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UNIVERSITY OF CALIFORNIA LAWRENCE RADIATION LABORATORY

TERMS AND CONDITIONS OF PURCHASE ORDER 4785407

with

UCR 68-71

MONSANTO RESEARCH CORPORATION

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UNIVERSITY OF CALIFORNIA  
LAWRENCE RADIATION LABORATORY - PROCUREMENT DEPARTMENT  
TERMS AND CONDITIONS OF PURCHASE ORDER 4785407

WITH  
**MONSANTO RESEARCH CORPORATION**

INTRODUCTION

The Regents of the University of California, a California Corporation, hereinafter called "University," have entered into a contract, W-7405-Eng. 48 with the United States Government, hereinafter called "Government," represented by the Atomic Energy Commission, hereinafter called "Commission," for the performance of certain atomic energy research and development work at the University of California Lawrence Radiation Laboratory. This Purchase Order, hereinafter called "Subcontract," is entered into with **Monsanto Research Corporation, Dayton, Ohio**

hereinafter called "Subcontractor," in furtherance of the performance of the work provided for in the prime contract.

In accepting this Subcontract, the Subcontractor agrees to perform the Subcontract work in accordance with the following terms and conditions. No other terms or conditions shall be binding upon the parties, unless accepted by them in writing. The parties hereby accept, incorporate into, and make a part of this Subcontract, APPENDIX A - REIMBURSEMENT OF COSTS and **APPENDIX B - SCOPE OF WORK.**

Some of the requirements for University approval hereunder are imposed by the prime contract, statute, or governmental regulation. Subcontractor recognizes that failure to obtain approvals may jeopardize its reimbursement for costs accrued hereunder. All requests for University approval hereunder shall be directed to the Business Manager, University of California Lawrence Radiation Laboratory, or his designee, hereinafter called "Business Manager."

ARTICLE I - SCOPE OF WORK

The Subcontractor shall furnish the necessary facilities, supplies, equipment and personnel, except such as are furnished by the University or the Government, to conduct certain work generally described as **adhesive formulation,**

to be performed by the Subcontractor at locations approved by the University and Subcontractor's facility at **Dayton, Ohio**

the nature and extent of which are more specifically described in APPENDIX B - SCOPE OF WORK hereto, and shall also deliver such materials, products, supplies and incidental services and reports as may be set forth in said APPENDIX B.

The University and the Commission shall have the right to inspect Government Property and the work and activities of the Subcontractor under this Subcontract at such time and in such manner as they shall deem appropriate. The Subcontractor shall include in all subcontracts and purchase orders under this Subcontract involving research and development or fabrication, or where costs incurred are a factor in determining the amount payable to the vendor, a similar provision making this paragraph applicable to the subcontractor or vendor.

ARTICLE II - TERM

Unless completely performed prior thereto or sooner terminated in accordance with ARTICLE XVIII - TERMINATION, the work described in ARTICLE I - SCOPE OF WORK, shall begin upon receipt by Subcontractor of a fully executed agreement and shall continue through a period of six (6) months, which is the current period of time estimated as necessary for completion of said work, provided that the term of this Subcontract shall continue for such period of time as required to comply with the reporting and close-out procedures of this Subcontract. Neither party guarantees the aforesated estimate of time and work under this Subcontract and, except as necessary to comply with reporting and close-out procedures, the term shall cease on the last date mentioned unless the University by written notice to Subcontractor extends, at its sole option, such period for such time or times as it considers appropriate for completion of the work described in ARTICLE I - SCOPE OF WORK. Such an extension of time will not be a basis for a claim of additional fee by Subcontractor.

ARTICLE III - ESTIMATES AND FIXED FEE

A - Initial Estimate of Cost and Fixed Fee

The presently estimated cost of the work under this Subcontract is **FORTY-SIX THOUSAND THREE HUNDRED THIRTY-THREE DOLLARS (\$46,333.00)**, exclusive of the Subcontractor's fixed fee. The Subcontractor's fixed fee is **THREE THOUSAND NINE HUNDRED THIRTY-EIGHT DOLLARS (\$3,938.00)**. The aggregate of presently estimated cost and fixed fee is **FIFTY THOUSAND TWO HUNDRED SEVENTY-ONE DOLLARS (\$50,271.00)**.

B - Revised Estimates of Cost

The presently estimated cost of the work under this Subcontract may be increased or decreased by written agreement of the parties.

C - Limit on Total Amount of Allowable Costs

Payments on account of costs shall not in the aggregate at any time exceed the amount of estimated costs specified in the Subcontract.

D - Notice of Costs Approaching Subcontract Amount - Subcontractor Excused Pending Increase

Whenever the Subcontractor has reason to believe that the total cost of the work under this Subcontract (exclusive of fixed fee) will exceed the estimated cost of the work then in effect, the Subcontractor shall promptly notify the University in writing. The Subcontractor shall also notify the University in writing when the aggregate of expenditures and outstanding commitments allowable under this Subcontract, excluding fixed fee, is equal to 75% (or such other percentage as the University may from time to time establish by notice to the Subcontractor) of the estimated cost of the work then in effect. When such expenditures and outstanding commitments, excluding fixed fee, equal 100% of such amount, the Subcontractor shall make no further commitments or expenditures (except to meet existing commitments) and shall be excused from further performance of the work unless and until the University shall increase the estimated cost of the work in accordance with B above.

E - The University's Right to Terminate Not Affected

The giving of any notice by either party under this ARTICLE III shall not be construed to waive or impair any right of the University to terminate the Subcontract under the provisions of ARTICLE XVIII - TERMINATION.

F - Cost Information

The Subcontractor shall maintain current cost information adequate to reflect the cost of performing the work under this Subcontract at all times while the work is in progress and shall prepare and furnish to the University such written estimates of cost and information in support thereof as the University may request.

G - Correctness of Estimates Not Guaranteed

Neither the University nor the Subcontractor guarantees the correctness of any estimate of cost or estimate of time for the performance of the work under this Subcontract, and there shall be no adjustment in the amount of the Subcontractor's fixed fee by reason of errors in the computation of estimates or differences between such estimates and the actual cost or time for the performance of the work.

ARTICLE IV - CONSIDERATION

Payment for allowable costs, reimbursable in accordance with APPENDIX A - REIMBURSEMENT OF COSTS hereto, and of the fixed fee set forth in ARTICLE III - ESTIMATES AND FIXED FEE, shall constitute complete compensation for Subcontractor's services, including profit and all items or kinds of expenses not allowable under the terms of this Subcontract.

ARTICLE V - PROCUREMENT

The Subcontractor shall use procurement practices which are acceptable to the University, including the following:

A - Procurements shall be made in the name of the Subcontractor only, shall not relieve the Subcontractor of any obligation under this Subcontract (including among other things the obligation properly to supervise and coordinate the work of subcontractors and vendors and assure performance of the work described in APPENDIX B - SCOPE OF WORK), and the Subcontractor shall not enter into any contractual arrangement on a cost-plus-percentage-of-cost basis or for items whose purchase is expressly prohibited by any provision of this Subcontract.

