

GENERAL TERMS & CONDITIONS

Individuals (IND JUL 2010)

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1. DEFINITIONS

The following terms have the meanings below:

(a) Government means the United States of America and includes the U. S. Department of Energy (DOE) or any duly authorized representative thereof.

(b) Company means Babcock and Wilcox Technical Services Y-12, LLC (B&W Y-12) acting under Contract No. DE-AC05-00OR22800.

(c) Seller (or “you”) means the person who has entered into this Agreement with Company.

(d) Agreement means Purchase Order, Subcontract, or Modification thereof.

(e) Article or Clause is the numbered paragraph of General Terms & Conditions

(f) Subcontract Administrator means Company’s cognizant Procurement representative.

(g) Subcontract Technical Representative means the duly authorized Company representative who provides technical direction for performance of the work under this Agreement.

2. ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence in Agreement documents:

- (a) Negotiated Alterations or Special Provisions;
- (b) Supplemental Conditions;

- (c) General Terms and Conditions;
- (d) Specifications or statement of work, or other description of services or supplies; and
- (e) Drawings

3. AGREEMENT FOR BENEFIT OF DOE

(a) Funding – Company shall make all payments under this Agreement from Government funds advanced and agreed to be advanced by DOE, and not from its own funds. In almost all circumstances, funds recovered by Company from Seller are Government funds.

(b) Administration – Administration of this Agreement may be transferred, in whole or in part, to DOE or its designee(s), and to the extent of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

(c) Company Right to Recovery – The Company, acting under its Prime Contract with DOE, has entered into this Agreement with Seller for the benefit of DOE. Seller acknowledges that any loss caused by Seller shall be borne principally by DOE rather than by Company. If Company seeks recovery from Seller, Seller agrees it shall not plead, assert or raise in any manner a defense that Company has no right to recover because the Company itself has suffered no damages or because DOE has accepted the project or task performed under this Agreement.

4. ACCEPTANCE OF TERMS AND CONDITIONS

(a) Seller, by signing this Agreement, delivering the supplies, or performing the requirements indicated herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporates by reference or attachment. Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement that are different from or in addition to those mentioned in this document.

(b) Failure of Company to enforce any of the provisions of this Agreement shall not be construed as (1) evidence to interpret the requirements of this Agreement, (2) a waiver of any requirement, or (3) a waiver of the right of Company to enforce each and every provision. In accordance with Tennessee Code, Section 47-50-112(c), no waiver of any provision or part thereof of this Agreement shall be valid unless such waiver is in a writing signed by the Subcontract Administrator. Any waiver shall be strictly construed and shall apply on a one-time basis unless expressly stated to apply otherwise.

5. TAXES – FIXED PRICE, FEDERAL, STATE AND LOCAL TAXES

(a) Definitions. As used throughout this clause, the following terms shall have the meaning set forth below:

(1) The term “direct tax” means any tax or duty directly applicable to the completed supplies or services covered by this subcontract, or any other tax or duty from which the Seller or this transaction is exempt. It includes any tax or duty directly applicable to the importation, production, processing, manufacture, construction, sale, or use of such supplies or services; it also includes any tax levied on, with respect to, or measured by sales, receipt from sales, or use of the supplies or services covered by this subcontract. The term does not include transportation taxes, unemployment compensation taxes, social

security taxes, income taxes, excess-profits taxes, capital stock taxes, property taxes, and such other taxes as are not within the definition of the term "direct tax" as set forth above in this paragraph.

(2) The term "subcontract date" means the effective date of this subcontract if it is a negotiated subcontract, or the date set for the opening of bids if it is a subcontract entered into as a result of formal advertising.

(b) Federal Taxes. Except as may be otherwise provided in this subcontract, the subcontract price includes all applicable Federal taxes in effect on the subcontract date.

(c) State or Local Taxes. Except as may be otherwise provided in this subcontract, the subcontract price does not include any State or local direct tax in effect on the subcontract date. For subcontractors providing and installing tangible personal property, which becomes part of real property, the subcontract price should include all state and local direct taxes on such installed tangible personal property.

(d) Evidence of Exemption. The Company agrees, upon request of the Seller, to furnish a tax exemption certificate or other similar evidence of exemption with respect to any direct tax not included in the subcontract price pursuant to this clause; and the Seller agrees, in the event of the refusal of the applicable taxing authority to accept such evidence of exemption, (1) promptly to notify the Company of such refusal, (2) to cause the tax in question to be paid in such manner as to preserve all rights to refund thereof, and (3) if so directed by the Company to take all necessary action, in cooperation with and for the benefit of Government, to secure a refund of such tax (in which event the Company agrees to reimburse the Seller for any and all reasonable expenses incurred at its direction)

