b) The Government shall notify the Contractor of the security classifications of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) To the extent the Government has indicated as of the date of this contract or thereafter indicates security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within his own organization in accordance with the requirements of—

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

*of a group, division, or department of the Contractor's business wherein the
 **all or substantially all of one or more of the Contractor's plants or other
 ***within a plant wherein the contract is being performed.

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(d) Representatives of the Military Department having security cognizance over the facility and representatives of the contracting Military Department shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost and fixed fee shall, to the extent appropriate, be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause in this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding paragraph (e) of this clause. The Contractor may insert in any such subcontract, and any such subcontract entered into thereunder may contain, in lieu of paragraph (e) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved. (Oct. 1953)

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

(ASPR 7-104.12 (60 Ed.) except (e) and (f) are ASPR 7-204.12)

17. AUTHORIZATION AND CONSENT (Jan. 1961)

The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in this contract) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The Contractor's entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in the contract and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(ASPR 7-203.23 (9-102.1) (60 Ed.), revised 31 Jan. 1961 (ASPR Rev. No. 3))

18. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (Feb. 1962)

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

(a) The Contractor shall report to the 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 Contractor has knowledge.

(b) In the event of any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

(ASPR 7-203.24, (9-104) (60 Ed.), revised 15 Feb. 1962 (ASPR Rev. No. 7))

19. FILING OF PATENT APPLICATIONS (Jan. 1955)

(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with provisions of 35 U.S.C. 181-188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U. S. Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

(ASPR 7-204.6) (9-106) (60 Ed.)

20. CONVICT LABOR (Mar. 1949)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

(ASPR 7-203.15) (12-203) (60 Ed.)

21. WALSH-HEALEY PUBLIC CONTRACTS ACT (Jan. 1958)

If 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.C. 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

(ASPR 7-203.17) (12-604) (60 Ed.)

~~DELETED - SEE CLAUSE 22 ON PAGE 778~~

~~This contract is of the character specified in the Eight Hour Law of 1912, as amended (40 U.S.C. 324-326) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said Law:~~

~~No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause, and all penalties thus imposed shall be withheld for the use and benefit of the Government.~~

~~(ASPR 7-203.18) (12-603.1) (60 Ed.)~~

23. PAYMENT FOR OVERTIME AND SHIFT PREMIUMS (Feb. 1962)—(a) Allowable Cost shall not include any amount on account of overtime premiums or shift premiums, except to the extent that they either (i) are approved in writing on behalf of the Government or (ii) are paid for work—

(A) necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(B) by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(C) in the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(D) which will result in lower overall cost to the Government.

(b) The cost of overtime premiums or shift premiums otherwise allowable under (a) above shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under this contract.

(ASPR 7-203.27) (60 Ed.) revised 15 Feb. 1962 (ASPR Rev. No. 7)

24. NONDISCRIMINATION IN EMPLOYMENT (Jul 1962) (The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity issued pursuant to Executive Order No. 10925 of March 6, 1961 (26FR 1977))

In connection with the performance of work under this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, 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 selection for training, including apprenticeship. The Contractor 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 Nondiscrimination in Employment clause.

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

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

(d) The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity in effect as of the date of this contract.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Nondiscrimination in Employment clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of the foregoing paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor.* The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: **Provided, however,** that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

*The President's Committee on Equal Employment Opportunity interprets the first sentence of paragraph (g) to mean that the Contractor will include the provisions of the foregoing paragraphs (a) through (f) in every first-tier subcontract or purchase order, so that such provisions will be binding upon each such subcontractor or vendor, and will require each first-tier subcontractor or vendor similarly to include the provisions of paragraphs (a) through (f) in any subcontract or purchase order which he places, unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961.

(ASPR 7-203.18) (12-802) revised 30 July 1962 (ASPR Rev. No. 10)

25. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (Sept. 1958)

(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract, except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify its next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

"22. WORK HOURS ACT OF 1962 -- OVERTIME COMPENSATION (Oct. 1962)

This contract, to the extent that it is of a character specified in the Work Hours Act of 1962 (Public Law 87-581, 76 Stat. 357-360) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and to all other provisions and exceptions of said Work Hours Act of 1962.

(a) No Contractor or subcontractor contracting for any part of the contract work shall require or permit any laborer or mechanic to be employed on such work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible for such violation shall be liable to any affected employee for his unpaid wages. In addition, such Contractor or subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic 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 work in excess of eight hours or in excess of forty hours in a workweek without payment of the required overtime wages.

(c) The Contracting Officer may withhold, or cause to be withheld, from moneys payable on account of work performed by the Contractor or subcontractor, the full amount of wages required by this contract and such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in paragraph (b)."

(ASPR 7-203.16) (12-303.1) (60 Ed.) revised 31 Dec. 1962) (ASPR Rev. No. 13)

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26. PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (Jan. 1961)

The Contractor shall follow the provisions of DMS Reg. 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this order.

(ASPR (7-204.15) (7-104.18) (60 Ed.), revised 31 Jan. 1961 (ASPR Rev. No. 3))

27. RENEGOTIATION (Oct. 1959)

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any sub-contract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all sub-contracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended.

(ASPR 7-203.13) (7-103.13) (60 Ed.)

28. ASSIGNMENT OF CLAIMS (Feb. 1962)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

(ASPR 7-203.6) (60 Ed.) revised 15 Feb. 1962 (ASPR Rev. No. 7)

29. OFFICIALS NOT TO BENEFIT (Jul. 1949)

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.

(ASPR 7-203.19) (7-103.19) (60 Ed.)

30. COVENANT AGAINST CONTINGENT FEES (Jan. 1958)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the 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.

(ASPR 7-203.20) (7-103.20) (60 Ed.)

31. GRATUITIES (Mar. 1952)

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(ASPR 7-204.14) (7-104.16) (60 Ed.)

ADDITIONAL GENERAL PROVISIONS

32. SHIPMENTS. (Oct. 1957) - (a) Unless otherwise provided in this contract or unless the Contracting Officer acting under the "Changes" clause hereof directs in writing otherwise, all supplies to be furnished under this contract shall be delivered f.o.b. carrier's equipment at the plant or plants at which such supplies are to be finally inspected and accepted, or if the facilities for shipment by carrier's equipment are not available at the Contractor's plant, f.o.b. the point or points nearest thereto that carrier service is available. When the carrier's equipment is rail, any shipment occupying sufficient space in a railroad car to constitute a carload shipment subject to carload freight rates shall be properly and adequately loaded in freight cars by the Contractor, and any shipment subject to less-than-carload freight rates shall be delivered by the Contractor into the carrier's possession at the Contractor's plant, or at the point or points nearest thereto at which delivery can be effected.

(b) Whenever it is provided in this contract that supplies shall be delivered f.o.b. specified destinations, such supplies shall be shipped direct by the Contractor to the specified destinations on commercial bills of lading, at the expense of the Contractor. Provided, however, that nothing contained herein shall preclude reimbursement of the Contractor by the Government of any such transportation expenses if this is a cost-reimbursement type contract.

(c) Notwithstanding other provisions of this contract, shipments made under cost-reimbursement contracts which do not exceed (i) 1000 pounds if shipped by rail, truck, or freight forwarder, or (ii) 100 pounds if shipped by railway express, or (iii) 50 pounds if shipped by commercial air, shall be made by commercial bills of lading, charges to destination(s) paid by the Contractor.

(d) If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be delivered to a carrier for shipment from a point other than specified in this contract, equitable adjustment shall be made in the contract price in the manner provided in the general provisions of this contract entitled "Changes."

(e) **Shipping Instructions.** If not otherwise provided herein, names of consignees of all supplies to be delivered by the Contractor hereunder will be furnished in writing by the Contracting Officer at a later date. Request therefor shall be made to such address as the Contracting Officer may direct, not later than thirty (30) days prior to the date on which any of the articles are ready for shipment.

(f) **Routing Instructions.** If not otherwise provided herein and deliveries are other than f.o.b. specified destinations, Government routing instructions will be furnished to the Contractor in writing by the Contracting Officer at a later date. If the Government routing instructions have not been received by the Contractor thirty (30) days prior to date on which any of the articles are anticipated to be ready for shipment, request therefor shall immediately be made to the cognizant transportation activity specified herein.

(g) **Notice of Shipments.** (Jul. 1949) At the time of delivery of any shipment of supplies to a carrier for transportation, the Contractor shall give prepaid notice of shipment to the consignee establishment, and to such other persons or installations designated by the Contracting Officer, in accordance with instructions of the Contracting Officer. If such instructions have not been received by the Contractor at least twenty-four (24) hours prior to such delivery to a carrier, the Contractor shall request instructions from the Contracting Officer concerning the notice of shipment to be given. (ASPR 7-105.4)

(h) **Computation of Delivery Time.** For the purpose of determining the fulfillment of this contract so far as delivery dates are concerned, in the event the delivery point or points are not the same as the point or points of destination, the time of delivery of the supplies shall be the date of delivery to the carrier ready for shipment to destination.

(i) **Shipments by the Government.** Unless this is a cost-reimbursement type contract, any articles, supplies or other items to be delivered by the Government to the Contractor shall, unless otherwise provided herein, be delivered to the Contractor f.o.b. carrier's equipment at the plant or plants of the Contractor designated, or if facilities for shipment by carrier's equipment are not available at the Contractor's plant or plants, f.o.b. the point or points nearest thereto that carrier's equipment is available.

(j) Where the contract provides that inspection and acceptance shall be accomplished at a subcontractor's plant (whether in whole or in part) the foregoing provisions, except paragraphs (e) and (f), shall be equally applicable to such subcontractors as provided in said subcontract. Subcontractors' shipping instructions and routing instructions, if not previously furnished, shall be requested from the Prime Contractor.

(AFPI 7-204.50) (7-4004)

33. DATA—WITHHOLDING OF PAYMENT. (Apr. 1962) (This clause is applicable only if this contract contains the "Data" clause set forth in ASPR 9-203.1.)

If "Subject Data" (as defined in the clause of this contract entitled "Data"), or any part thereof, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by the contract), the Contracting Officer may, until such data is delivered or deficiencies are corrected, withhold payment due the Contractor on account of allowable costs and fixed fee, of ten percent (10%) of the contract price, unless a lesser withholding is specified in the schedule. Payments shall not be withheld nor any other action taken pursuant to this clause where the Contractor's failure to make timely delivery or to deliver data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause hereof entitled "Excusable Delays." The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

ASPR 9-207.2(b) (60 Ed.) issued 15 Apr. 1962 (Rev. No. 9)

34. SUPERSEDING SPECIFICATIONS. (Jul 1948)— All references in any Government specification incorporated herein to other Government specifications shall be deemed to include all specifications supplementary to or superseding the specifications so referred to, to the extent that such supplementary or superseding specifications are in effect at the date of Contractor's latest quotation, if the Contractor was furnished or otherwise notified of the existence of such supplementary or superseding specifications at the time of said quotation

(AFPI 7-204.50) (7-4024)

*The Contractor is hereby notified that the Department of Defense is conducting a review of the contract and may require the Contractor to provide additional information. AF 1705-0-011

42. AUDIT AND RECORDS (NOV. 1962)

(a) The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitute "records" for the purposes of this clause.

(b) The Contractor's plants, or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable times to inspection and audit by the Contracting Officer or his authorized representative.

(c) The Contractor shall preserve and make available his records (i) until the expiration of three years from the date of final payment under this contract, and (ii) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the "Disputes" clause of this contract or (ii) litigation or the settlement of claims arising out of the performance of this contract, shall be retained until such appeals, litigation or claims have been disposed of.

(d) (1) The Contractor shall insert the substance of this clause, including the whole of this paragraph (d), in each subcontract hereunder that is not on a firm fixed-price basis.