B - Procurements in excess of \$100.00 shall be in writing and in such form and contain such provisions as are required by this Subcontract. The University reserves the right to require the Subcontractor to submit any contractual arrangement under this Subcontract for University approval. In addition to approvals required for other procurements under this Subcontract, the written approval of the University must be obtained for procurement of the following where the cost thereof will be claimed for reimbursement under this Subcontract:

- (1) Any single total procurement in excess of \$5,000.00.
- (2) Any single total procurement of equipment in excess of \$1,000.00. An item of equipment is defined as having a unit value of \$100.00 or more and an expected useful life of twelve (12) months or more.
- (3) Construction of building, roads, utilities, or appurtenances, building alterations or repairs; installation of equipment involving building modification and leasing, purchasing or otherwise acquiring any real property.

C - The Subcontractor shall not subcontract with any other party for the performance of any part of the work described in APPENDIX B - SCOPE OF WORK (other than the furnishing, otherwise consistent with this Subcontract, of necessary standard or commercial articles, raw materials and supplies or components and mechanical services required for production of models or equipment) without the approval of the University.

#### ARTICLE VI - PAYMENTS

##### A - Payments on Account of Allowable Costs

Once each month (or at more frequent intervals, if approved by the University) the Subcontractor will submit to the University, in such form and reasonable detail as the University may require, and showing separately any charges attributed to equipment, an invoice or voucher supported by a statement of costs incurred by the Subcontractor in the performance of this Subcontract and claimed to constitute allowable cost. Promptly after receipt of each invoice or voucher, the University shall, subject to the provisions of C below, make payments thereon as approved by the University.

##### B - Payments on Account of Fixed Fee

The fixed fee shall become due and payable in periodic installments in amounts based on the portion of the work then completed as determined by the University. In making such periodic payments there shall be retained 15% from each payment, which retained amounts shall be paid upon completion and acceptance of all work under this Subcontract; provided however, that the University may at any time that the amount of the retained fixed fee equals \$100,000, make payments of any of the remaining periodic installments of the fixed fee, in full.

##### C - Audit Adjustments

At any time or times prior to settlement under this Subcontract the University may have invoices or vouchers and statements of costs audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the University, 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.

D - Completion Voucher

On receipt and approval of the invoice or voucher designated by the Subcontractor as the "completion invoice" or "completion voucher," and upon completion and resolution of a final audit by the Commission, and compliance by the Subcontractor with all the provisions of this Subcontract (including, without limitation, the accounting for Government-owned property required by ARTICLE XI - PROPERTY, and disclosures, if any, of information called for under ARTICLE XIV - PATENTS and ARTICLE XV - COPYRIGHTS, and the provisions of Paragraphs E and F below) the University shall promptly pay to the Subcontractor any balance of the allowable costs and any part of the fixed fee which has been withheld pursuant to B above or otherwise not paid to the Subcontractor. The completion invoice or voucher shall be submitted by the Subcontractor promptly following completion of the work under this Subcontract, but in no event later than one year (unless within the year the University grants a further specific period of time) from the date of such completion.

E - Applicable Credits

The Subcontractor agrees that any refunds, rebates, credits or other amounts, (including any interest thereon), accruing to or received by the Subcontractor or any assignee under this Subcontract shall be paid by the Subcontractor to the University, to the extent that they are properly allocable to costs for which the Subcontractor has been reimbursed by the University under this Subcontract. Reasonable expenses incurred by the Subcontractor for the purpose of securing refunds, rebates, credits or other amounts shall be allowable costs hereunder when approved by the University.

F - Financial Settlement

Prior to final payment under this Subcontract, the Subcontractor and each assignee under this Subcontract whose assignment is in effect at the time of final payment under this Subcontract shall execute and deliver:

1. An Assignment to University in form and substance satisfactory to the University, of rights to refunds, rebates, credits, or other amounts (including any interest thereon), properly allocable to costs for which the Subcontractor has been reimbursed by the University under this Subcontract; and

2. A release discharging the University and the Government, their officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Subcontract 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 Subcontractor;

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

c. Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of any indemnification of the University or Government against patent liability), including reasonable expenses, incidental thereto, incurred by the Subcontractor under the provisions of this Subcontract relating to patents.

3. If called for by the Commission, a patent certification satisfactory to the Commission stating whether or not any inventions or discoveries have been made or conceived in performance of the work. An amount up to 10% of this Subcontract price may be withheld by the University until the Subcontractor has complied with the patent provisions of this Subcontract to an extent satisfactory to the Commission. Payment of any amount or the withholding thereof under this requirement shall not be construed as a waiver of any rights accruing to the University or Government under this Subcontract.

#### ARTICLE VII - CHANGES

##### A - Changes and Adjustment of Fee

The Business Manager or his designee may at any time and without notice to the sureties, if any, issue written directions within the general scope of this Subcontract requiring additional work or directing the omission of or variation in work covered by this Subcontract. If any such direction results in a material change in the amount or character of the work described in ARTICLE I - SCOPE OF WORK, an equitable adjustment of the fixed fee shall be made in accordance with the agreement of the parties, and this Subcontract shall be modified in writing accordingly.

Any claim by the Subcontractor for an adjustment under this ARTICLE VII must be asserted in writing within thirty (30) days from the date of receipt by the Subcontractor of the notification of change; provided, however, that the University, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Subcontract. A failure to agree on an equitable adjustment under this ARTICLE VII shall be deemed to be a dispute within the meaning of ARTICLE XX - DISPUTES.

##### B - Work to Continue

Nothing contained in this ARTICLE VII shall excuse the Subcontractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

#### ARTICLE VIII - ACCOUNTS AND RECORDS

##### A - Accounts

The Subcontractor shall maintain accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues and other applicable credits, fixed fee accruals and the receipt, use and disposition of all University furnished Government Property coming into the possession of the Subcontractor under this Subcontract. The system of accounts employed by the Subcontractor shall be satisfactory to the University and the Commission and in accordance with generally accepted accounting principles consistently applied.

B - Inspection and Audit of Accounts and Records

All books of account and records relating to this Subcontract shall be subject to inspection and audit by the University and the Commission at all reasonable times before and during the period of retention provided for in Paragraph D below, and the Subcontractor shall afford the University and the Commission proper facilities for such inspection and audit.

C - Audit of Subcontractor's Records

The Subcontractor also agrees, with respect to any subcontracts (including lump-sum or unit price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to conduct an audit of the costs of the subcontractor in a manner satisfactory to the University and Commission.

D - Disposition of Records

Except as agreed upon by the University with the approval of the Commission, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable and revenues and other applicable credits under this Subcontract in the possession of the Subcontractor relating to this Subcontract shall be preserved by the Subcontractor for a period of three (3) years after final settlement of the Subcontract or otherwise disposed of in such manner as may be agreed upon by the University with the approval of the Commission.

E - Reports

The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this Subcontract as the University may from time to time require, and in addition shall also furnish such monthly progress reports and a final report in such form and numbers of copies and to such addresses as and when directed in APPENDIX B - SCOPE OF WORK.

F - Subcontracts

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

ARTICLE IX - EXAMINATION OF RECORDS

A - The Subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Subcontractor involving transactions related to this Subcontract until the expiration of three (3) years after final payment under this Subcontract, unless the Commission authorizes their prior disposition.

B - The Subcontractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall 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 until the expiration of three (3) years after final payment under this Subcontract, unless the Commission authorizes their prior disposition. The term "subcontract" as used in this ARTICLE IX excludes (1) purchase orders not exceeding \$2,500.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

C - Nothing in this Subcontract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this Subcontract.

