

Independent Climate Change E-mails Review

Notes of Interview with Ian McCormick (Director of Research, Enterprise and Engagement) and Alan Walker (Manager of Research Services)

Interviewers: Sir Muir Russell & David Eyton

Interview carried out at UEA on 26 March 2010.

Background

1. Sir Muir Russell and David Eyton briefly summarized the purpose of the Review. The terms of reference required the Review to consider among other things management and governance structures. This sequence of interviews was aimed at exploring the framework for the management of research within the University: what staff take on; what the university expects them to deliver, subject to what requirements on quality, standards, processes and procedures; what are the associated financial disciplines; and how all this is communicated to staff.

Overview of the process

2. Ian McCormick explained that REE had been the product of a restructuring exercise about 18 months ago, reflecting the need to review and re-focus enterprise and commercialization and technology transfer. A central support office for research had existed since the early 1990s and was first brought together with the technology transfer support services in 2004/5. Straightforward single purpose grants were handled by Faculty Research Support Officers, while more complex cases, such as multi-partner applications, came to REE for final checks and authorization. The Faculty structure was created about 5 years ago. Once grants were approved, Finance were involved – REE don't handle the accounts except where contractual matters were involved. There was regular internal audit every few years of the process and the research policies [Supporting Docs 4–7] were kept under continuous review. Ian McCormick supplied a management chart of the organization [Supporting Doc 1] and a diagram showing how research policy and strategy was managed through the University hierarchy [Supporting Doc 2 – at a later discussion a more detailed version of this was supplied, Doc 2A].
3. Ian McCormick referred to the Research Ethics structure [Supporting Doc 3]. UEA has had a subject-based ethics committee structure for many years, eg as a requirement of the ESRC. The discussion moved to issues of reputation management, to be picked up under the heading of “Good Research Practice” [Supporting Doc 5 updated November 2009]. He explained that there were procedures for complaints and whistleblowing [Supporting Docs 6 & 7], involving HR and senior management. In the case of CRU, any such case would ultimately go to the Registrar & Secretary, Mr Brian Summers. Questioned on whether CRU had been subject to these processes he recalled an FOI request from Times Higher Education in 2006 where UEA had had no cases of misconduct to report [Supporting Doc 8].
4. Alan Walker took us through a typical external funding application process [Supporting Doc 9]. He acknowledged that there was no standard formal review at

the outset, though some Research Council applications went through a formal sifting committee (eg BBSRC). Questioned on what the Head of School approval actually meant, he referred to the pFACT Project Authorisation Sheet that made formal reference to a range of policy compliance requirements. An example is at Supporting Doc 12. He undertook to provide information of when these requirements were brought in. The set of papers mentioned in para 7 below includes at Supporting Docs 10-12 examples of how sign-off has developed, from general commitment to Research Council terms and conditions to the current pFACT. A document was provided that set out pricing policy. As it is commercially sensitive it is not disclosed with this record. Within this framework the Heads of Schools have pricing discretion.

5. Alan explained that following a grant award, which would normally be subject to standard conditions imposed by funders, the Research Services team within REE would take responsibility, as set out in Supporting Doc 9. These terms and conditions have evolved over time. The requirements of those who funded the work going into key 1998/9 papers were requested¹, while acknowledging the point that publications are not necessarily uniquely or directly linked to funded projects. The process, including the involvement of Finance, was designed to ensure that timetables and other requirements were met, so that in due course, typically on a routine prompt from the funder, a report on the output of the work could be submitted by the Principal Investigator responsible for the grant. He undertook to provide a NERC example of requirements and conditions [Supporting Doc 13]. In response to a question, however, he acknowledged that there had been less central control in the past than was now in place, so it would not be realistic to seek a detailed statement of who had funded each and every piece of CRU work and what conditions had been imposed [eg Supporting Doc 14].
6. He stressed, however, that the University's audit processes looked at the details of expenditure and income and at compliance with budgets; and that there was a growing attention to outputs, something that the forthcoming REF would underline.

Final session

7. Muir Russell and David Eyton met Ian McCormick and Alan Walker after the schedule of other interviews was complete, to provide an opportunity to pick up any loose ends. There were no new points to follow up. A set of the papers referred to in earlier discussions was handed over to the ICCER team [Supporting Docs 4-8 & 10 -14].

Muir Russell

27 April 2010

¹ The UEA provided the Review with additional information and documentation in relation to this request. This is attached at the end of this interview note.

Additional information for Sir Muir Russell re. Notes of Interview with Ian McCormick (Director of Research, Enterprise and Engagement) and Alan Walker (Manager of Research Services), carried out at UEA on 26 March 2010

This refers to the line: *“The requirements of those who funded the work going into key 1998/9 papers were requested.”*

We made the point in the interview that funding and publications are not necessarily uniquely or directly linked to publications, and also that records are not complete for this period. I have discussed this with Professors Briffa and Jones: it may have been I misunderstood this part of the interview, but I thought you had made a connection with publications involving Mike Mann and relating to the “Hockey Stick” and CRUTEM1 issues; they have assured me that the publications from the period you are interested in (see references below) do not cover these. We have in any case identified 3 funders as the main contributors for the period and referenced articles. They are EU Framework Programme 4, NERC and the US Department of Energy.

We gave you our earliest copy of the NERC general regulations at the meeting; these are the general conditions which apply to all projects funded at the time (the booklet is slightly newer than the actual projects concerned, but we are confident that this will be either the same or more stringent). We have attached a copy of “Annex 2” of the EU Framework Programme 4 which is common to all projects funded under this programme (1994-8). We have also attached a copy of the IP conditions and associated guidance on reporting issued by the US Department of Energy for the actual projects concerned.

We would be happy to supply any further information we can.

Ian McCormick
7 May 2010

Key publications in 1998/9, as identified by Professors Briffa and Jones:

Briffa, K.R., Schweingruber, F.H., Jones, P.D., Osborn, T.J., Shiyatov, S.G. and Vaganov, E.A., 1998: Reduced sensitivity of recent northern tree-growth to temperature at northern high latitudes. Nature 391, 678-682.

Briffa, K.R., Jones, P.D., Schweingruber, F.H. and Osborn, T.J., 1998: Influence of volcanic eruptions on Northern Hemisphere summer temperature over the last 600 years. Nature 393, 450-455.

Jones, P.D., Briffa, K.R., Barnett, T.P. and Tett, S.F.B., 1998: High-resolution palaeoclimatic records for the last millennium: interpretation, integration and comparison with General Circulation Model control run temperatures. The Holocene 8, 455-471.

Briffa, K. R., and T. J. Osborn. 1999. Seeing the wood from the trees. Science 284:926-927.

ANNEX II - GENERAL CONDITIONS²

Part A - Implementation of the Work

Article 1 - Definitions

- (1) "Access Rights" means non-exclusive licences and user rights to *Foreground Results* or *Background Results* under this Annex.

In granting *Access Rights*, the conditions may vary between the recipients unless otherwise specified and:

- "commercial conditions" means open market payment and other conditions;
 - "favourable conditions" means conditions preferential to *commercial conditions*;
 - "royalty-free" means at no cost and against no conditions other than those specified in Part B of this Annex.
- (2) "Associated Background Results" means information, patents, copyrights (including copyright on software in any code), plant variety rights and other similar statutory rights, as well as the applications for any such rights, owned or controlled by a *Participant* and generated by the *Participant* in the execution of the research work associated with the scope of the *Project*.
- (3) "Associated Contractor" means an organisation which is a party to the *Contract of Association* with the *Contractor*.
- (4) "Associated State" means a State specified in Article 9.1 of the contract which has concluded a cooperation agreement with the Community in respect of RTD associating it with, and under which the State contributes financially to, the *TMR Programme* provided the cooperation agreement specifies that legal entities³ from the Associated State shall have the same rights and obligations in the *TMR Programme* as legal entities from the Community, subject to specific conditions that may be imposed.
- (5) "Associated State RTD Undertaking" means any legal entity established and carrying out RTD in an *Associated State*.
- (6) "Background Results" means *Associated Background Results* and *Non-Associated Background Results*.