(2) The Contractor shall insert the substance of the following clause in each firm fixed-price subcontract hereunder in excess of \$100,000, except those subcontracts covered by subparagraph (3) below.

AUDIT -

(a) For purposes of verifying that cost or pricing data submitted in conjunction with the negotiation of this contract or any contract change or other modification involving an amount in excess of \$100,000 are accurate, complete, and current, the Contracting Officer, or his authorized representatives, shall - until the expiration of three years from the date of final payment under this contract - have the right to examine those books, records, documents, and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the

computations and projections used therein, which were available to the Contractor as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data.

(b) The Contractor agrees to insert the substance of this clause including this paragraph (b) in all subcontracts hereunder in excess of \$100,000 unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(3) The Contractor shall insert the substance of the following clause in each firm fixed-price subcontract hereunder in excess of \$100,000 where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

AUDIT - PRICE ADJUSTMENTS

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of \$100,000, unless the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) For purposes of verifying that any cost or pricing data submitted in conjunction with a contract change or other modification involving an amount in excess of \$100,000 are adequate, complete, and current, the Contracting Officer, or his authorized representatives, shall - until the expiration of three years from the date of final payment under this contract - have the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data.

(c) The Contractor agrees to insert the substance of this clause including this paragraph (c) in all subcontracts hereunder in excess of \$100,000 unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(ASPR 7-203.29) (7-104.41(c)) (60 Ed.), issued 26 November 1962 (ASPR Rev. No. 12)

43. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (NOV. 1962)

(a) If the Contracting Officer determines that any price, including profit or fee, negotiated in connection with this contract was increased by any significant sums because the Contractor, or any subcontractor in connection with a subcontract covered by (c) below, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the Contractor's Certificate of Current Cost or Pricing Data, then such price shall be reduced accordingly and the contract shall be modified in writing to reflect such adjustment.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) The Contractor agrees to insert the substance of paragraphs (a) and (c) of this clause in each of his cost-reimbursement type, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder in excess of \$100,000 unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceeds \$100,000, the Contractor shall insert the substance of the following clause.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - PRICE ADJUSTMENTS

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of \$100,000 * The right to price reduction under this clause shall be limited to such price adjustments.

(b) If the Contractor determines that any price, including profit or fee, negotiated in connection with any price adjustment under this contract was increased by any significant sums because the subcontractor or any of his subcontractors in connection with a subcontract covered by paragraph (c) below, furnished incomplete or inaccurate cost or pricing data or data not current as of the date of execution of the subcontractor's certificate of current cost or pricing data, then such price shall be reduced accordingly and the subcontract shall be modified in writing to reflect such adjustment.

(c) The subcontractor agrees to insert the substance of this clause in each subcontract hereunder which exceeds \$100,000.

(ASPR 7-203.30) (7-104.29(a)) (60 Ed.), issued 26 November 1962 (ASPR Rev. No. 12) as modified by AFPC No. 5 dated 29 Jan. 1963)

* that is not based on adequate price competition, established catalog or market price of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

44. SUBCONTRACTOR COST AND PRICING DATA (NOV. 1962)

(a) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to award of any cost-reimbursement type, incentive, or price redeterminable subcontract; (ii) prior to the award of any subcontract the price of which is expected to exceed \$100,000; ~~except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation;~~ (iii) ~~prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000.~~

(b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief, the cost and pricing data submitted under (a) above is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in each subcontract hereunder which exceeds \$100,000, except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of \$100,000 the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST AND PRICING DATA - PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of \$100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to award of any cost-reimbursement type, incentive, or price redeterminable subcontract; (ii) prior to award of any subcontract, the price of which is expected to exceed \$100,000; ~~except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation;~~ (iii) ~~prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000.~~

*(iii) prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000; except, in the case of (ii) or (iii), where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds \$100,000.

(ASPR 7-203.31) (7-104.42(a)) (60 Ed.) issued 26 November 1962 (ASPR Rev. No. 12) as modified by AFPC No. 5 dated 29 Jan. 1963)

45. NEGOTIATED OVERHEAD RATES ~~(XXXXXX)~~ (Mar. 1963)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of each period specified in the Schedule, shall submit to the Contracting Officer with a copy to the cognizant audit activity a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract and in accordance with Clause 49 of this contract.

(d) The results of each negotiation shall be set forth in ~~an amendment to this contract~~ which shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, and (iii) the periods for which the rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in the Schedule shall be set forth in ~~an amendment to this contract~~.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

~~(g)~~ ***
*er "Allowable Cost, Incentive Fee and Payment," as applicable to this contract

~~(63 Ed) except (d) modified and (g) added~~
(ASPR 3-704.1 ~~(63 Ed) except (d) modified and (g) added~~)

** as an amendment to the Basic Agreement incorporated in this contract, and shall thereby constitute a modification of this contract,

*** (g) Nothing in this clause shall preclude the administrative Contracting Officer from negotiating final overhead rates for any fractional periods less than six (6) months necessary to close out a contract as authorized by AFPI 3-705.

46. REFUNDS - In connection with direct charges to the contract, the Contractor shall not be required to account or pay over to the Government any unclaimed wages, salaries or other payments owed to employees, agents, subcontractors or vendors of the Contractor by reason of work performed under this contract or any unclaimed wage or salary deductions or other accumulations held for the account of any employees or agents of the Contractor so long as the Contractor is under any liability or obligation with respect to such wages, salaries, deductions, accumulations or other payments.

47. SUPPLEMENTAL PROVISIONS - GOVERNMENT PROPERTY - (a) Pursuant to paragraph (i) of the clause of this contract entitled "Government Property," the Contractor is hereby authorized to omit from the inventory schedules required by said paragraph (i) any scrap consisting of faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimburseable cost in accordance with the Contractor's established accounting procedures.

(b) It is further understood and agreed that the provisions of paragraph (j) of the clause of this contract entitled "Government Property" shall not prejudice the right of the Contractor to include a properly allocable portion of such costs under any other contract with the Government.

48. ADDITIONAL PROVISIONS CONCERNING PAYMENT OF ALLOWABLE COSTS - Payment of Approved Costs Representing Progress Payments and Cost Reimbursement to Subcontractors: It is agreed that the provisions of this contract shall not be construed as requiring the Contractor to submit proof of prior payment of progress payments and cost reimbursement to subcontractors as a prerequisite to approval for payment of such costs by the Contracting Officer, provided the Contractor complies with its normal business practice of recording subcontractor's invoices or vouchers on its books and liquidating its liabilities promptly when due.

49. ALLOWABLE COSTS - Without limiting the generality of the clause entitled, "Allowable Cost, Fixed Fee, and Payment" or the clause entitled "Allowable Cost, Incentive Fee, and Payment," as applicable to this contract and Clause 45, Allowable Items of Cost hereunder shall include but shall not be limited to the following:

- (1) a. There shall be added to the amount of all direct expenditures for which reimbursement is authorized and paid to the Contractor certain negotiated provisional rates or billing rates, subject to the provisions of the clause of this contract entitled "Negotiated Overhead Rates."
- b. For purposes of negotiation of final overhead rates under this paragraph, a proper and reasonable amount of the corporate level general research costs incurred by the Contractor's General Engineering and Research laboratories will be included as an allowable expense.

c. For the purpose of negotiation of final overhead rates under this paragraph, reimbursement shall also be made under this contract for the cost of contractor's independent research and development programs conducted at division and department level, as distinguished from corporate level general research, to the extent that such cost is reasonable and proper in accordance with paragraph 15-205.35 of the Armed Services Procurement Regulation as in effect on the date of this basic agreement. The extent to which the cost of such independent research and development programs is allowable may be the subject of advance agreements between the contractor and the appropriate negotiating activity of the Defense Department.

(2) In connection with the work under this contract, the Contractor shall be free but not obligated to use any articles customarily produced or assembled by the Contractor in the regular course of its business, provided that such articles are billed at a price approved by the Contracting Officer and the Contractor hereby agrees that the said price shall be equal to or less than the prices charged to other commercial users in the regular course of its business. In addition, articles or services such as computer operation may be procured from other operating organization components of the Contractor on a fixed-price basis, provided the Contracting Officer gives prior approval to such procurement.

SECTION B - SPECIAL PROVISIONS

The clauses set forth in this section shall become a part of any contractual instrument entered into between the United States Air Force and the Contractor, if agreed upon by the said parties and incorporated by specific reference. Only those clauses specifically referred to shall become a part of such contractual instrument.

B.1.....PATENT RIGHTS. (LICENSE) (Apr. 1962)—(a) As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "Subject Invention" means any invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice either—

(A) in the performance of the experimental, developmental, or research work called for or required under this contract; or

(B) in the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded; provided that the term "Subject Invention" shall not include any invention which is specifically identified and listed in the Schedule for the purpose of excluding it from the license granted by this clause.

(ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts are set forth in (g) and (h) below), who, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.

(iii) The terms "subcontract" and "subcontractor" mean any subcontract or subcontractor of the Contractor, and any lower-tier subcontract or subcontractor under this contract.

(b) (1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method. Such license (i) shall be nontransferable, except that the Government shall have the right to grant sub-licenses to any foreign government or international organization specifically for use in programs established by International Agreements for research, development or production of weapons or equipment for mutual defense and (ii) shall include the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method, or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government.

(2) With respect to:

(i) any Subject Invention made by other than Technical Personnel; and

(ii) any Subject Invention conceived prior to, but first actually reduced to practice in the course of, any of the experimental, developmental, or research work specified in (a)(i) above;

the obligation of the Contractor to grant a license as provided in (b)(1) above, to convey title as provided in (d)(ii)(B) or (d)(iv) below, and to convey foreign rights as provided in (e) below, shall be limited to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this Patent Rights clause shall be deemed to grant any license under any invention other than a Subject Invention.

(c) The Contractor shall furnish to the Contracting Officer the following information and reports concerning Subject Inventions which reasonably appear to be patentable:

(i) a written disclosure promptly after conception or first actual reduction to practice of each such Invention together with a written statement specifying whether or not a United States patent application claiming the Invention has been or will be filed by or on behalf of the Contractor;

(ii) interim reports at least every twelve months, commencing with the date of this contract, each listing all such Inventions conceived or first actually reduced to practice more than three months prior to the date of the report, and not listed on a prior interim report, or certifying that there are no such unreported Inventions; and

(iii) prior to final settlement of this contract, a final report listing all such Inventions including all those previously listed in interim reports.

(d) In connection with each Subject Invention referred to in (c)(i) above, the Contractor shall do the following:

(i) if the Contractor specifies that a United States patent application claiming such Invention will be filed, the Contractor shall file or cause to be filed such application in due form and time; however, if the Contractor, after having specified that such an application would be filed, decides not to file or cause to be filed said application, the Contractor shall so notify the Contracting Officer at the earliest practicable date and in any event not later than eight months after first publication, public use or sale.

(ii) if the Contractor specifies that a United States patent application claiming such Invention has not been filed and will not be filed (or having specified that such an application will be filed thereafter notifies the Contracting Officer to the contrary), the Contractor shall:

(A) inform the Contracting Officer in writing at the earliest practicable date of any publication of such Invention made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication; and

(B) convey to the Government the Contractor's entire right, title, and interest in such Invention by delivering to the Contracting Officer upon written request such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the Contractor's right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such Invention throughout the world, subject, however, to the rights of the Contractor in foreign applications as provided in (e) below, and subject further to the reservation of a nonexclusive and royalty-free license to the Contractor (and to his existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such Invention pertains;

(iii) the Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such Invention;

(iv) in the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the Contractor's entire right, title, and interest in such Invention and the application, subject to the reservation as specified in (d)(i) above; and

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(v) the Contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government.