ARTICLE X - LIABILITY

In the conduct of work under this Subcontract, the Subcontractor is acting in the capacity of an independent contractor; and neither party shall by reason of this Subcontract be obligated to defend, assume the cost of defense, hold harmless or indemnify the other from any liability to third parties for loss of or damage to property, death, or bodily injury, arising out of or connected with the work under this Subcontract, except as provided in ARTICLE XIV-PATENTS, ARTICLE XXVII - LITIGATION AND CLAIMS, and ARTICLE XXVIII - TAXES. The Subcontractor shall take all reasonable precautions in the performance of the work under this Subcontract to protect the health and safety of employees and of members of the public and to minimize all hazards to life and property. This ARTICLE X shall have no application to public liability as defined in the Atomic Energy Act of 1954, as amended, to the extent the Subcontractor is indemnified under said law.

ARTICLE XI - PROPERTY

A - Furnishing of Government Property

The University reserves the right to furnish any property or services available to the University required for the performance of the work under this Subcontract.

#### B - Title to Property

Title to all property furnished by the University shall remain in the Government, except as otherwise provided in this ARTICLE XI. Except as otherwise provided by the University, title to all materials, equipment, supplies and tangible personal property of every kind and description purchased by the Subcontractor, for the cost of which the Subcontractor is entitled to be reimbursed as a direct item of cost under this Subcontract, shall pass directly from the vendor to the Government. The University and the Government reserve the right to inspect and to reject or accept any item of such property. The Subcontractor shall make such disposition of rejected items as the University shall direct. Title to other property, the cost of which is reimbursable to the Subcontractor under this Subcontract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this Subcontract, (2) commencement of processing or use of such property in the performance of this Subcontract, or (3) reimbursement of the cost thereof by the University, whichever first occurs. Property furnished by the University, and property purchased or furnished by the Subcontractor title to which vests in the Government under this paragraph are hereinafter referred to as Government Property. Title to Government Property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government; nor shall such Government Property or any part thereof be or become a fixture or lose its identify as personalty by reason of affixation to any realty.

#### C - Identification

To the extent directed by the University, the Subcontractor shall identify Government Property coming into the Subcontractor's possession or custody by marking or segregating in such a way, satisfactory to the University, as shall indicate its ownership by the Government.

#### D - Disposition

The Subcontractor shall make such disposition of Government Property which has come into the possession or custody of the Subcontractor under this Subcontract as the University shall direct. When authorized in writing by the University during the progress of the work or upon completion or termination of this Subcontract, the Subcontractor may, upon such terms and conditions as the University may approve, sell or exchange such property or acquire such property at a price agreed upon by the University and the Subcontractor as the fair value thereof. The amount received by the Subcontractor as the result of any disposition or the amount of the agreed fair value of any such property acquired by the Subcontractor shall be applied in reduction of costs allowable under this Subcontract or shall be otherwise credited to account of the University, as the University may direct. Upon completion of the work or the termination of this Subcontract, the Subcontractor shall render an accounting, as prescribed by the University, of all Government Property which has come into the possession or custody of the Subcontractor under this Subcontract.

E - Protection of Government Property - Classified Materials

The Subcontractor shall take all reasonable precautions as directed by the University, or in the absence of such directions, in accordance with sound industrial practice, to safeguard and protect Government Property in the Subcontractor's possession or custody. Special measures shall be taken by the Subcontractor in the protection of and accounting for any classified or special materials involved in the performance of this Subcontract in accordance with the regulations and requirements of the Commission.

F - Risk of Loss of Government Property

The Subcontractor shall not be liable for loss or destruction of or damage to Government Property in the Subcontractor's possession, unless such loss, destruction or damage results from wilful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel or unless such loss, destruction or damage results from a failure on the part of the Subcontractor's managerial personnel to take all reasonable steps to comply with any appropriate written directives of the University to safeguard such property under Paragraph E hereof. The term "Subcontractor's managerial personnel" as used herein means the Subcontractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (1) all or substantially all of the Subcontractor's business, (2) all or substantially all of the Subcontractor's operation at any one plant or separate location at which this Subcontract is being performed, (3) a separate and complete major industrial operation in connection with the performance of this Subcontract, or (4) a separate and complete major construction, alteration or repair operation in connection with performance of this Subcontract.

G - Steps to be Taken in Event of Loss

Upon the happening of any loss or destruction of or damage to Government Property in the possession or custody of the Subcontractor, the Subcontractor shall immediately inform the University of the occasion and extent thereof, shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property, if and as directed by the University, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the University and/or Government on request all reasonable assistance in obtaining recovery.

H - Government Property for Subcontract Use Only

Government Property shall be used only for the performance of this Subcontract.

ARTICLE XII - CONTRIBUTIONS AND ASSIGNMENT

A - Contributions

The Subcontractor shall accept exclusive liability for payment of any contributions measured by the wages of employees of the Subcontractor and its agents assessed by the Federal Unemployment Tax Act, the Federal Insurance Contributions Act and any other applicable laws or statutes and shall indemnify and hold harmless the University and the Government on account thereof.

B - Assignment

The Subcontractor shall have no right, power or authority to sell, mortgage, transfer or assign this Subcontract, any portion thereof, any interest herein or any claim hereunder to, nor allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purposes whatsoever without the prior written consent of the University. The breach of the foregoing prohibition, whether voluntary, or by operation of law, by any process or proceeding of any court or by attachment, execution, proceeding in insolvency, reorganization, composition or bankruptcy, whether voluntary or involuntary, assignment for the benefit of creditors or receivership, shall be cause for default under this Subcontract. The University may assign this Subcontract or any of its rights hereunder, to the Government.

ARTICLE XIII - REQUIRED BONDS AND INSURANCE

The Subcontractor shall procure and maintain such bonds and insurance as required by law (including Workmen's Compensation Insurance which will compensate up to the maximum benefits available under any applicable Workmen's Compensation laws) or written direction of the University and with companies, underwriters, or underwriting firms under forms of policies which shall be submitted upon request for University approval. In view of the provisions of ARTICLE XI - PROPERTY, the Subcontractor shall not be reimbursed for any insurance procured or maintained for its own protection (including self insurance or reserves) covering loss or destruction of, or damage to, Government-owned property.

#### ARTICLE XIV - PATENTS

A - Whenever any invention or discovery is made or conceived by the Subcontractor or its employees in the course of or under this Subcontract, the Subcontractor shall promptly furnish the Commission with complete information thereon; and the Commission shall have the sole power to determine whether or not and where a patent application shall be filed, and to determine the disposition of the title to and the rights in and to any invention or discovery and any patent application or patent that may result. The judgment of the Commission on these matters shall be accepted as final; and the Subcontractor, for itself and for its employees, agrees that the inventor or inventors will execute all documents and do all things necessary or proper to carry out the judgment of the Commission.

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

C - Except as otherwise authorized in writing by the Commission, the Subcontractor will obtain patent agreements to effectuate the purposes of Paragraphs A and B of this ARTICLE XIV from all persons who perform any part of the work under this Subcontract, except such clerical and manual labor personnel as will not have access to technical data.

D - Except as otherwise authorized in writing by the Commission, the Subcontractor will insert in all sub-subcontracts provisions making this ARTICLE XIV applicable to the Subcontractor and its employees.

E - It is recognized that during the course of the work under this Subcontract, the Subcontractor or its employees may from time to time desire to publish, within the limits of security requirements, information regarding scientific or technical developments made or conceived in the course of or under this Subcontract. In order that public disclosure of such information will not adversely affect the patent interests of the Commission or the Subcontractor, patent approval for release and publication shall be secured from the Commission prior to any such release or publication.

