

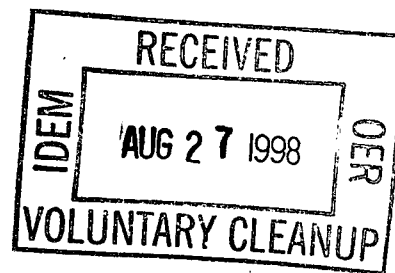


AlliedSignal Inc.
 Law Department
 P.O. Box 2245
 Morristown, NJ 07962-2245

Telephone: 973-455-2775
 Fax: 973-455-5904

August 24, 1998

Mr. Ed Joniskan, Senior Project Manager
 Voluntary Remediation Program
 Office of Environmental Response
 Indiana Department of Environmental Management
 100 North Senate Avenue
 P.O. Box 6015
 Indianapolis, IN 46206-6015



Re: Voluntary Remediation Agreement
 VRP Site #6980601

revision sent out
 9-2-98

Dear Ed:

Enclosed are my suggested revisions on the Voluntary Remediation Agreement. As we discussed, I have added a paragraph making it clear that AlliedSignal has the right to withdraw from the Voluntary Program.

Please feel free to call if you have any questions.

Very truly yours,

Thomas Byrne

Thomas Byrne
 Assistant General Counsel
 Environmental

Enclosure
 cc: Ray White

IDEM Office of Land Quality - Fileroom Stamp	
VRP Project Name:	HONEYWELL
VRP#:	6980601 File Code: 200
Description:	VRP REVISIONS
Confidential?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Deliberative?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Insert A
For Indiana Voluntary Remediation Agreement,
AlliedSignal Inc., South Bend, IN

20. The Applicant may terminate this Agreement at any time, by notifying IDEM in writing of its intent to terminate the Agreement. IDEM will cease review of any submittals under this Agreement ^{within 2 days of receipt of} ~~on the date it receives~~ the notice of intent to terminate the Agreement. No additional administrative costs, as described in section XIX, will accrue after that date. IDEM will then prepare a summary of its administrative costs through that date and provide that summary to the Applicant for payment. Upon full payment of the appropriate administrative costs by the Applicant, the Agreement shall be terminated.

business

except those
necessary to
administrate
costs associated
w/ terminating
this Agreement

VOLUNTARY REMEDIATION AGREEMENT
Relating to AlliedSignal Inc.

AlliedSignal Inc.)
~~Morristown, NJ~~)
South Bend, IN)
Applicant)
)
Voluntary Remediation of:)
AlliedSignal Aerospace Equipment)
Systems)
IDEM Site #:6980601)
)
Proceeding under)
the Environmental)
Management Act)
(Indiana Code 13-25-5))



I. INTRODUCTION

1. The Indiana Department of Environmental Management ("IDEM"), by its Commissioner ("Commissioner"), and ("Applicant") hereby enter into this Voluntary Remediation Agreement ("Agreement"), pursuant to IC 13-25-5-8 for the purpose of remediating the release of hazardous substances or petroleum at AlliedSignal Aerospace Equipment Systems, South Bend, Indiana.

II. JURISDICTION

2. This Agreement is entered into by and between the Applicant and IDEM, by its Commissioner, pursuant to IC 13-25-5-8, hereafter collectively referred to as the "Parties."

3. The Parties agree to the following terms and conditions for the evaluation and implementation of the Voluntary Remediation Work Plan (Work Plan) and to waive their rights to administrative and judicial review of the binding effect and enforceability of the Agreement and agree not to contest the jurisdiction of IDEM to enter into this Agreement. However, the Applicant reserves all rights it may have under common law, the Indiana Code and federal statutes to seek contribution or indemnity from others not signatories to this Agreement.

4. By entering into this Agreement, the Applicant neither admits nor denies liability.

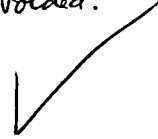
12. The activities conducted by the Applicant under this Agreement are subject to approval by IDEM. Applicant shall provide all necessary information for a Work Plan for the site. The activities conducted by the Applicant shall be consistent with this Agreement, all applicable laws and regulations and any appropriate guidance documents applicable to the Voluntary Remediation Program as of the date of execution of this agreement. Applicant shall employ sound scientific, engineering and construction practices.