(e) The Contractor, or those other than the Government deriving rights from the Contractor, shall, as between the parties hereto, have the exclusive right to file applications on Subject Inventions in each foreign country within:

(i) nine months from the date a corresponding United States application is filed;

(ii) six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(iii) such longer period as may be approved by the Contracting Officer.

The Contractor shall, upon written request of the Contracting Officer convey to the Government the Contractor's entire right, title, and interest in each Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation of a nonexclusive and royalty-free license to the Contractor together with the right of the Contractor to grant sublicenses, which license and right shall be assignable to the successor of that part of the Contractor's business to which the Subject Invention pertains.

(f) If the Contractor fails to deliver to the Contracting Officer the interim reports required by (c)(ii) above, or fails to furnish the written disclosures for all Subject Inventions required by (c)(i) above shown to be due in accordance with any interim report delivered under (c)(ii) or otherwise known to be unreported, there shall be withheld from payment until the Contractor shall have corrected such failures either ten (10) percent of the amount of this contract, as from time to time amended, or five thousand dollars (\$5,000), whichever is less. After payment of eighty (80) percent of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten (10) percent of such amount, or five thousand dollars (\$5,000), whichever is less, shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer:

(i) the final report required by (c)(iii) above;

(ii) written disclosures for all Subject Inventions required by (c)(i) above which are shown to be due in accordance with interim reports delivered under (c)(ii) above, or in accordance with such final reports, or are otherwise known to be unreported; and

(iii) the information as to any subcontractor required by (h) below.

The maximum amount which may be withheld under this paragraph (f) shall not exceed ten (10) percent of the amount of this contract or five thousand dollars (\$5,000), whichever is less, and no amount shall be withheld under this paragraph (f) when the amount specified by this paragraph (f) is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph (f) shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(g) The Contractor shall, unless otherwise authorized by the Contracting Officer as hereafter provided, include a patent rights clause containing all the provisions of this Patent Rights Clause except provision (f) in any subcontract hereunder of three thousand dollars (\$3,000) or more having experimental, developmental, or research work as one of its purposes. In the event of refusal by a subcontractor to accept such a patent rights clause, the Contractor (i) shall promptly submit a written report to the Contracting Officer setting forth the subcontractor's reasons for such 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. Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such a patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer.

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing one or more patent rights clauses; furnish the Contracting Officer a copy of each of such clauses; and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to any subcontract clause granting rights to the Government in Subject Inventions, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. If there are no subcontracts containing patent rights clauses, a negative report is required. The Contractor 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.

(i) The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for royalties for the use of a Subject Invention on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which the Government holds a royalty-free license. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

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B.2.....PATENT RIGHTS. (LICENSE)(SPACE) (Apr. 1962)—(a) As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "Subject Invention" means any invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice either—

(A) in the performance of the experimental, developmental, or research work called for or required under this contract; or

(B) in the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded; provided that the term "Subject Invention" shall not include any invention which is specifically identified and listed in the Schedule for the purpose of excluding it from the license granted by this clause.

(ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts are set forth in (g) and (h) below), who, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.

(iii) The terms "subcontract" and "subcontractor" mean any subcontract or subcontractor of the Contractor, and any lower-tier subcontract or subcontractor under this contract.

(b) (1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method. Such license (i) shall be nontransferable, except that the Government shall have (a) the right to grant sublicenses to any foreign government or international organization specifically for use in programs established by International Agreements for research, development or production of weapons or equipment for mutual defense and (b) the right to grant sublicenses to others, under such terms and conditions as may be prescribed, for the practice of any Subject Invention throughout the world in the design, development, manufacture, operation, maintenance and testing of communications satellite systems, and of equipment, components, and ground tracking, transmitting and receiving facilities therefor, and (ii) shall include the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government.

(2) With respect to:

(i) any Subject Invention made by other than Technical Personnel; and

(ii) any Subject Invention conceived prior to, but first actually reduced to practice in the course of, any of the experimental, developmental, or research work specified in (a)(i) above;

the obligation of the Contractor to grant a license as provided in (b)(1) above, to convey title as provided in (d)(ii)(B) or (d)(iv) below, and to convey foreign rights as provided in (e) below, shall be limited to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this Patent Rights clause shall be deemed to grant any license under any invention other than a Subject Invention.

(c) The Contractor shall furnish to the Contracting Officer the following information and reports concerning Subject Inventions which reasonably appear to be patentable:

(i) a written disclosure promptly after conception or first actual reduction to practice of each such Invention together with a written statement specifying whether or not a United States patent application claiming the Invention has been or will be filed by or on behalf of the Contractor;

~~(i) a written disclosure promptly after conception or first actual reduction to practice of each such Invention together with a written statement specifying whether or not a United States patent application claiming the Invention has been or will be filed by or on behalf of the Contractor;~~

(ii) interim reports at least every twelve months, commencing with the date of this contract, each listing all such Inventions conceived or first actually reduced to practice more than three months prior to the date of the report, and not listed on a prior interim report, or certifying that there are no such unreported Inventions; and

(iii) prior to final settlement of this contract, a final report listing all such Inventions including all those previously listed in interim reports.

(d) In connection with each Subject Invention referred to in (c)(i) above, the Contractor shall do the following:

(i) if the Contractor specifies that a United States patent application claiming such Invention will be filed, the Contractor shall file or cause to be filed such application in due form and time; however, if the Contractor, after having specified that such an application would be filed, decides not to file or cause to be filed said application, the Contractor shall so notify the Contracting Officer at the earliest practicable date and in any event not later than eight months after first publication, public use or sale.

(ii) if the Contractor specifies that a United States patent application claiming such Invention has not been filed and will not be filed (or having specified that such an application will be filed thereafter notifies the Contracting Officer to the contrary), the Contractor shall:

(A) inform the Contracting Officer in writing at the earliest practicable date of any publication of such Invention made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication; and

(B) convey to the Government the Contractor's entire right, title, and interest in such Invention by delivering to the Contracting Officer upon written request such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the Contractor's right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such Invention throughout the world, subject, however, to the rights of the Contractor in foreign applications as provided in (e) below, and subject further to the reservation of a nonexclusive and royalty-free license to the Contractor (and to his existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such Invention pertains;

(iii) the Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such Invention;

(iv) in the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the Contractor's entire right, title, and interest in such Invention and the application, subject to the reservation as specified in (d)(ii) above; and

ASPR 9-107.2(b) and 9-107-8 (Rev. 10)

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(v) the Contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government.

(e) The Contractor, or those other than the Government deriving rights from the Contractor, shall, as between the parties hereto, have the exclusive right to file applications on Subject Inventions in each foreign country within:

(i) nine months from the date a corresponding United States application is filed;

(ii) six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(iii) such longer period as may be approved by the Contracting Officer.

The Contractor shall, upon written request of the Contracting Officer convey to the Government the Contractor's entire right, title, and interest in each Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation of a nonexclusive and royalty-free license to the Contractor together with the right of the Contractor to grant sublicenses, which license and right shall be assignable to the successor of that part of the Contractor's business to which the Subject Invention pertains.

(f) If the Contractor fails to deliver to the Contracting Officer the interim reports required by (c)(ii) above, or fails to furnish the written disclosures for all Subject Inventions required by (c)(i) above shown to be due in accordance with any interim report delivered under (c)(ii) or otherwise known to be unreported, there shall be withheld from payment until the Contractor shall have corrected such failures either ten (10) percent of the amount of this contract, as from time to time amended, or five thousand dollars (\$5,000), whichever is less. After payment of eighty (80) percent of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten (10) percent of such amount, or five thousand dollars (\$5,000), whichever is less, shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer:

(i) the final report required by (c)(iii) above;

(ii) written disclosures for all Subject Inventions required by (c)(i) above which are shown to be due in accordance with interim reports delivered under (c)(ii) above, or in accordance with such final reports, or are otherwise known to be unreported; and

(iii) the information as to any subcontractor required by (h) below.

The maximum amount which may be withheld under this paragraph (f) shall not exceed ten (10) percent of the amount of this contract or five thousand dollars (\$5,000), whichever is less, and no amount shall be withheld under this paragraph (f) when the amount specified by this paragraph (f) is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph (f) shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(g) The Contractor shall, unless otherwise authorized by the Contracting Officer as hereafter provided, include a patent rights clause containing all the provisions of this Patent Rights Clause except provision (f) in any subcontract hereunder of three thousand dollars (\$3,000) or more having experimental, developmental, or research work as one of its purposes. In the event of refusal by a subcontractor to accept such a patent rights clause, the Contractor (i) shall promptly submit a written report to the Contracting Officer setting forth the subcontractor's reasons for such 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. Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such a patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer.

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing one or more patent rights clauses; furnish the Contracting Officer a copy of each of such clauses; and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to any subcontract clause granting rights to the Government in Subject Inventions, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. If there are no subcontracts containing patent rights clauses, a negative report is required. The Contractor 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.

(i) The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for royalties for the use of a Subject Invention on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which the Government holds a royalty-free license. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

ASPR 9-107.2(b)(Rev.10)

B.3 Deleted

B.4 Deleted

B.5

DATA (Feb. 1962)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright.

(c) The Contractor shall not include in the Subject Data any copyrighted matter, without the written approval of the Contracting Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in paragraph (b) above.

(d) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Unless otherwise limited below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

(g) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of Subject Data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, or which is in the public domain, or with respect to which the Government has been placed in possession without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(h) Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate or ignore any marking not authorized by the terms of this contract on any piece of Subject Data furnished under this contract.

(i) Notwithstanding any Tables or Specifications included or incorporated in the contract by reference, "proprietary data" need not be furnished unless suitably identified in the Schedule of the contract as being required. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others. (Oct. 1958)

(ASPR 9-203.1, 9-203.2) (60 Ed.) revised 15 Feb. 1962 (Rev. No. 7) and shall be used only in accordance with the requirements thereof.

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright.

(c) The Contractor shall not include in the Subject Data any copyrighted matter, without the written approval of the Contracting Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in paragraph (b) above.

(d) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Unless otherwise limited below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

(g) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of Subject Data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, or which is in the public domain, or with respect to which the Government has been placed in possession without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(h) Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate or ignore any marking not authorized by the terms of this contract on any piece of Subject Data furnished under this contract.

(i) Data need not be furnished for standard commercial items or services which are normally or have been sold or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to procure the part or an adequate substitute, are furnished; and further, "proprietary data" need not be furnished for other items which were developed at private expense and previously sold or offered for sale, including minor modifications thereof, which are incorporated as component parts in or to be used with the product or process being developed if in lieu thereof the Contractor shall identify such other items and that "proprietary data" pertaining thereto which is necessary to enable reproduction or manufacture of the item or performance of the process. For the purpose of this clause "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to its manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others. (Oct. 1958)

ASPR 9-203.1, 9-203.4 (60 Ed.) revised 15 Feb. 1962 (Rev. No. 7) and shall be used only in accordance with the requirements thereof.

E.7

DATA (Feb. 1962)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright.

(c) The Contractor shall not include in the Subject Data any copyrighted matter, without the written approval of the Contracting Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in paragraph (b) above.

(d) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Unless otherwise limited below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

(g) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of Subject Data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, or which is in the public domain, or with respect to which the Government has been placed in possession without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(h) Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate or ignore any marking not authorized by the terms of this contract on any piece of Subject Data furnished under this contract.