F - With respect to any U. S. Patent Application filed by the Subcontractor on any Subcontract invention or discovery made or conceived in the course of the Subcontract, the Subcontractor will incorporate in the first paragraph of the U. S. Patent Application the following statement:

"The invention described herein was made in the course of, or under, a Subcontract issued under Prime Contract W-7405-ENG-48 with the U. S. Atomic Energy Commission."

G - In addition to the rights of the parties under the foregoing paragraphs in and to inventions or discoveries made or conceived in the course of or under this Subcontract, the Subcontractor agrees, and does hereby grant to the Government an irrevocable, non-exclusive, paid up license in and to any inventions or discoveries actually reduced to practice or patented before the effective date of this Subcontract owned or controlled by the Subcontractor and in and to any inventions or discoveries actually reduced to practice or acquired during the term of this Subcontract, but not subject to the foregoing foreground invention rights provision, which are incorporated in any conceptual design, process or prototype furnished under this Subcontract;

1. To make, use and to have made and used in embodiments and applications of the concept of said design, process, or prototype throughout the world for U. S. Government purposes, and

2. To sell and have sold, as provided by law, resulting apparatus, articles, materials, or products embodying, in whole or in part, said design or prototype, or adapted to conduct said process. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

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ARTICLE XV - COPYRIGHTS

A - The Subcontractor (1) agrees that the Commission shall determine the disposition of the title to and the rights under any copyright secured by the Subcontractor or its employees on copyrightable material first produced or composed and delivered to the Government under this Subcontract, and (2) hereby grants to the Government and separately to the University for use in performance of its Contract W-7405-Eng. 48 with the Commission a royalty-free, non-exclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted or copyrightable work not first produced or composed by the Subcontractor in the performance of this Subcontract, but which is incorporated in the material furnished under this Subcontract, provided that such license shall be only to the extent the Subcontractor now has or prior to the completion or final settlement of the Subcontract may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

B - The Subcontractor agrees that it will not knowingly include any copyrighted materials in any written or copyrightable material furnished or delivered under this Subcontract without a license as provided in A above, or without the consent of the copyright owner, unless specific written approval of the Commission to the inclusion of such copyrighted material is obtained. Requests for such approval shall be directed to the University.

C - The Subcontractor agrees to report in writing to the University promptly and in reasonable detail any notice or claim of copyright infringement received by the Subcontractor with respect to any material delivered under this Subcontract.

ARTICLE XVI - DRAWINGS, DESIGNS, SPECIFICATIONS AND RELEASE OF INFORMATION

A - Drawings, Designs and Specifications

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereof, shall be subject to inspection by the University and the Commission at all reasonable times; and the Subcontractor and its lower tier subcontractors shall afford the University and Commission proper facilities for such inspection; and, further shall be the property of the Government and may be used by the University for use in performance of its Contract W-7405-Eng. 48 with the Commission and by the Government for any purpose whatsoever without any claim on the part of the Subcontractor and its lower tier subcontractors and vendors for additional compensation and shall be subject to the Subcontractor's right to retain a copy of said material where not classified, for its own use (such retention and use subject to the patent and security provisions of this Subcontract) and shall be delivered to the University upon completion or termination of this Subcontract, unless the University shall otherwise direct.

B - Release of Information

Publications, news releases, advertising, speeches, technical papers, usage of photographs, releases of information regarding this undertaking or data developed hereunder may not be made except upon prior written approval from the Business Manager, or his designee.

ARTICLE XVII - SECURITY

A - The Subcontractor's Duty to Safeguard Restricted Data and Other Classified Information

In the performance of the work under this Subcontract, the Subcontractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding restricted data and other classified matter and protecting against sabotage, espionage, loss and theft, the classified documents, materials, equipment, processes, etc., as well as such other material of high intrinsic or strategic value as may be in the Subcontractor's possession in connection with performance of work under this Subcontract. Except as otherwise expressly instructed by the University or the Commission, the Subcontractor shall upon completion or termination of this Subcontract transmit to the University any classified matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of this Subcontract.

B - Regulations

The Subcontractor agrees to conform to all security regulations and requirements of the Commission.

C - Definition of Restricted Data

The term "Restricted Data", as used in this ARTICLE XVII, means all data concerning: (1) design, manufacture, or utilization of atomic weapons, (2) the production of special nuclear material, or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954.

D - Security Clearance of Personnel

The Subcontractor shall not permit any individual to have access to Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements.

E - Criminal Liability

It is understood that disclosure of information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data or any Top Secret, Secret or Confidential matter that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under this Subcontract may subject the Subcontractor, its agents, employees, and subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, 68 Stat. 919). (See also Executive Order No. 10104 of February 1, 1950, 15 F. R. 597).

F - Classification

In the performance of the work under this Subcontract, the Subcontractor shall assign classifications to all documents, material and equipment originated or generated by the Subcontractor in accordance with classification guidance furnished to the Subcontractor by the Commission and the University. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material or equipment, shall include a provision to the effect that in the performance of such subcontract or purchase order the subcontractor or supplier shall assign classifications to all such documents, material, and equipment in accordance with classification guidance furnished to such subcontractor or supplier by the Subcontractor.

G - Subcontracts and Purchase Orders

Except as otherwise authorized by the University in writing, the Subcontractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this Subcontract.

## ARTICLE XVIII - TERMINATION

A - The performance of work under this Subcontract may be terminated by the University in accordance with this ARTICLE XVIII in whole, or from time to time in part, 1) whenever this Subcontractor shall default in performance of this Subcontract in accordance with its terms (including in the term "default" any such failure by the Subcontractor 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 University may allow) after receipt from the University of a notice specifying the default; or 2) whenever for any reason the University shall determine that such termination is in the best interests of the University. Any such termination shall be effected by delivery to the Subcontractor of a Notice of Termination specifying the extent to which the performance of work under the Subcontract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this Subcontract for default under (1) above, it is determined that for any reason the Subcontractor was not in default pursuant to (1), or that the Subcontractor'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 Subcontractor pursuant to Paragraph K, below, 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.

B - After receipt of a Notice of Termination and except as otherwise directed by the University, the Subcontractor shall 1) stop work under the Subcontract 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 the Subcontract 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 University, in the manner and to the extent directed by the University all of the right, title, and interest of the Subcontractor under the orders or other subcontracts so terminated in which case the University 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; 5) with the approval or ratification of the University, to the extent it may require, which approval or ratification shall be final and conclusive for all purposes of this ARTICLE XVIII, 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 Subcontract; 6) transfer title to the Government (to the extent that title has not already been transferred) and deliver in the manner, to the extent and at the times directed by the University, (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 the Subcontract had been completed, would be required to be furnished to the University, and (iii) the jigs, dies, and fixtures, and other special tools, and tooling acquired or manufactured for the performance of this Subcontract

for the cost of which the Subcontractor has been or will be reimbursed under this Subcontract; 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 University, any property of the types referred to in (6) above: Provided, however, that the Subcontractor (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 the price or prices approved by the University; 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 University to the Subcontractor under this Subcontract or shall otherwise be credited to the price or cost of the work covered by this Subcontract or paid in such other manner as the University 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 University may direct, for the protection and preservation of the property related to this Subcontract which is in the possession of the Subcontractor and in which the University has or may acquire an interest. The Subcontractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fixed fee, or any item of reimbursable cost under this ARTICLE XVIII.