2. Words defined in the contract or in Article 1 of this Annex appear in italics throughout.

3. This word has the meaning specified in Article 1 of the Council Decision 94/763 CE (OJ N° L306, 30.11.1994).

- (7) "**Business Interests**" means any business interests of the *Contractor* opposing the grant of *Access Rights* which are sought including opposition due to the fact that services, software or products or the manufacturing thereof are, or are about to become, commercially available (opposition on this latter basis shall not, under normal circumstances, be deemed to be abusive).
- (8) "**Commencement Date**" is defined in Article 2.1 of the contract.
- (9) "**Completion Date**" is defined in Article 2.2 of the contract.
- (10) "**Community RTD Undertaking**" means any legal entity established and carrying out RTD in the Community.
- (11) "**Contract of Association**" means the contractual arrangement between the *Contractor* and the *Associated Contractors* whereby they act jointly and severally towards the Community for the implementation of the *Project*.
- (12) "**Contractor**" means the signatory to this contract, other than the Community.
- (13) "**Foreground Results**" means information, patents, copyrights, plant variety rights and other similar statutory rights owned or controlled by a *Participant* and generated by the *Participant*, or third party working for it, in the direct execution of the *Project*.
- (14) "**Less-Favoured Region**" means a region which appears in the list of the regions of Objective 1 of Council Regulation (EEC) N° 2052/88, last amended by Council Regulation of 19 December 1994 N° 3193/94 (OJ L 337, 24.12.1994, p.11) as supplemented by Decision N° 95/1/EC, Euratom, ECSC of the Council of the European Union of 1 January 1995 adapting instruments relating to the accession of new Member States of the European Union (OJ L 1, 1.1.1995, p. 218), or of Objective 6 of Protocol N° 6 of the Treaty of Accession (OJ L 1, 1.1.1995, p.12), the Protocol on the special provision for Objective 6 under the Structural Funds in Finland and Sweden.
- (15) "**Network Coordinator**" is the person defined in Article 2.2 of this Annex.
- (16) "**Non-Associated Background Results**" means information, patents, copyrights, plant variety rights and other similar statutory rights owned or controlled by a *Participant* and generated by the *Participant* in the execution of work which is not associated with the scope of the *Project*.
- (17) "**Ownership**" shall exist through the direct or indirect:
- ownership or control of more than 50% of the nominal value of the issued equity share capital or of more than 50% of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or
 - right by any other means to elect or appoint directors, or persons performing similar functions, who have a majority vote.

- (18) "**Participants**" means the *Contractor* and the *Associated Contractors* collectively. A "**Participant**" means the *Contractor* or any *Associated Contractor*.
- (19) "**Project**" is defined in Article 1.1 of the contract.
- (20) "**Project Deliverables**" are defined in Article 4 of the contract.
- (21) "**Proprietary Information**" means information including trade secrets of actual or potential commercial value not generally available to the public or only made available under confidentiality arrangements.
- (22) "**RTD**" means research and technological development and includes demonstration.
- (23) "**Subcontract**" means a contractual arrangement between a *Participant* and a third party for the third party to carry out work, at no cost to itself, on the *Project*.
- (24) "**Subcontractor**" means a third party having concluded a *Subcontract* with a *Participant*.
- (25) "**Third Country Project Undertaking**" means any legal entity established in a State, other than a Member State of the Community or an *Associated State*, and participating as the *Contractor* or *Associated Contractor* in a project within the *TMR Programme*.
- (26) "**TMR Programme**" means the *RTD* programme under which this contract was concluded as specified in the recitals (preceding Article 1 to the contract).
- (27) "**Young Researcher**" refers to a researcher aged 35 years or less at the time of his appointment by a *Participant* in the frame of this contract. An allowance to this age limit may be made for compulsory military service (the actual time spent in military service) or child care (a maximum of two years per child for the actual time spent off work up to an overall maximum of five years).

Article 2 - Management of *Project*

2.1 The *Contractor* shall:

- (a) be the channel for submitting all documents and for general liaison between the *Participants* and the Commission. All general communications with the Commission shall be through the *Contractor*;
- (b) subject to any special conditions in Article 9 of the contract, receive and distribute all payments which shall be made to the *Contractor* in trust for the *Participants*. The *Contractor* shall without undue delay transfer the appropriate amount of each payment to each *Associated Contractor*. The *Contractor* shall not be the beneficial owner of that part of any payment due to the *Associated Contractors*.

2.2 The *Participants* shall agree appropriate arrangements for the efficient management of the *Project* and shall, in particular, designate a member of the staff of the *Contractor*, who shall, as *Network Coordinator*, under the direct responsibility of the *Contractor*:

- (a) coordinate the *Project* and ensure good communication between the *Participants*;
- (b) confirm that the overall resources used are consistent with, and reasonable for, the work to be performed;
- (c) arrange for the *Contract of Association*, specified in Article 3.2 of this Annex, to be concluded between the *Participants* and to be amended when necessary, in particular following any amendment to this contract;
- (d) ensure that *Subcontracts* conform with the obligations of this contract and maintain copies of the *Subcontracts* for inspection by the Commission as specified in Articles 4 and 22 of this Annex.

The *Contractor* shall promptly notify the name of the designated person, in writing, to the Commission and shall ensure that the designated tasks are effected.

2.3 The *Contractor* shall promptly notify the Commission, in writing, of:

- (a) the actual commencement of work on the *Project*;
- (b) the Scientist-in-Charge of the work for each *Participant*;
- (c) any circumstance which may materially affect the *Project*;
- (d) changes in *Ownership* of a *Participant*.

2.4 Any written notice, request or approval required under the contract shall be sent by recorded delivery or registered post.

Article 3 - Participation of Third Parties

3.1 This Article applies to the *Contract of Association* and *Subcontracts*. It does not apply to arrangements for the provision of materials, equipment and services concluded by a *Participant* in the course of its normal business.

3.2 The *Contract of Association*

3.2.1 The *Contractor* shall conclude with all *Associated Contractors* a *Contract of Association*, which shall:

- provide for the *Participants* to act jointly and severally towards the Commission to perform the implementation of the *Project*;

- ensure that the *Participants* carry out the activities assigned to them in Annex I;
 - ensure that all *Participants* comply with the terms and conditions of the contract and its annexes as if they were the *Contractor*.
- 3.2.2 The *Contract of Association* shall be drawn up in the format specified in Part E of this Annex or in any similar format notified or approved in writing by the Commission.
- 3.2.3 A copy of the *Contract of Association*, signed by authorised representatives of all the *Participants*, shall be sent to the Commission without undue delay.

3.3 *Subcontracts*

The *Participants* may, where necessary or appropriate, enter into *Subcontracts*, subject to the prior written approval of the Commission being required:

- (a) for any *Subcontract* where the *Subcontractor* is established outside the Community or an *Associated State* (subject to paragraph(b), no approval is required for *Subcontracts* placed by a *Third Country Project Undertaking* in the State in which it is established) or
- (b) for *Subcontracts* which cumulatively exceed 20% of the relevant *Participant's* estimated allowable *Project* costs, unless sufficient details of the *Subcontracts* have been included in this contract.

Within one month of the receipt of the request, the Commission shall submit its observations or notify the *Participant* of the need for a longer period not exceeding three months to submit its observations, failing which relevant approval under this Article shall be deemed to be granted.

- 3.4 Obligations shall be imposed in each *Subcontract* giving the Commission the same rights concerning technical monitoring of, and access to, the *Subcontractor* as the Commission has in respect of the *Participants*.

Article 4 - Technical Verification of *Project*

- 4.1 The Commission, or its authorised representatives, shall be given reasonable access to sites or premises of work on the *Project* and to documents concerning the *Project's* management, progress and review.
- 4.2 The *Participants* shall provide reasonable assistance, including attending meetings, for monitoring, reviewing and evaluating the *Project*.

4.3 The Mid-Term Review

The *Network Coordinator* shall organise a Mid-Term Review Meeting between representatives of all the *Participants* and the Commission. The meeting shall take place no later than when two-thirds of the duration of the work to be performed under the contract has elapsed. The *Network Coordinator* shall agree with the Commission the date and the agenda for the meeting at least two months in advance of the meeting.