(i) Notwithstanding any Tables or Specifications included or incorporated in the contract by reference, "proprietary data" need not be furnished unless suitably identified in the Schedule of the contract as being required. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others. (Oct. 1958)

(j) That portion of the Subject Data delivered under this contract which is identified in the Schedule as being subject to limitations shall not be released outside the Government, nor be duplicated, used, or disclosed in whole or in part for procurement or manufacturing purposes (other than for manufacture required in connection with repair or overhaul where an item is not procurable commercially so as to enable the timely performance of the overhaul or repair work; provided, when Data is released by the Government to a Contractor for such purposes, the release shall be made subject to the limitation of this clause; provided further, such Data shall not be used for manufacture or procurement of spare parts for stocks), without permission of the Contractor, if the following legend is marked on each piece of Data so limited either in its entirety or only partially as to its content:

Furnished under United States Government Contract No. and only those portions hereof which are marked (for example, by circling, underscoring or otherwise) and indicated as being subject to this legend shall not be released outside the Government (except to foreign governments, subject to these same limitations), nor be disclosed, used, or duplicated, for procurement or manufacturing purposes, except as otherwise authorized by contract, without the permission of This legend shall be marked on any reproduction hereof in whole or in part.

Provided, that such Data may be delivered to foreign governments as the national interest of the United States may require, subject to the limitations specified in this paragraph. The Contractor shall not impose limitations on the use of any piece of Data, or any portion thereof, which the Contractor has previously delivered to the Government without limitation. (Jun. 1959)

ASPR 9-203.1, 9-203.2, 9-203.3 (60 Ed.) revised 15 Feb. 1962 (Rev. No. 7) and shall be used only in accordance with the requirements thereof.

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B.8 AUTHORIZATION AND CONSENT (Jan. 1961)

(a) 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 any lower-tier subcontract).

(b) If this clause is made applicable to any item or items of a contract, or to an entire contract, the provisions of the clause of Section A hereof entitled "Authorization and Consent" are hereby made inapplicable to any such item or items or in the case of applicability to an entire contract, to any such entire contract.

(ASPR 9-102.2 (60 Ed.), revised 31 Jan. 1961 (ASPR Rev. No. 3) except (b) added and such clause shall be used only in accordance with the requirements thereof.)

B.9 EXCESS PROFIT (Jun. 1957)

The Contractor agrees that, unless otherwise provided by law, this contract shall be subject to all the provisions of 10 U.S.C. 2382 and 7300 and shall be deemed to contain all the agreements required by those sections; provided, however, that this clause shall not be construed to enlarge or extend by contract the obligations imposed by those sections. The Contractor agrees to insert in the subcontracts specified in those sections either the provisions of this clause or the provisions required by those sections.

(ASPR 7-104.11(a) (60 Ed.))

B.10

BAILMENT

It is contemplated by the parties hereto that the Government will bail (in addition to any property listed in this contract as to be "furnished" by the Government) to the Contractor the items listed elsewhere herein for use in connection with the performance of this contract, and that an appropriate written agreement of bailment will be entered into by and between the parties hereto for that purpose. In the event of delay or failure of the Government to bail such property, as aforesaid, the provisions of the clause of this contract entitled "Government-Furnished Property" or "Government Property" (whichever is applicable) relating to failure or delay in the furnishing of property, shall be applicable.

(AFPI 13-550 (a))

B.11

BAILMENT

It is anticipated that the Government may bail to the Contractor such Government property of the categories specified elsewhere herein as may from time to time be deemed by the Contracting Officer to be necessary in the interest of the Government to so furnish, provided, however, the effect of such bailment upon the contract price or fixed fee (whichever is applicable) shall be reflected by adjusting the contract price or fixed fee (whichever is applicable) in accordance with the procedures set forth in the Changes clause of this contract, and the contract amended accordingly by supplemental agreement prior to the payment of Contractor's final invoice under this contract. Any property bailed pursuant to this paragraph shall be made available to the Contractor only under the provisions of a separate bailment agreement or agreements and this contract shall not be construed as effecting or committing the Government to the bailment of such property.

(AFPI 13-550 (b))

B.12

BAILMENT (For Use in Letter Contracts Only)

It is anticipated that the Government may bail to the Contractor such items of Government property specified elsewhere herein as may from time to time be deemed by the Contracting Officer to be necessary in the interest of the Government to so furnish, provided, however, the effect of such bailment shall be considered in any adjustments in amounts finally payable to the Contractor at the time of settlement of Contractor's termination claim or taken into account at the time of execution of the definitive contract contemplated hereby. Any property bailed pursuant to this paragraph shall be made available to the Contractor only under the provisions of a separate bailment agreement or agreements and this contract shall not be construed as effecting or committing the Government to the bailment of such property.

(AFPI 13-550 (c))

B.13 FACILITIES

The Contractor has indicated that, to the best of its knowledge and belief, it will require no capital facilities such as land, buildings, or general purpose machine tools to perform this contract in addition to those which it now owns or which it is now renting or using other than such additional capital facilities as may be otherwise specifically listed in the particular contract. The Contractor shall not be required, however, to purchase or otherwise acquire at its own expense any such additional capital facilities which may be later determined to be necessary for the performance of this contract. In the event such additional facilities are determined by either the Government or the Contractor to be necessary for such performance, the Government may furnish or authorize the Contractor to acquire such facilities by purchase, rental or otherwise. If the Government authorizes the Contractor to acquire facilities pursuant to the above costs of the acquisition thereof shall be reimbursable under the conditions and to the extent specified in the authorization therefor, which authorization shall be in the form of a supplemental agreement hereto or in the form of a separate facilities contract. Any disagreement concerning a question of fact arising under this clause shall be considered a dispute within the meaning of the clause of this contract entitled "Disputes"; provided, however, that nothing in this clause shall relieve the Contractor from performing any obligation which it has contractually assumed.

B.14 FLIGHT RISKS (Nov. 1961)

(a) Notwithstanding any other provision of this contract, and particularly subparagraph (f)(1) of the Government Property clause and paragraph (c) of the Insurance-Liability to Third Persons clause, the Contractor shall not (i) be relieved of liability for, damage to, or loss or destruction of, aircraft sustained during flight, or (ii) be reimbursed for liabilities to third persons for loss of or damage to property, or for death or bodily injury, which are caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the AFSC Contract Management Region Commander or his designee.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means any aircraft, whether furnished by the Contractor under this contract (either before or after acceptance by the Government) or furnished by the Government to the Contractor under this contract, including all Government Property placed or installed therein or attached thereto; provided, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer. As to land based aircraft, "flight" shall commence with the taxi roll from a flight line and continue until the aircraft has completed the taxi roll to a flight line; as to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp; as to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged; and for vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been re-engaged to any launching platform or device.

(iii) The term "flight crew members" means the pilot, and co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defensive systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) If any aircraft is damaged, lost, or destroyed during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars (\$100,000) or twenty percent (20%) of the estimated cost (exclusive of any fee) of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made (i) in the estimated cost, delivery schedule, or both, and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly; provided, in determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, his employees, or any subcontractor, which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(ASPR 10-504 (60 Ed.) Revised 15 November 1961 (Rev. No. 6) and is authorized for use in accordance with the instructions therein)

B.15

USE OF GOVERNMENT FACILITIES ON A NO-CHARGE BASIS

(a) The Contractor is authorized to use, in the performance of this contract, the Government-owned facilities provided to it under Facilities Contracts listed elsewhere herein, in effect on the date of this contract, on a no-charge basis.

(b) The following subcontractors having Government-owned facilities provided under the Facilities Contracts set forth below, in effect on the date of this contract, are authorized to use such facilities on a no-charge basis for the subcontract items listed below, and the subcontract shall so provide:

Subcontractor	Facilities Contract Number	Subcontract Item
(Listed elsewhere herein)		

(c) If the Contractor enters into other subcontracts with subcontractors who have Government-owned facilities provided to them under Facilities Contracts which provide that no-charge use may be authorized, the Contracting Officer may authorize the use of such facilities on a no-charge basis, provided (i) he determines that such use will not give the subcontractor a favored competitive position, and (ii) this contract is amended to reflect adequate consideration to the Government for the use of such facilities on a no-charge basis. Such subcontracts shall specifically authorize the no-charge use, and require the manual approval of the Contracting Officer. No amendment to this contract will be required, as provided in (ii) above, if the Contracting Officer determines that an elimination of charge for use of such facilities will of itself result in an adequate decreased cost to the Government under this contract.

(d) If the Government-owned facilities provided to the Contractor or any subcontractor hereunder on a no-charge basis are increased or decreased or do not remain available during the performance of this contract, or if any change is made in the terms and conditions under which they are made available, such equitable adjustment as may be appropriate will be made in the terms of this contract, unless such increase or decrease was contemplated in the establishment of the price of this contract or a subcontract.

(e) The Contractor agrees that it will not directly or indirectly, through overhead charges or otherwise, include in the price of this contract, or seek reimbursement under this contract for, any rental charge paid by the Contractor for the use on other contracts of the facilities referred to herein. Any subcontract hereunder which authorizes the subcontractor to use Government facilities on a no-charge basis shall contain a provision to the same effect as this paragraph (e).

(AFPI 7-4052)

NOTE: The use of this clause is predicated upon the approval of the facilities contract issuing office as required by AFPI 13-401(d)(4).

B.16 MODIFICATION OF PARAGRAPHS (a) OF CLAUSE B.15 AND (c) OF CLAUSE B.17

If this clause is incorporated in this contract paragraph (d) of Clause B.15 or Paragraph (c) of Clause B.17 is amended to read as follows:

"If the Government-owned facilities provided to the Contractor or any subcontractor hereunder on a no-charge basis are increased or decreased or do not remain available during the performance of this contract, or if any change is made in the terms and conditions under which they are made available,

(i) Such equitable adjustment as may be appropriate will be made in the terms of this contract, including performance dates or contract price or both, unless such increase or decrease was contemplated in the establishment of the price of this contract or a subcontract. In the negotiation of the aforementioned equitable adjustment consideration will be given to but not limited to the following:

(A) All appropriate additional costs resulting from the decrease or unavailability of Government-owned facilities, which are authorized pursuant to Paragraph (a) of this clause or resulting from the changes in terms and conditions under which such facilities are made available. These will include, but not be limited to, rentals, depreciation, taxes, maintenance costs and costs attributable to relocation and rearrangement to the extent such costs are properly allocable to this contract and not reimbursable under the facility contract W35-038ac-22188.

(ii) If the facilities made available to the Contractor pursuant to Paragraph (a) are denied to the Contractor, the Contractor will not be required to buy substitute facilities to perform this contract."

NOTE: This Clause is authorized for use only when this Contract authorizes use of Government-owned Facilities at Johnson City, New York, under Contract W35-038ac-22188.

B.17

USE OF GOVERNMENT FACILITIES ON A NO-CHARGE BASIS

(a) The Contractor is authorized to use, in the performance of this contract, the Government-owned facilities provided to it under Facilities Contracts listed elsewhere herein, in effect on the date of this Contract, on a no-charge basis.

(b) If the Contractor enters into subcontracts with subcontractors who have Government-owned facilities provided to them under Facilities Contracts which provide that no-charge use may be authorized, the Contracting Officer may authorize the use of such facilities on a no-charge basis, provided (i) he determines that such use will not give the subcontractor a favored competitive position, and (ii) this contract is amended to reflect adequate consideration to the Government for the use of such facilities on a no-charge basis. Such subcontracts shall specifically authorize the no-charge use, and require the manual approval of the Contracting Officer. No amendment to this contract will be required, as provided in (ii) above, if the Contracting Officer determines that an elimination of charge for use of such facilities will of itself result in an adequate decreased cost to the Government under this contract.

(c) If the Government-owned facilities provided to the Contractor or any subcontractor hereunder on a no-charge basis are increased or decreased or do not remain available during the performance of this contract, or if any change is made in the terms and conditions under which they are made available, such equitable adjustment as may be appropriate will be made in the terms of this contract, unless such increase or decrease was contemplated in the establishment of the price of this contract or a subcontract.

(d) The Contractor agrees that it will not directly or indirectly, through overhead charges or otherwise, include in the price of this contract, or seek reimbursement under this contract for, any rental charge paid by the Contractor for the use on other contracts of the facilities referred to herein. Any subcontract hereunder which authorizes the subcontractor to use Government facilities on a no-charge basis shall contain a provision to the same effect as this paragraph (d).