(e) Price Adjustment. If, after the subcontract date, the Federal Government or any State or local Government either (1) imposes or increases (or removes an exemption with respect to) any direct tax, or any tax directly applicable to the materials or components used in the manufacture or furnishing of the completed supplies or services covered by this subcontract, or (2) refuses to accept the evidence of exemption, furnished under paragraph (d) hereof, with respect to any direct tax excluded from the subcontract price, and if under either (1) or (2) the Seller is obliged to and does pay or bear the burden of any such tax (and does not secure a refund thereof), the subcontract price shall be correspondingly increased. If, after the subcontract date, the Seller is relieved in whole or in part from the payment or the burden of any direct tax included in the subcontract price, or any tax directly applicable to the materials or components used in the manufacture or furnishing of the completed supplies or services covered by this subcontract, the Seller agrees promptly to notify the Company of such relief, and the subcontract price shall be correspondingly decreased or the amount of such relief paid over to the Company for the benefit of the Government. Invoices or vouchers covering any increase or decrease in the subcontract price pursuant to the provisions of this paragraph shall state the amount thereof, as a separate added or deducted item, and shall identify the particular tax imposed, increased, eliminated, or decreased.

(f) Refund or Drawback. If any tax or duty has been included in the subcontract price or the price as adjusted under paragraph (e) of this clause, and if the Seller is entitled to a refund or drawback by reason of the export or re-export of

supplies covered by this subcontract, or of materials or components used in the manufacture or furnishing of the completed supplies or services covered by this subcontract, the Seller agrees that he will promptly notify the Company thereof and that the amount of any such refund or drawback obtained will be paid over to the Company for the benefit of the Government or credited against amounts due from the Company under this subcontract: Provided, however, That the Seller shall not be required to apply for such refund or drawback unless so requested by the Company.

6. COOPERATING WITH DOE OFFICE OF INSPECTOR GENERAL

Seller shall cooperate fully and promptly with requests from the DOE Office of Inspector General (OIG) for information and data relating to DOE programs and operations (i) comply with requests by the OIG for interviews and briefings and provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements, and (ii) not impede or hinder another employee's cooperation with the OIG.

7. REPORTING WASTE, FRAUD, AND ABUSE

(a) General Requirements - Seller shall ensure its employees having information about actual or suspected violations of laws, regulations, or policies including fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems notify an appropriate authority. Examples of violations to be reported include, but are not limited to, allegations of false statements; false claims; bribery; kickbacks; fraud; environmental, safety, and health violations; theft, computer crimes; subcontractor mischarging; conflicts of interest; and conspiracy to commit any of these acts. Seller must ensure that its employees are aware that its employees are required to report actual or suspected violations. Reporting can be as follows: Company Ethics Hotline; phone 865 576-1900 (M-Th 7:00 AM – 5:30PM EST); fax 865 574-9656; Office of Inspector General; 1-800-541-1625 (M-F 8:00AM – 4PM EST)

(b) Seller Specific Requirements - Seller shall inform its employees annually of their duty to report allegations of information described in General Requirements above; display the OIG hotline telephone number in buildings and common areas under its responsibility such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies; publish the OIG hotline telephone number in telephone books, newsletters, or other means of widespread communication to employees under its responsibility; Seller and its employees shall report to the OIG within a reasonable period of time, but not later than 24 hours after discovery of any alleged violations; shall not take any reprisal action against an employee for reporting actual or suspected violations to the OIG.

(c) Flowdown - Requirements of this clause shall be flowed down to all lower-tier subcontractors

8. PUBLIC RELEASE OF INFORMATION

Except as provided in the Statement of Work, work description, statutory requirement, or other provisions of this Agreement, no public release of information, including, without limitation, data, photographs, sketches, and advertising, announcements, denials, or confirmations related to the work under this Agreement shall be made without the prior written approval of the Subcontract Administrator. Any request for approval shall include identity of the specific media as well as other pertinent details of the requested release.

9. CONFIDENTIALITY OF INFORMATION

a) To the extent that work under this Agreement requires that Seller be given access to confidential or proprietary business, technical, or financial information belonging to the Government, the Company, or other parties, Seller shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Company in writing. The foregoing obligations, however, shall not apply to (1) information which, at the time of receipt by Seller is in public domain; (2) information which is published after receipt thereof by Seller or otherwise becomes part of the public domain through no fault of Seller; (3) information which Seller can demonstrate was in its possession at time of receipt thereof and was not acquired directly or indirectly from Government or Company; (4) information which Seller can demonstrate was received by it from a third party who did not require Seller to hold it in confidence.

(b) Seller agrees, if requested by Company or DOE, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to Seller under this Agreement, and to supply a copy of such agreement to Company.

(c) Seller agrees that upon request by Company or DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities.

10. COMPLIANCE WITH LAWS

(a) In performing work under this Agreement, the Seller shall comply with the requirements of applicable Federal, State, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency.

(b) Except as otherwise directed by the Company, the Seller shall procure all necessary permits or licenses required for the performance of work under this Agreement.

11. PROHIBITED ITEMS AT Y-12

(a) General. The prohibitions in this clause apply at the Y-12 National Security Complex and at sites leased by B&W Y-12, LLC.