VII. WORK TO BE PERFORMED

13. All work to be performed by the Applicant pursuant to this Agreement shall be under the direction and supervision of a Certified Professional Engineer or Certified Professional Geologist or other qualified persons with expertise in hazardous substance or petroleum site investigation and remediation. This individual may or may not be designated by the Applicant as the Applicant's Project Manager pursuant to Paragraph 24. Prior to the initiation of site work, the Applicant shall notify IDEM, in writing, regarding the name, title, and qualification of such engineer, geologist or qualified person and of any contractors and/or subcontractors to be used in carrying out the terms of this Agreement. Selection of any such engineer, geologist or qualified person contractor and/or subcontractor shall be subject to disapproval by IDEM.

14. The Applicant shall submit a Voluntary Remediation Work Plan not later than one hundred eighty (180) days after the date this VRA is executed, or longer if an extension is agreed to by the parties. If Applicant fails to submit the Work Plan within that time frame the Agreement is voidable at the discretion of IDEM. If IDEM determines the Agreement is void, all protection provided under IC 13-25-5-18(e) is extinguished. In the event the VRA is voided, the Applicant shall remain responsible to IDEM under Section XIX. The Remediation Work Plan must specify the objectives for the remediation of hazardous substances or petroleum that is based on one of the following: background levels that occur naturally on the site, or an assessment of the risks posed by the hazardous substances or petroleum, taking into consideration the expected future use and measurable risks to human health, natural resources, or the environment. Risk based objectives shall be based on one of the following: 1) levels of hazardous substances and petroleum calculated by IDEM using standard equations and default values for that particular contaminant; 2) levels of hazardous substances and petroleum calculated using site specific data for the default values in IDEM's standard equations; 3) levels of hazardous substances and petroleum developed based on site specific risk assessments that take into account site specific factors. The remedial actions shall be selected using any U.S. EPA or IDEM guidance documents or reasonable alternatives selected by IDEM as appropriate.

for expenses through the date the agreement is voided.



15. The Voluntary Remediation Work Plan submittal shall include, (1) a detailed description of the investigation conducted by the Applicant in preparing the Voluntary Remediation Work Plan and a description of the work to be performed by the Applicant to determine the nature and extent of the actual or threatened release, (2) a proposed statement of work to accomplish the remediation in accordance with guidelines established by the department; and (3) the following project plans; (a) a quality assurance project plan; (b) a sampling and

analysis plan; (c) a health and safety plan; (d) a community relations plan; (e) a schedule for implementation of all tasks set forth in the Voluntary Remediation Work Plan; and (f) data management plan.

16. The IDEM may request Applicant to submit additional or corrected information pursuant to IC 13-25-5-9(b). The Applicant may comply with the request or withdraw the proposed plan from consideration.

17. The Voluntary Remediation Work Plan shall be subject to review and evaluation by IDEM pursuant to IC 13-25-5-9(a) within sixty (60) days of receipt of the Work Plan. Additionally, IDEM may request the applicant to supply additional information or corrected information pursuant to IC 13-25-5-9(b). This time period shall not include the time required for public comment under IC 13-25-5-11.

18. The Commissioner shall make a determination concerning the approval, modification and approval, or rejection of the Voluntary Remediation Work Plan within thirty (30) calendar days of close of the public comment period provided for in IC 13-25-5-11 and notify the Applicant as provided in IC 13-25-5-12 or 13-25-5-13.

19. If the Applicant desires to proceed with the implementation of the approved Work Plan, the Applicant must notify the Commissioner in writing not more than 60 days after the Work Plan is approved. After providing such notice, the Applicant shall initiate the work detailed in the Voluntary Remediation Work Plan according to the schedule as set forth in the Commissioner's Notice of Approval. Upon the Commissioner's receipt of notice that the Applicant intends to proceed, the fully approved Voluntary Remediation Work Plan shall be deemed incorporated into and made an enforceable part of this Agreement.

