GENERAL TERMS & CONDITIONS
Cost-Reimbursement – Services
(CTSER MAR 2011)

CONTENTS.....PAGE

1. Definitions.....1
2. Order of Precedence.....1
3. Agreement for Benefit of DOE.....1
4. Acceptance of Terms and Conditions.....1
5. Employee Concerns Program.....2
6. Cooperating with DOE Office of Inspector General.....2
7. Reporting Waste, Fraud, and Abuse.....2
8. Public Release of Information.....3
9. Confidentiality of Information.....3
10. Compliance with Laws.....3
11. Work Schedule.....3
12. Prohibited Items at Y-12.....3
13. DOE Security Badges and Clearance Requirements.....4
14. Workplace Substance Abuse Program.....5
15. Environmental, Safety, and Health.....6
16. Independent Contractor.....8
17. Hold Harmless.....8
18. Defense Priority and Allocation Requirements.....8
19. Allowable Cost and Payment.....8
20. Taxes – Fixed-Price Federal, State, and Local Taxes.....9
21. Predetermined Indirect Cost Rates.....10
22. Export Control.....10
23. Authorization and Consent.....10
24. Patent Indemnity.....11
25. Insurance.....11
26. Limitation of Cost.....11
27. Limitation of Funds.....12
28. Interest.....13
29. Assignment.....13
30. Assignment of Claims.....13
31. Resolution of Disputes.....13
32. Bankruptcy.....14
33. Stop-Work Order.....14
34. Suspension of Work.....15
35. Changes.....15
36. Subcontracts.....16
37. Property.....17
38. Inspection of Services.....18
39. Suspect/Counterfeit Items.....19
40. Submission of Transportation Bills.....20
41. Termination.....20
42. Excusable Delays.....22
43. Clauses Incorporated by Reference.....22

1. DEFINITIONS

The following terms shall have the meanings below:

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

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

(c) Seller means the person or organization that has entered into this Agreement with the Company.

(d) Agreement means Purchase Order, Subcontract, Price Agreement, AVID Agreement, Basic Ordering Agreement, 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 to the Seller in performance of the work under this Agreement.

(h) Educational Institution means an entity described in Office of Management and Budget Circular No. A-21.

(i) On-site work means work in furtherance of this Agreement at a DOE-owned or –leased area or Company-owned or –leased area.

2. ORDER OF PRECEDENCE

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

(a) The Schedule (excluding Sections C and G);
(b) Negotiated Alterations or Special Provisions;
(c) General Terms and Conditions;
(d) Clauses Incorporated by Reference;
(e) Supplemental Conditions;
(f) Specifications or Statement of Work, or other description of services or supplies; and
(g) 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, a Managing and Operating Contractor, acting under its Prime Contract with DOE, has entered into this Agreement with Seller for the benefit of DOE. 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 (1) because the Company itself, rather than DOE/NNSA, has suffered no damages on account of the cost-reimbursable nature of Company's Prime Contract with DOE, or (2) 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 Agreement.
(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. EMPLOYEE CONCERNS PROGRAM

(a) For purposes of this clause, "Seller employees" are persons employed by Seller and engaged in on-site work or activities directly related to on-site work.

(b) Seller must notify Seller employees that:

(1) DOE and the Company maintain an Employee Concerns Program (ECP) that extends to Seller employees. An "employee concern" is a good-faith expression by an employee that a policy or practice by DOE, Company, or Seller should be improved, modified, or terminated. Concerns may address health, safety, the environment, management practices, ethics, harassment, discrimination, fraud, waste, or reprisal for raising a concern.

(2) The Company ECP provides Seller employees with a forum for consideration of employee concerns. Two purposes of the Company ECP are to ensure that Seller employees can raise employee concerns without fearing reprisal, and to address employee concerns in a timely and objective manner.

(3) Seller employees have the right and responsibility to report concerns relating to the environment, safety, health, or management of DOE-related activities. While Seller employees are encouraged first to seek resolution with first-line supervisors or organizational managers, or through Seller's own existing complaint or dispute-resolution systems, Seller employees have the right to report concerns through the Company ECP by calling 865-574-7744 or 865-574-7755. Seller employees may also call the NNSA Y-12 Site Office at 1-865-576-0401, or the DOE Employee Concerns Hotline at 1-800-688-5713.

(4) Although concerns may be reported anonymously, the investigation into the concern may be limited if insufficient information is provided when submitting the concern. Those who submit concerns anonymously will not receive a direct response.

(5) For on-site work or activities directly related to on-site work, Seller is subject to the DOE Contractor Employee Protection Program procedures of 10 CFR 708 for processing complaints of alleged retaliation for disclosure of information concerning danger to public or worker health or safety, substantial violations of law, or gross mismanagement; for participation in Congressional proceedings; or for refusal to participate in dangerous activities. The provisions of 10 CFR 708 prohibit reprisals against Seller employees in response to, or in retaliation for, having raised good-faith reasonable concerns about DOE-related operations.

(c) Seller must assist Company and/or DOE in the resolution of employee concerns in a manner that protects the health and safety of both employees and the public and ensures effective and efficient operation of DOE-related activities under Seller's or Company's jurisdiction.

(d) Seller must cooperate with assessments used to verify that it has acted to minimize, correct, or prevent recurrence of the situation that precipitated a valid concern.

(e) Notices containing the information in subparagraph (b) and which are posted in areas where DOE-related work is performed will satisfy the notification requirement of subparagraph (b).

(f) Flowdown – Requirements of this clause shall be flowed down to all lower-tier subcontracts involving on-site work or activities directly related to on-site work.

6. COOPERATING WITH DOE OFFICE OF INSPECTOR GENERAL

(a) 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. The Seller must ensure that its employees (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.

(b) Seller must ensure that reprisals are not taken against employees who cooperate with or disclose information to 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

(a) Seller shall not publicly disclose information concerning any aspect of the materials or services relating to this Agreement without the prior written approval of the Subcontract Administrator unless specifically required by law.

(b) The interest of the Company in this Agreement may not be used in advertising or publicity without advance written approval of the Company.

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 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 required Seller to hold it in confidence.

(b) Seller shall obtain written agreement, in a form satisfactory to Company, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within Seller's organization directly concerned with performance of this Agreement.

(c) 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.

(d) 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. Upon request by Company or DOE, such an agreement shall also be signed by Seller's personnel.

(e) This clause shall flow down to all appropriate lower-tier subcontracts.

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.

(c) Regardless of the performer of the work, the Seller is responsible for compliance with the requirements of this clause. The Seller is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Seller's compliance with the requirements.