(b) Alcohol. Alcoholic beverages are prohibited.

(c) Cell phones. (1) Cellular telephones that are not owned by the Government or B&W Y-12, LLC are prohibited without prior written approval obtained through the Subcontract Technical Representative (STR). Cellular telephones may be used on Bear Creek Road (using hands-free devices as

required) and facility parking lots for telephone purposes only outside of the security fence. Cellular telephones may be secured in the owner's private vehicle within parking areas at the Y-12 National Security Complex and at leased sites. They should remain secured at all times while within the Blue Line (229 boundary) of Y-12 unless required to report a personal emergency within the 229 boundary. A personal emergency is an immediate need for assistance (e.g., an after-hours car – deer accident, a car breakdown, an acute health condition such as a heart attack, etc.). In a personal emergency, the personal cellular telephone should be used to contact the Y-12 Plant Shift Superintendent's Office (574-7172). Calling 911 from a cellular telephone will not notify B&W Y-12 of an emergency, though Company emergency resources would be the closest respondent. Therefore, calling 911 instead of 574-7172 is inappropriate.

(2) Seller employees must self-report to the STR any violation of these restrictions on cellular telephones.

(d) Dangerous instruments. Instruments likely to produce substantial injury to persons or property are prohibited. This prohibition includes:

- Bows and arrows
- Explosive devices
- Firearms and any ammunition
- Knives with blades longer than three inches and switchblades
- Stun guns, mace, pepper spray
- Martial arts weapons and equipment
- Weapons or simulated weapons

(e) Flash memory data storage devices. Memory devices [such as Universal Serial Bus (USB) flash memory drives, USB memory keys, memory sticks, etc.] are prohibited without prior written approval obtained through the STR. Approval will require that the device be labeled according to B&W Y-12 guidance pertaining to data content type and thereafter properly accounted for and destroyed if required.

(f) Pagers. Two-way pagers are prohibited. One-way pagers and pagers that have the capability for the user to select and transmit one of several manufacturers' pre-programmed responses (for example, "Message received") are allowed.

(g) PDA's. Personal digital assistants [also called personal electronic devices (PEDs)] such as Blackberry, Pireas, Hewlett-Packard Palmtop Computer, and Hewlett-Packard Jomada Palmtop, are prohibited without prior written approval obtained through the STR.

(h) Transmitting, recording and photographic equipment. Transmitting, recording, or photographic equipment is prohibited without prior written approval obtained through the STR. Such equipment includes, but is not limited to:

- Cameras
- Portable tape players
- Portable two-way radios
- Recording Devices
- Video recorders

(i) Wireless devices. The following devices are prohibited without prior written approval obtained through the STR:

- Cordless telephones
- Devices with infrared capability
- Global Positioning System (GPS) units

- Wireless local area networks (WLAN)
- Wireless mice and keyboards
- Wireless-enabled computers, including laptop computers
- Wireless radios (such as Nextel)
- Wireless wide area networks
- Wireless audio-visual support equipment (such as wireless microphones)
- Wireless scanners and bar code readers
- Wireless Survey Equipment
- Wireless tags
- Wireless special purpose sensors and other wireless instruments
- Wireless data acquisition equipment and data loggers

(j) Subcontracts. The Seller shall include this clause in lower-tier subcontracts requiring work to be performed at the Y-12 National Security Complex and at sites leased by B&W Y-12, LLC.

12. DOE SECURITY BADGES AND CLEARANCE REQUIREMENTS

(a) A security badge issued by the Company to the Seller is Government property. The Seller must return the badge upon expiration of this agreement or when access to the Y-12 National Security Complex is no longer needed. Sellers holding an L or Q clearance must attend a security termination debriefing conducted by the Company when returning badges. However, in all cases, the Personnel Security Clearance Office should be notified by the Seller within one working day of a termination of employment or need for access to the Complex if the employee holds an L or Q clearance in order to provide notification to DOE/NNSA within two business days.

(b) The Seller must immediately notify the Subcontract Administrator in writing when a badge is lost or stolen. The Seller must report in person to the Y-12 Visitor Center Badging Office (or contact PSS after hours/weekends) to complete an affidavit concerning the loss or theft and to obtain a replacement badge.

(c) The Seller must complete the Company *Subcontractor Personnel Exit Checklist*, Form UCN- 4452S, before exiting the site. The Seller must take the completed Checklist and badge to the Visitor Center badging office. If the Y-12 Visitor Center is closed (hours of operation are Monday-Thursday 6:00 a.m. to 4:30 p.m.) the Seller may leave the Checklist and badge with the STR. (In such cases alternate debriefing arrangements will be made for employees holding an L or Q clearance.) The Checklist, signed by the STR or an authorized representative of Personnel Security, is acceptable proof to the Company that a badge has been returned.