✓ insert (A) →

VIII. ADDRESSES FOR ALL CORRESPONDENCE

20. Documents, including reports, approvals, notifications, disapprovals, and other correspondence, to be submitted under this Agreement, may be sent by certified mail, return receipt requested, hand delivery, overnight mail or by courier service to the following addresses or to such addresses as the Applicant or IDEM may designate in writing.

Documents to be submitted to IDEM should be sent to:

Mr. Ed Joniskan
Voluntary Remediation Project Manager
IDEM
100 N Senate Ave
P.O. Box 6015
Indianapolis, Indiana 46206-6015
(317) 308 - 3126

XII. QUALITY ASSURANCE

27. The Applicant shall use quality assurance, quality control, and chain of custody procedures in accordance with the Quality Assurance Project Plan approved for use by IDEM, throughout any Work Plan sample collection and analysis activities under this Agreement, unless IDEM agrees otherwise.

28. Applicant shall provide the IDEM Project Manager with reasonable advance notice of all sampling and analysis as detailed in the Work Plan. To provide quality assurance and maintain quality control, the Applicant shall:

- (a) allow IDEM personnel and/or IDEM authorized representatives reasonable access to laboratories and personnel utilized by the Applicant for analyses;
- (b) ensure that all sampling and analyses are performed according to U.S. EPA methods, the approved Quality Assurance Project Plan, or other methods deemed satisfactory by IDEM; and,
- (c) ensure that any laboratories used by the Applicant for analyses participate in a documented Quality Assurance/Quality Control program that complies with U.S. EPA guidance documents. As part of such a program, and upon request by IDEM, such laboratories shall perform analyses of samples provided by IDEM to demonstrate the quality of analytical data for each such laboratory.

29. In the event any laboratory fails to perform the activities required above, IDEM reserves the right to reject any data not gathered pursuant to the requirements listed above, and to require that the Applicant utilize a different laboratory.

XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

30. The Applicant shall, upon request, make the results of all sampling, including raw data, and/or tests or other data generated by the Applicant, or on the Applicant's behalf, available to IDEM. IDEM will make available to the Applicant the quality assured results of sampling and/or tests or other data similarly generated by IDEM.

31. At the request of IDEM, the Applicant shall provide split or duplicate samples to IDEM and/or its authorized representative, of any samples collected by the Applicant pursuant to the implementation of this Agreement. At the request of the Applicant, IDEM or its authorized representative, shall provide split or duplicate samples to the Applicant of any samples collected by IDEM and/or its authorized representative pursuant to the implementation of this Agreement. Each Party shall notify the other in advance of any sample collection activity.

↳ sufficiently

↳ to allow for the splitting or duplicating of samples.

XIV. ACCESS

with the Applicant's consent, OK ✓

32. To the extent that the site or other areas where work is to be performed hereunder is presently owned or controlled by Parties other than those bound by this Agreement, the Applicant shall obtain, or shall use its best efforts to obtain access agreements from the present owners. Best efforts shall include at a minimum, a certified letter from Applicant to the present owner of such property requesting access agreements to permit Applicant, IDEM and their authorized representatives access to such property. Any such access agreements shall be incorporated by reference into this Agreement. Such agreements shall provide access for IDEM and authorized representatives of IDEM, as specified below. In the event that such access agreements are not obtained, the Applicant shall so notify IDEM, which may then, at its discretion, assist the Applicant in gaining access. IDEM reserves the right to withdraw, or modify, as necessary, this Agreement, should the Applicant's inability to gain access to the site or other areas materially affect the Applicant's ability to perform the work required herein.

33. The Applicant shall provide authorized representatives of IDEM access to the site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed on the Site and shall include, but not be limited to: inspecting records, operating logs and contracts related to the site; reviewing the progress of the Applicant in carrying out the terms of this Agreement; conducting such tests, inspections, and sampling as IDEM may deem necessary; ~~using a camera, sound recording, or other documentary type equipment for field activities;~~ and, verifying the data submitted to IDEM by the Applicant hereunder. The Applicant shall permit IDEM's authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Agreement and over which the Applicant exercises control. All persons with access to the site pursuant to this Agreement shall comply with approved health and safety plans.

Not w/o a good reason. Are they worried about secrets?

34. Nothing herein shall be construed as restricting the inspection or access authority of IDEM under any law or regulation.