At any time after expiration of the plant clearance period (See 41 CFR -8.1 for definition), the Subcontractor may submit to the University 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 University, and may request the University to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the University will accept such items and remove them or enter into a storage agreement covering the same; provided that the lists submitted shall be subject to verification by the University 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.

C - After receipt of a Notice of Termination, the Subcontractor shall submit to the University, in the form and with the certification prescribed by the University, a termination claim. 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 University upon request of the Subcontractor made in writing within such one year period or authorized extension thereof. However, if the University determines that the facts justify such action, it 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 Subcontractor to submit its termination claim within the time allowed, the University may, subject to review of the Commission, determine, on the basis of information available to it, the amount, if any, due to the Subcontractor by reason of the termination and shall thereupon pay to the Subcontractor the amount so determined.

D - Subject to the provisions of C above, and subject to any review required by the Commission, the Subcontractor and the University may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Subcontractor by reason of the total or partial termination of work pursuant to this ARTICLE XVIII. The Subcontract shall be amended accordingly, and the Subcontractor shall be paid the agreed amount.

E - In the event of the failure of the Subcontractor and the University to agree in whole or in part, as provided in D above, as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Subcontractor in connection with the termination of work pursuant to this ARTICLE XVIII, the University shall determine on the basis of information available to it, the amount, if any, due to the Subcontractor by reason of the termination and University shall pay to the Subcontractor the amount determined as follows:

1. If the settlement includes cost and fee - there shall be included therein:

(a) all costs and expenses reimbursable in accordance with this Subcontract, not previously paid to the Subcontractor, for the performance of this Subcontract 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 University: Provided, however, that the Subcontractor shall proceed as rapidly as practicable to discontinue such costs; and

(b) so far as not included under (a) above, the cost of paying and settling claims arising out of the termination of work under subcontracts or purchase orders, as provided in Paragraph B - 5 above, which are properly chargeable to the terminated portion of the Subcontract; and

(c) 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 Subcontract 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 Subcontractor there shall not be included any amounts for the preparation of the Subcontractor's settlement proposal; and

(d) a portion of the fixed fee payable under the Subcontract, determined as follows:

(i) in the event of the termination of this Subcontract for the convenience of the University and not for the default of the Subcontractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the Subcontract, less fee payments previously made hereunder.

(ii) in the event of the termination of this Subcontract for default of the Subcontractor, the total fee payable shall be such proportionate part of the fee (or, if this Subcontract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of articles under consideration) as the total number of articles delivered to and accepted by the University bears to the total number of articles of a like kind called for by this Subcontract.

(iii) if the amount determined under this subparagraph 1 is less than the total payment theretofore made to the Subcontractor, the Subcontractor shall repay to the University the excess amount.

2. If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph 1 (d).

F - The Subcontractor shall have the right to proceed under ARTICLE XX - DISPUTES from any determination made by the University under Paragraph C or E, above, except that if the Subcontractor has failed to submit its claim within the time provided in Paragraph C above and has failed to request extension of such time, he shall have no such right. In any case where the University has made a determination of the amount due, the University shall pay to the Subcontractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the University, or (2) if the appeal has been taken, the amount finally determined on such appeal.

G - In arriving at the amount due the Subcontractor under this ARTICLE XVIII there shall be deducted 1) all unliquidated advance or other payments theretofore made to the Subcontractor, applicable to the terminated portion of this Subcontract, 2) any claim which the University may have against the Subcontractor in connection with this Subcontract, and 3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Subcontract or sold pursuant to the provisions of this ARTICLE XVIII and not otherwise recovered by or credited to the University.

H - In the event of a partial termination, the portion of the fixed fee which is payable with respect to the work under the continued portion of the Subcontract shall be equitably adjusted by agreement between the Subcontractor and the University, and such adjustment shall be evidenced by an amendment to this Subcontract.

I - The provisions of this ARTICLE XVIII, relating to the fixed fee shall be inapplicable if this Subcontract does not provide for payment of a fixed fee.

J - The University 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 Subcontractor in connection with the terminated portion of the Subcontract whenever in the opinion of the University the aggregate of such payments shall be within the amount to which the Subcontractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this ARTICLE XVIII, such excess shall be payable by the Subcontractor to the University 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 Subcontractor to the date on which such excess is repaid to the University: Provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Subcontractor'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 University by reason of the circumstances.

K - Except with respect to defaults of subcontractors, the Subcontractor shall not be in default by reason of any failure in performance of this Subcontract in accordance with its terms (including any failure by the Subcontractor 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 Subcontractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the University, acts of Government, 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 Subcontractor. 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 Subcontractor and its subcontractor, and without the fault or negligence of either of them, the Subcontractor shall not be deemed to be in default, unless (1) the supplies or services to be furnished by its subcontractor were obtainable from other sources, (2) the University shall have ordered the Subcontractor in writing to procure such supplies or services from such other sources, and (3) the Subcontractor shall have failed to comply reasonably with such order. Upon request of the Subcontractor, the University shall ascertain the facts and extent of such failure and, if it 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 University under this ARTICLE XVIII.

ARTICLE XIX - LABOR PROVISIONS

A - Contract Work Hours Standards Act - Overtime Compensation

This Subcontract, to the extent that it is of a character specified in the Contract Work Hours Standards Act (40 U.S.C. 327-330), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

1. Overtime Requirements - No Subcontractor or lower tier subcontractor contracting for any part of the subcontract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or, in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act 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 such 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.

2. Violation, Liability for Unpaid Wages, Liquidated Damages - In the event of any violation of the provisions of subparagraph 1, the Subcontractor and any lower tier subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Subcontractor and lower tier subcontractor shall be liable to the Government for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the provisions of subparagraph 1, in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by subparagraph 1.

3. Withholding for Unpaid Wages and Liquidated Damages - The University or Government may withhold or cause to be withheld from any moneys payable on account of work performed by the Subcontractor or lower tier subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Subcontractor or lower tier subcontractor for unpaid wages and liquidated damages as provided in the provisions of subparagraph 2.

4. Subcontracts - The Subcontractor shall insert subparagraphs 1 through 4 of this clause in all lower tier subcontracts, and shall require their inclusion in all subcontracts of any tier.

5. Records - The Subcontractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the Subcontract.

B - Notice of Labor Disputes

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

C - Equal Employment Opportunity

(The following clause is applicable unless this Subcontract is exempt under the rules and regulations of the Secretary of Labor (41 CFR, ch 60). Exemptions include contracts and subcontracts (1) not exceeding \$10,000, (2) not exceeding \$100,000 for standard commercial supplies or raw materials, and (3) under which work is performed outside the United States and no recruitment of workers within the United States is involved.)

During the performance of this Subcontract, the Subcontractor agrees as follows:

1. The Subcontractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Subcontractor 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 Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause.