11. WORK SCHEDULE

(a) B&W Y-12 has adopted a work schedule of four ten-hour days, Monday through Thursday. Shifts begin at 6:00 a.m., 6:30 a.m., 7:00 a.m., 7:30 a.m., 8:00 a.m., or 8:30 a.m. Seller employees working on site at Y-12 must adopt the work schedule of four ten-hour days and must work shifts acceptable to their Subcontract Technical Representatives.

(b) Shipments will not be received at Y-12 on Fridays. Shipments will be received Mondays through Thursdays from 7:00 a.m. to 1:30 p.m. (7:00 a.m. to 11:00 a.m. for hazardous materials).

(c) The Seller must include this clause in subcontracts requiring work to be performed on site at Y-12.

12. 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) Information Technology (IT) devices. (1) A current list of acceptable IT devices for use at Y-12 is available to Seller and its employees at **http://www.y12.doe.gov/business/procurement/subcontracting/ .** Seller agrees to review the list before entering this agreement and to check it periodically for updates before reporting for on-site work.

(2) Within Y-12's Limited Areas, Exclusion Areas, Material Access Areas, and Protected Areas (security areas designated by DOE for the protection of classified and other materials), **all** personally owned IT devices are prohibited without prior written approval obtained through the Subcontract Technical Representative (STR). The prohibited IT devices include, without limitation, cellular telephones, smart phones, personal digital assistants, personal electronic devices, pagers, and flash memory storage devices. Examples include the iPhone, iPod, iPad, Droid, BlackBerry, Evo, Pro Plus, Rogue, e-readers such as the Kindle or Nook, netbooks, and laptop computers. These are only examples and this list is not exhaustive.

(3) Personally owned IT devices may be taken into, and used in, Y-12's designated Property Protection Areas

unless otherwise posted as prohibited. Seller must confirm with the STR whether a particular area is a Property Protection Area. However, if any IT device contains one of the following features, then that feature cannot be used at any time: (A) camera capability; (B) built-in recording capability; or (C) Wi-Fi connection to the Y-12 networks, unless the STR has provided prior written approval.

(4) Personally owned IT devices may not be connected to Y-12 networks or Y-12 issued IT computing devices or components (i.e., printers) without prior written approval obtained through the STR. In no event may Y-12 data be stored on personally owned IT devices.

(5) In the event of a personal emergency while within the Y-12 NSC boundary, do not dial 911 from a cellular telephone. A personal cellular telephone may be used to contact the Plant Shift Superintendent's (PSS) office at 574-7172 for assistance. Dialing 911 from a cellular telephone does not contact the Y-12 plant's emergency services and will therefore delay assistance.

(6) Seller employees must self-report to the STR any violation of these restrictions on IT devices.

(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) Media. (1) Use of any personally owned media, such as Universal Serial Bus (USB) flash memory drives, USB memory keys, memory sticks, compact discs, floppy discs, etc., is prohibited without prior written approval obtained through the STR. Approval will require, among other things, that the media or device be labeled according to B&W Y-12 guidance pertaining to data content type and thereafter properly accounted for and destroyed if required. In no event may Y-12 data be stored on personally owned media.

(2) Government owned media that has been used in private personal computers may not be connected, attached, or inserted into any government device without prior written approval obtained through the STR.

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

(g) 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

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

- Cordless telephones
- Devices with infrared, Bluetooth, or radio frequency (RF) capability; Bluetooth may, however, be used outside in facility parking lots designated as PPAs and while driving on Bear Creek Road and access road leading to or from PPA parking areas
- Global Positioning System (GPS) units
- Wireless local area networks (WLAN) and wide area networks (WANs)
- Wireless mice and keyboards
- Wireless-enabled computers, including laptop and netbook computers, in Limited Areas, Exclusion Areas, Material Access Areas, and Protected Areas
- Wireless radios (such as Nextel)
- Wireless wide area networks
- Wireless audio-visual support equipment (such as wireless microphones, remote controls, headsets, and electronic white boards)
- Wireless scanners and bar code readers
- Wireless survey or testing equipment
- Wireless tags
- Wireless special purpose sensors and other wireless instruments
- Wireless data acquisition equipment and data loggers
- Wireless Wi-Fi or broadband cards in Limited Areas, Exclusion Areas, Material Access Areas, and Protected Areas

(i) Subcontracts. The Seller must include this clause in lower-tier subcontracts requiring on-site work.

13. DOE SECURITY BADGES AND CLEARANCE REQUIREMENTS

(a) Security badges issued by the Company to Seller employees and Seller's lower-tier subcontractor employees are Government property. The Seller must ensure that badges issued to its employees and employees of its subcontractors at all tiers are returned to the Company. Employees must return badges upon expiration of this Agreement, termination of employment, or when access to the Y-12 National Security Complex is no longer needed. Employees holding an L or Q clearance must attend a security termination debriefing conducted by the Company when returning badges. When possible, the Seller must notify the STR three business days before an employee holding an L or Q clearance will be returning a badge so that debriefings may be scheduled. However, in all cases, the Personnel Security Clearance Office should be notified by the Seller within one business 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. 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.

(b) The Seller must immediately notify the Subcontract Administrator in writing when a badge of its employee or the

employee of a lower-tier subcontractor is lost or stolen. These employees 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 replacement badges.

(c) The Seller must immediately notify the Subcontract Administrator in writing whenever any employee of Seller or a lower-tier subcontractor who has been badged or holds a security clearance under this Agreement terminates employment or no longer needs access to the Complex.

(d) The Seller must ensure that its employees and its lower-tier subcontractors' employees complete the *B&W Y-12 Subcontractor Personnel Exit Checklist*, Form UCN- 4452S, before exiting the site. The employee must take the completed Checklist and badge to the Y-12 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 employee 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.

(e) 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.

(f) On the last Thursday of each month, the Seller shall go to Company web site http://www.y12.doe.gov/business/badging to initially register and/or update the Subcontract Badge/Clearance Status Report for that month. The Seller must ensure that all security badges issued to its employees and employees of its subcontractors at all tiers are recorded monthly through this web site.

14. WORKPLACE SUB STANCE ABUSE PROGRAM (WSAP)

(a) Applies to -- This clause applies to subcontracts $25,000 or greater and which involve: (1) access to or handling of classified information or special nuclear materials; (2) high risk of danger to life, the environment, public health and safety, or national security; (3) transportation of hazardous materials to or from a DOE site, (4) employees who are required to have L or Q clearances to perform work under this Agreement, or (5) on–site construction activities.