XV. RECORD PRESERVATION

35. The Applicant agrees to preserve, during the pendency of this Agreement and for a minimum of six (6) years after its termination, all records and documents in the Applicant's possession or in the possession of its employees, agents, accountants, contractors, which relate in any way to the subject matters covered by this Agreement. Upon request by IDEM, the Applicant shall make available to IDEM such records, or copies of any such records. After this six year period, the Applicant shall notify IDEM in writing thirty (30) calendar days prior to the destruction of any such documents. At that time, if IDEM requests that some or all documents be preserved for a longer period of time, the Applicant shall provide IDEM with the documents that IDEM wishes to preserve.

The IDEM will inform the Applicant within 30 days of receipt whether it disagrees with the request for confidentiality claim for any submitted information. Any such dispute shall be subject to section XVI. No physical or analytical data sampling OK ✓

36. The Applicant may assert a confidentiality claim, pursuant to applicable laws and rules IC 13-14-11-1 thru IC 13-14-11-5, and 5-14-3 with respect to any or all of the information requested or submitted pursuant to this Agreement. Any assertion of confidentiality shall be adequately substantiated by Applicant when the assertion is made. Information determined to be confidential by the IDEM shall be disclosed only to the extent permitted by IC 13-14-11-1 and IC 5-14-3. If no such confidentiality claim accompanies the information when it is submitted to the IDEM, it may be made available to the public by the IDEM without further notice to the Applicant. Applicant agrees not to assert any confidentiality claim with regard to any physical or analytical data.

XVI. DISPUTE RESOLUTION

37. This section (Dispute Resolution) shall apply to any dispute arising under any section of this Agreement, unless specifically excepted.

38. The Parties shall use their best efforts to, in good faith, resolve all disputes or differences of opinion informally. If, however, disputes arise concerning this Agreement which the Parties are unable to resolve informally, the Applicant may present written notice of such dispute to IDEM and set forth specific points of dispute and the position of the Applicant. This written notice shall be submitted no later than five (5) calendar days after the Applicant discovers the Project Managers are unable to resolve the dispute. The Applicant's Project Manager will notify IDEM's Project Manager immediately by phone or other appropriate method of communication, prior to written notice, when s/he believes the Parties are unable to resolve a dispute.

39. Within ten (10) calendar days of receipt of such a written notice, IDEM shall provide a written response to the Applicant setting forth its position and the basis therefore. During the five (5) calendar days following the receipt of the response, the Parties shall attempt to negotiate in good faith a resolution of their differences.

40. (a) Following the expiration of the time periods described in the immediately preceding paragraph, if IDEM concurs with the position of the Applicant, the Applicant shall be notified in writing and this Agreement shall be modified to include any necessary extensions of time or variances of work. If IDEM does not concur with the position of the Applicant, IDEM, through the Commissioner or his/her designate, shall make a determination regarding the dispute, based upon and consistent with the terms of this Agreement, and shall provide written determination of such resolution to the Applicant.

(b) In the event that such determination is not acceptable to either Party, the dispute may be submitted to an impartial third Party for mediation in the following manner:

(1) The Parties shall select a mediator from the Indiana Supreme Court's approved list of mediators as established by the Indiana Rules of Alternative Dispute

Resolution (ADR Rules) within five (5) calendar days of Applicant's receipt of the Commissioner's determination. In the event such a list does not exist or does not contain mediators which the Parties agree are qualified to mediate environmental disputes, the Parties shall compile a mutually acceptable list and select a mediator from that list within five (5) calendar days of the Parties determination that the Supreme Court approved list does not contain qualified mediators. In addition to the qualifications required by the ADR Rules, the mediator shall have experience in environmental issues.

(2) The dispute shall be initially submitted to the mediator via a written request for dispute resolution through mediation; the written request shall be issued within 5 calender after the Parties have selected a mediator under paragraph 40(b)(1) of this section. The request for assistance shall include the written determination of the Commissioner issued pursuant to paragraph 40(a) and the documents specified in paragraphs 38 and 39 of this section. A copy of the written request shall be delivered to the other Parties at the time the request is made.