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

3. The Subcontractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Government, advising the labor union or workers' representative of the Subcontractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Subcontractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Subcontractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Commission and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Subcontractor's noncompliance with the nondiscrimination clauses of this Subcontract or with any of such rules, regulations, or orders, this Subcontract may be cancelled, terminated or suspended in whole or in part and the Subcontractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

7. The Subcontractor will include the provisions of paragraphs 1 through 7 in every lower tier subcontract or purchase order, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each lower tier subcontractor or vendor. The Subcontractor will take such action with respect to any lower tier subcontract or purchase order as the Government may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Subcontractor becomes involved in, or is threatened with litigation with a lower tier subcontractor or vendor as a result of such direction by the Government, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

#### D - Convict Labor

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

ARTICLE XX - DISPUTES

A - Except as otherwise provided in this Subcontract, any dispute concerning a question of fact arising under this Subcontract which is not disposed of by agreement shall be decided by a representative of the Commission authorized to supervise and administer performance of the University's contract with the Government, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the parties to this Subcontract. Within thirty (30) days from the date of receipt of such copy, Subcontractor may appeal by mailing or otherwise furnishing to the aforesaid Commission representative a written appeal addressed to the Commission. The decision of the Commission or its duly authorized representative for the determination of such appeals other than the aforesaid Commission representative shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious or so grossly erroneous as to necessarily imply bad faith or not supported by substantial evidence: Provided, that if no such appeal to the Commission is taken, the decision of the aforesaid Commission representative shall be final and conclusive. In connection with any appeal proceeding under this ARTICLE XX, Subcontractor shall be offered an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Subcontractor shall proceed diligently with the performance of the Subcontract and in accordance with the decision of the aforesaid Commission representative. Any sum or sums allowed to the Subcontractor under the provisions of this ARTICLE XX shall be paid by University as part of the cost of the work herein contracted for and shall be deemed to be within the contemplation of this Subcontract and in accordance with said decision.

B - This ARTICLE XX does not preclude consideration of law questions in connection with decisions provided for in Paragraph A above: Provided, that nothing in this Subcontract shall be construed as making final the decision of any administrative official, representative or board on a question of law.

ARTICLE XXI - COVENANT AGAINST CONTINGENT FEES

A - Warranty - Termination or Deduction for Breach

The Subcontractor warrants that no person or selling agency has been employed or retained to solicit or secure this Subcontract 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 Subcontractor for the purpose of securing business. For breach or violation of this warranty the University shall have the right to annul this Subcontract without liability or, in its discretion, to deduct from the Subcontract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

B - Subcontracts and Purchase Orders

Unless otherwise authorized by the University in writing, the Subcontractor shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this Subcontract.

ARTICLE XXII - OFFICIALS NOT TO BENEFIT

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

ARTICLE XXIII - NOTICE

If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances whatsoever which may jeopardize its fulfillment of the agreed performance of all or any portion of the Subcontract, it shall immediately notify the Business Manager at the University of California Lawrence Radiation Laboratory, Berkeley, California 94720, or his designee, in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

ARTICLE XXIV - RENEGOTIATION

If this Subcontract is subject to the Renegotiation Act of 1951, as amended, the following provisions shall apply:

A - This Subcontract 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 Subcontract or any lower tier subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this Subcontract 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 Subcontractor agrees to insert the provisions of this ARTICLE XXIV including this Paragraph B, in all subcontracts, as that term is defined in Section 103 g. of the Renegotiation Act of 1951, as amended.

ARTICLE XXV - WALSH-HEALEY PUBLIC CONTRACTS ACT

To the extent that this Subcontract is subject to the Walsh-Healey Public Contracts Act, as amended, (41 U.S. Code 35-45), there are hereby incorporated by reference the representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

ARTICLE XXVI - BUY AMERICAN ACT

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

1. "Components" means those articles, materials, and supplies which are directly incorporated in the end products;

2. "End products" means those articles, materials, and supplies, which are to be acquired under this Subcontract for public use;

3. A "Domestic source end product" means (i) an unmanufactured end product which has been mined or produced in the United States and (ii) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the costs of all its components. For the purpose of this A-3 (ii), components of foreign origin of the same type or kind as the products referred to in B-2 or B-3 of this clause shall be treated as components mined, produced, or manufactured in the United States.

B - The Subcontractor agrees that there will be used under this Subcontract (by subcontractors, materialmen, and suppliers) only domestic source end products, except end products:

1. Which are for use outside the United States;

2. 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;

3. As to which the Commission determines the domestic preference to be inconsistent with the public interest; or

4. As to which the Commission determines the cost to the Government to be unreasonable.

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

ARTICLE XXVII - LITIGATION AND CLAIMS

A - Initiation of Litigation

If the University requires the Subcontractor to initiate litigation, including proceedings before administrative agencies, in connection with this Subcontract, the Subcontractor shall proceed with the litigation in good faith as directed from time to time by the University.

B - Defense and Settlement of Claims

The Subcontractor shall give the University immediate notice in writing of (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract, and (2) any claim against the Subcontractor, the cost and expense of which is allowable under APPENDIX A - REIMBURSEMENT OF COSTS. Except as otherwise directed by the University in writing, the Subcontractor shall furnish immediately to the University copies of all pertinent papers received by the Subcontractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Subcontractor may with the University's approval settle any such action or claim, shall effect at the University's request an assignment and subrogation in favor of the Commission of all the Subcontractor's rights and claims (except those against the University) arising out of any such action or claim against the Subcontractor; and, if required by the University, shall authorize representatives of the University or Government to settle or defend any such action or claim and to represent the Subcontractor in or to take charge of any action. If the settlement or defense of an action or claim against the Subcontractor is undertaken by the University or Government the Subcontractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Subcontractor is not covered by a policy of insurance the Subcontractor shall with the approval of the University proceed with the defense of the action in good faith, and in such event the defense of the action shall be an allowable expense hereunder. Provided, however, that such expense shall not be allowable to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the University, but which the Subcontractor failed to secure through its own fault or negligence.

ARTICLE XXVIII - TAXES

The Subcontractor agrees to notify the University of any tax, fee or charge from which exemption is granted by State or local law or which is invalid under any provisions of the Constitution of the United States levied or purported to be levied on the Subcontractor in respect of this Subcontract and to refrain from paying any such tax, fee, or charge unless otherwise authorized by the University. The Subcontractor further agrees to take such steps as may be required by the University to cause such tax, fee, or charge to be paid under protest, and if so directed by the University, to cause to be assigned to the Commission or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, or to permit the University or the Commission to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the Subcontractor's name.

ARTICLE XXIX - PERMITS

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

ARTICLE XXX - UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS

It is recognized that 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 efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Subcontractor agrees to use its best efforts to place its subcontracts in accordance with this policy. In complying with the foregoing, and with ARTICLE XXXI - UTILIZATION OF SMALL BUSINESS CONCERNS, the Subcontractor, in placing its subcontracts, shall observe the following order of preference.

1. persistent labor surplus area concerns which are also small business concerns;
2. other persistent labor surplus area concerns;
3. substantial labor surplus area concerns which are also small business concerns.
4. other substantial labor surplus area concerns, and
5. small business concerns which are not labor surplus area concerns.

ARTICLE XXXI - UTILIZATION OF SMALL BUSINESS CONCERNS

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 Subcontractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Subcontractor finds to be consistent with the efficient performance of this Subcontract.

ARTICLE XXXII - COST OR PRICING DATA

A - 1. The Subcontractor agrees to submit, under the situations described in 2 below, unless exempted under the exceptions set forth in 3 below, and shall require each sub-subcontractor under this Subcontract to submit cost or pricing data, and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete, and current.