Article 5 - Termination of Contract

- 5.1 The *Contractor*, acting jointly and unanimously with the *Associated Contractors*, or the Commission, may terminate the contract for major technical or economic reasons substantially affecting the *Project* or if the completion of the *Project* ceases to be justified for any reason, by giving two months written notice.
- 5.2 The *Contractor*, acting jointly and unanimously with the *Associated Contractors*, in which case the Commission shall not object, may, or the *Contractor*, acting on the written request of the Commission, shall, without delay, terminate the participation of any *Associated Contractor* on the grounds of failure to perform, by giving two months written notice (from the time of despatch) to the *Associated Contractor* concerned.
- 5.3 The Commission shall not object to the withdrawal by an *Associated Contractor* from the *Project* where all the other *Participants* have agreed, in writing, unless the Commission considers that the withdrawal affects the conditions under which the contract was concluded. Prior notification shall be given by the *Contractor* to the Commission and shall be deemed to be accepted unless written observations are transmitted within two months of the receipt of the notification.
- 5.4 The Commission may, by written notice to the *Contractor*, immediately terminate the contract or require the *Contractor* immediately to terminate the participation of an *Associated Contractor*:
- (a) (i) where remedial action to rectify non performance within a reasonable period of time (being not less than one month) specified in writing has been requested by the Commission and has not been satisfactorily taken, or
 - (ii) for any financial irregularity of a serious nature;
 - (b) if there is a change in the *Ownership* of a *Participant* which is likely to affect the *Project* or the interests of the Community.
- 5.5 The Community contribution to costs, on termination, shall be paid if they relate to *Project Deliverables* accepted by the Commission and such other costs which are fair and reasonable, including expenditure commitments.

Participants shall take appropriate action to cancel or mitigate commitments entered into before the termination notice and shall take account of any reasonable written directions of the Commission to this effect on the termination. The Commission shall not accept as allowable costs any costs incurred by an *Associated Contractor* that relate to the failure of the *Contractor* to issue, without undue delay, a termination notice under Articles 5.2 and 5.4 of this Annex.

For termination under Article 5.4 of this Annex, interest may be added to any amount to be reimbursed, upon written request, at 2% above the rate applied by the European Monetary Institute for ECU operations⁴ for the period between the receipt of the funds and their reimbursement.

- 5.6 *Access Rights* relating to work performed on the *Project* before termination shall be granted by any defaulting or withdrawing *Participant* on the conditions specified in Part B of this Annex to any replacing entity performing the *Project*.

Access Rights granted by any of the other *Participants* to a defaulting or a withdrawing *Participant* shall relate only to work performed on the *Project* before the termination or withdrawal.

- 5.7 The following provisions shall continue to apply despite any termination:

- the submission of reports, and cost statements supporting costs, relating to work up to termination;
- Articles 6, 13 and Part C of this Annex.

Article 6 - Liability

- 6.1 The Commission shall incur no liability in respect of any claim consequent upon its financial contribution to the *Project*.
- 6.2 The *Participants* shall, subject to any suitable disclaimer in the report, indemnify the Commission against any liability resulting from the publication, or transmission of any report in accordance with this contract or from the application of the contents of any report (other than liability resulting from erroneous translation in accordance with Article 13.5 of this Annex or other erroneous acts or omissions attributable to the Commission).
- 6.3 Notification shall be given to the *Contractor* of any claim against the Community for which a *Participant* is, or may be, liable and the *Participant* shall be given the opportunity to take over its defence.

4. Published monthly in the Official Journal of the European Communities

Article 7 - Competent Court

The Court of First Instance of the European Communities and, in the case of appeal, the Court of Justice of the European Communities shall have exclusive jurisdiction in any dispute between the Commission and the *Contractor* concerning the validity, application and interpretation of this contract.

Article 8 - Experts Providing Services to the Commission

The Commission shall take reasonable steps to ensure that experts providing assistance to it in the management of this contract do not disclose or use confidential information provided to them. Details of any such experts intended to exercise functions under Articles 4 or 22 of this Annex shall be given in advance and the Commission shall take reasonable account of any objections by a *Participant* for legitimate business, scientific or technical reasons.

Part B - Ownership and Dissemination of Results

Article 9 - Foreground Results

- 9.1 *Foreground Results* generated within the framework of the *Project* shall be owned by the *Participant* that has generated them. That *Participant* shall take appropriate action to protect *Foreground Results* that could be used for industrial and commercial application.
- 9.2 Where *Foreground Results* are generated by two or more *Participants*, they shall agree between themselves on the arrangements for the ownership and the protection of such results.
- 9.3 If exploitable results are obtained, appropriate action shall be taken by the *Participant(s)* to publicise, exploit or commercialise the results in conformity with the interests of the Community and, for those *Participants* from *Associated States*, in conformity with the mutual interests of the Community and the *Associated States*.

Article 10 - Background Results

- 10.1 Each *Participant* shall, upon request of another *Participant* and on a royalty-free basis, make available its *Associated Background Results* to that other *Participant*, to the extent necessary for the proper execution of the *Project* and provided that the *Participant* concerned is free to disclose such results.
- 10.2 Each *Participant* shall, upon request and at *favourable conditions*, make available its *Non Associated Background Results* to another *Participant* to the extent specified in Article 10.1 of this Annex.

- 10.3 The making available of *Background Results* shall be subject to suitable arrangements required by the *Participant* to ensure that information will not be used for any purpose other than that for which it was legitimately granted.
- 10.4 Where *Proprietary Information* that is to be treated confidentially is made available, such Information shall be duly marked so as to notify the recipient to preserve its confidentiality.

Article 11 - Dissemination of *Foreground* and *Background Results*

- 11.1 *Foreground Results* shall, at the request of the Commission and subject to the *business interests* of the *Participants*, be made available on a *royalty-free* basis to *Community RTD Undertakings* and *Associated State RTD Undertakings* not participating in the *Project*, where the granting of such rights is necessary for their research or the exploitation or commercialisation of it in conformity with the interests of the Community or, in the case of a legal entity in an *Associated State*, in conformity with the mutual interests of the Community and the *Associated State*.
- 11.2 *Associated Background Results* shall be similarly made available on *commercial conditions*.

Article 12 - Reports

12.1 Submission of Reports

The *Contractor* shall submit to the Commission for approval the following reports which shall consolidate and summarise the work and results of all the *Participants*:

- (a) a database report, to be updated annually, suitable for publication in an electronic database and in the yearbooks of the *TMR Programme*;
- (b) annual progress reports, each 12 months from the *Commencement Date*, providing information necessary (progress on the joint programme of research, details of the training programme and of networking activities) for the Commission to monitor the *Project*;
- (c) a mid-term assessment report, to be the basis of the discussion at the Mid-Term Review meeting;
- (d) a final report covering all the *Project's* work, objectives, results and conclusions, including a summary suitable for publication.

- 12.2 The layout of the reports shall conform with any reasonable rules notified by the Commission. Each report shall be of a suitable quality to enable direct reproduction.
- 12.3 The database report shall be submitted initially within two months of the *Commencement Date*.

Each annual progress report shall be submitted within one month following the end of the relevant reporting period.

The final report shall be submitted within two months following either the end of the *Project* as specified in Article 2.1 of the contract, or the termination or the completion of the work, if earlier.

Unless there are observations by the Commission, the final report shall be deemed to be approved within two months of its receipt and within one month in the case of other reports.