(b) WSAP Covered Work --_ For purposes of this clause, "WSAP covered work" means both on-site work, and work that is not on-site but that is performed by subcontractor employees with Q or L clearances at facilities that have Limited Areas (security areas designated by DOE for the protection of classified matter). Facilities that are not DOE-owned or –leased or Company-owned or -leased but that have Limited Areas within them are known as "possessing facilities."

(c) Sub-tier contractors to Seller -- Seller shall include this requirement in its contracts with applicable lower tier subcontractors, and will require those subcontractors to include this requirement in their subcontracts, if the applicability standards listed in the "Applies to" section above are met. References to "Seller" include all lower tier subcontractors falling within the "Applies to" criteria listed in subparagraph (a) above.

(d) Company approval of Seller Program

(1) All work falling within the **"**Applies to**"** criteria above is subject to 10 CFR 707, "Workplace Substance Abuse Programs at DOE Sites." This clause highlights certain provisions of 10 CFR Part 707, but Seller is directed to the entire provision to ensure compliance. The Seller shall develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707. In accordance with 10 CFR 707.5(d), Seller's WSAP requires Company approval. Seller's proposed WSAP must be submitted to the Subcontract Administrator and approved before the start of work.

(2) Seller shall also submit applicable lower-tier subcontractor WSAPs for Company approval. Seller may either include employees of some or all subcontractors in its WSAP, or include this clause in subcontracts for WSAP covered work and require subcontractors to submit WSAPs for Company approval.

(e) General Workplace Substance Abuse Program Requirements.

(1) Seller's WSAP shall be consistent with the baseline elements in 10 CFR Part 707 and the guidelines of the U.S. Department of Health and Human Services found at:

http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/mandatory_guidelines5_1_10.html.

(2) For all WSAP covered work, Seller's WSAP must provide for pre-employment testing for illegal drugs before final selection of applicants for employment, regardless of whether such applicants will fill testing designated positions (TDPs) as described in subparagraph (f) below. Pre-employment testing must comply with all applicable provisions of 10 CFR 707.

(3) Seller must notify the Subcontract Administrator in writing as soon as possible, or at the latest by the next business day, after Seller receives notice -

- of an employee's conviction under a criminal drug statute, or
- for employees in TDPs (defined below), of a drug related arrest or conviction or a receipt of a positive drug test result.

(4) Seller shall maintain files of chain-of-custody records required by 10 CFR 707.12(a) and 10 CFR 707.16(d) and submit copies to Company upon request. Seller and lower-tier subcontractors shall require that laboratory records relating to positive drug test results be maintained in the manner and for the periods required by 10 CFR 707.16(c).

(5) Seller shall use only drug-testing laboratories certified by the Department of Health and Human Services under Subpart C of the HHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs." [See 10 CFR 707.12(a)]. The HHS Mandatory Guidelines are available at

http://dwp.samhsa.gov/. Seller shall provide a copy of the certification to the Subcontract Administrator upon request. Seller shall retain pre-employment testing records in accordance with 10 CFR 707.16. When an applicant has been tested and determined to have used an illegal drug, Seller must terminate processing for employment and so notify the applicant.

(6) As required by 10 CFR 707.5(d), Company will monitor Seller's implementation of its program for effectiveness and compliance with 10 CFR Part 707. Seller shall submit a written report, if appropriate, to the Subcontract Administrator of drug tests completed before mobilization or commencing authorized work. At Company's request, Seller shall submit additional reports of tests completed during performance.

(7) Company may require Seller to remove from WSAP covered work any Seller employee who is determined to have used an illegal drug. Seller shall in all cases remove from WSAP covered work at Y-12 any employee who is twice determined to have used illegal drugs.

(f) Testing Designated Positions

(1) In addition to the general WSAP provisions, Seller shall determine if it has employees in TDPs as defined below and performing WSAP covered work. If Seller has no TDPs (potentially the case for uncleared construction subcontractors employees not possessing a Facility Clearance) the WSAP shall so state. If Seller has employees in TDPs performing WSAP covered work, then prior to beginning work under this Agreement, Seller shall provide the Subcontract Administrator with a list of all TDP employees, and Seller's WSAP must comply with the provisions of 10 CFR Part 707 regarding TDPs. Thereafter, Seller shall notify the STR of any additions or deletions of employees in TDPs within 48 hours.

(2) TDPs are defined as those positions involving certain high risk work listed in Part 707, access to classified information, construction, and crane operators, and any positions filled by employees holding an L- or Q-clearance.

(3) Seller's employees in TDPs who perform on-site will be subjected to the following drug testing by Company:

(i) Random drug testing at the rates specified in 10 CFR 707.7,

(ii) Drug testing as a result of an occurrence (see 10 CFR 707.9), and

(iii) Drug testing for reasonable suspicion of illegal drug use (see 10 CFR 707.10).

(4) Seller's employees performing on-site work shall be placed in Company's pool of employees for random drug testing, and these employees will be subject to testing by Company's Occupational Health Services (OHS). Seller's employee will be notified by Company's representative when Seller's employee is selected for random drug testing. Company's representative will notify Company's OHS when Seller's employee has been notified of his/her duty to report to Company's OHS. Upon notification by Company's representative, Seller's employee will have one and one-half hours to report to Company's OHS.

(g) Seller's failure to comply with the requirements of 10 CFR Part 707 or to perform in a manner consistent with its approved WSAP may render Seller subject to suspension of payments, termination for default, suspension and debarment, and any other remedies available to Company and/or to DOE.

(h) If Seller believes that an anticipated lower tier subcontract for on-site work may require a WSAP that complies with 10 CFR 707, then Seller must notify the Subcontract Administrator not later than ten calendar days before Seller awards that subcontract.

15. ENVIRONMENT, SAFETY, AND HEALTH

(a) Applicability -- This clause applies to all on-site work for both Seller and its lower-tier subcontractors at any level. Employees include Seller employees and all lower-tier subcontractor employees. Company is in the process of attaining DOE-VPP Star status. The DOE-VPP Star status program promotes safety and health excellence, with the core of VPP being a cooperative effort among all employees. The program is equivalent to the OSHA program that recognizes employers and workers who have implemented effective safety and health management systems. The ongoing safety initiatives at Y-12 ensure that Y-12 is one of the safest sites within the NNSA/DOE Complex. Non-compliance with safety requirements is grounds for removal from or denial of access to Y-12.

(b) Seller shall immediately notify the STR of all occupational injuries or illnesses. Seller shall submit written reports to the STR for occupational injuries or illnesses that are recordable under 29 CFR 1904, Subpart C, within two working days after Seller learns of the injury or illness. Reports shall be made on DOE Form 5484.3, *Individual Accident/Incident Report*. Before the third working day of each month, Seller shall submit a report for the previous month to the STR on the Subcontractor Safety Performance Report form, UCN-21439.