2. The cost or pricing data called for under 1 above shall be submitted prior to (a) the award of each sub-subcontract the price of which is expected to exceed \$100,000 and (b) the pricing of each change or modification to this Subcontract or to a sub-subcontract under this Subcontract for which the price adjustment is expected to exceed \$100,000.

3. Cost or pricing data need not be furnished pursuant to this Paragraph A where (a) the price or 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; or (b) the Subcontractor has not been required to furnish cost or pricing data and to certify that it is accurate, complete, and current.

4. In submitting the cost or pricing data, the Subcontractor shall use the form of certificate set forth in Paragraph B below, and certify that the data are accurate, complete, and current as of a date prior to and as close as practicable to the date of award of the Subcontract or to the date of the price adjustment of any change or modification. Such cost or pricing data and certificate of current cost or pricing data shall be submitted by subcontractors to the University (or to their immediate next higher tier subcontractor, for delivery to the University). Such data and certificates shall become a part of the prime contract records.

B - The certificates required by this clause shall be in the form set forth below. The Subcontractor shall be required to submit the certificate as soon as practicable after agreement is reached on the Subcontract price. For definitions of cost or pricing data, and other requirements applicable to the certificate, see FPR 1-3.807-3 and FPR 1-3.807-4:

"SUBCONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data submitted to the prime contractor in support of \_\_\_\_\_ are accurate, complete, and current as of the date of execution of this certificate.

Firm \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
(Date of execution)

1/6/66

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C - For purposes of verifying that cost or pricing data required to be submitted and certified to are accurate, complete and current, the Commission or any of its authorized representatives shall until three (3) years after final payment under this Subcontract 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 computations and projections used therein which were available to the Subcontractor as of the date of execution of his certificate of current cost or pricing data, and such other data, including books, records, and other documents generated during the Subcontract period which the Commission or any of its authorized representatives consider necessary to verify that the data submitted were accurate, complete, and current.

D - Whenever the price of any change or modification to this Subcontract is expected to exceed \$100,000, except 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, the Subcontractor agrees to furnish the University cost or pricing data and shall certify, using the certificate set forth in Paragraph B above, that to the best of his knowledge and belief such cost or pricing data are accurate, complete, and current as of a date prior to and as close as practicable to the date of agreement of the price adjustment.

E - Whenever the Subcontractor was required to furnish a certificate of current cost or pricing data, either during negotiation of this Subcontract or pursuant to the provisions of this clause, or whenever a sub-subcontractor hereunder was required to furnish such a certificate pursuant to the provisions of this clause or of a clause in the subcontract, and the University determines that the price of this subcontract including any profit or fee, or that any price adjustment negotiated for any change or modification to this Subcontract has been increased by any significant sums because such cost or pricing data was inaccurate or incomplete or was not current as of the date set forth in the certificate applicable to such data, such price or price adjustment shall be reduced accordingly and the Subcontract shall be modified in writing to reflect such reduction.

F - The Subcontractor agrees to insert Paragraph C without change and the substance of Paragraphs A, B, D, E, and F of this Article in each sub-subcontract hereunder in excess of \$100,000 or less at the time of making a change or modification thereto in excess of \$100,000.

G - Failure of the University and the Subcontractor to agree on any of the matters in Paragraph E above shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this Subcontract.

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IN WITNESS WHEREOF, the parties hereto have executed this Subcontract.

UNIVERSITY OF CALIFORNIA

BY /s/ W. D. Johnson  
For C. L. Blue

TITLE Procurement and Supply Manager  
Lawrence Radiation Laboratory

DATE Jul 12 1968

SUBCONTRACTOR

MONSANTO RESEARCH CORPORATION

BY /s/ H. K. Nason

TITLE President

DATE 2 August 1968

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REIMBURSEMENT OF COSTS

APPENDIX A TO PURCHASE ORDER 4785407

with

**MONSANTO RESEARCH CORPORATION**

CONFORMED COPY

INTRODUCTION

The allowable cost of performing the work under this Subcontract shall be the costs and expenses (less applicable income and other credits) that are actually incurred by the Subcontractor, are applicable and properly chargeable, either as directly incident or as allocable through appropriate distribution or apportionment, to the performance of the Subcontract in accordance with its terms and are determined to be allowable pursuant to this paragraph. The determination of the allowability of cost hereunder shall be based on: (1) reasonableness, including the exercise of prudent business judgment; (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the Subcontract work; and (3) recognition of all exclusions and limitations set forth in this APPENDIX A, or elsewhere in this Subcontract as to types or amounts of items of cost. Allowable cost shall not include costs of any item described as unallowable in Paragraph B of this APPENDIX A except as indicated therein. Failure to mention an item of cost specifically in Paragraph A or Paragraph B shall not imply either that it is allowable or that it is unallowable. This Subcontract recognizes that audit hereunder will be in accordance with this contract and contract cost principles and procedures of the Commission (AECPR 9-15.50) in effect on the date of this Subcontract. The audit might be performed by the Government Agency having the preponderant workload. However, the Commission reserves the right to conduct its own audit of expenditures under the contract.

A - EXAMPLES OF ITEMS OF ALLOWABLE COST

Subject to other provisions of this Subcontract, the following examples of items of cost of work under this Subcontract shall be allowable to the extent indicated.

1. Bonds and insurance (including self-insurance) as provided in ARTICLE XIII - REQUIRED BONDS AND INSURANCE.
2. Communication costs including telephone services, local and long distance telephone calls, telegrams, cablegrams, radiograms, postage and similar items.
3. Consulting services (including legal and accounting), and related expenses, as approved by the University, except as made unallowable by Paragraph B-24.
4. Litigation expenses, including reasonable counsel fees, incurred in accordance with ARTICLE XXVII - LITIGATION AND CLAIMS.

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5. Losses and expenses (including settlements made with the approval of the University and the Commission) sustained by the Subcontractor in the performance of this Subcontract and certified in writing by the University to be just and reasonable, except the losses and expenses expressly made unallowable under other provisions of this Subcontract.

6. Materials and supplies (including those withdrawn from common stores costed in accordance with any generally recognized method that is consistently applied by the Subcontractor and productive of equitable results).

7. Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions of this Subcontract or as approved by the University; and preparation of invention disclosures, reports, and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with ARTICLE XIV - PATENTS - of this Subcontract.

8. Personnel costs and related expenses incurred in accordance with the Subcontractor's established personnel policies and programs applicable on a company-wide basis throughout the Subcontractor's private operations, by collective bargaining contracts, or by custom in the industry or area, as approved by the University, such as:

a. salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday and other premium pay for time worked; nonwork time including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, negotiating agreements with the Subcontractor or serving on labor-management (Subcontractor) committees: Provided, however, that University approval is required in each instance of total compensation to an individual employee at an annual rate of \$22,500 or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under AEC and other Government cost-type contracts. Total compensation, as used here, includes only the employee's base salary and bonus and incentive compensation payments. Work by any person or group of persons in excess of forty-eight (48) hours in any one week shall require written approval of the University; and, establishment of a regular workweek in excess of forty (40) hours shall require the written approval of the University;

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

c. travel (except foreign travel which requires specific approval by the University on a case by case basis); incidental subsistence and other allowances of Subcontractor employees, in connection with performance of work under this Subcontract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);

d. employee relations, welfare, morale, etc., programs including incentive or suggestion awards, employee counseling services, health or first aid clinics and house or employee publications;

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

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

g. net cost of operating plant-site cafeterias, dining rooms and canteens (attributable to the performance of this Subcontract).