Article 13 - Confidentiality, Publicity and Information on Results

- 13.1 The Commission shall be entitled to publish general information on the *Project*, namely the *Participants*, title, objective, duration, total estimated allowable costs, the Community financial contribution, and the name of the *Network Coordinator*.
- 13.2 All reports, other than those specified as being suitable for publication in Article 12.1 of this Annex, shall remain confidential provided that:
 - (a) the Commission may submit the reports to other Community Institutions on a confidential basis to the extent properly required by them;
 - (b) The Commission and the *Contractor*, acting on behalf of the *Participants*, shall agree, having regard to the interests of the Community and the *Participants*, a policy for limited and restricted dissemination of the reports, if appropriate, on a confidential basis to Member States of the Community, *Associated States*, international organisations or other third parties.
- 13.3 Except as expressly authorised by and subject to any obligations of this contract, the Commission and the *Participants* undertake to keep confidential any information, document or other material communicated to them as confidential or the disclosure of which may be prejudicial to any of the parties, until, or unless, the content legitimately becomes publicly available through other parties or through work or actions lawfully performed outside, and not based on activities under, this contract, or has been made available to the disclosing party by another party without any confidentiality restrictions.
- 13.4 Any communication or publication concerning the *Project*, including at a conference or seminar, shall acknowledge the *Participants*, the financial contribution of the Commission, and the *TMR Programme*.
- 13.5 Upon request, and where it is free to do so, the *Participants* shall grant the Commission a non-exclusive irrevocable *royalty-free* non-commercial right to translate, reproduce and distribute scientific and technical journal articles, conference papers and other documents published by a *Participant* in respect of the *Project*.

- 13.6 Subject to the confidentiality requirements, the *Participants* shall wherever appropriate for up to two years after the *Completion Date* give reasonable information on the *Project* to relevant standardisation bodies notified in writing by the Commission.

Part C - Financial Management

Article 14 - Allowable Costs

- 14.1. Allowable costs are those costs defined in Articles 15 to 18 of this Annex that are necessary for the *Project*, can be substantiated, and are incurred during the period specified in Article 2.1 of the contract. Allowable costs shall not be incurred before the *Contract of Association* becomes effective. Allowable costs after this period shall be limited to those relating to the reporting, review or evaluation requirements of this contract.
- 14.2 Allowable costs shall normally relate only to those costs, in accordance with the internal rules of the *Participant* concerned, necessary for the networking of the research work associated with the *Project* and for the appointment of visiting researchers in accordance with Article 15.2 of this Annex. Allowable costs shall not include any other costs of the research itself.
- 14.3 The *Contractor* shall ensure that at least two-thirds of the estimated allowable costs of the *Project*, as specified in Article 3.1 of the contract, is used to support the sum of the personnel costs of visiting researchers (specified in Article 15 of this Annex) plus networking costs (specified in Article 16 of this Annex).
- 14.4 The estimated breakdown of the allowable costs between the *Participants*, contained in the table following the contract signatures, shall be indicative only. Decisions on a reapportionment shall be taken by the *Contractor* in consultation with all the *Participants* and in agreement with those *Participants* directly concerned by any reapportionment. Any such reapportionments shall be reported to the Commission by the *Contractor* when submitting annual progress reports and in the final report. Additionally, any reapportionment that changes the allowable costs of one of the *Participants* by more than 50% from that set out in the aforementioned table shall require an amendment to the contract in accordance with its Article 8. Reapportionments covered by this Article do not affect the total allowable costs of the *Project* as defined in Article 3 of the contract.
- 14.5 Costs shall exclude any profit. No *Participant* shall incur unnecessarily high or extravagant costs on the *Project*.

Article 15 - Personnel Costs of Visiting Young Researchers

- 15.1 Personnel costs shall relate to the actual costs of reinforcing the research staffs of the *Participants* through the temporary appointment of *young researchers*. Such appointments

shall be made in accordance with the internal rules (including pay and conditions) of the *Participant* concerned. Personnel costs shall be limited to:

- the actual salaries or grants paid to the *young researchers*; plus
- any social charges and pension costs related to their appointment; plus
- any registration or tuition fees specific to their appointment.

15.2 For the personnel costs of a *young researcher* to be charged to the *Project*, the following conditions must be satisfied:

- the *young researcher* must be a holder of a doctoral degree or of a degree, obtained from a university or equivalent institution of higher education, which qualifies him to embark on a doctoral degree; and
- his appointment must be temporary and for a fixed-term starting after the *Commencement Date* of the contract; and
- he must be appointed specifically either to carry out research associated with the *Project* or to assist the *Network Coordinator* in the scientific coordination of the *Project*; and
- he must be a national of a Member State of the Community or of an *Associated State*; and
- he must not be a national of the state in which the *Participant* appointing him is situated and he must not have carried out his normal activities in that state for more than 18 of the 24 months prior to his appointment.

15.3 Personnel costs shall exclude the costs of all other persons employed by or working in the research teams of the *Participants*.

15.4 The appointment of *young researchers* does not require the prior approval of the Commission.

15.5 All personnel time charged to the *Project* must be recorded and certified. This requirement will be satisfied by, at the minimum, the maintenance of attendance records, certified at least monthly by the designated Scientist-in-Charge, or an authorized senior employee, of the *Participant* concerned.

Article 16 - Networking Costs

16.1 Networking costs shall comprise the following:

- international travel and subsistence costs of those research staff and technical support staff, working on the *Project* in the *Participant* teams, relating to:

- meetings with other *Participants* in the *Project*,
 - secondments between the *Participants* of young researchers,
 - secondments between the *Participants* of more experienced researchers and technical support staff not exceeding three months,
 - representation of the *Project* at international workshops, seminars and conferences;
- international workshop, seminar and conference fees for research staff of the *Participants* when representing the *Project* at such events;
 - the costs of exchanging information between the *Participants*, including access to electronic-based information transfer systems and the costs of newsletters (excluding day-to-day telephone and postal services, since they are deemed to be included in the contribution to overheads);
 - the costs of joint publications, aimed at disseminating the collective results of the *Project* (the costs of publishing the results of an individual *Participant* will not be supported).

16.2 International travel and subsistence shall be charged to the *Project* in accordance with the normal internal rules and procedures of the *Participant* concerned. The prior approval of the Commission is required for charging travel and subsistence outside the Member States of the Community and the *Associated States* (approval is deemed to be granted if the travel has been specified in Annex I, or if no objection is raised by the Commission within two months of the receipt of the written request); such approval is not required for work or collaboration with any *Participant* established outside these states. Travel and subsistence may not be charged for mobility within a single state.

Article 17 - Other Direct Costs

- 17.1 The following other direct costs may be charged to the *Project* only to the extent that they relate to the networking of the research work associated with the *Project*:
- the costs of *Subcontractors*;
 - the costs of external technical services and external scientific facilities - all require the prior approval of the Commission (approval is deemed to be granted if the cost item has been specified in Annex I or if no objection is raised by the Commission within two months of the receipt of the written request);
 - the costs of exchanging materials and reference products between the *Participants*;
 - computing (on the basis of recorded computer usage) and software;
 - consumables.

The costs for routine and minor usage of computing and consumables are not allowable, since they are deemed to be included in the contribution to overheads.

- 17.2 Scientific equipment may be charged with the prior approval of the Commission, but only when it is used to equip a new research team to be set up in a *Less-Favoured Region* of the Community by a researcher trained abroad on a post-doctoral fellowship in the frame of the *TMR Programme* or of the earlier Human Capital and Mobility Programme. The equipment must have been purchased or leased after the *Commencement Date*. The allowable costs for leased equipment shall not exceed any allowable costs for its purchase. The Community contribution shall be reimbursed in a single amount according to the following formula:

$$\frac{A \times C \times D}{B}$$

- A = the period in months for which the equipment is to be used for the *Project* after its delivery;
B = depreciation period of 60 months (36 months for data processing equipment costing less than 25,000 ECU);
C = cost of equipment;
D = percentage usage of equipment on the *Project*.

Article 18 - Overheads

A maximum contribution of 20% of the total actual allowable costs of the *Project*, as specified in Articles 15 to 17 of this Annex, may be charged for indirect general costs relating to the work carried out under the *Project*.

Article 19 - Cost Statements

- 19.1 Cost statement summaries shall be expressed in national currency and in European Currency Units (ECU) unless otherwise specified in the contract. The conversion rate to ECU for cost statements and payments shall be the rate published by the Commission for budget execution⁵ and valid for the first working day of the month following the end of the period for the relevant cost statement. No account shall be taken of exchange gains or losses between the issue of the cost statement and the receipt of any payment.
- 19.2 The *Contractor* and each *Associated Contractor* shall submit cost statements in the format specified in Part D of this Annex or in any similar format notified or approved in writing by the Commission. These statements shall cover the same period and be appended to each corresponding annual progress report.

