(a) Definitions.

(1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on or by a computer. The term does not include computer software.

(2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.

(3) 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 "data" does not include data incidental to the administration of this Subcontract, such as financial, administrative, cost and pricing, or management information.

(4) 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. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.

(5) 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 any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.

(6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

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

(b) Allocation of Rights.

(1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Subcontract;

(ii) Unlimited rights in technical data and computer software specifically used in the performance of this Subcontract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where approved by DOE, appropriate instances of the DOE Work for Others Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Subcontract at all reasonable times. The Seller shall make available all necessary facilities to allow Company or DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Subcontract delivered to the Company or Government or otherwise disposed of by the Seller, either as the Company or Government may from time to time direct during the progress of the work or in any event as the Company or Government shall direct upon completion or termination of this Subcontract. The Seller agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Company or Government such data upon request by the Company or Government. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

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

(2) The Seller shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Subcontract, data it first produces in the performance of this Subcontract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Subcontract have been met as of the date of the private use of such data.

(3) The Seller agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Subcontract which is authorized to be marked by DOE, the Seller shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material.

(1) The Seller shall not, without prior written authorization of the DOE Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this Subcontract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Seller.

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

(d) Subcontracting.

(1) Unless otherwise directed by the Company, the Seller agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR (FAR) Subpart 27.4 as supplemented by 48 CFR (DEAR) 927.401 through 927.409, the clause entitled "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409 (a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Seller shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at FAR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The Seller shall use instead the Rights in Data-Facilities clause at DEAR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for the facilities that are managed or

operated by the Company.

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

(i) Promptly submit written notice to the Company setting forth reasons for the Subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and

(ii) Not proceed with the Subcontract without the written authorization of the Company.

(3) Neither the Seller nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.

(e) Rights in Limited Rights Data.

Except as may be otherwise specified in this Subcontract as data which are not subject to this paragraph, the Seller agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Seller specifically used in the performance of this Subcontract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Seller at the time of initial delivery to the Company or Government or a representative of the Government, such data shall not be used within or outside the Company or Government except as provided in the "Limited Rights Notice' set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Government Contract No. _____ and Subcontract No. _____ which may be duplicated and used by the Company and Government with the express limitations that the "limited rights data" may not be disclosed outside the Company or Government or be used for purposes of manufacture without prior permission of the Seller, except that further disclosure or use may be made solely for the following purposes:

(a) Use (except for manufacture) by support services contractors or subcontractors within the scope of their contracts;

(b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(c) This "limited rights data" may be disclosed to other contractors or subcontractors participating in the Government's program of which this Subcontract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(d) This "limited rights data" may be used by the Company or Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(f) Rights in Restricted Computer Software.

(1) Except as may be otherwise specified in this Subcontract as data which are not subject to this paragraph, the Seller agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Seller specifically used in the performance of this Subcontract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Seller at the time of initial delivery to the Company or Government or representative of the Government, such data shall not be used within or outside the Company or Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

(a) This computer software is submitted with restricted rights under Government Contract No.   and Subcontract No.   . It may not be used, reproduced, or disclosed by the Company or Government except as provided in paragraph (b) of this notice.

(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, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

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

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

(5) Disclosed to and reproduced for use by contractors or subcontractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b) (1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.

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

(End of Notice)

(2) 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

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Subcontract No.   with   .

(End of Notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Subcontract contains any variation to the rights in the Long Form Notice, then the Subcontract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Seller includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

(g) <u>Relationship to patents</u>.

Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(End of Clause)