(AFPI 7-4052 except (i) paragraph (b) is deleted (ii) the word "other" is omitted from the first line of paragraph (c) and (iii) shall be used only in accordance with the requirements of the first sentence thereof).

NOTE: The use of this clause is predicated upon the approval of the facilities contract issuing office as required by AFPI 13-401(d)(4).

B.18 CHANGES TO MAKE-OR-BUY PROGRAM (JUL. 1960)

The Contractor agrees to perform this contract in accordance with the "make-or-buy" program attached to this contract except as hereinafter provided. If the Contractor desires to change the "make-or-buy" program, he shall notify the Contracting Officer in writing of the proposed change reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the proposed change. Changes in the place of performance of work on any "make" item in the "make-or-buy" program are subject to this requirement. With respect to items deferred at the time of negotiation of this contract for later additions to the "make-or-buy" program, the Contractor shall notify the Contracting Officer of each proposed addition at the earliest possible time, together with justification in sufficient detail to permit evaluation. The Contractor shall not, without the written consent of the Contracting Officer, make changes or additions to the program; provided, that in his discretion, the Contracting Officer may ratify in writing any changes or additions and such ratification shall constitute the consent of the Contracting Officer required by this clause. The "make-or-buy" program attached to this contract shall be deemed to be modified in accordance with the written consent or ratification by the Contracting Officer.

(ASPR 3-902.1 (60 Ed) Revised 22 July 1960 (Rev. No. 1) and is authorized for use in accordance with the instructions therein.)

B.19 SAFETY AND ACCIDENT PREVENTION (JUN. 1959)

In performing any work under this contract on premises which are under the direct control of the Government, the Contractor shall (i) conform to all safety rules and requirements prescribed in Air Force Manual 32-3, as in effect on the date of this contract and (ii) take such additional precautions as the Contracting Officer may reasonably require for safety and accident prevention purposes. The Contractor agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of Contractor and Government personnel performing or in any way coming in contact with the performance of this contract on such premises. Any violation of such rules and requirements, unless promptly corrected, as directed by the Contracting Officer, shall be grounds for termination of this contract in accordance with the default provisions hereof.

(AFPI 7-4047 (60 Ed.) and is authorized for use in accordance with the instructions therein)

B.20

SAFETY PRECAUTIONS FOR DANGEROUS MATERIALS (AUG. 1962)

(a) For purposes of this clause, dangerous materials shall be deemed to include ammunition, explosives, acids, fuels, propellants, hazardous chemicals, and other material of an explosive, corrosive, flammable, combustible, toxic, radio-active, oxidizing nature, or so magnetic as to affect aircraft navigation systems or of an otherwise dangerous nature.

(b) The Contractor shall comply with the applicable portions of AF Technical Orders 11C-1-6, 42B1-1-6, 00-110N-3; AF Manuals 32-6, 71-4, 75-2; AF Regulation 86-6; and Manufacturing Chemists' Association, Inc., Manual L-1, entitled "Warning Labels," in addition to local, state and federal ordinances, laws, and codes, including latest changes, revisions and/or supplements thereto, in effect on the date of this contract, in the development, testing, storage, manufacture, packaging, transportation, handling, disposal, or use of government or contractor owned dangerous materials, which may affect the performance of this contract, whether such performance is on premises controlled by the Government or otherwise. The Contractor shall comply with the requirement for shippers certificate in accordance with AFM 71-4 if shipment of dangerous materials is to be made by military air or to an aerial port of embarkation. The Contractor shall also comply with any additional safety measures required by the Contracting Officer with regard to such dangerous materials; provided, that if compliance with such additional safety measures results in a material increase in the cost or time of performance of the contract, an equitable adjustment will be made in accordance with the clause hereof entitled "Changes."

(c) The Contractor agrees to insert in every subcontract hereunder which may involve the development, testing, storage, manufacture, packing, transporting, handling, disposal or use of dangerous materials, as defined in paragraph (a) above, the substance of the foregoing paragraphs (a) and (b).

AFPI 7-4048 (60 Ed) issued 30 August 1962 (AFPI Rev. No. 21) and is authorized for use in accordance with the instructions therein).

B.21 **NOTICE OF RADIOACTIVE MATERIALS**

(a) Contractor shall advise the Contracting Officer in writing, or such office as the Contracting Officer may designate, prior to the delivery of any item or completion of any service called for under this contract if such item or any item upon which service is performed contains radioactive material which requires specific licensing under the Atomic Energy Act of 1954, as set forth as of the date of this contract in the Code of Federal Regulations, Title 10, Parts 30, 40 and 70. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of such materials, the name and strength of the isotope, the manufacturer of the radioactive materials, and any other information known to the Contractor which will put users of the items on notice of the hazards involved in their use. (BOB No. 38-RO27.3) Such notification shall be made to the Contracting Officer with sufficient lead time in order that the Air Force may complete licensing requirements prior to delivery and at such time that delivery dates will not be affected.

(b) All items, parts, or subassemblies which contain radioactive materials, and all containers in which such items, parts or subassemblies are delivered to the Government, shall be clearly marked and labeled as required by Military Specification MIL-M-19590B.

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(AFPI 7-4053 (60 Ed.) revised 24 July 1961 (AFPI Rev. No. 8) and is authorized for use in accordance with the instructions therein).

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AF-WF-B-SEP 62 180

B.22 CURRENT REIMBURSEMENT (Sept. 1961) (For Use in Letter Contracts Only)

Pending the placing with you of the definitive contract referred to herein, the Government will currently reimburse you for all proper expenditures made by you hereunder at the following rates:

(i) 100 percent of such approved costs representing progress payments to subcontractors under fixed-price type subcontracts, provided, that such payment by the Government to the Contractor shall not exceed 70 percent of the costs incurred by such subcontractors which are not small business concerns and shall not exceed 75 percent of the costs incurred by such subcontractors which are small business concerns.

(ii) 100 percent of such approved costs representing cost reimbursement to subcontractors under cost reimbursement type subcontracts, provided that such payment by the Government shall not exceed 70 percent of the costs incurred by such subcontractors, and

(iii) _____ percent of all other approved costs.

Such reimbursement shall be accomplished upon certification to and approval by the Contracting Officer of vouchers and invoices for materials, tools, labor and other proper costs and charges. For the purpose of determining the amounts payable to the Contractor hereunder, allowable items of cost will be determined by the Contracting Officer in accordance with the statement of cost principles set forth in Part 2 of Section XV of the Armed Services Procurement Regulation and Clause A.49 hereof. In no event shall the total reimbursement made under this paragraph exceed * percent of the maximum amount of the Government's liability set forth in Paragraph 5 of this letter contract.

*the percentage specified elsewhere herein, no greater than 70%.

(AFPI 7-4058 (60 Ed.) Revised 22 Sept. 1961 (Rev. No. 10) except (1) modified, next to last sentence modified and is authorized for use in accordance with the instructions therein.)

B.23 SOVIET-CONTROLLED AREAS (Apr. 1962)

(a) The Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within Soviet-controlled areas, as listed in the Schedule of this contract, or transported from or through Hong Kong or Macao, without the written approval of the Contracting Officer.

(b) The Contractor agrees to insert the provisions of this clause, including this subparagraph (b) and the Soviet-controlled areas listed in the Schedule, in all subcontracts hereunder.

(ASPR 7-203.25 or 7-403.8 (60 Ed.) revised 15 Apr. 1962 (Rev. No. 9) and is authorized for use in accordance with the instructions in ASPR 6-403.)

B.21 ALLOWABLE COST, INCENTIVE FEE, AND PAYMENT ~~FORWARD~~ (Sep. 1962)

(a) (1) For the performance of this contract, the Government shall pay to the Contractor —

(i) the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with —

(A) Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract; and

(B) the terms of this contract; and

(ii) a fee determined as provided in this contract.

(2) The target cost and target fee of this contract are set forth in the Schedule and shall be subject to adjustment in accordance with (h) and (i) below. As used throughout this contract the term —

(i) "target cost" means the estimated cost of this contract initially negotiated, adjusted in accordance with (h) below; and

(ii) "target fee" means the fee which was initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost of this contract initially negotiated, adjusted in accordance with (h) below.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require an invoice or voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of fee shall be made to the Contractor as specified in the Schedule; provided, however, that after payment of ninety-five percent (95%) of the minimum fee provided for in (i) below, further payment on account of the fee shall be withheld until a reserve of either fifteen percent (15%) of the target fee, or one hundred thousand dollars (\$100,000), whichever is less, shall have been set aside.

(d) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver —

(i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) 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 —

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

(B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that such claims are not known to the Contractor on the date of the execution of the release; and provided further, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

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

Payments under the assignment and the claims excepted from the release shall be subject to adjustment by reason of the adjustment of fee in accordance with (i) below.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

(h) When the work under this contract (including any supplies or services which are ordered separately under, or otherwise added to, this contract) is increased or decreased by contract modification, appropriate adjustments in the target cost and target fee shall be set forth in an amendment or supplemental agreement to this contract.

(i) The fee payable hereunder shall be the target fee increased by ___% cents for every dollar by which the total allowable cost is less than the target cost or decreased by ___% cents for every dollar by which the total allowable cost exceeds the target cost. In no event shall the fee be greater than ___ percent, nor less than ___ percent, of the target cost; and within these limits such fee shall be subject to adjustment, by reason of increase or decrease of total allowable cost, on account of payments under the assignment required by (f)(1) above, and claims excepted from the release required by (f)(1) above.

(j) (In the event this contract calls for spare parts or other supplies and services which are to be ordered under a provisioning document or Government option, the following shall be applicable):

Compensation for supplies (including spare parts) and services which are to be furnished under this contract pursuant to a provisioning document or Government option shall be determined in accordance with the provisions of this clause notwithstanding any inconsistent provision in such provisioning document or Government option.

(k) In the event this clause applies to this contract, Clause A.4 shall be inapplicable unless otherwise provided in this contract.

* set forth elsewhere in this contract.

ASPR 7-203.4(b) (60 Ed.) revised ^{30 Sep 62} ~~ASPR Rev. No. 4~~ ¹¹ (ASPR Rev. No. 4) except (k) added and shall be used only in accordance with the requirements of ~~ASPR 3-405.4~~ ^{3-405.4}.

B.25 MODIFICATION OF CLAUSE B.24 (i) (P-V)

Clause B.24 paragraph (i), is hereby deleted and the following substituted in lieu thereof:

(i) The fee payable hereunder shall be the target fee: (a) increased by *(1) cents for every dollar by which the total allowable cost is less than the target cost; (b) or decreased by *(2) cents for every dollar by which the total allowable cost exceeds the target cost; (c) and further increased or decreased by application of any and all performance, value engineering, and/or other fee incentives separately provided in this contract. In no event shall the fee, inclusive of cost incentives, but exclusive of any and all performance, value engineering, and/or other fee incentives of this contract, be greater than *(3) percent, nor less than *(4) percent, of the target cost; nor in no event shall the fee, inclusive of any and all cost, performance, value engineering, and/or other fee incentives of this contract, be greater than *(5) percent of the target cost; and within these limits such fee shall be subject to adjustment, by reason of increase or decrease of total allowable cost, on account of payments under the assignment required by (f)(i) above, and claims excepted from the release required by (f)(ii) above.

*(Set forth elsewhere in this contract. Percentage to be inserted under (5) may not exceed the statutory limitations.)