(d) Seller's payment may be withheld until all requirements of this clause have been met. Failure by employees of the Seller and its lower-tier subcontractors to return badges will result in a charge of \$500 per badge, to be withheld from payment or billed to the Seller. This \$500 charge will not be assessed against badges that are lost or stolen during performance if replacement badges are issued to allow Seller or lower-tier subcontractor employees to return to work. DOE/NNSA directives require the termination of an employee security clearance within two business days of termination of employment or need for access to the Complex.

13. ENVIRONMENT, SAFETY, AND HEALTH

Applicability --This clause applies to all on-site work for both Seller and its lower-tier subcontractors at any level.

Definitions -- (The following definitions are applicable to this clause)

On-Site --For this clause, on-site is defined as DOE owned or leased or Company leased facilities.

Employees – Seller employees and all lower-tier subcontractor employees

Environment, Safety and Health (ES&H) – includes pollution prevention and waste minimization.

REQUIREMENTS - (a) Seller shall perform work under B&W Y-12's approved 10 CFR 851 Worker Safety and Health Program, which can be found at:

<http://www.y12.doe.gov>.

(b) The Seller shall take all reasonable precautions in the performance of the work under this subcontract to protect the environment, safety and health of all personnel and members of the public, and minimize danger from all hazards to the environment, life and property. Additionally, the Seller shall comply with all environmental, health and safety regulations and requirements of the Company and DOE including, without limitation, such other provisions as may be contained in this subcontract relating to safety and health and shall comply with the applicable provisions of 10 CFR 851, *Worker Safety and Health Program*. Seller is subject to civil penalties for failure to comply with applicable 10 CFR 851, *Worker Safety and Health Program* requirements. In the event that the Seller fails to comply with said regulations and requirements, the Company may, without prejudice to any other legal or contractual rights of the Company, issue an order stopping all or part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the Company. The Seller shall make no claim for extension of time or for compensation or damages by reason of, or connection with, such work stoppage.

(c) In the performance of any and all aspects of work subject to this clause the Seller shall:

(1) Establish line management that is responsible for the protection of personnel, the public, and the environment. (Line management includes those Seller and subcontractor employees managing or supervising employees performing work).

(2) Establish and maintain clear and unambiguous lines of authority and responsibility for ES&H matters at all organizational levels.

(3) Ensure personnel possess the experience, knowledge, skills, and abilities necessary to discharge their responsibilities.

(4) Ensure resources are effectively allocated to address ES&H, programmatic, and operational considerations.

(5) Determine, before any on-site work is performed, the associated hazards are evaluated and ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Ensure necessary administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards.

(d) Comply with ES&H requirements of all applicable laws and regulations, and applicable Company or DOE directives identified in this subcontract.

(e) Cooperate with Federal, state, and local agencies having jurisdiction over ES&H matters under this subcontract.

(f) Promptly evaluate and resolve any noncompliance with ES&H requirements that it discovers or of which it is notified by the Company. If the Seller fails to resolve the noncompliance or if, at any time, the Seller's acts or failures to act cause substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Subcontract Administrator may require the Seller's participation, at the Seller's expense, in the Company's fact-finding investigations of accidents, injuries, occurrences, and near-misses.

COMPANY RIGHTS

In addition to any rights and remedies otherwise available to Company, if the Seller fails to comply with the requirements of this clause, the Company may:

(a) Notify the Seller in writing of any noncompliance with the provisions of this clause and the corrective action to be taken. After receipt of such notice, the Seller shall immediately take appropriate corrective actions.

(b) Require, in writing, that the Seller remove from the work any employee the Company deems unsafe, incompetent, careless, or otherwise objectionable.

INDEMNIFICATION -- The Seller shall indemnify, hold harmless, and defend the Company, its members, directors, officers and employees from any liability under 10 CFR 851 arising out of activities by the Seller, its subcontractors, suppliers, agents, employees, and their officers, or directors. The Seller's obligation to indemnify, hold harmless and defend includes fines and penalties, attorneys' fees and other reasonable costs of defending any action or proceeding instituted under 10 CFR 851.

FLOWDOWN -- The Seller shall include this clause in all lower-tier subcontracts involving performance of on-site work. However, such provision in lower-tier subcontracts shall not relieve the Seller of its obligation to assure compliance with this clause for all aspects of the work.

14. INDEPENDENT CONTRACTOR

(a) Neither this Agreement nor Seller's performance hereunder shall constitute or create an employee/employer relationship. Seller shall act solely as an independent contractor, not as an employee or agent of Company. As an independent contractor the Seller shall not be entitled to Workers Compensation or any other employee benefits or other insurance protection provided by the Company. However, if the Seller was previously a bona fide employee of the Company or an affiliate, the retirement and other benefits that Seller may be entitled to as a result of said previous employment shall continue uninterrupted in accordance with the terms and conditions of each applicable benefit plan or other program, and such benefits shall not be affected by nor have any relationship to this Agreement.

(b) Seller's responsibilities are limited to providing services and Seller has no authority to obligate the Company to any agreement or to exercise any supervision or direction over Company's employees.