(c) (1) Seller shall perform work under Company's approved 10 CFR 851 Worker Safety and Health Program, which can be found at:

Y73-004PD, B&W Y-12 10-CFR Part 851 Worker Safety & Health Program

Seller 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, or with Company's approved Program.

(2) Seller shall comply with OSHA medical surveillance requirements (29 CFR 1910) based on Seller's scope of work and the OSHA requirements for the treatment of illnesses and injuries. The 10 CFR *Worker Safety and Health Program* requirements include requirements for occupational medicine. Seller shall provide a program under the direction of a licensed physician meeting the credentials requirements of 10 CFR 851, Appendix A.8(b), and personnel providing health services meeting the credentials requirements of Appendix A.8(c). A written description of Seller's occupational medicine program including proof of staff credentials is a required submittal under this Agreement. Seller's occupational medicine program contents will be determined by its Occupational Medicine Director and based on Seller's

scope of work and associated hazards. Company has submitted an application for a permanent variance to exempt subcontractors from certain requirements for occupational medicine programs. Should the Company's variance for occupational medicine requirements for subcontractors be denied, Company will be required to comply with all applicable requirements of 10 CFR 851, including Appendix A.8

(d) Seller shall perform all work in accordance with DEAR 970.5223-1, *Integration of Environment, Safety, and Health into Work Planning and Execution* (DEC 2000). Depending upon the complexity and hazards associated with the work, Seller may be required to submit, as provided for in special articles *Environment, Safety, and Health, Alternative I* (UCN-22481), *Alternative II* (UCN-22476), or *Alternative III* (UCN-22479), a Safety Management System that compliew with DEAR 970.5223-1. Seller shall take all reasonable precautions in the performance of the work under this Agreement to protect the safety and health of all personnel and members of the public, and minimize danger from all hazards to the environment, life and property. Additionally, Seller shall comply with all environment, safety, and health regulations and requirements of the Company and DOE including, without limitation, such other provisions as may be contained in this Agreement relating to environment, safety and health. In the performance of any and all aspects of work subject to this clause, 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;

(7) Comply with ES&H requirements of all applicable laws and regulations, and applicable Company or DOE directives identified in this Agreement; and

(8) Cooperate with federal, state, and local agencies having jurisdiction over ES&H matters under this Agreement.

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

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

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

(f) Stop Work Authority

(1) All persons on site, including Seller's personnel, have the right and responsibility to stop work or decline to perform an assigned task whenever they discover:

(i) Conditions that pose (because of a reasonable belief) an imminent risk of death, serious physical harm or other serious hazard to workers or the public;

(ii) Conditions that, if allowed to continue, could adversely affect the safe operation of, or could cause serious damage to the facility; or

(iii) Conditions that, if allowed to continue, could result in release, from the facility to the environment, of radiological or chemical effluents that exceed regulatory limits.

(2) Seller shall promptly evaluate and resolve any noncompliance with ES&H requirements or conditions listed in (f)(1) above that it discovers or of which it is notified by the Company. If Seller fails to resolve the noncompliance or condition, or if at any time 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, Company may, without prejudice to any other legal or contractual rights of Company, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of Company.

(3) Seller shall not be entitled to, and shall make no claim, for an extension of time or for compensation or damages by reason of, or on connection with, such work stoppage. If work is stopped or suspended because of a condition stated in this clause, then whether or not a written order is issued and whether or not this clause is cited at the time of the work stoppage or suspension, this clause applies notwithstanding any other clause in this Agreement that might apply.

(g) The Subcontract Administrator may require Seller's participation, at Seller's expense, in Company fact-finding investigations of accidents, injuries, occurrences, and near-misses.

(h) Seller shall be responsible for all liability and related expenses resulting from Seller's violation of any laws or regulations, and such responsibility includes the obligation to defend, indemnify, and hold harmless Company, its members, directors, officers and employees for Seller's conduct. 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.

(i) Flowdown -- **S**eller 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 Seller of its obligation to assure compliance with this clause for all aspects of the work.

16. INDEPENDENT CONTRACTOR

(a) Seller shall act in performance of this Agreement as an independent contractor and not as an agent for Company or the Government, maintaining complete control over its employees and all lower-tier subcontractors. Nothing contained in this Agreement or any lower-tier subcontract shall create any contractual relationship between any such lower-tier subcontractor and the Government or Company. Seller is solely responsible for the actions of itself and its lower-tier subcontractors, agents or employees.

17. HOLD HARMLESS

SELLER SHALL BE SOLELY RESPONSIBLE FOR ALL LIABILITY AND RELATED EXPENSES RESULTING FROM INJURY, DEATH, DAMAGE TO, OR LOSS OF PROPERTY WHICH IS IN ANY WAY CONNECTED WITH THE NEGLIGENT PERFORMANCE OF WORK UNDER THIS AGREEMENT. SELLER SHALL ALSO BE RESPONSIBLE FOR ALL MATERIALS AND WORK UNTIL ACCEPTANCE BY COMPANY. SELLER'S RESPONSIBILITY SHALL APPLY TO ACTIVITIES OF SELLER, ITS AGENTS, LOWER-TIER SUBCONTRACTORS, OR EMPLOYEES AND SUCH RESPONSIBILITY INCLUDES THE OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE GOVERNMENT AND THE COMPANY. HOWEVER, SUCH LIABILITY AND INDEMNITY DOES NOT APPLY TO INJURY, DEATH, OR DAMAGE TO PROPERTY TO THE EXTENT IT ARISES FROM THE CONDUCT OF COMPANY.

18. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS.

This is a rated order certified for national defense, and Seller shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700). Unless otherwise stated the Defense Priority is DO-E2.

19. ALLOWABLE COST AND PAYMENT

(a) Invoicing. The Company will make payments to the Seller when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Company in accordance with the terms of this Agreement and the following FAR Subparts, as supplemented by DEAR Subpart 931.2, in effect on the date of this Agreement: (1) FAR Subpart 31.3 for educational institutions, (2) FAR Subpart 31.7 for nonprofit organizations not listed in Attachment C of OMB Circular A-122, and (3) FAR Subpart 31.2 for all others. The Seller may submit to the Company, in such form and reasonable detail as the Company may require, an invoice supported by a statement of the claimed allowable cost for performing this Agreement.