(ASPR 7-203.4 (b) (60 Ed.) revised 1 May 1961 (ASPR Rev. 4); modified for consistency with ASPR 3-405.4 (60 Ed.) revised 15 March 1962 (ASPR Rev. 8) and ASPR 3-407.2 (60 Ed.) revised 15 March 1962 (ASPR Rev. 8); authorized for use when contract contains any performance, value engineering, and/or other (except cost) authorized fee incentives, where the cost incentive formula sharing ratio is the same at all levels of cost variation.)

B.26 MODIFICATION OF CLAUSE B.24 (i) (P-V COST VARIANCE LEVELS)

Clause B.24 paragraph (i), is hereby deleted and the following substituted in lieu thereof:

(i) The fee payable hereunder shall be the target fee: (a) increased by *(1) cents for every dollar by which the total allowable cost is less than the target cost for the first *(2)% of cost variance, by *(3) cents for every dollar by which the total allowable cost is less than the target cost minus the above stated cost variance for the next *(4)% of cost variance, (-provision for additional cost variance levels may be made in the Schedule of the contract-), and by *(5) cents for every dollar by which the total allowable cost is less than the target cost minus the total of the above stated cost variance for the remaining cost variance; (b) or decreased by *(6) cents for every dollar by which the total allowable cost exceeds the target cost for the first *(7)% of cost variance, by *(8) cents for every dollar by which the total allowable cost exceeds the target cost plus the above stated cost variance for the next *(9)% of cost variance, (-provision for additional cost variance levels may be made in the Schedule of the contract-), and by *(10) cents for every dollar by which the total allowable cost exceeds the target cost plus the total of the above stated cost variance for the remaining cost variance; (c) and further increased or decreased by application of any and all performance, value engineering, and/or other fee incentives separately provided in this contract. (Cost variance is measured from the target cost.) In no event shall the fee, inclusive of cost incentives, but exclusive of any and all performance, value engineering, and/or other fee incentives of this contract, be greater than *(11) percent, nor less than *(12) percent, of the target cost; nor in no event shall the fee, inclusive of any and all cost, performance, value engineering, and/or other fee incentives of this contract, be greater than *(13) percent of the target cost; and within these limits such fee shall be subject to adjustment, by reason of increase or decrease of total allowable cost, on account of payments under the assignment required by (f)(i) above, and claims excepted from the release required by (f)(ii) above.

*(Set forth elsewhere in this contract. Percentage to be inserted under (13) may not exceed the statutory limitations.)

(ASPR 7-203.4(b) (60 Ed.) revised 1 May 1961 (ASPR Rev. 4); modified for consistency with ASPR 3-405.4 (60 Ed.) revised 15 March 1962 (ASPR Rev. 8) and ASPR 3-407.2 (60 Ed.) revised 15 March 1962 (ASPR Rev. 8); modified for permissive change of ASPR 7-203.4(c)(4) (60 Ed.) revised 1 May 1961 (ASPR Rev. 4); authorized for use when contract contains any performance, value engineering, and/or other (except cost) authorized fee incentives, where a cost incentive formula based upon cost variance levels is desired.)

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B.27 MODIFICATION OF CLAUSE A.6 (a)(4)

Clause A.6 (a)(4) is hereby deleted and the following substituted in lieu thereof:

"(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available his records (i) for a period of three years from the date of payment of the voucher or invoice submitted by the Contractor after the completion of the work performed during any separate period of performance established by this contract or by any amendment or supplemental agreement, without regard to former or subsequent periods of performance, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A), (B), or (C) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the Disputes clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(C) If the Contractor plans to destroy any records sooner than three years after the date of the voucher or invoice to be submitted after the completion of the work performed during the total of the periods of performance established by this contract and all amendments and supplemental agreements thereto, which voucher or invoice shall be designated "completion voucher" or "completion invoice", he shall give written notice to the Contracting Officer and to the Comptroller General of the United States, specifying any records which he plans to destroy after the expiration of 90 days from the receipt of such notice, and shall retain any records which either the Contracting Officer or the Comptroller General, by written notice within 90 days after receipt of the Contractor's notice, requires to be retained for a further specified period of time. (MAY 1960)

(ASPR 7-203.7(b) (60 Ed.) and shall be used only in accordance with the requirements thereof).

B.28 INSPECTION (FEB. 1959)

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(ASPR 7-402.5(b) and shall be used only in accordance with the requirements thereof. If this clause is applicable to this contract it shall be deemed to be substituted for the clause set forth under D-4 entitled "Inspection and Correction of Defects.")

B.29 LIMITATION OF GOVERNMENT'S OBLIGATION ~~(SECRET)~~ (Aug. 1962)

(1) It is estimated that the total cost to the Government, inclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost and fixed fee set forth in the schedule, and the Contractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under this contract within such estimated cost. The fixed fee for complete performance of this contract is specified in the schedule. If at any time the Contractor has reason to believe that the total cost to the Government, inclusive*

(2) The sum presently available for payment and allotted to this contract, the items covered thereby and the period of performance which it is estimated the allotted amount will cover, are specified in the schedule. It is anticipated that from time to time additional funds will be allotted to this contract up to the full estimated cost, including any fixed fee. When additional funds are allotted from time to time for continued performance of the work, the parties shall agree as to the applicable estimated period of contract performance which shall be covered by such funds and the contract schedule amended accordingly. The Contractor agrees to perform or have performed work on this contract up to the point at which, in the event of termination of this contract for the convenience of the Government pursuant to the clause of this contract entitled "Termination," the total amount paid and payable by the Government pursuant to any settlement including cost and fixed fee under Paragraph (e) of such clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to this contract. The Contractor shall not be obligated to continue performance of the work beyond such point.

(3) The Government shall not be obligated to reimburse the Contractor for costs incurred (including amounts payable in respect to subcontracts and termination settlement costs) and to pay any fixed fee to which the Contractor may be entitled, in excess, of the total amount from time to time allotted to this contract. However, when and to the extent that the total amount allotted to this contract has been increased, any costs incurred by the Contractor and any fixed fee to which the Contractor may be entitled, prior to the increase and in excess of the amount previously allotted, shall be allowable to the same extent as if such costs had been incurred and fee earned after such increase in amount allotted.

(4) In the event funds allotted are considered by the Contractor to be inadequate to cover the work to be performed for the period set forth in the schedule, the Contractor shall notify the Contracting Officer in writing when within the next thirty (30) days the work will reach a point, at which, in the event of termination of this contract for the convenience of the Government pursuant to the clause of this contract entitled "Termination," the total amount paid and payable by the Government pursuant to a settlement including cost and fixed fee under Paragraph (e) of such clause will approximate eighty-five percent (85%) of the total amount then allotted to the contract. The notice shall state the estimated date when such point will be reached and the estimated amount of additional funds required to continue performance for the period set forth in the schedule. The Contractor shall thirty (30) days prior to the end of the period specified in the schedule, advise the Contracting Officer *of any fee, for the performance of this contract will be substantially greater or less than the amounts thereof then set forth in the Schedule to date, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of the total cost to the Government for the performance of this contract.

in writing as to the estimated amount of additional funds which will be required, on the basis of the obligation for performance in accordance with Paragraph (2) of this clause, for the timely performance of the work under the contract for such further period as may be specified in the schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the schedule, or an agreed date in substitution therefor, the Contracting Officer will, upon written request of the Contractor, terminate this contract on such date, or on a date to be specified in such request, on which the Contractor, in the exercise of his reasonable judgment, estimates that he will have discharged his obligation to perform hereunder in accordance with Paragraph (2) of this clause, whichever is later, pursuant to the provisions of the clause of this contract entitled "Termination."

(5) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree as to the applicable period of contract performance which shall be covered by such funds, and the provisions of ~~Paragraphs (2), (3), and (4)~~ of this clause shall apply in like manner to such additional allotted funds and substituted date pertaining thereto, and the contract shall be amended accordingly.

(6) The Government may at any time prior to termination allot additional funds for this contract, and, with the consent of the Contractor, after notice of termination, may rescind such termination in whole or in part, and allot additional funds for this contract.

(7) In the event that sufficient amounts are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled, subject to the limitations of Paragraph (3) of this clause, to a percentage of the fixed fee set forth in the schedule equivalent to the percentage of completion of the work contemplated by this contract.

(8) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination."

(9) For the purpose of this clause the allotment or allotments specified in the schedule shall not be decreased without the consent of the Contractor.

(10) This clause shall be applicable and the clause of this contract entitled "Limitation of Cost" inapplicable until such time as an amount equal to the total estimated cost and fee set forth in the schedule is allotted to this contract, and thereafter the clause of this contract entitled "Limitation of Cost" shall be applicable and this clause inapplicable.

revised 29 November 1962) (AFPI Rev. No. 24) except (5) modified
AFPI 7-4054(b)/ and is authorized for use only in accordance with the requirements
of AFPI 53-316.

B.30 SMALL BUSINESS SUBCONTRACTING PROGRAM (FEB. 1962)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall —

(1) Designate a liaison officer who will (i) maintain liaison with the Government on small business matters, (ii) supervise compliance with the "Utilization of Small Business Concerns" clause, and (iii) administer the Contractor's "Small Business Subcontracting Program."

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

(3) Assure that small business 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 small business concerns. Where the Contractor's lists of potential small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(4) Maintain records showing (i) whether each prospective subcontractor is a small business concern, (ii) procedures which have been adopted to comply with the policies set forth in this clause, and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding \$10,000, information substantially as follows:

- (A) Whether the award went to large or small business.
- (B) Whether less than three or more than two small business concerns were solicited.
- (C) The reason for non-solicitation of small business if such was the case.
- (D) The reason for small business failure to receive the award if such was the case when small business was solicited.

The records maintained in accordance with (iii) above may be in such form as the individual Contractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or division to the Contractor's cognizant small business liaison officer. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Government; however, records maintained pursuant to this clause will be kept available for review.

(5) Notify the Contracting Officer before soliciting bids or quotations on any subcontract (including purchase orders) in excess of \$10,000 if (i) no small business concern is to be solicited, and (ii) the Contracting Officer's consent to the subcontract (or ratification) is required by a "Subcontracts" clause in this contract. Such notice will state the Contractor's reasons for non-solicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Contracting Officer may give the Small Business Administration timely notice to permit SBA a reasonable period to suggest potentially qualified small business concerns through the Contracting Officer. In no case will the procurement action be held up when to do so would, in the Contractor's judgment, delay performance under the contract.

(6) Include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities.

(7) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's subcontracting procedures and practices that the Contracting Officer may from time to time conduct.

(8) Submit DD Form 1140 reports, in triplicate, to the Military Department that reviews his subcontracting program, except that where the Contractor elects to report on a corporate rather than a plant basis, he may submit his reports to the Military Department having industrial readiness planning responsibility at the corporate headquarters.

(b) A "small business concern" is a concern that meets the pertinent criteria established by the SBA and set forth in paragraph 1-701 of the Armed Services Procurement Regulation.

(c) The Contractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting program, this contract may be terminated in whole or in part, for default.

(d) The Contractor further agrees to insert, in any subcontract hereunder which is in excess of \$500,000 and which contains the "Utilization of Small Business Concerns" clause, provisions which shall conform substantially to the language of this clause, including this paragraph (d), and to notify the Contracting Officer of the names of such subcontractors; except that the subcontractor will submit the DD Form 1140 reports to the Military Department having industrial readiness planning responsibility or plant cognizance. (A subcontractor may request advice from the nearest military purchasing or contract administration activity as to the Military Department to which he should submit his reports.)

(ASPR 7-104.22, 7-204.19, 7-303.11 or 7-403.13 (60 Ed.) Revised 15 Feb. 1962 (Rev. No. 7) and is authorized for use in accordance with the instructions in ASPR 1-707.3(b)).

B.31 MATERIAL INSPECTION AND RECEIVING REPORT (JUL. 1958)

At the time of each delivery under this contract the Contractor shall prepare and furnish to the Government, in the manner and to the extent required by the Contracting Officer, a Material Inspection and Receiving Report (DD Form 250 or comparable form). The Government shall furnish the required forms to the Contractor upon request.