15. AUTHORIZATION AND CONSENT

(a) The U. S. 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) If the Seller is sued for copyright infringement or anticipates the filing of such a lawsuit, the Seller may request authorization and consent to copy a copyrighted work from the Subcontract Administrator. Programmatic necessity is a major consideration for the Company in determining whether to grant such request.

(c) (1) The Seller agrees to include, and require inclusion of the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed \$100,000 at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Seller agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed \$100,000.

(3) Omission of an authorization and consent clause from any subcontract, including those valued less than \$100,000 does not affect this authorization and consent.

16. PATENT INDEMNITY

(a) The Seller shall indemnify the Company and the Government and their officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this Agreement, or out of the use or disposal by or for the account of the Company or the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Seller shall have been informed as soon as practicable by the Company or Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—

(1) An infringement resulting from compliance with specific written instructions of the Company directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the Seller;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the Seller, unless required by final decree of a court of competent jurisdiction.

17. INSURANCE

(a) The Seller may be required to provide and maintain professional liability insurance of at least \$1 million per claim. The retroactive date must be before or the same as the date of award of this Agreement. Coverage must continue for three years following completion or termination of this Agreement.

(b) Where the Seller is required to operate a motor vehicle on-site at the Y-12 National Security Complex, Automobile Liability (Covering any automobile) – Minimum off \$500,000 per person and \$1 million per occurrence for bodily injury and \$500,000 per occurrence for property damage is required.

(c) No later than ten calendar days after award and before beginning work under this agreement, the Seller must submit to the Subcontract Administrator a certificate of liability insurance (Acord form 25 or equivalent) certifying that the required insurance has been obtained. All insurers on the certificate must have an A.M. Best Company financial strength rating of “B” or higher. The certificate must:

- (1) Include the number of this subcontract,
- (2) Identify B&W Y-12, LLC as the certificate holder, and

(3) Certify that required policies obligate the insurer to provide the certificate holder 30 calendar days written notice if any required policy is canceled before its expiration date.

(d) A replacement certificate must be submitted if a required policy expires before completion of the work.

(e) The Seller waives subrogation under all liability policies against B&W Y-12, LLC and the U.S. Department of Energy.

(f) The Seller must provide written notice to the Subcontract Administrator 30 calendar days before modification or cancellation of any required coverage.

(g) None of the requirements for insurance in this clause limits or qualifies liabilities or obligations assumed by he Seller under this subcontract.

(h) The Seller shall include this clause in all lower-tier subcontracts.

18. STANDARDS OF CONDUCT

(a) It is the policy of the Company that its acquisition and retention of business be conducted in accordance with the highest standards of honesty and integrity. Sales of its products and services must be free from even a perception that favorable treatment was sought or received, or that questionable activities were engaged in or condoned. Purchases of products and services must be conducted with the same high standards. Severe criminal and civil penalties may be imposed on the individuals involved for violation of federal and state laws that affect the conduct of our business.

(b) By execution of this agreement, consultant represents and certifies that he or she has not been convicted or has not pleaded guilty to a federal offense involving fraud, corruption or moral turpitude and is not now listed by any federal agency as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for federal procurement programs. The consultant shall provide immediate notice to Company in the event of being suspended, debarred, or declared ineligible by any Department or other Federal

Agency, or upon receipt of a notice of proposed debarment from any Department or Agency, during the performance of this agreement.

(c) By execution of this agreement, consultant hereby certifies that he or she is familiar with and will comply with all federal laws and regulations relating to federal conflict of interest (“Revolving Door”) concerns, particularly of 41 U.S.C. @ 423 (Procurement Integrity) and 18 U.S.C. 207. Consultant further represents and warrants that the services to be performed under this agreement, whether by itself, its employees, or its associates, shall not be in violation of said statutes or regulations.

(d) By execution of this agreement, consultant agrees that, unless such effort is specifically called out in the Statement of Work of this agreement, he or she will not engage in any effort on behalf of Company to lobby (i.e., to influence or attempt to influence) Congress, any Federal agency, any Member of Congress, any Federal Officer, or any Federal Agency employee or employee of a Member of Congress.

(e) Public Law 101-121 (Byrd Amendment) places restrictions on activities of consultants in connection with specific contract actions. By execution of this agreement, consultant agrees that, unless such effort is specifically called out in the Statement of Work of this agreement, he or she will not influence or attempt to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding, extension, renewal, or modification of any federal contract for Company.