(b) Reimbursing costs. (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for the Agreement;

(ii) When the Seller is not delinquent in paying costs of performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Supplies and services purchased directly for the Agreement and associated financing payments to subcontractors, provided payments determined due will be made in accordance with the terms and conditions of a subcontract or invoice and ordinarily within 30 calendar days of the submission of the Seller's payment request to the Company;

(B) Materials issued from the Seller's inventory and placed in the production process for use on the Agreement;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Seller contributions under employee pension plans shall be excluded until actually paid unless the Seller's practice is to make contributions to the retirement fund quarterly or more frequently, and the contribution does not remain unpaid 30 calendar days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Seller's indirect costs for payment purposes).

(c) Final indirect cost rates. (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Seller shall submit an adequate final indirect cost rate proposal to the Company (or cognizant Federal agency official) and auditor within six months after the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Seller and granted in writing by the Company. The Seller shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Seller's actual cost experience for that period. The appropriate Company or Government representative and the Seller shall establish the final indirect cost rates as promptly as practical after receipt of the Seller's proposal.

(3) The Seller and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling,

obligation, or specific cost allowance or disallowance provided for in this Agreement.

(4) Within 120 calendar days (or longer period if approved in writing by the Subcontract Administrator) after settlement of the final annual indirect cost rates for all years of a physically complete Agreement, the Seller shall submit a completion invoice to reflect the settled amounts and rates. If the Seller fails to submit a completion invoice within the time specified, the Subcontract Administrator may determine the amounts due to the Seller under the Agreement and record this determination in a unilateral modification to the Agreement.

(d) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(e) Audit. At any time or times before final payment, the Company may have the Seller's invoices and statements of cost audited. Any payment may be reduced by amounts found by the Subcontract Administrator not to constitute allowable costs or adjusted for prior overpayments or underpayments.

(f) Final payment. (1) Upon approval of a completion invoice or voucher submitted by the Seller in accordance with paragraph (c)(4) of this clause, and upon the Seller's compliance with all terms of this Agreement, the Company shall promptly pay any balance of allowable costs and fee (if any) not previously paid. A final invoice shall be submitted for payment no more than 90 calendar days following the expiration or termination of the subcontract, unless a later or alternate date is agreed to in writing by the Subcontract Administrator. Said invoices shall be clearly marked "Final Invoice", thus indicating that all payment obligations of the Company under this subcontract have ceased and that no further payments are due or outstanding. If Seller fails to submit a final invoice within time allowed, the Subcontract Administrator shall determine the final amount owed to the Seller, if any, or the final amount owed by the Seller to the Company. Such determination shall be final and conclusive between the parties without the right of judicial review unless the Seller submits a claim requesting a Procurement Manager Final Decision under the Resolution of Disputes clause within 60 calendar days after receipt of the Subcontract Administrator's determination.

(2) The Seller shall pay to the Company any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Seller or any assignee under this Agreement, to the extent that those amounts are properly allocable to costs for which the Seller has been reimbursed by the Company. Reasonable expenses incurred by the Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Subcontract Administrator. Before final payment under this Agreement the Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Company, in form and substance satisfactory to the Subcontract Administrator, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Seller has been reimbursed by the Company under this Agreement; and

(ii) A release discharging the Company, the Government, their officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Agreement, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Seller to third parties arising out of the performance of this Agreement; provided, that the claims are not known to the Seller on the date of the execution of the release, and that the Seller gives notice of the claims in writing to the Subcontract Administrator within six years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Seller under the patent clauses of this Agreement, excluding, however, any expenses arising from the Seller's indemnification of the Company and the Government against patent liability.

20. 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 of 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.

21. PREDETERMINED INDIRECT COST RATES.

(This clause is applicable if the Seller is an educational institution and its cognizant agency has established predetermined final indirect cost rates.)

(a) Notwithstanding the Allowable Cost and Payment clause of this Agreement, allowable indirect costs shall be obtained by applying predetermined final indirect cost rates established in accordance with FAR 42.705-3(b).

(b) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR Subpart 31.3 in effect on the date of this Agreement.

(c) Predetermined rate agreements in effect on the date of this Agreement or subsequently established do not change any monetary ceiling or specific cost allowance or disallowance provided for in this Agreement.

(d) Pending establishment of predetermined indirect cost rates for any fiscal year, the Seller shall be reimbursed either at the rates fixed for the previous fiscal year or at billing rates acceptable to the cognizant agency, subject to appropriate adjustment when the predetermined final rates for that period are established.

(e) If for any fiscal year the Seller and its cognizant agency fail to agree to predetermined indirect cost rates, allowable indirect costs shall be determined in accordance with the Allowable Cost and Payment clause.

22. EXPORT CONTROL

(a) The Seller must comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement. In the absence of available license exemptions or exceptions, the Seller must obtain required licenses or other approvals for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Seller must obtain export licenses, if required, before using foreign persons in performance of this Agreement, if the foreign person will have access to export-controlled technical data or software.

(c) The Seller is responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions and exceptions.

(d) The Seller shall include this clause in subcontracts hereunder.

23. AUTHORIZATION AND CONSENT

(a) The Government authorizes and consents to all use and manufacture, in performing this Agreement or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Company under this Agreement or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Seller or a subcontractor with (i) specifications or written provisions forming a part of this Agreement or (ii) specific written instructions given by the Company directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this Agreement or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Seller agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract,

including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

24. 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.

25. INSURANCE

This clause applies to on-site work only.

(a) Seller shall provide and maintain during the entire performance period of this subcontract the following kinds and at least the minimum amounts of insurance:

(1) Workers' Compensation – As required by applicable federal and state workers' compensation and occupational disease statutes;

(2) Employer's Liability - $1 million each accident, $1 million each employee, $1 million policy limit for disease;

(3) Commercial General Liability (Occurrence basis) - Bodily injury liability of at least $1 million per occurrence; and

(4) Automobile Liability (Covering any automobile) - Minimum of $500,000 per person and $1 million per occurrence for bodily injury and $500,000 per occurrence for property damage.

(b) When aircraft are used in connection with performing the subcontract, Seller shall provide and maintain public and passenger liability insurance. Coverage shall be at least $200,000 per person and $500,000 per occurrence for bodily injury and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(c) No later than ten calendar days after award and before beginning work under this agreement on site, 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,

(3) State that B&W Y-12, LLC and the U.S. Department of Energy have been added as Additional Insured's on all liability policies other than workers' compensation, and

(4) 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 the Seller under this subcontract.

(h) The Seller shall be reimbursed for that portion of the reasonable cost of insurance allocable to this subcontract and required or approved under this clause.

(i) This clause does not restrict the right of the Seller to be reimbursed for the cost of insurance maintained by the Seller in connection with the performance of this subcontract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this subcontract.