9. Rental and leases of land, buildings, and equipment owned by third parties where such items are used in the performance of the subcontract, except that such rentals and leases directly chargeable to the subcontract shall be subject to approval of the University.

10. Repairs, maintenance, inspection, replacement and disposal (as provided in ARTICLE XI - PROPERTY) of Government-owned property to the extent directed or approved by the University. Subcontractor is hereby directed to perform minor repairs and routine maintenance and inspection of Government-owned property in accordance with sound industrial practice.

11. Repairs, maintenance and inspection of Subcontractor-owned property used in connection with the performance of this Subcontract including reasonable standby facilities which are due to ordinary wear and tear from use and the action of the elements provided such maintenance and repairs keep the property in efficient operating condition and do not add to its permanent value or appreciably prolong its intended useful life; and major repairs (including replacement) to such property as directed or approved by the University, when charged directly to the Subcontract.

12. Special tooling, including jigs, dies, fixtures, molds, patterns, designs and drawings, tools and equipment of a specialized nature generally useful to the Subcontractor only in the performance of this Subcontract.

13. Subcontracts, purchase orders and purchases from Subcontractor controlled sources subject to approvals required by other provisions of this Subcontract.

14. Subscriptions to trade, business, technical, and professional periodicals as approved by the University when charged directly to the Subcontract.

15. Taxes, fees and charges levied by public agencies which the Subcontractor is required by law to pay, except those which are expressly made unallowable under ARTICLE XXVIII - TAXES, or under any other provisions of the Subcontract.

16. Utility service including electricity, gas, water, steam, and sewage.

17. Equipment and services necessary to carry out security, health and safety measures under this Subcontract as approved by the University.

18. The costs of preparing bids and proposals to the extent approved by the University, but not to exceed one percent (1%) of the direct material and direct labor costs of the Subcontract work.

19. The cost of independent research and development to the extent approved by the Commission through the University.

20. Items of cost which are not expressly disallowed by any other provisions of this Subcontract and specifically certified in writing by the University as being reasonable and necessary to the performance of work under this Subcontract.

#### B - EXAMPLES OF ITEMS OF UNALLOWABLE COSTS

The following examples of items of cost are unallowable under this Subcontract to the extent indicated:

1. Advertising, except (a) help-wanted advertising and (b) other advertising (such as costs of participation in exhibits) approved by the University as clearly in furtherance of work performed under the Subcontract.

2. Bad debts (including expenses of collection) and provisions for bad debts not arising out of the performance of this Subcontract.

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

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

5. Contingency reserves provisions (except provisions for reserves under a self-insurance program to the extent that the type, coverage, rates and premiums would be allowable if commercial insurance were purchased to cover the same risk, as approved by the University).

6. Contributions and donations.

7. Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Service under the Internal Revenue Code of 1954, as amended, including the straight-line, declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method) or sum-of-the-years-digits methods, on the basis of expected useful life to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life. Amortization or depreciation of unrealized appreciation of values of assets or of assets fully amortized or depreciated on the Subcontractor's books of account is unallowable.

8. Dividend provision or payments and, in the case of sole proprietors and partners, distributions of profit.

9. Entertainment costs, except the costs of such recreational activities for on-site employees as may be approved by the University or provided for elsewhere in this Subcontract.

10. Fines and penalties, including assessed interest, resulting from violations of, or failure of the Subcontractor to comply with Federal, state, or local laws, or regulations, except when incurred in accordance with written approval of the University or as a result of compliance with the provisions of this Subcontract.

11. Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of the Commission applicable to transfers of such property to the Subcontractor from others.

12. Insurance (including any provision of self-insurance reserve) or any person where the Subcontractor under the insurance policy is the beneficiary directly or indirectly; and insurance against loss of or damage to Government property as defined in ARTICLE XI - PROPERTY.

13. Interest, however represented (except interest incurred in compliance with ARTICLE XXVIII - TAXES), bond discounts and expenses, and costs of financing and refinancing operations.

14. Legal, accounting, and consulting services, and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or reorganization, prosecution or defense of anti-trust suits, prosecution of claims against the United States or contesting actions or proposed actions of the United States and prosecution or defense of patent infringement litigation.

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

a. are compensated for by insurance or otherwise; or which would have been compensated by insurance required by law or by written direction of the University but which the Subcontractor failed to procure or maintain through its own fault or negligence, or which could have been covered by permissible insurance in keeping with ordinary business practice but which the Subcontractor failed to secure or maintain;

b. result from wilful misconduct or lack of good faith on the part of any of the Subcontractor's directors, corporate officers, or managerial personnel, as defined in ARTICLE XI - PROPERTY.

c. represent liabilities to third persons for which the Subcontractor has expressly accepted responsibility under other terms of this Subcontract.

16. Maintenance, depreciation, and other costs incidental to the Subcontractor's idle or excess facilities (including machinery and equipment) other than reasonable stand-by facilities.

17. Membership in trade, business, and professional organizations except as approved by the University.

18. Precontract costs, except as expressly allowable under other provisions in this Subcontract.

19. Reconversion, alteration, restoration, or rehabilitation of the Subcontractor's facilities, except as expressly provided elsewhere in the Subcontract.

20. Independent research and development costs, unless specifically provided for elsewhere in this Subcontract.

21. Selling costs, except to the extent they are determined to be reasonable and to be allocable to the Subcontract. Allocability of selling costs to the Subcontract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the Subcontractor's product for agency use.

22. Storage of records pertaining to this Subcontract after completion of operations under this Subcontract irrespective of contractual or statutory requirements of the preservation of records.

23. Taxes, fees and charges in connection with financing, refinancing, or refunding operations, including the listing of securities on exchanges; taxes which are paid contrary to ARTICLE XXVIII - TAXES; Federal taxes on net income and excess profits; and special assessments on land which represent capital improvements.

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

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

- a. Require circuitous routing.
- b. Require travel during unreasonable hours.
- c. Greatly increase the duration of the flight.
- d. Result in additional costs which would offset the transportation savings.
- e. Offer accommodations which are not reasonably adequate for the medical needs of the traveler.

C - OVERHEAD

1. Pending final audit and determination of overhead, Subcontractor shall be paid a provisional overhead rate as approved by the University from time to time and authorized in writing by the University. Such provisional payments will be adjusted to the actual overhead costs and expenses determined as set forth in this APPENDIX A and principles herein established.

2. When actual reimbursable overhead costs have been determined pursuant to this Subcontract, adjustment shall be made for the difference between the sum to be determined and the sum of provisional payments made under Paragraph C (1) above.

3. Provisional and/or final general overhead costs for this Purchase Order and changes thereto, shall be limited to an amount not to exceed 103 percent of direct labor and payroll burden charged to this Purchase Order.

4. Provisional and/or final general and administrative expense for this Purchase Order and changes thereto, shall be limited to an amount not to exceed 9 percent of all other allowable costs under this Purchase Order.

ACCEPTED

MONSANTO RESEARCH CORPORATION

By /s/ H. K. Nason

Title President

Date 2 August 1968

AUTHORIZED

UNIVERSITY OF CALIFORNIA  
LAWRENCE RADIATION LABORATORY

By /s/ W. D. Johnson  
for C. L. BLUE

Title PROCUREMENT & SUPPLY MANAGER

Date Jul 12 1968

Appendix A to  
P. O. 4785407  
June 19, 1968

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