(f) Federal Acquisition Regulation Subpart 9.5 establishes policy relating to conflict of interest standards for those who provide services to the Government and to its contractors. “Marketing consultant” is defined as “an independent contractor who furnishes advice, information, direction, or assistance to an offeror or any other contractor in support of the preparation or submission of an offer for a Government contract by that offeror. An independent contractor is not a marketing consultant when rendering advisory and assistance services such as:

- i. Routine engineering and technical services such as installation, operation or maintenance of systems, equipment, software, components, or facilities;
- ii. Routine legal, actuarial, auditing, and accounting services;
- iii. Training services

By execution of this agreement, consultant represents and agrees that performance of consulting work under this agreement does not constitute a conflict of interest and that consultant will not provide any unfair competitive advantage to the Company in the performance of such work. Where the Company is notified that it is the apparent successful offeror for any federal acquisition, any marketing consultant engaged in connection with that acquisition may be required to further certify to the Government that consultant has provided no unfair competitive advantage to the Company with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that does or may exist has been disclosed. Consultant agrees to provide that certificate promptly upon request by the Company.

(g) By execution of this agreement, consultant represents that consultant has and will make full disclosure during the terms of this Agreement of each instance where consultant is

currently providing a supplier, customer, or competitor of Company services similar to those provided for hereunder or has provided such services during a period of twelve months prior to the date of any certification. Consultant further represents that he or she will make disclosure to the Company prior to entering into any such arrangements in the future and will provide current certifications as may be requested by the Company in order to facilitate its compliance with applicable laws and regulations.

(h) By execution of this agreement, consultant agrees that it shall not attempt to obtain, or receive any information that is security classified or procurement sensitive, directly or indirectly, from the U.S. Government or any other source where it is clear that release is unauthorized or in circumstances where there is reason to believe that such information cannot lawfully be in the Company's possession. The same prohibitions apply to information of another company that is business confidential or proprietary. For the purpose of this agreement, the term "information" includes documents, video and audio materials, oral transmissions, electronic data, and any other method or means by which information might be conveyed.

(i) By execution of this agreement, consultant certifies that, to the best of his or her knowledge and belief, he or she is not prohibited by law from performing such services.

19. CONFLICTS OF INTEREST

(a) Purpose. The purpose of this clause is to ensure that the Seller (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this Agreement, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this Agreement.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Seller and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Seller") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Seller's Work Product. (i) The Seller shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Seller's performance of work under this Agreement for a period of five years after the completion of this Agreement. Furthermore, unless so directed in writing by the Subcontract Administrator, the Seller shall not perform any advisory and assistance services work under this Agreement on any of its products or services or the products or services of another firm if the Seller is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Seller from competing for follow-on Agreements for advisory and assistance services.

(ii) If, under this Agreement, the Seller prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Seller shall be ineligible to perform or participate in any capacity in

any contractual effort which is based on such statement of work or specifications. The Seller shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Subcontract Administrator, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Seller from offering or selling its standard and commercial items to the Company or the Government.

(2) Access to and use of information. (i) If the Seller, in the performance of this Agreement, obtains access to information, such as Company or DOE plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Seller agrees that without prior written approval of the Subcontract Administrator it shall not:

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Company or DOE based on such information for a period of six months after either the completion of this Agreement or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to DOE which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Company or DOE.

(ii) In addition, the Seller agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this Agreement, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Seller may use technical data it first produces under this Agreement for its private purposes consistent with paragraphs (b) (2) (i) (A) and (D) of this clause and the patent, rights-in-data, and security provisions of this Agreement.

(c) Disclosure after award. (1) The Seller agrees that, if changes, including additions, to the facts disclosed by it prior to award of this Agreement, occur during the performance of this Agreement, it shall make an immediate and full disclosure of such changes in writing to the Subcontract Administrator. Such disclosure may include a description of any action which the Seller has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Company may, however, terminate the Agreement for convenience if it deems such termination to be in the best interest of the Government.

(2) If the Seller was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Subcontract Administrator, the Company may terminate this Agreement for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this Agreement, including the

existence of an actual or potential organizational conflict of interest at the time of or after award, the Company may terminate the Agreement for default, disqualify the Seller from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this Agreement.

(e) **Waiver.** Requests for waiver under this clause shall be directed in writing to the Subcontract Administrator and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Company may grant such a waiver in writing.

(f) **Subcontracts.** (1) The Seller shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts involving the performance of advisory and assistance services as that term is defined at FAR 37.201.

(2) Before the award of any such subcontracts for advisory and assistance services, the Seller shall obtain from the proposed subcontractor the disclosure required by DEAR 909.507-1 and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Seller shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Seller. If the conflict cannot be avoided or neutralized, the Seller must obtain the approval of the Subcontract Administrator before entering into the subcontract.

20. CONSIDERATION

Company shall pay Seller the specified hourly or daily rate for such time as Seller actually performs services hereunder at the request of the Company, not to exceed dates or time-periods set forth in the Agreement period of performance. A day means a period consisting of eight hours or more in any one calendar day. For each two-hour period or fraction of such period, one quarter of said rate of compensation shall be payable. Nothing in this paragraph authorizes payment of more than the specified daily rate for any one calendar day. Except as otherwise provided herein, no portion of the daily rate will be payable (i) for time spent in travel for the Seller's convenience during an assignment or (ii) if travel begins after 6 p.m. one day and ends before 8 a.m. the next day (local time zone) and no work was actually performed under the Agreement during these hours.