(j) The Seller may, with the approval of the Subcontract Administrator, maintain a self-insurance program, provided that, with respect to workers' compensation, the Seller is qualified pursuant to statutory authority.

(k) Flowdown – Seller shall include this clause, modified to identify the parties, in lower-tier subcontracts that require work on site. At least five days before entry of each such subcontractor's personnel into an on-site area, Seller shall furnish (or ensure that there has been furnished) to the Subcontract Administrator a certificate of liability insurance, meeting the requirements of paragraphs (a), (b), and (c) above, for each such subcontractor.

26. LIMITATION OF COST.

(This clause applies if the Agreement is fully funded.)

(a) The parties estimate that performance of this Agreement, exclusive of any fee, will not cost the Company more than (1) the estimated cost specified in the Agreement or, (2) if this is a cost-sharing Agreement, the Company's share of the estimated cost specified in the Agreement. The Seller agrees to use its best efforts to perform the work and all obligations

under this Agreement within the estimated cost, which, if this is a cost-sharing Agreement, includes both the Company's and the Seller's share of the cost.

(b) The Seller shall notify the Subcontract Administrator in writing whenever it has reason to believe that—

(1) The costs the Seller expects to incur under this Agreement in the next 60 calendar days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Agreement; or

(2) The total cost for the performance of this Agreement, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Seller shall provide the Subcontract Administrator a revised estimate of the total cost of performing this Agreement.

(d) Except as required by other provisions of this Agreement, specifically citing and stated to be an exception to this clause—

(1) The Company is not obligated to reimburse the Seller for costs incurred in excess of (i) the estimated cost specified in the Agreement or, (ii) if this is a cost-sharing Agreement, the estimated cost to the Company specified in the Agreement; and

(2) The Seller is not obligated to continue performance under this Agreement (including actions under the Termination clause) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Subcontract Administrator (i) notifies the Seller in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this Agreement. If this is a cost-sharing Agreement, the increase shall be allocated in accordance with the formula specified in the Agreement.

(e) No notice, communication, or representation in any form other than that specified in paragraph (d)(2) of this clause, or from any person other than the Subcontract Administrator, shall affect this Agreement's estimated cost to the Company. In the absence of the specified notice, the Company is not obligated to reimburse the Seller for any costs in excess of the estimated cost or, if this is a cost-sharing Agreement, for any costs in excess of the estimated cost to the Company specified in the Agreement, whether those excess costs were incurred during the course of the Agreement or as a result of termination.

(f) If the estimated cost specified in the Agreement is increased, any costs the Seller incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Subcontract Administrator issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders are not authorizations to exceed the estimated cost to the Company specified in the Agreement, unless they contain a statement increasing the estimated cost.

(h) If this Agreement is terminated or the estimated cost is not increased, the Company and the Seller shall negotiate an equitable distribution of all property produced or purchased under the Agreement, based upon the share of costs incurred by each.

27. LIMITATION OF FUNDS

(This clause applies if the Agreement is to be incrementally funded.)

(a) The parties estimate that performance of this Agreement will not cost the Company more than (1) the estimated cost specified in the Agreement or, (2) if this is a cost-sharing Agreement, the Company's share of the estimated cost specified in the Agreement. The Seller agrees to use its best efforts to perform the work and all obligations under this Agreement within the estimated cost, which, if this is a cost-sharing Agreement, includes both the Company's and the Seller's share of the cost.

(b) The Agreement specifies the amount available for payment by the Company and allotted to this Agreement, the items covered, the Company's share of the cost if this is a cost-sharing Agreement, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Company will allot additional funds incrementally to the Agreement up to the full estimated cost to the Company specified in the Agreement, exclusive of any fee. The Seller agrees to perform, or have performed, work on the Agreement up to the point at which the total amount paid and payable by the Company under the Agreement approximates but does not exceed the total amount actually allotted by the Company to the Agreement.

(c) The Seller shall notify the Subcontract Administrator in writing whenever it has reason to believe that the costs it expects to incur under this Agreement in the next 60 calendar days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the Agreement by the Company or, (2) if this is a cost-sharing Agreement, the amount then allotted to the Agreement by the Company plus the Seller's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Agreement.

(d) Sixty calendar days before the end of the period specified in the Agreement, the Seller shall notify the Subcontract Administrator in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Agreement or for any further period specified in the Agreement or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Agreement or another agreed-upon date, upon the Seller's written request the Subcontract Administrator will terminate this Agreement on that date in accordance with the Termination clause. If the Seller estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Subcontract Administrator may terminate this Agreement on that later date.

(f) Except as required by other provisions of this Agreement, specifically citing and stated to be an exception to this clause—

(1) The Company is not obligated to reimburse the Seller for costs incurred in excess of the total amount allotted by the Company to this Agreement; and

(2) The Seller is not obligated to continue performance under this Agreement (including actions under the Termination clause) or otherwise incur costs in excess of—

(i) The amount then allotted to the Agreement, or

(ii) If this is a cost-sharing Agreement, the amount then allotted by the Company to the Agreement plus the Seller's corresponding share, until the Subcontract Administrator notifies the Seller in writing that the amount allotted has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Company to this Agreement.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Company or, (2) if this is a cost-sharing Agreement, the amount then allotted by the Company plus the Seller's corresponding share, exceeds the estimated cost specified in the Agreement. If this is a cost-sharing Agreement, the increase shall be allocated in accordance with the formula specified in the Agreement.

(h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) of this clause, or from any person other than the Subcontract Administrator, shall affect the amount allotted by the Company to this Agreement. In the absence of the specified notice, the Company is not obligated to reimburse the Seller for any costs in excess of the total amount allotted, whether incurred during the course of the Agreement or as a result of termination.

(i) When and to the extent that the amount allotted by the Company to the Agreement is increased, any costs the Seller incurs before the increase that are in excess of—

(1) The amount previously allotted by the Company or;

(2) If this is a cost-sharing Agreement, the amount previously allotted by the Company to the Agreement plus the Seller's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Subcontract Administrator issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders are not authorizations to exceed the amount allotted by the Company specified in the Agreement, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause affects the right of the Company to terminate this Agreement. If this Agreement is terminated, the Company and the Seller shall negotiate an equitable distribution of all property produced or purchased under the Agreement, based upon the share of costs incurred by each.

(l) If the Company does not allot sufficient funds to allow completion of the work, the Seller is entitled to a percentage of the fee specified in the Agreement equaling the percentage of completion of the work contemplated by this Agreement

28. INTEREST

(This clause does not apply if Seller is a state or local government or instrumentality or if the Seller is a nonprofit organization and this Agreement has no provision for fee.)