5. Available from Information Offices of the Commission or Directorate General XIX (Budgets), or automatic answering machine (telephone +32.2.295.17.60), or via Internet (location <http://europa.eu.int/en/comm/dg19/inforecu/en/index.htm>).

- 19.3 If any cost statement is not submitted as required, the Commission may withhold part, or exceptionally all, of its payment for the *Project* until the next financial reporting period.
- 19.4 The Commission may determine not to take account of any further costs or not to make any further reimbursement after giving one month's notice in writing of the non receipt of the final cost statement.
- 19.5 The *Participants* shall provide any details reasonably required by the Commission for its management of the contract.

Article 20 - Justification of Costs

Each *Participant* shall maintain, on a regular basis and in accordance with the normal accounting conventions of the State in which it is established, proper books of account and appropriate documentation to support and justify the costs and the hours reported. These shall be made available for audits.

Article 21 - Payment of Commission Contribution

- 21.1 Payment of the advance shall be withheld until a copy of the *Contract of Association* duly signed by all the *Participants* has been received by the Commission.
- 21.2 Where the *Project* has not effectively commenced within three months of the payment of the advance, the Commission may:
- determine to add interest on the advance from its payment to the *Contractor* until the effective Commencement Date at the monthly rate applied by the European Monetary Institute for its operations in ECU, or
 - require the reimbursement of the advance together with such interest.

The Commission shall make interim payments to the *Contractor* in full against accepted cost statements up to the limit specified in Article 4 of the contract. If the actual level of costs reported is considerably less than foreseen, the Commission may exceptionally adjust the advance by reducing the interim payment due.

- 21.3 Where the *Contractor* fails to transfer the appropriate amount of a payment to an *Associated Contractor* within one month of the receipt of the payment from the Commission, the Commission may:
- determine to add interest to the payment until the date of transfer to the *Associated Contractor* at the monthly rate applied by the European Monetary Institute for its operations in ECU, or
 - require the reimbursement of this payment together with such interest.

- 21.4 Subject to Article 22 of this Annex, all payments shall be treated as advances until acceptance of the appropriate *Project Deliverables*, or, if none are specified, until acceptance of the final report.
- 21.5 Where the total financial contribution due for the *Project*, including the result of any audit, is less than the payments made for the *Project*, the *Contractor* shall immediately reimburse the difference, in ECU, to the Commission.

Article 22 - Auditing

- 22.1 The Commission, or persons authorised by it, shall be entitled to carry out audits up to two years after the *Completion Date* or the termination of the contract. They shall have complete on-site access at all reasonable times to personnel engaged on the *Project* and all documents, computer records, and equipment relating to the *Project*, or, when necessary, be entitled to require the submission of any such documentary evidence.
- 22.2 The European Court of Auditors shall be entitled to the same rights, under the same terms and conditions, as the Commission in respect of auditing.

Part D - Network Cost Statement

Following this page are three costs statement forms that are to be completed as specified on each form.

1. COST STATEMENT TO BE COMPLETED BY EACH PARTICIPANT

for the period from _____ to _____

Project Short Title:

Contract N°:

Name of Participant:

Currency in which accounts kept:

Exchange rate used for conversion to ECU⁽¹⁾:

Categories of Cost	Costs for the Period	
	National Currency	ECU
<u>Direct Costs</u>		
1. Personnel costs ⁽²⁾		
2. Networking costs ⁽³⁾		
3. Other direct costs ⁽⁴⁾		
<u>Indirect Costs</u>		
4. Overheads ⁽⁵⁾		
<u>Adjustments</u>		
5. Adjustments to costs previously reported ⁽⁶⁾		
<u>VAT⁽⁷⁾</u>		
Total:		

Certificate⁽⁸⁾

We certify that:

- the above costs are derived from the resources employed which were necessary for the work under the contract,
- such costs have been incurred and fall within the definition of allowable costs specified in the contract,
- any necessary permissions of the Commission have been obtained, and
- full supporting documentation to justify the costs is available for audit.

We certify that any necessary adjustments, for any reason, to costs reported in previous cost statements have been incorporated in the above statement.

Name of Scientist-in-Charge:

Name of Financial Officer:

Signature:

Signature:

Date:

Date:

1. The exchange rate must be that specified in Article 19.1 of this Annex
2. See Article 15 of this Annex
3. See Article 16 of this Annex
4. See Article 17 of this Annex
5. See Article 18 of this Annex
6. Not applicable for the first cost statement. Any adjustments, for example, to reflect actual rates instead of budgeted rates, must be made in subsequent statements. Details and reasons for any adjustments must be provided.
7. See Article 3.2 of the contract - applies only to any invoice or bill by a supplier exceeding 2500 ECU specific to the Project.
8. The Scientist-in-Charge of the work and the Financial Officer must sign this certificate.

2. SUPPLEMENTARY STATEMENT OF COSTS TO BE COMPLETED BY EACH PARTICIPANT (National Currency only)

for the period from _____ to _____

Project Short Title:

Contract N°:

Name of Participant:

Currency:

PERSONNEL COSTS OF VISITING YOUNG RESEARCHERS⁹

NAME	Nationality	Age ¹⁰	Date and Duration of Appointment ¹¹	COSTS
TOTAL:				

NETWORKING COSTS¹²

DESCRIPTION	COSTS
1. Travel and subsistence	
2. Workshop, seminar and conference fees	
3. Information exchange, newsletters	
4. Joint publications	
TOTAL:	

OTHER DIRECT COSTS¹³

DESCRIPTION	COSTS
1. External technical services, scientific facilities, subcontractors	
2. Exchanging materials and reference products	
3. Computing and software	
4. Consumables	

5. Scientific equipment	
TOTAL:	

9. See Article 15 of this Annex.
 10. Give age in years at time of appointment.
 11. Give the start date and foreseen end date of the appointment. Only costs incurred during the reporting period should be entered into the "costs" column.
 12. See Article 16 of this Annex. If there are no costs against any of the four cost lines, enter a "0" in the appropriate line.
 13. See Article 17 of this Annex. If there are no costs against any of the five cost lines, enter a "0" in the appropriate line.

3. SUMMARY COST STATEMENT TO BE COMPLETED BY THE NETWORK COORDINATOR (ECU only)

for the period from _____ to _____

Project Short Title:

Contract N°:

NAME OF PARTNER ¹⁴	Personnel Costs	Networking Costs	Other Direct Costs	Overheads	VAT and Adjustments	TOTAL
TOTAL:						

The signed original copy of each Participant's cost statement is attached.

Certified by the Network Coordinator on behalf of the Participants as reasonable for the work under the contract.

Name:

Signature:

Date:

14. The Contractor should appear as the first partner in the list, followed by the Associated Contractors given in the order shown in Part A of Annex I. If a participant does not submit a cost statement, insert "no statement" in the column "VAT and Adjustments". If the cost statements for any participant cover more than one reporting period, indicate the number of periods in the column "VAT and Adjustments"; separate cost statements should be submitted for each period.

CONTRACT OF ASSOCIATION
concerning

CONTRACT N° ERBinsert contract number.....

This Contract of Association is made and entered into by and between:

1.insert name of Contractor and its acronym(hereinafter referred to as "the Contractor")

and

2.... insert names of the other Participants and their acronyms ...

3."

4."

5."

"

"

"

"

"

"

n."

(hereinafter referred to as "the Associated Contractors") represented by their authorised representatives,

Within the frame of the Training and Mobility of Researchers Programme, the Contractor has concluded contract N° ERBenter number of contract....., concerning a research network entitled ".....enter title of Project.....", hereinafter referred to as "the EC-Contract",

The Contractor and the Associated Contractors have agreed that they shall act jointly and severally towards the Commission to perform the work contracted for under the EC-Contract,

The EC-Contract has been formally incorporated into this Contract of Association as Annex A thereto,

IN THE LIGHT OF THE FOREGOING, THE PARTIES HAVE AGREED AS FOLLOWS:

1. Objective of the Contract of Association

The objective of this Contract of Association is for the Associated Contractors to contribute to the achievement of the requirements of the EC-Contract together with the Contractor in accordance with the terms and conditions as stated in this Contract of Association.