21. TRAVEL REIMBURSEMENT

If Seller is to be reimbursed for travel expenses, the Agreement will specify a dollar ceiling for such reimbursement. Seller will be reimbursed for travel expenses in accordance with the Travel Reimbursement Policy, which is incorporated by reference, up to the amount allowed by the policy or the ceiling amount, whichever is less.

22. INVOICING

(a) Seller shall be paid monthly, upon submission of an invoice in an approved form, the consideration stipulated herein less deductions, if any.

(b) Invoices shall be submitted using Company Form UCN-

6573, "Consultant or Personal Services Subcontractor's Invoice for Services and/or Travel." Information for completing Form UCN-6573 is in Company Form UCN-9652, "Information for Completion of Invoice for Services and/or Travel for Consultant or Personal-Services Subcontractor." Company forms are available on the "Procurement" link at <http://www.y12.doe.gov>.

(c) Applicable IRS forms must accompany Seller's initial invoice submission. For U. S. citizens and resident aliens, IRS Form W-9, "Request for Taxpayer Identification Number and Certification" is required. Non-resident aliens must submit the applicable form in the IRS W-8 series (W-8BEN, W-8ECI, W-8EXP, or W-8IMY), and, if applicable, IRS Form 8233, "Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual." IRS forms are available at <http://www.irs.gov/formspubs/lists/0..id=97817.00.html>.

(d) Company may withhold payment hereunder until requirements of this clause are fulfilled.

23. ASSIGNMENT

Seller shall not assign rights or obligations to third parties without the prior written consent of the Subcontract Administrator.

24. RESOLUTION OF DISPUTES

(a) Seller and Company agrees to make good-faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative dispute resolution (ADR). In the event arbitration or non-binding mediation is agreed upon, the site of the proceedings shall be Oak Ridge, Tennessee; the parties shall share the cost of obtaining the mediator or arbiter, and each party shall bear its discretionary costs.

(b) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Agreement terms, or other relief arising from or relating to this Agreement, or its breach. A voucher, invoice, or other routine request for payment (e.g., a request for an equitable adjustment) that is not in dispute when submitted is not a claim, but may be converted to a claim by the Seller as provided in paragraph (c) below.

(c) A claim by the Seller shall be made in writing, cite this clause, and be submitted to the B&W Y-12 Procurement Manager with a request for a Final Decision.

(d) Seller and any lower-tier subcontractors whose portion of the claim exceeds \$50,000 shall certify its portion of the claim; provided however, if Seller cannot certify the lower-tier subcontractor's portion of Seller's claim, Seller shall explain in writing why it cannot certify that portion.

(i) The Company shall not be liable for, and shall not pay, any claim originated by the Seller if that claim exceeds \$50,000 unless Seller's claim is accompanied by the below certification from the Seller.

(ii) The Company shall not be liable for, and shall not pay, any claim of a lower-tier subcontractor to Seller if that claim, without mark-ups by a higher-tier subcontractor or Seller, exceeds \$50,000 unless that

claim is accompanied by the below certification from the lower-tier subcontractor that originated the claim.

- (iii) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met.
- (iv) If Seller certified its costs under the Adjustments clause, Seller is not required to certify under this Article as a claim, unless Seller certified more than 180 calendar days before Seller submits its claim or the claim amount exceeds the prior certified amount by more than \$50,000.

CERTIFICATION

I certify that this claim request is made in good faith, that the supporting data are accurate and correct to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the Seller and I believe the Company is liable, and that I am duly authorized to certify the request on behalf of [the Seller or lower-tier subcontractor, as appropriate].

(e) (1) A claim from Seller shall be deemed denied if the Procurement Manager does not issue a written Final Decision (i) by the date the Procurement Manager notified Seller that the decision would be issued, or (ii) within 60 calendar days after receipt of the claim if the Procurement Manager did not notify Seller of a date by which the Final Decision would be issued. The Procurement Manager may, but is not required to issue a written Final Decision after a claim is deemed denied.

(2) The Procurement Manager's written Final Decision on any Seller claim shall be final and conclusive between the parties with no right of judicial review, provided however, that the Final Decision shall not be final and binding against either party if the Seller files suit within 90 calendar days of the written Final Decision in the appropriate court as provided for in paragraph (f) below.

(3) Seller shall have no right to file suit prior to the date of the written Final Decision or 60 calendar days from the Procurement Manager's receipt of the claim, whichever occurs earlier.

(f) (1) Where Seller is a State agency, such as an Educational Institution, the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues.

(2) In all other cases, subject to (f)(3) below, any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Eastern District of Tennessee, Northern Division.

(3) However, in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in either Anderson, Knox, or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate.

(4) The parties agree to trial by judge alone and hereby waive any right to demand a trial by jury.