All amounts that become payable to Company by Seller under this Agreement shall bear simple interest from the date due until paid, unless paid within 30 calendar days of the date due. The interest rate shall be the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) as of the date due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. This clause shall not apply to amounts due under a price reduction for defective cost or pricing data clause or a cost accounting standards clause.

29. ASSIGNMENT

Except as provided in the Assignment of Claims clause**,** Seller shall not assign rights or obligations to third parties without the prior written consent of the Subcontract Administrator

30. ASSIGNMENT OF CLAIMS

(a) The Seller may assign its rights to be paid amounts due or to become due as a result of the performance of this Agreement to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this Agreement, payments to an assignee of any amounts due or to become due under this Agreement shall not be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under this clause shall cover all unpaid amounts payable under this Agreement, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Agreement.

(c) The Seller shall not furnish or disclose to any assignee under this Agreement any classified document (including this Agreement) or information related to work under this Agreement until the Subcontract Administrator authorizes such action in writing.

31. 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 mediation or binding arbitration 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 Company's 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 Manger 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, and shall be given no evidentiary weight by the trier of fact, 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.

(5) If a court awards prejudgment interest on a claim, the interest rate shall be the applicable rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563).

(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.

32. BANKRUPTCY

If Seller enters into any proceeding relating to bankruptcy, it shall give written notice by certified mail to the Subcontract Administrator within five calendar days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing, by Company Agreement numbers, of all Company Agreements for which final payment has not been paid.

33. STOP-WORK ORDER

(a) Unless the provisions for stop work under the "Environmental, Safety and Health" clause apply, the Subcontract Administrator, may under this clause, at any time, by written order, require Seller to stop all or any portion of the work called for by this Agreement for 90 calendar days, and for any other further period to which the parties may agree. Seller shall immediately comply with the order and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the work stoppage.

(b) Before expiration of the stop-work order, Company may

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order for default or convenience.

(c) If the order is canceled or expires, the Seller shall resume work. The Company shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the Agreement that may be affected, and the Agreement shall be modified, in writing, accordingly, if the stop-work order results in an increase in the time required for, or cost properly allocable to, performance of this Agreement. As a condition precedent to an equitable adjustment, Seller shall submit its request for equitable adjustment in writing to the Subcontract Administrator within 30 calendar days after the work stoppage ends.

(d) If the work covered by the order is terminated for convenience, Company shall allow reasonable costs resulting from the order in arriving at the termination settlement.

(e) If the work covered by the order is terminated for default, Company shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the order.

34. SUSPENSION OF WORK

(a) The Subcontract Administrator may order the Seller, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time that the Subcontract Administrator determines appropriate.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Company in the administration of this Agreement, or (2) by the Company's failure to act within the time specified in this Agreement (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Agreement (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Seller, or for which an equitable adjustment is provided or excluded under any other term or condition of this Agreement.

(c) A request for adjustment under this clause shall not be allowed—

(1) For any costs incurred more than 14 calendar days before the Seller shall have notified the Subcontract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the request for adjustment, in an amount stated, is submitted in writing as soon as practicable, but no later than 180 calendar days, after the termination of the suspension, delay, or interruption. Requests for adjustment not submitted within the 180-day period are waived.

35. CHANGES

(a) The Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Company in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery of supplies.

(4) Description of services to be performed.

(5) Time of performance of the services (*i.e.*, hours of the day, days of the week, etc.).

(6) Place of performance of the services.

(b) If any such change causes a difference in the cost, or the time required for performance, the Company shall, subject to the submission requirement in paragraph (d), make an equitable adjustment in the price, delivery/performance schedule, or both, and modify the Agreement in writing. If Seller's proposal includes the cost of property made obsolete or excess by the change, the Company has the right to prescribe the manner of disposition of the property.

(c) Only the Subcontract Administrator is authorized on behalf of the Company to issue a change, which must be in writing and clearly designated as a change order. If Seller considers that any oral direction or instruction by any Company personnel (including the Subcontract Administrator) constitutes a change, or if Seller considers that any written direction or instruction by any Company personnel (other than a designated change order issued by the Subcontract Administrator) constitutes a change, Seller shall not rely upon such direction or instruction and shall not be eligible for an equitable adjustment arising there from, without prior written confirmation from the Subcontract Administrator directing Seller to perform as stated in the direction or instruction. If such written confirmation from the Subcontract Administrator to perform also confirms the direction or instruction to be a change, the confirmation shall be deemed a change order for purposes of paragraph (d). If, however, such written confirmation from the Subcontract Administrator to perform does not confirm the direction or instruction to be a change, any request by Seller for an equitable adjustment arising from such direction or instruction shall comply with paragraph (e).

(d) If the Subcontract Administrator issues a change order, any request for equitable adjustment by Seller must be submitted in writing to the Subcontract Administrator within 30 calendar days of receiving the Company's change order. If the request is not submitted within such time, the request shall be late and may be denied by the Subcontract Administrator whether or not the Company is prejudiced by the late request. If the Company, in its sole discretion, decides to act upon a particular late request submitted prior to final payment, such action shall not constitute or be deemed to be a waiver of this submission requirement with regards to any other late request, nor shall such action be considered in any way in interpreting this provision as a course of dealing or in any other manner.

(e)(1) If the Subcontract Administrator has not issued a written change order but the Seller considers a change to this Agreement has occurred because, for example: (i) the Company did not satisfy one if its expressed or implied duties under the Agreement, or (ii) the Subcontract Administrator did

not provide written confirmation that a change occurred in response to Seller's request for confirmation as provided for in paragraph (c), then as a condition precedent for entitlement to an equitable adjustment, Seller shall notify the Subcontract Administrator, in writing, that a change has occurred for which Seller intends to seek an equitable adjustment and identify: (i) date, nature and circumstances regarding the change, (ii) name of each person knowledgeable about the change, (iii) documents and substance of oral communications involving the change, and (iv) the particular elements of performance impacted by the change, including (a) adjustment in labor and/or materials, (b) delay or disruption caused, (c) estimated resulting price and schedule adjustments and (d) time by which Company must respond to minimize cost, delay, or disruption to performance of the work.

(2) In no event shall Seller recover any costs caused by the change incurred prior to 14 calendar days before Seller gives such written notice.

(3) Any request for equitable adjustment by Seller must be submitted in writing to the Subcontract Administrator no later than 30 calendar days after Seller gives the written notice specified in subparagraph (e)(1). If the request is not submitted within such time, the request shall be late and may be denied by the Subcontract Administrator whether or not the Company is prejudiced by the late request. If the Company, in its sole discretion, decides to act upon a particular late request submitted prior to final payment, such action shall not constitute or be deemed to be a waiver of this submission requirement with regards to any other late request, nor shall such action be considered in any way in interpreting this provision as a course of dealing or in any other manner.