(ASPR 7-105.7 or 7-205.6 (60 Ed.) and is authorized for use in accordance with the instructions in AFPI 7-105.7)

B.32 FURNISHING OF PRICING INFORMATION (JAN. 1961)

(a) The Contractor shall furnish to the Accounting and Finance Officer as soon as practical, but in no event later than the time of delivery of the respective item, either on the DD Form 250, "Material Inspection and Receiving Report," or in such other written form as may be convenient for the contractor, its best estimate of the price of any item, (excluding complete aircraft and missiles, drawings, blueprints, technical reports, experimental, developmental or research items), for which a billing, estimated or firm price does not appear in the contract, or has not otherwise been furnished to the Contracting Officer prior to the time of delivery.

(b) The Contractor shall further indicate on each DD Form 250, submitted under this contract, the price of Government-Furnished Material (GFM) that is included in each line item covered by the respective DD Form 250.

(c) The Contractor shall include in each of its subcontracts under which deliveries may be made directly to the Government a provision whereby such subcontractor agrees to prepare and distribute the DD Form 250 and to enter thereon the price of all GFM included in items so delivered to the Government. The price of GFM will be made available to the contractor or subcontractor by the Government, as the case may be. No delivery shall be delayed by reason of the failure of the Government to furnish such prices to the contractor or subcontractor. The contractor shall require each subcontractor to include a similar provision in its subcontracts.

(AFPI 7-4061 (60 Ed.) issued 17 Jan. 1961 (Rev. No. 2) and is authorized for use in accordance with the instructions in AFPI 7-4061.)

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B.33 STOP WORK ORDER (JUL. 1960)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either —

- (i) cancel the stop work order, or
- (ii) terminate the work covered by such order as provided in the "Termination" clause of this contract.

(b) If a stop work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected, and the contract shall be modified in writing accordingly, if —

- (i) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and
- (ii) the Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

(ASPR 7-205.7 or 7-404.5 (60 Ed.) issued 22 July 1960 (Rev. No. 1) and is authorized for use in accordance with the instructions in ASPR 7-105.8).

B.34 PROGRAM PROGRESS REPORTING REQUIREMENTS (JAN. 1961)

Contractor agrees to submit those program progress reports as are specifically set forth in AFPI Form 21, "Specification of Program Progress Reporting Requirements," attached to this contract, and made a part thereof. Reports shall be prepared in accordance with instructions contained in AMC/ARDC Manual No. AMCM 70-5/ARDCM 70-1, "Handbook, Contractor Program Progress Reporting," and any amendments in effect on the date of this contract. Bureau of Budget Clearance No. 21-R125.1 applies.

(AFPI 7-4063 (60 Ed.) issued 17 January 1961 (Rev. No. 2) and is authorized for use in accordance with the instructions therein).

FP & CR

B.35 DUTY-FREE ENTRY—CANADIAN SUPPLIES (NOV. 1961)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

- (i) all end items which constitute "Canadian end products" (as defined in paragraph 6-101 of the Armed Services Procurement Regulation) to be delivered under this contract; and
- (ii) all supplies (including, without limitation, raw materials, components and intermediate assemblies) produced or made in Canada which are to be incorporated in the end items to be delivered under this contract; provided, that such end items are made in the United States or Canada;

except supplies imported into the United States prior to the date of this contract, or, in the case of supplies imported by a first- or lower-tier subcontractor hereunder, prior to the date of his subcontract.

(b) The Contractor warrants that all such Canadian supplies, for which such duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof, (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of Canadian end products or supplies as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents submitted to Customs, covering such Canadian end products or supplies for which duty-free entry is to be claimed, shall bear the following information:

- (i) Government prime contract number;
- (ii) identification of carrier;
- (iii) the notation: "UNITED STATES AIR FORCE - DUTY-FREE ENTRY TO BE CLAIMED pursuant to Act of August 10, 1956 (10 U.S.C. 2383)." Upon arrival of shipment at port of entry, Collector of Customs, kindly notify the Commercial Traffic Office, Detroit Air Procurement District, 6233 Concord Avenue, Detroit 11, Michigan, who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate;
- (iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
- (v) estimated value in United States dollars.

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the Collector of Customs at the port of entry. The foreign supplier shall also be instructed to forward, at the time of shipment, a memorandum copy of the bill of lading (or other shipping document) to the designated Government representative.

(f) This clause shall not apply to purchases of Canadian supplies in connection with this contract if (i) such Canadian supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business, and (ii) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(g) The Contractor agrees to insert the substance of this clause, including this paragraph (g), in all subcontracts for supplies hereunder that exceed \$5,000. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

B.36 CERTIFICATE OF CONFORMANCE (AUG. 1961)

(a) At the option of the Government, any of the supplies or services to be furnished f.o.b. origin hereunder may be accepted without prior government inspection upon receipt of a Certificate of Conformance of the contractor attached to DD Form 250 for supplies or services reading substantially as follows:

"I hereby certify that I did, on the (date) of (month) 19 ship via (Name of Carrier) on (Bill of Lading No., Receipt, etc.), in accordance with shipping instructions issued by the contracting officer, (the supplies called for by contract number (insert contract No.); that such supplies were in the quantities and of the quality called for, and were in all respects in accord with the applicable specifications) or (complete the services called for by Contract Number (insert contract number), item; that such services were in the quantity and of the quality called for, and were in all respects in accord with applicable specifications). This statement is furnished to support payment of the attached invoice."

(b) Notwithstanding any provisions of the certificate above referred to, and notwithstanding the provisions of paragraph (c) of clause hereof entitled "Inspection of Supplies and Correction of Defects," the liability of the Contractor with respect to supplies accepted by the Government under the provisions of paragraph (a) above will, after inspection by the Government or after the expiration of a reasonable time following delivery to the Government within which inspection may be made, whichever occurs first, be limited (except as to supplies rejected upon such inspection) to liability for latent defects, fraud, or such gross mistakes as amount to fraud.

(AFPI 7-4014 (60 Ed.) revised 8 August 1961 (AFPC No. 32) and is authorized for use in accordance with the instructions in AFPI 14-204.50).

B.37 LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (Feb. 1962)

(a) The Contractor 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 Contractor 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 Concerns in Labor Surplus Areas" clause, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;

(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 clause; and

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

(b) A "labor surplus area concern" is a concern which will perform, or cause to be performed, a substantial proportion of any contract awarded to it in "Areas of Substantial and Persistent Labor Surplus" or in "Areas of Substantial Labor Surplus," as designated by the Department of Labor. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production (by itself or its first-tier subcontractors) in such areas amount to more than 50 percent of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of \$500,000 and which contains the clause entitled "Utilization of Concerns in Labor Surplus Areas," that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

(ASPR 1-805.3(b) (60 Ed.) issued 15 Feb. 1962 (ASPR Rev. No. 7) and shall be used only in accordance with the instructions therein).

Deleted

B.38 / ~~BASE SUPPORT~~

~~In the interest of the parties that the Contractor will, so far as possible, coordinate with the Government in procuring materials, equipment, services, and facilities available at any Air Force installation involved in the performance of this contract. Therefore, the Contractor will utilize all available Government working space, equipment, supplies, material and services (including maintenance services) and facilities available at any Air Force installation or office where work under this contract is to be performed. Such facilities and services available to the Contractor in reasonable amounts on reasonable terms shall be furnished. The Contractor shall report any inadequacy or non-availability of the facilities and services to the Contracting Officer with a recommended plan for obtaining the requested item to the Contracting Officer. Such plan shall be submitted to the Contracting Officer and the Contractor shall not purchase or obtain any facilities or services without written approval of the Contracting Officer. The terms of the proposed purchase or other arrangement, if any, shall not be purchased under the authority of this clause.~~

~~(Authorized for use in any contract (including a letter contract) wherein the Contractor may be required to perform any portion of the work at a military base)~~

B.39 SECURITY REQUIREMENTS (For Use in Letter Contracts Only)

Pursuant to paragraph 5.b of "Industrial Security Manual for Safeguarding Classified Information", the Contracting Officer may modify Contractor's responsibilities for security with respect to any work being performed hereunder within the confines of a military installation. Such modification shall be transmitted to the Contractor by the Contracting Officer by amendment to this contract.

(Authorized for use in a letter contract wherein the Contractor may be required to perform any portion of the work within the confines of a military installation)

B.40 SECURITY REQUIREMENTS (Definitive Contract)

Pursuant to paragraph 5.b of "Industrial Security Manual for Safeguarding Classified Information", the Contracting Officer may modify Contractor's responsibilities for security with respect to any work being performed hereunder within the confines of a military installation. Such modification shall be transmitted to the Contractor by the Contracting Officer by written notice pursuant to the clause of this contract entitled "Changes". If such modification results in an increase or decrease of security costs under this contract, an appropriate increase or decrease of the contract price, the estimated cost, the fee (as applicable to this contract) hereunder shall be negotiated and evidenced by a supplemental agreement to this contract.

(Authorized for use in any definitive contract wherein the Contractor may be required to perform any portion of the work within the confines of a military installation)

B.41 CONTRACT NUMBER IDENTIFICATION ON DATA

Contractor agrees to mark the number of this contract on all Data delivered hereunder.

(AFPI 9-202.1(a)(5) (60 Ed.) and is authorized for use in accordance with the instructions therein)

B.42 SCHEDULE PROVISION RELATING TO THE CLAUSE HEREOF ENTITLED "DATA"

In the event the clause hereof entitled "Data" is incorporated in a contract the provisions of this clause shall be deemed to be incorporated in the Schedule of such contract.

Rights In Data

The rights obtained by the Government in Subject Data are set forth in the Data clause incorporated in this contract, and nothing elsewhere in this contract or in any documents incorporated by reference in this contract shall be construed as in any way altering such rights.

(This clause is authorized for use in accordance with the instructions in AFPI 9-202.1(b)(1) and AFPI 9-202.1(c)(4) (60 Ed.)

B.43 RELEASE OF NEWS INFORMATION

No news release, public announcement, denial or confirmation of same on any part of the subject matter of this contract or any phase of any program hereunder shall be made without the prior written approval of the Information Systems Office or the Deputy Assistant Secretary for Information Systems Office of Information (BSE), Ballistic Systems Division if this contract is with BSD and Office * (Authorized for use only in contracts entered into by AFSC Ballistic Systems Division and AFSC Space Systems Division)

*of Information, Space Systems Division if this contract is with Space Systems Division.
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B.44 RELEASE OF MANAGEMENT INFORMATION

With respect to work being performed under this contract, the Contractor agrees that information requested of the Contractor by Very Important Visitors as defined by AFSC Regulation 11-6, dated 16 January 1962, will be coordinated wherever feasible, with the cognizant Air Force Plant Representative or his duly authorized representative.

B.45 FINANCIAL MANAGEMENT REPORT (Mar. 1960)

(a) On or before the thirtieth day of the month following the end of each calendar quarter, until such time as the unvoiced dollar amount of this contract is less than \$25,000, the Contractor shall submit to the Contracting Officer, on DD Form 1097, dated 1 November 1959, or other authorized form calling for substantially the same information, furnished by the Contracting Officer, a report of the financial status of the contract, as of the end of such quarter. The Contracting Officer may extend the time for filing said report for a period not to exceed ten working days.

(b) This clause does not modify the obligations of the Contractor under the clause of this contract entitled ("Limitation of Cost").

AFPI 7-204.52) (60 Ed.)

B.46

PROVISIONS FOR MAINTENANCE, OVERHAUL AND MODIFICATION CONTRACTS

(1) Clause 1 - Definitions - of Section A is hereby amended by adding the following paragraphs after paragraph (e):

"(f) The term 'supplies' as used in this contract includes without limitation, and in addition to the items mentioned in the clauses of this contract entitled 'Inspection of Supplies and Correction of Defects,' all work to be performed under this contract.