2. Terms and Conditions

The Parties to this Contract of Association shall be bound mutatis mutandis by the terms and conditions of the EC-Contract, including its Annexes, which form part of the Contract of Association as Annex A, but excluding provisions of the EC-Contract that are particular to the Contractor alone.

3. Scope

The Associated Contractors shall perform and complete their share of the work under this Contract of Association in accordance with the respective requirements of the Project Programme at Annex I of the EC-Contract. The Associated Contractors shall cooperate with the Contractor to ensure the efficient management of the Project and, in particular, shall provide the Contractor with the information necessary for the Network Coordinator to carry out his duties.

4. Payments

Payments to the Associated Contractors of the Community contribution will be made by the Contractor without undue delay after receipt of the respective financial contribution of the Commission at the bank account indicated below in accordance with Article 4 of the EC-Contract and the terms and conditions relating thereto:

2. (insert acronym)	(insert bank account number of the Associated Contractor itself)
3. "	"
4. "	"
5. "	"
.	"
.	"
.	"
.	"
n.	"

5. Completion or Expiration of the Contract

The work to be performed under this Contract of Association shall be deemed to be completed on the date of the approval by the Commission of the tasks to be performed by the Associated Contractors as defined in the Project Programme of the EC-Contract.

6. Applicable Law, Language and Jurisdiction

The Contract of Association shall be governed by the law of ... *enter the same country as in the EC-Contract* ... This Agreement is drawn up in [English] and all documents and notices for its application or extension or amendment shall be in [English].

The following court shall have exclusive jurisdiction in any dispute between the parties concerning the validity, application and interpretation of this Contract of Association: ... *enter the name of the court* ...

7. Effectiveness of this Contract of Association

Provided that this Contract of Association is signed on behalf of all its contracting parties within three months following the Commencement Date of the EC-Contract, it shall become effective retroactively from the Commencement Date of the EC-Contract. In case this Contract of Association is signed on behalf of all its contracting parties later than three months following the Commencement Date of the EC-Contract, it shall become effective from the date of the last signature. This Contract of Association shall automatically terminate on the Completion Date of the EC-Contract or on termination of the EC-Contract.

8. Amendments

This Contract of Association may be modified, with the prior written authorisation of the Commission, only by a written agreement by duly authorised representatives of the Parties.

Done in n+1 copies

For the Parties	Signatures	Dates
1. (insert acronyms of the
2. Contractor and all
3. Associated Contractors)
4.
.....
n.

Intellectual Property Provisions - Assistance

LARGE BUSINESS, STATE AND LOCAL GOVERNMENTS, OR FOREIGN ORGANIZATIONS (Research, Development or Demonstration)

<u>CLAUSE</u>	<u>REFERENCE</u>	<u>TITLE</u>	<u>PAGE</u>
01.	48 C.F.R. 52.227-1	Authorization and Consent (JUL 1995), Alternate I	1
02.	48 C.F.R. 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996) <i>This clause is not applicable if the award is for less than \$100,000.</i>	1
03.	48 C.F.R. 952.227-9	Refund of Royalties (FEB 1995)	1
04.	48 C.F.R. 952.227-13	Patent Rights – Acquisition by the Government (FEB 1995)	2
05.	48 C.F.R. 52.227-14	Rights in Data – General (JUN 1987), with Alternates I and V, and paragraph (d)(3) as supplemented by 10 C.F.R. Part 600.27 <i>If this award requires the use or delivery of limited rights data and/or restricted computer software, Alternates II and III are incorporated, unless modified upon recommendation of Patent Counsel.</i>	10
06.	48 C.F.R. 52.227-16	Additional Data Requirements (JUN 1987)	15
07.	48 C.F.R. 52.227-23	Rights to Proposal Data (Technical) (JUN 1987)	16
Attachment 1 (for reference):		Patent Rights – Retention by Contractor (Short Form) (FEB 1995); 48 C.F.R. 952.227-11	

52.227-1 Authorization and Consent; Alternate I (APR 1984)

AUTHORIZATION AND CONSENT

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

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

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

(End of clause)

952.227-9 Refund of Royalties

REFUND OF ROYALTIES (FEB 1995)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract here-under. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or the copying of such data or data that is copyrighted.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs. The approval by DOE of any individual payments or royalties shall not prevent the Government from contesting at any time the enforceability, validity, scope of, or title to, any patent or the proprietary nature of data pursuant to which a royalty or other payment is to be or has been made.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

(End of clause)

952.227-13 Patent Rights - Acquisition by the Government

PATENT RIGHTS-ACQUISITION BY THE GOVERNMENT (FEB 1995)

(a) Definitions.

"Invention", as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Practical application", as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention", as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

"Patent Counsel", as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

"DOE patent waiver regulations", as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109-6 or successor regulations.

"Agency licensing regulations" and "applicable agency licensing regulations", as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocations of principal rights.

(1) Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations.

(i) The contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

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

(iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government.

(1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that--

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Contractor.

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license

submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:

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

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

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

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to

terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:

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

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

(vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

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

(e) Invention identification, disclosures, and reports.

(1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of

this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or certifying that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether--

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment (NOTE: This paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to--

(i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.

(ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;

(iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.

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

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

(1) The contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor--

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

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

(3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(i) Preference United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) Atomic energy.

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

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

(k) Background Patents.

(1) Background Patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:

(i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

(ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to

achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding subparagraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

(i) a competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

(ii) the Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

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

(m) Forfeiture of rights in unreported subject inventions.

(1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

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

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

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:

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

(ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or

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

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

52.227-14 Rights in Data - General, with Alternates I and V, and paragraph (d)(3)

RIGHTS IN DATA - GENERAL (JUN 1987)

(a) Definitions.

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formula, and flow charts of the software.

"Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

"Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in:

- (i) Data first produced in the performance of this contract;
- (ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) below.

(2) The Contractor shall have the right to:

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) below;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) below;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) below.

(c) Copyright.

(1) Data first produced in the performance of this contract. Unless provided otherwise in subparagraph (d) below, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 and 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) below if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, publication and use of data.

(1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided below in this paragraph or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(3) The Contractor agrees not to establish claim to copyright in computer software first produced in the performance of this contract without prior written permission of the Contracting Officer. When such permission is granted, the Contracting Officer shall specify appropriate terms to assure dissemination of the software. The Contractor shall promptly deliver to the Contracting Officer or to the Patent Counsel designated by the Contracting Officer a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and other terms pertaining to the computer software to which claim to copyright is made. //

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraphs (g)(2) or (g)(3) below and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will not longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (i) above, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be canceled or ignore. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the Head of the Contracting Activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (1) above may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) below, or the copyright notice required by paragraph (c) above, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor:

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) When data other than that listed in subparagraphs (b)(1)(i), (ii), and (iii) above are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this Contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government is to be treated as limited rights data and not restricted computer software.

(2) [Reserved.]

(3) [Reserved.]

(h) Subcontracting.

The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) Relationship to patents.

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

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) above, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

(End of clause)

ALTERNATE II

(g)(2) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

LIMITED RIGHTS NOTICE (JUN 1987)

(a) These data are submitted with limited rights under Government contract No. _____ (and subcontract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

-[Agencies may list additional purposes as set forth in 27.404(d)(1) or if none, so state]

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

ALTERNATE III

(g)(3)(i) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of

restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE (JUN 1987)

(a) This computer software is submitted with restricted rights under Government Contract No. _____ (and subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the contract.

(b) This computer software may be:

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors in accordance with subparagraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any others rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE
SHORT FORM (JUN 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract _____, if appropriate) with _____ (name of Contractor and subcontractor)."

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Contractor includes the following statement with such copyright notice: "Unpublished-rights reserved under the Copyright Laws of the United States."

(End of clause)

48 CFR 52.227-16 Additional Data Requirements

ADDITIONAL DATA REQUIREMENTS (JUN 1987)

(a) In addition to the data (as defined in the clause at 52.227-14, Rights in Data-General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data-General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data-General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

(End of clause)

48 CFR 52.227-23 Rights to Proposal Data

RIGHTS TO PROPOSAL DATA (TECHNICAL)(JUN 1987)

Except for data contained on pages _____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data--General" clause contained in this contract) in and to the technical data contained in the proposal dated _____, upon which this contract is based.