(3) The Party which submitted the dispute to mediation may make a written submission in support of its position to the mediator, if the mediator so requests, within 10 days of the mediator's selection, and any other Party may make a written response in support of its position within 7 days thereafter. The mediator shall immediately thereafter contact all Parties and determine the course of the mediation, including scheduling any meetings deemed necessary.

(4) The mediation process shall be conducted in accordance with Indiana Rules of Alternative Dispute Resolution in any aspect not covered by this Agreement.

(5) The mediator and the Parties shall proceed with all due speed to resolve the dispute.

(6) All communications, whether oral or written, between the mediator and the Parties, shall be kept confidential in accordance with the Indiana Rules for Alternative Dispute Resolution, Rule 2.12.

41. If either Party determines or the mediator declares that the dispute cannot be resolved through the mediation process, the Parties retain all rights under the Indiana Administrative Orders and Procedures Act, IC 4-21.5. *Nothing in this Agreement shall preclude the right of either party to seek appropriate judicial review of this Agreement or any action or decision made pursuant thereto.*

42. Until the dispute is resolved, any actions concerning that element of work in dispute shall be halted. The resolution of the dispute shall be incorporated into the Work Plan and made an enforceable part thereof. The time schedule for the work in dispute shall be extended by the amount of time needed for resolution. Elements of work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the Work Plan.

43. Elements of work and any actions required as a result of such dispute resolution shall

agrees, OK
requests,
No judicial review

immediately be incorporated, if necessary, into the appropriate plan or procedure, and into this Agreement. The Applicant shall proceed with all remaining work according to the modified plan or procedure.

XVII. FORCE MAJEURE

44. The Applicant shall cause all work or required reporting to be performed within the time limits set forth herein, unless performance is delayed by events which constitute a force majeure. For purposes of this Agreement, a force majeure is an event arising from circumstances beyond the reasonable control of the Applicant which delays performance of any obligations required by this Agreement. Increases of costs shall not be considered an event of force majeure.

45. The Applicant shall notify IDEM by calling within three (3) calendar days and by writing no later than seven (7) calendar days after any event which the Applicant contends is a force majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by the Applicant to minimize the delay, and the timetable by which these measures will be implemented. The Applicant shall have the burden of demonstrating that the event is a force majeure. The decision of whether an event is a force majeure shall be made by the Assistant Commissioner, or his/her designee, of the Office of Environmental Response. Said decision shall be immediately communicated to Applicant.

46. If a delay is attributable to a force majeure, the time period for performance under this Agreement shall be extended, in writing, by the amount of time that is attributable to the event constituting the force majeure.

XVIII. RESERVATION OF RIGHTS

47. IDEM and the Applicant reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein.

48. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the Parties may have against any person, firm, partnership or corporation, not a Party to this Agreement for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous waste, contaminants, or pollutants at, to, or from the site. The Parties to this Agreement expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not Parties to this Agreement, and as to each other for matters not covered hereby. *Nothing in this Agreement is intended to create rights in any persons or entities who are not parties to this agreement.* OK ✓

49. The Applicant reserves the right to seek contribution, indemnity, or any other available remedy against any person other than IDEM found to be responsible or liable for

contribution, indemnity, or otherwise for any amounts which have been or will be expended by the Applicant in connection with the site.

50. The IDEM reserves the right to bring an action, including an administrative action, against Applicant for any violations of statutes or regulations except for the specific violations or releases that are being remediated in the Work Plan.

51. Pursuant to IC 13-25-5, the IDEM reserves the right to withdraw its approval of the Work Plan at any time during the implementation of the Work Plan if:

- (a) IDEM determines that the Applicant has failed to substantially comply with the terms and conditions of this Agreement or the Work Plan;
- (b) the Applicant declines to implement the Work Plan after being notified of its approval by the IDEM; or
- (c) IDEM determines that a hazardous substance or petroleum has become an imminent or substantial threat to human health or the environment.

Upon withdrawal of its approval, this Agreement shall be terminated and IDEM reserves the right to bring any action to enforce any statute or regulation under Title 13 of the Indiana Code including an action regarding the violations or releases that were the subject of this Agreement.