(g) The term 'Specifications' as used herein includes without limitation the statement of work to be performed upon Air Force Equipment being maintained, modified, reconditioned, rehabilitated, or repaired hereunder."

28 Feb. 1963 (Rev. No. 27)

(AFPI 7-4603.1) (60 Ed.) revised/29 Dec 1962 (Rev. No. 25)

(2) Special Provisions Relating To Air Force Equipment Upon Which Work Is To Be Performed (Jun. 1959)

(a) The Contractor's liability for Air Force equipment upon which work is to be performed by the Contractor pursuant to this contract shall be subject to the provisions of paragraph (f) and paragraph (e) as revised below, of the clause of this contract entitled "Government-Property." For the purpose of this clause, the following shall be substituted for paragraph (e) of the clause entitled "Government-Property": "Title to Air Force equipment furnished for repair or modification shall remain in the Government. The Contractor shall protect such equipment in accordance with sound industrial practice. The Government shall at all reasonable times have access to the premises wherein the Air Force equipment is located." However, such equipment shall not be considered Government-property within the meaning and for the purpose of any other paragraph of that clause.

(b) The Contractor shall maintain adequate property control records of Air Force equipment furnished for repair or modification in accordance with the requirements of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Service Procurement Regulation) as in effect on the date of the contract, which manual is hereby incorporated by reference and made a part of this contract.

(Applicable if this is a definite quantity contract)

(c) In the event the Air Force equipment furnished for repair or modification is not delivered to the Contractor by the time or times specified in the schedule, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the estimated cost, fixed fee, or both and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes".

(AFPI 7-4051 (60 Ed.))

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1. The following provisions shall form a part of any Letter Contract incorporating the provisions of this Section C by reference.

2. All clauses of Section A of this Basic Agreement, excepting any clause entitled "Limitation of Cost," "Allowable Cost, Fixed-fee and Payment," and "Termination" are hereby incorporated into this Letter Contract by reference with the same force and effect as though herein set forth in full. Reference in any of the clauses of Section A of this Basic Agreement to contract costs or adjustments in fixed-fee, if any, and delivery schedules, to the extent such are not included in this Letter Contract, shall be inapplicable, except that any adjustments in amounts finally payable to the Contractor, or in time of performance required by such clauses, shall be made either at the time of settlement of Contractor's termination claims or shall be taken into account at the time of execution of the definitive contract contemplated hereby.

3. By the Contractor's acceptance hereof, it undertakes without delay to provide such price and cost information as may reasonably be required by the Contracting Officer and to enter into negotiations with the Department of the Air Force looking to the execution of a definitive contract which will include all of Section A, the Section B clauses referred to elsewhere herein, and such other clauses as may be mutually agreeable. The definitive contract will also contain a detailed delivery schedule, estimated cost, fixed fee, if any, terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this order.

4. Termination—(a) In case a definitive contract is not executed by the date specified in the clause hereof entitled "Provision for Definitizing Contract," because of the inability of the parties to agree upon a definitive contract, this order may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than thirty (30) days after receipt of such notice.

(b) The performance of work under the contract may be terminated by the Government, in accordance with this clause in whole, or from time to time in part, (1) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default, or (2) whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the referenced clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(c) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under this order on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this order as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this clause; (6) transfer title to and deliver to the Government, in the manner, at the times and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information, and other property which, if this order had been completed, would be required to be furnished to the Government; (7) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provisions (6) of this paragraph: Provided, however, That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: And provided further, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this order or shall otherwise be credited to the price or cost of work covered by this order or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary or as the Contracting Officer may direct, for the protection and preservation of the property related to this order which is in the possession of the Contractor and in which the Government has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, or as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: Provided, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year

period or any extension thereof. Upon failure of the Contractor to submit a termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provision of paragraph (d) hereof, and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) or (b)(1) hereof, such amount or amounts shall not include any allowance for profit or fee. In the event of any termination pursuant to paragraph (b)(2) hereof, such amount or amounts may include a reasonable allowance for profit or fee, but only on work actually done in connection with the terminated portion of this order. Any such amount shall not exceed the amount set forth in the clause hereof entitled "Authority to Obligate Funds." Any such agreement shall be embodied in an amendment to this order and the Contractor shall be paid the agreed amount.

(f) If the Contractor and the Contracting Officer are not able to agree in whole or in part, as provided in paragraph (e) hereof, as to the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer, without duplication of any amounts agreed upon in accordance with the above-cited paragraph (e), shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, pay to the Contractor an amount determined in accordance with the applicable cost principles of the Armed Services Procurement Regulation. In the event of the termination of this order pursuant to paragraph (a) hereof, no allowance for fee or profit shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause entitled "Disputes" incorporated in this order by reference, from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any dispute as to whether termination has in fact taken place pursuant to paragraph (a) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) hereof and has failed to request extension of such time, the Contractor shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due to the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand together with interest computed at the rate of 6% per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: Provided, however, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition.

5. If Clause A.33 - Data-Withholding of Payment - is applicable to this letter contract the wording "ten percent (10%) of the contract price" appearing in said clause is modified to read "ten percent (10%) of the amount that may be otherwise payable to the Contractor under the terms of this letter contract".

(AFPI 7-2505.3(a) as modified by AFPC No. 18 dated 18 March 1963)

SECTION D—PROVISIONS FOR RESEARCH AND DEVELOPMENT CONTRACTS

This Section D shall be deemed to be incorporated in and form a part of every contract placed by the United States Air Force with the Contractor whenever such instrument or document states that this Section D of this Basic Agreement applies:

D-1. Clause 1—Definitions—of Section A is hereby amended by inserting therein the following paragraph:

“(f) The term ‘contract work’ means all work to be performed under this contract including without limitation any studies covering fundamental, theoretical, or experimental investigations; any extension of the investigative findings and theories of a scientific or technical nature into practical application; any tangible items, hereinafter referred to as ‘supplies,’ furnished to the Government; and any reports, data, computations, plans, drawings and specifications with respect to any of the foregoing.” AFPI 7-402.1) (Oct. 1957)

D-2. Clause 2—Changes—of Section A is hereby deleted and the following clause substituted in lieu thereof:

“2. CHANGES. (Feb. 1959) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, (ii) method of shipment or packing; (iii) place of inspection, delivery, or acceptance, and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled ‘Disputes.’ However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.”

(ASPR 7-404.1) (60 Ed.) except the words and figures “thirty (30)” changed to “sixty (60)”

D-3. Clause 3—Limitation of Cost—of Section A is hereby amended by deleting paragraph (a) and substituting in lieu thereof the following:

“(a) It is estimated that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five per cent (75%) of the estimated cost then set forth in the Schedule, or if at any time, the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.” (Feb. 1959) (ASPR 7-402.2) (60 Ed)

D-4. Clause 5—Inspection of Supplies and Correction of Defects—of Section A is hereby deleted and the following clause substituted in lieu thereof:

“5. INSPECTION AND CORRECTION OF DEFECTS. (May 1960) (a) All work under this contract shall be subject to inspection and test by the Government (to the extent practicable) at all times (including the period of performance) and places, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, final inspection, and acceptance shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than ninety (90) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other time as may be provided in the Schedule) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any failure by the Contractor to comply with requirements of this contract. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified in the preceding sentence, except as provided in (d) below. Except as otherwise provided in paragraph (c) below, the allowability of the cost of any such replacement or correction shall be determined as provided in the clause of this contract entitled Allowable Cost, Fixed Fee, and Payment, but no additional fee shall be payable with respect thereto. Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of articles not delivered, may require the delivery of such articles, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled Disputes.

(c) Notwithstanding the provisions of paragraph (b) above, the Government may, at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which the contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of paragraph (b) above shall apply to any corrected or replacement end item or component until six months after its acceptance.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace articles which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

(ASPR 7-402.5(a)(1) (60 Ed.) ~~except (c) modified~~)

D-5. Clause 7—Subcontracts—of Section A is hereby amended by deleting the period at the end of the first sentence of paragraph (c) and inserting in lieu thereof the following:

“, or (v) has experimental, developmental, or research work as one of its purposes.” (ASPR 7-402.8 (60 Ed.) Revised 15 Apr. 1962 (ASPR Rev. No. 9))

D-6. Clause 38—Limitation on Withholding of Payments—of Section A is hereby amended by deleting the words “supplies delivered or services performed” and substituting in lieu thereof the words “work performed under this contract.” (ASPR 7-402.32 (60 Ed.))

D-7. Standards of Work (Feb. 1959)—The Contractor agrees that the performance of work and services, pursuant to the requirements of this contract, shall conform to high professional standards.

(ASPR 7-402.4) (60 Ed.)

D-8. Reports of Work (Jul. 1960)—(a) The Contractor shall submit reports making full disclosure of all work done and the results thereof, in the manner, at the times, and to the extent set forth in the Schedule; provided that, unless otherwise specified in the Schedule, the Contractor shall submit such reports in triplicate from time to time as requested and upon completion (or earlier termination) of the work. Except as may be otherwise specified in the Schedule, or unless the Contractor is otherwise instructed, the Contractor shall, upon completion (or earlier termination) of the work, deliver any working drawings and specifications of any prototypes as may have been developed.

(b) If the Contractor becomes unable to complete the contract work and to deliver at the time specified in the Schedule because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in performance of the work, he shall give the Contracting Officer written notice of the anticipated delays with reasons therefore not less than forty five (45) days before the completion date specified in the Schedule or within such time as the Contracting Officer deems sufficient. When notice is so required, the Contracting Officer may, in his discretion, extend the time specified in the Schedule for such period as he deems advisable.

(ASPR 7-404.6, (60 Ed.) revised 27 July 1960 (ASPR Rev. No. 1))

~~D-9. SUBMISSION OF VOUCHERS (Jan. 1959)~~

~~Pursuant to the Allowable Cost, Fixed Fee, and Payment (or Allowable Cost and Payment) General Provisions of this contract, the Contractor shall submit vouchers to the Contracting Officer with the supporting statement of costs describing the amounts claimed for direct salaries and wages, labor burden or overhead, materials, and other direct and indirect costs.~~

D-10. ACKNOWLEDGEMENT OF SPONSORSHIP (May 1960)

(a) The Contractor agrees that for the life of this contract and for two years thereafter include a statement to the effect that the project or effort depicted was or is sponsored by the agency set forth in the Schedule of this contract.

(b) For the purpose of this clause, “information” includes but is not limited to, news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association meetings, symposia, etc.

(c) Nothing in the foregoing shall affect compliance with the requirements of the clause of this contract entitled “Military Security Requirements.”

(d) The Contractor further agrees to include this provision in any subcontract awarded as a result of this contract.

*operations of a group, division, or department of the Contractor's business wherein the contract is being performed; or (iii) all or substantially all of one or more of the Contractor's plants or other major industrial operation within a plant wherein the contract is being performed.

SECTION E - ADDITIONAL PROVISIONS

The part of this contract describing the supplies and services to be furnished shall refer to either Clause E-1 or E-2 of this Section; thus, such part shall read "(a) Supplies and Services to be Furnished Pursuant to the Provisions of Clause (Insert E-1 or E-2 and follow with list of items)".

E-1 The parties have determined that this contract is of a highly experimental and developmental nature and therefore that the Contractor cannot guarantee successful performance thereof or completion within the time specified in the delivery schedule set forth herein; however, the Contractor shall use its best efforts to perform the prescribed work until the date specified in this contract as the date beyond which no performance on the part of the Contractor will be required.

E-2 The Contractor shall, within the time specified in the delivery schedule set forth in this contract, manufacture, furnish and deliver to the Government the articles and services set forth in this contract.