(g) The parties agree that, subject to (f)(1), the resolution of all issues arising from or relating to this Agreement shall be governed to the maximum extent practicable by the common law of federal contracts; provided, however, that (i) the "Christian Doctrine" shall not apply, meaning that federal

procurement clauses (e.g., the FAR, including agency supplements) or portions thereof not appearing in this Agreement shall not be read into this Agreement, and (ii) where the language of any clause, provision or term herein differs from the language of a federal procurement clause, provision or term, the differing language of this Agreement shall control. Where the common law of federal contracts does not apply, then subject to (f)(1), resolution shall be governed by the laws of the State of Tennessee.

(h) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under or related to this Agreement between the parties or between Seller and its subtier subcontractors.

25. TERMINATION

(a) The Company may terminate this Agreement for any reason in its sole discretion upon ten (10) calendar days' advance written notice to Seller. Upon receipt of a notice of termination Seller shall terminate efforts in an orderly fashion as promptly as possible. Upon any termination, Seller shall within thirty calendar days thereafter be paid the compensation due through the effective date of termination.

(b) This Agreement may be terminated without further liability or obligation on the part of the Company should Seller incur cost reimbursable by Company under this Agreement in excess of the total amount otherwise authorized or should the Seller breach any of the covenants of this Agreement.

26. SEVERABILITY

The obligations set forth in this Agreement are severable and divisible, and no clause or portion thereof which is not enforceable shall cause the remainder of such clause or other obligations contained herein to be unenforceable.

27. ENFORCEMENT.

Failure on the part of either party (the "first party") to insist on strict compliance by the other with any provisions of this Agreement shall not constitute a waiver of the other party's obligations in respect thereof, or of the first party's right hereunder to require strict compliance therewith in the future.

28. CLAUSES INCORPORATED BY REFERENCE

(a) The clauses in paragraph (c) below are incorporated by reference. The texts of FAR clauses incorporated by reference are available at <http://www.arnet.gov/far>, the texts of DEAR clauses are available at <http://www.management.energy.gov/DEAR.htm> and the texts of Company clauses are available on the Procurement link at <http://www.y12.doe.gov>. Except as provided in (b) below, in FAR and DEAR clauses incorporated by reference, "Contractor" means Seller, "Government" means the Company, "Contract" means this Agreement, and "Contracting Officer" means Subcontract Administrator.

(b) "Government" retains its meaning in

(1) The phrases "Government property" and "Government-furnished property;" and

(2) Paragraph (a) of FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions.

(c)(1) The following clauses are incorporated into this Agreement:

- FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995)
- FAR 52.222-3 Convict Labor (JUN 2003)
- FAR 52.223-3 Hazardous Material Identification and Material Safety Data (JAN 1997) Alternate I (JUL 1995)
- Hazardous Material Reporting (Company) (APR 2010)
- FAR 52.224-2 Privacy Act (APR 1984)
(Applies to scope of work for system of records on individuals)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (JUN 2008)
- FAR 52.244-6 Subcontracts for Commercial Items (AUG 2009)
- DEAR 952.204-77 Computer Security (AUG 2006)
- Exhibit 9, Technical Data (Company-7/99)
- Security of Unclassified Controlled and Proprietary Information (APR 2010) (Company)
- Travel Reimbursement Policy (APR 2010) (Company)

(c)(2) The following clauses are incorporated if this Agreement exceeds \$10,000:

- FAR 52.222-26 Equal Opportunity (MAR 2007) (The required poster is available at:
<http://www.dol.gov/dol/esa/public/regs/compliance/posters/eo.htm>)
- FAR 52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998)

(c)(3) The following clause is incorporated by reference if this agreement exceeds \$25,000.

- Workplace Substance Abuse Program (JAN 2010) (Company)

(c)(4) The following clauses are incorporated if this Agreement exceeds \$100,000:

- FAR 52.203-7 Anti-Kickback Procedures (JUL 1995), except paragraph (c)(1)
- FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997)
- FAR 52.222-35 Affirmative Action for Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)
- FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)
- FAR 52.247-63 Preference for U.S. Flag Air Carriers (JUN 2003)
- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

(c)(5) The following clauses are incorporated by reference when Seller works on a DOE site:

- Badging , Personal Identity Verification and Security Clearances for Seller Employees (APR 2010)
- DEAR 952.203-70 Whistleblower Protection for Contractor Employees (DEC 2000)

- DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure Records (APR 1984)
- Required Training (Company-JUL 2010)
- Subcontract Administrative Requirements (APR 2010) (Company)
- Appropriate Footwear Policy (APR 2010) (Company)
- Y-12 Motor Vehicle and Pedestrian Safety (APR 2010) (Company)
- Smoking Policy (APR 2010) (Company)

(c)(6) The following clauses are incorporated when the work involves access to classified information or special nuclear material:

- FAR 52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 1984)
- DEAR 952.204-2 Security (AUG 2009)
- DEAR 952.204-70 Classification/Declassification (SEP 1997)
- Civil Penalties for Classified-Information Security Violations (APR 2010) (Company)
- Exhibit 7 - Classified Inventions (Company 5/80)