52. IDEM acknowledges that, pursuant to IC 13-25-5-20(b), Applicant, upon receipt of the Certificate of Completion, is not liable for claims for contribution concerning matters addressed in the Voluntary Remediation Work Plan.

XIX. ADMINISTRATIVE COSTS

53. Applicant agrees to reimburse IDEM for all of its administrative costs associated with implementation of this agreement. Attachment A contains an itemized list of estimated costs that IDEM expects to incur under this Agreement. The estimated costs may include the preparation of the itemized list of administrative costs. This estimate is not intended to bind IDEM to a maximum cost it is entitled to bill the Applicant under this Agreement. The estimate is merely provided as a courtesy to the Applicant.

54. IDEM shall send periodically an accounting of contractor, subcontractor and laboratory costs to Applicant. Applicant shall pay said amount within thirty (30) days of receipt of the accounting. IDEM shall also send periodically an accounting of IDEM's staff costs to Applicant. Said accounting shall itemize all costs incurred by IDEM for time, salary, benefits and travel costs of IDEM staff personnel and associated indirect costs. Applicant shall pay said amount within thirty (30) days of receipt of the accounting.

55. Checks should be made payable to the Voluntary Remediation Fund and be mailed along with a transmittal letter stating the site name and address to the Indiana Department of Environmental Management; Attention: Cashier; 100 North Senate Avenue; P.O. Box 7060; Indianapolis, Indiana 46207-7060. In addition, a copy of the check and transmittal letter shall be mailed to the IDEM Project Manager.

56. Administrative costs shall include all reasonable costs, direct and indirect, of IDEM's oversight arrangement for this Agreement and the Work Plan including, but not limited to, time, salary, benefits and travel costs of IDEM personnel and its contractors and associated indirect costs, contractor costs, compliance monitoring, including the collection and analysis of split or duplicate samples, inspection of Applicant's activities, site visits, discussions regarding disputes that may arise as a result of this Agreement, review and approval or disapproval of reports, and the costs of dispute resolution. Such costs shall also include the costs incurred by IDEM in having a qualified person oversee the conduct of the Applicant under this Agreement and the Work Plan. In addition, Applicant shall be assessed an additional amount not to exceed ten (10) % of the total administrative costs paid to IDEM. This amount will ensure that the IDEM meets its obligations under IC 13-25-5-22 and all other expenses not covered above. Said amount must be paid before the Certificate of Completion will be issued by the IDEM. ?

57. In the event that this agreement is terminated for any reason, Applicant agrees to reimburse IDEM for all of its administrative costs reasonably incurred to the time of termination. IDEM agrees to reimburse Applicant any unused portion of the application fee in accordance with IC 13-25-5-8 (b) (2).

XX. COMMUNITY RELATIONS

58. The Applicant will cooperate with IDEM in providing information about the Work Plan to the public. IDEM will give the Applicant reasonable advance notice of and may require the Applicant's or its agent's attendance at any such public meetings it may hold or sponsor at times and locations which are agreed upon by IDEM and the Applicant.

59. A public information file shall be maintained by IDEM at a public repository near the site. Applicant shall be notified of the location of said public place.

60. Before the Commissioner may approve or disapprove the Work Plan, the Commissioner shall provide opportunities for public comment pursuant to IC 13-25-5-11.

XXI. NOTICE OF BANKRUPTCY

61. As soon as Applicant has knowledge of its intention to file bankruptcy or no later than 7 days prior to the actual filing of a voluntary or involuntary bankruptcy petition, Applicant shall notify IDEM of its intention to file a bankruptcy petition.

appropriate relief to protect human health or the environment from pollution or contamination at or from this site not remediated in accordance with this Agreement.

70. After IDEM issues the Certificate of Completion, the Governor shall provide Applicant with a Covenant Not to Sue pursuant to IC 13-25-5-18. The Covenant Not To Sue shall contain a listing of the specific work and contaminants covered.

XXVI. PRECEDENCE OF AGREEMENT

71. In the event that conflict arises among the terms and conditions of this Agreement, the Statement of Work, or the approved Work Plan, this Agreement shall govern and the terms and conditions hereunder shall determine the Parties' rights and responsibilities.

*- need right of
Applicant to terminate*