Attachment 1:

952.227-11 Patent Rights - Retention by the Contractor (short form)

PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995)

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(7) "Agency licensing regulations" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor.

(1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological

or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention--

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file.

(1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted

in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor action to protect the Government's interest.

(1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) Subcontracts.

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227-13.

(3) In the case of subcontracts, at any tier, DOE, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that-- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use; (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees; (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that--

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) Communications.

(1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.

(3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:

(i) a copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;

(ii) a report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or

(iii) a report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

(End of clause)

GUIDE
FOR
REPORTING OF SCIENTIFIC AND TECHNICAL INFORMATION
FOR
UNIVERSITY AND OTHER NON-PROFIT-TYPE INSTITUTIONS

May 1995

U. S. DEPARTMENT OF ENERGY
CHICAGO OPERATIONS OFFICE
CONTRACTS DIVISION

AA-6U
05/95

EXHIBIT A

SAMPLE COVER FOR REPORT

DOE Report No.

DOE/ET/01834-1

Title and Subtitle

ABSORPTION AND DIFFUSION
OF RADIONUCLIDES IN SOILS

Report Period
(if applicable)

Progress Report
for Period January 1, 1984 - December 31, 1984

Personal Author(s)

J. D. Briscoe and S. R. Samuelson

Awardee's Name
and Address

Central University
Raritan, Illinois 61471

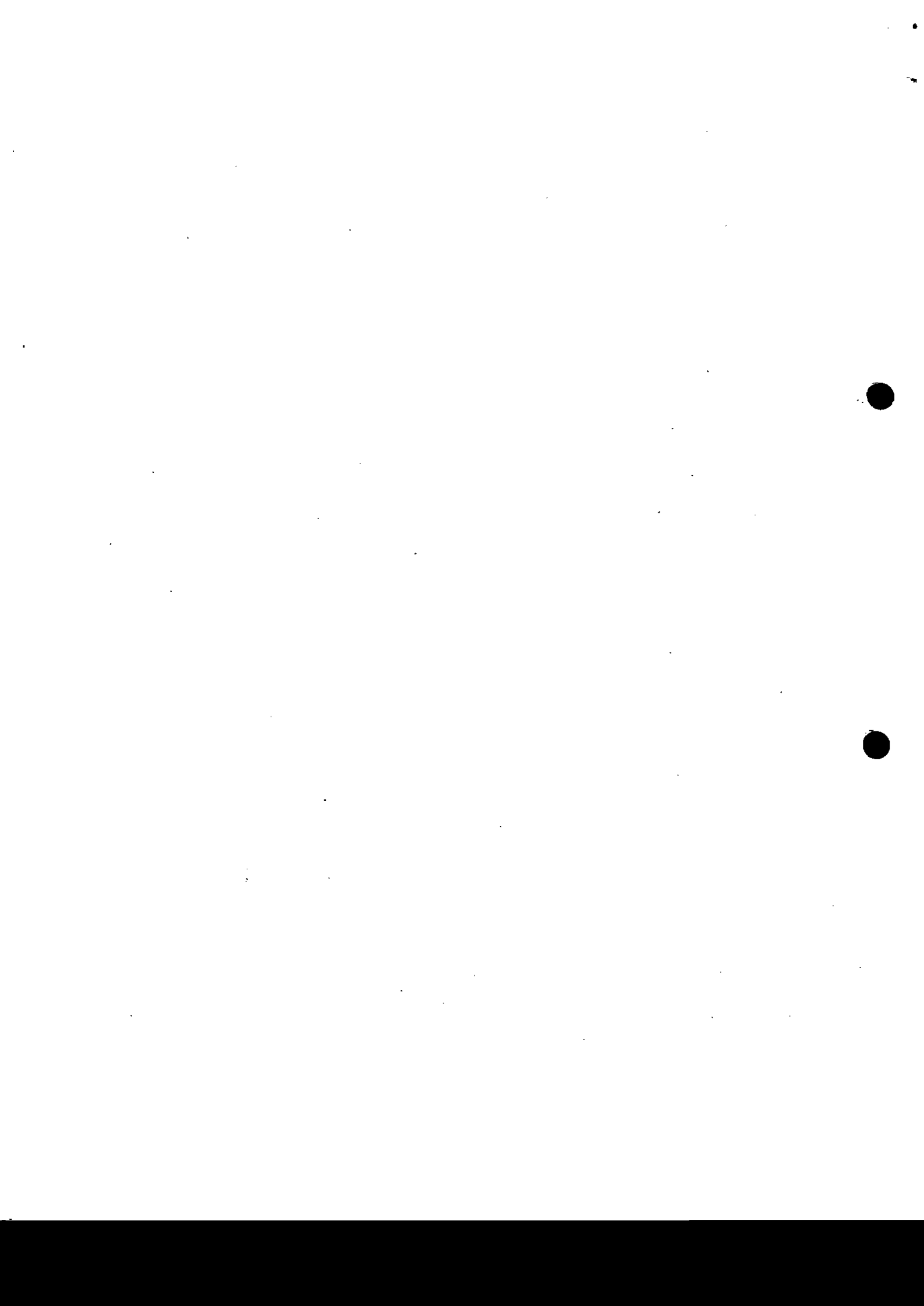
Report Date

May 1985

DOE Sponsorship and
DOE Instrument Number

Prepared for
THE U.S. DEPARTMENT OF ENERGY
AWARD NO. DE-FG02-82ER01834

AA-6U
05/95



U. S. DEPARTMENT OF ENERGY
 CHICAGO OPERATIONS OFFICE
 CONTRACTS DIVISION

GUIDE FOR
 REPORTING OF SCIENTIFIC AND TECHNICAL INFORMATION
 FOR
 UNIVERSITY AND OTHER NON-PROFIT-TYPE INSTITUTIONS

Your award requires the submission of reports on scientific and technical information generated under the award. Results are to be made available through normal channels and publication in the open literature. These instructions are intended to permit maximum use of journal reporting with the provision that the Awardee comply with the terms of the award in submitting the information at the time and in the form desired by DOE.

DOCUMENT DISTRIBUTION AND SCHEDULE

(The number of copies required for each type of report will be indicated in the award document)

<u>Type</u>	<u>Copies Required</u>	<u>When Due</u>
Summary: Approximately 200 words on scope and purpose. (Notice of Energy RD & D Project)	3	Immediately after award and with each renewal proposal (For research awards only). Use DOE Form 1430.22.
Renewal Proposal	No more than 3 cys unless awarded pursuant to 10 CFR 605 which requires 8 cys.	No later than 6 months before the project period ends.
Progress Report, generally not to exceed two pages per project or task.	3	90 days prior to the next budget period (or as a part of the renewal application).
Other progress, brief topical reports (when significant results develop when work has direct programmatic impact).	3	As deemed necessary by investigator or as specifically requested by the Administration. <u>Include 2 copies of DOE Form 1332.15 for each report.</u>
Reprints*, Conference papers	3	As deemed necessary by investigator or as specifically requested by the Administration. <u>Include 2 copies of DOE Form 1332.15 for each report.</u>

*Identify with appropriate Award Number.

<u>Type</u>	<u>Copies Required</u>	<u>When Due</u>
Final Report	3	Within 90 days after termination of the project. Include 2 copies of DOE Form 1332.15.
Financial Status Report	3	Within 90 days after completion of the project period; for budget periods exceeding 12 months and FSR is also required within 90 days after the first 12-month period. <u>Include 2 copies of DOE Form 1332.15.</u>

All of the above documents shall be submitted to:

U. S. Department of Energy
Chicago Operations Office
Contracts Division
9800 South Cass Avenue
Argonne, Illinois 60439

CONTENTS OF REPORTS

Progress Report.

After issuance of an initial award and if future support is recommended, recipients must submit a satisfactory progress report in order to receive continuation awards for the remainder of the project period. On the first page, provide the project title, principal investigator/project director name, period of time the report covers, name and address of recipient organization, and DOE award number. The report should state the amount of unexpended funds, if any, that are anticipated to be left at the end of the current budget period, and if the amount exceeds 10 percent of the funds available for the budget period, provide information as to why the excess funds are anticipated to be available and how they will be used in the next budget period. The report should state whether aims have changed from original application and if they have, provide revised aims; include results of work to date; emphasize findings and their significance to the field; and emphasize any real or anticipated problems. A completed budget page must be submitted with the continuation progress report when a change to anticipated future costs will exceed 25 percent of the original recommended future budget.

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Final Report.

A final report summarizing the entire investigation must be submitted by the recipient promptly. Satisfactory completion of an award will be contingent upon the receipt of this report. The final report shall follow the same outline as a progress report. Manuscripts prepared for publication should be appended.

FORMAT OF REPORTS

Notice. The following notice shall appear on the inside front cover or on the title page of all DOE scientific and technical reports:

N O T I C E

This report was prepared as an account of work sponsored by the United States Government. Neither the United States nor the United States Department of Energy, nor any of their employees, nor any of their contractors, subcontractors, or their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product or process disclosed or represents that its use would not infringe privately-owned rights.

Copyright Notice. Each article submitted for journal publication shall contain a notice on the front to the effect that the publisher, by accepting the article for publication, acknowledges the U. S. Government's right to retain a nonexclusive, royalty-free license in and to any copyright covering the article. The notice should be similar to the following:

By acceptance of this article, the publisher and/or recipient acknowledges the U. S. Government's right to retain a nonexclusive, royalty-free license in and to any copyright covering this paper.

The provision does not require that the copyright notice appear in the published journal article.

Front Cover and Title Page. Either a self-cover (of the same paper as the text) or a separate cover (of different paper than the text) is required. Where self-cover is used, there is to be no additional title page. Where separate cover is used, there also may be a title page, but it is not required. Additional items, as applicable, should appear on the front cover and the title page. See Exhibit A. While layouts and typefaces need not be exactly the same as shown, each item should appear in approximately the location and with the relative prominence indicated on the sample.

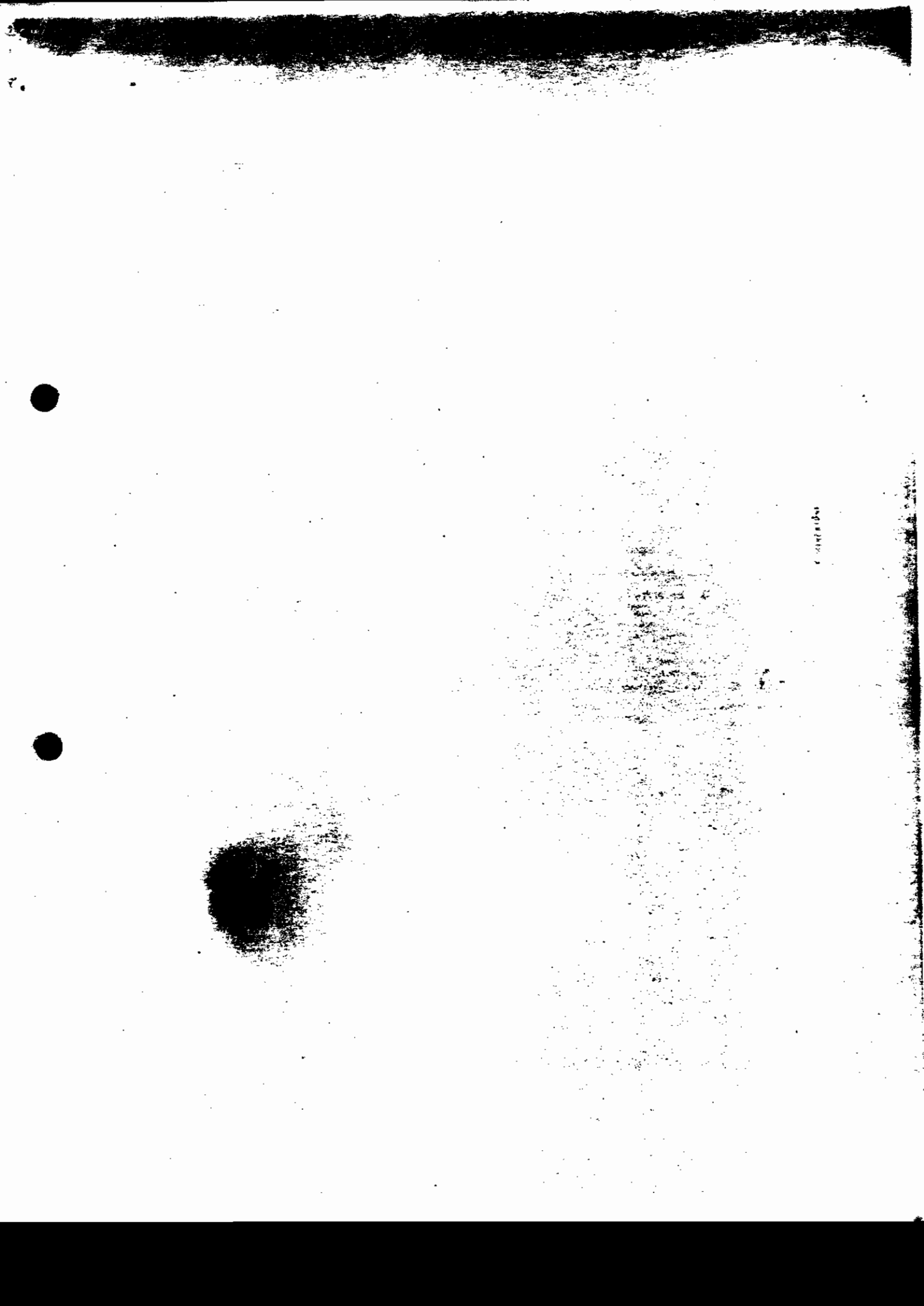
NUMBERING OF DOCUMENTS

Because the information products are to be integrated into DOE official central data base at its Office of Scientific and Technical Information (OSTI) in Oak Ridge, Tennessee, a standardized alpha-numeric system for identifying reports has been established. The system is used for the control and retrieval of scientific and technical information and for reference purposes in abstracting and indexing information products in publications such as Nuclear Science Abstracts and DOE Research Abstracts. DO NOT ASSIGN REPORT NUMBERS TO THE FOLLOWING ITEMS: proposed technical programs, budgets, unexpended fund statements, equipment reports, or any other type of administrative reports. Also, DO NOT NUMBER manuscripts submitted for publication in journals, preprints, or reprints. OSTI uses its own system for cataloging and indexing these documents. The following documents SHOULD BE ASSIGNED REPORT NUMBERS: monthly, quarterly, annual, progress, and other periodic scientific or technical reports; summary, topical, and final reports; and conference papers. The instructions are on the reverse side of DOE Form 1332.15. Do not identify the type of document by inclusion of special symbols in the standard number. Additional symbols for internal control purposes may be used on the report provided the standard number appears in the upper right-hand corner of the cover, and title page if applicable. It is very important that numbers be assigned consecutively as various documents are prepared during the entire life of each award. If an award is renewed, modified, or extended, do not start renumbering subsequent documents from number 1.

Submission of DOE F 1332.15

Completed copies of DOE F 1332.15, "Recommendations for the Announcement and Distribution of Department of Energy (DOE) Scientific and Technical Information (STI)," should accompany the initial submission of each document as indicated in the preceding tabulation under "Document Distribution and Schedule." All scientific and technical documents submitted under your award shall be sent to the Contract Specialist for patent and classification review and distribution, including those for OSTI. For complete instructions, see reverse side of the form. A supply of this form is attached and additional copies may be obtained by request. If a document is received without the required 1332.15 form, the Contract Specialist may, at his/her option, submit a reminder with a deadline to the Awardee, requesting submission of the completed form. Failure to submit the form normally will result in a report receiving an announcement of unrestricted availability.

When public announcement or distribution is deemed desirable or necessary, the author (or Awardee if the author is not available) will be consulted in advance if the author has indicated any restrictions of announcement or distribution. If, after such consultation, the author(s) and/or Awardee refuse to waive the restrictions, DOE retains the right to overrule the restrictions when it is in the best interest of the Government or when provisions of "The Freedom of Information Act" are invoked.



11/11/11