(f) Nothing in this clause, including any disagreement with Company about an equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

36. SUBCONTRACTS

(a) Definitions. As used in this clause—

"Approved purchasing system" means a purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Subcontract Administrator's written consent for the Seller to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of this Agreement or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment if this Agreement contains the clause at FAR 52.245-18, Special Test Equipment.

(c) If the Seller does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds either $100,000 or five percent of the ceiling price of this Agreement.

(d)(1) The Seller shall notify the Subcontract Administrator reasonably in advance of placing any subcontract or modification thereof for which consent is required, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other clauses of this Agreement.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other clauses of this Agreement.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Seller did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Seller and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Seller's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Seller has an approved purchasing system and consent is not required under paragraph (c) of this clause, the Seller shall nevertheless notify the Subcontract Administrator reasonably in advance of entering into any (cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either $100,000 or five percent of the total estimated cost of this Agreement. The notification shall include the information required by paragraphs (d) (1) (i) through (d) (1) (iv) of this clause.

(e) Unless the consent specifically provides otherwise, consent by the Subcontract Administrator to any subcontract does not constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this Agreement; or

(3) To relieve the Seller of any responsibility for performing this Agreement.

(f) No subcontract or modification thereof placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(g) The Seller shall give the Subcontract Administrator immediate written notice of any action or suit filed and prompt notice of any claim made against the Seller by any subcontractor or vendor that, in the opinion of the Seller, may result in litigation related in any way to this Agreement, with respect to which the Seller may be entitled to reimbursement from the Company.

37. PROPERTY

(a) Furnishing of Government property. The Company reserves the right to furnish any property or services required for the performance of the work under this Agreement.

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

(c) Identification. To the extent directed by the Subcontract Administrator, the Seller shall identify Government property coming into the Seller's possession or custody, by marking and segregating in such a way, satisfactory to the Subcontract Administrator, as shall indicate its ownership by the Government.

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

(e) Protection of government property--management of high-risk property and classified materials. (1) The Seller shall take all reasonable precautions, and such other actions as may be directed by the Subcontract Administrator, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Seller's possession or custody.

(2) In addition, the Seller shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property. (1)(i) The Seller shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:

(A) Willful misconduct or lack of good faith on the part of the Seller's managerial personnel;

(B) Failure of the Seller's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Subcontract Administrator to safeguard such property under paragraph (e) of this clause; or

(C) Failure of Seller managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the Subcontract Administrator informs the Seller that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Seller to show that the Seller should not be required to compensate the Company for the loss, destruction, or damage.

(2) In the event that the Seller is determined liable for the loss, destruction or damage to Government property in

accordance with (f) (1) of this clause, the Seller's compensation to the Company shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Seller that is allocable to coverage of risks of loss referred to in paragraph (f) (1) of this clause is not allowable.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Seller with a value above the threshold set out in the Seller's approved property management system, the Seller:

(1) Shall immediately inform the Subcontract Administrator of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Subcontract Administrator. The Seller shall take no action prejudicial to the right of the Company to recover therefore, and shall furnish to the Company, on request, all reasonable assistance in obtaining recovery.

(h) Use of Government property. Government property shall be used only for the performance of this Agreement.

(i) Property Management. (1) Property Management System. (i) The Seller shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the Agreement. The Seller's property management system shall be submitted to the Subcontract Administrator for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the Subcontract Administrator may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Government-owned property;

(C) Full integration with the Seller's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by ``best in class" performers.

(iii) Approval of the Seller's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i) (2) of this clause.

(2) Property Inventory. (i) Unless otherwise directed by the Subcontract Administrator, the Seller shall within six months after execution of the Agreement provide a baseline inventory covering all items of Government property.

(ii) If the Seller is succeeding another Seller in the performance of this Agreement, the Seller shall conduct a joint reconciliation of the property inventory with the predecessor Seller. The Seller agrees to participate in a joint reconciliation of the property inventory at the completion of this Agreement. This information will be used to provide a baseline for the succeeding Agreement as well as information for closeout of the predecessor Agreement.

(j) The term ``Seller's managerial personnel" as used in this clause means the Seller's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

(1) All or substantially all of the Seller's business; or

(2) All or substantially all of the Seller's operations at any one facility or separate location to which this Agreement is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this Agreement; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this Agreement; or

(5) A separate and discrete major task or operation in connection with the performance of this Agreement.

(k) The Seller shall include this clause in all cost reimbursable subcontracts.

38. INSPECTION OF SERVICES

(a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Seller shall provide and maintain an inspection system acceptable to the Company covering the services under this Agreement. Complete records of all inspection work performed by the Seller shall be maintained and made available to the Company during performance and for as long afterwards as the Agreement requires.

(c) The Company has the right to inspect and test all services called for by the Agreement, to the extent practicable at all places and times during the term of the Agreement. The Company shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with Agreement requirements, the Company may require the Seller to perform the services again in conformity with Agreement requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Company may require the Seller to take necessary action to ensure that

future performance conforms to Agreement requirements and reduce any fee payable under the Agreement to reflect the reduced value of the services performed.

(e) If the Seller fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with Agreement requirements, the Company may, by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances, or terminate the Agreement for default.

39. SUSPECT/COUNTERFEIT ITEMS.

(a) Definitions. (1) A suspect item is one that visual inspection, testing, or other means indicate may not conform to established Government or industry-accepted specifications or national consensus standards; or one whose documentation, appearance, performance, material, or other characteristics may have been misrepresented by the supplier or manufacturer.

(2) A counterfeit item is a suspect item that has been copied or substituted without legal right or authority or whose material, performance, or other characteristics are misrepresented by the supplier or manufacturer.

(b)(1) Items furnished under this Agreement are intended for use in a U.S. Department of Energy (DOE) facility. Suspect and counterfeit items in the following categories have been discovered at DOE sites:

- Threaded fasteners, including fasteners in assemblies such as ratchet tie-down straps, and in particular fasteners in critical load paths of lifting equipment such as fixed and mobile cranes, forklifts, scissor lifts, manlifts, balers, truck and dock lifts, elevators, conveyors, and slings.
- Electrical components (circuit breakers, semi-conductors, current and potential transformers, fuses, resistors, switchgear, overload and protective relays, motor control centers, heaters, motor generator sets, DC power supplies, AC inverters, transmitters, GFCI's).
- Piping components (fittings, flanges, valves and valve replacement products, couplings, plugs, spacers, nozzles, pipe supports).
- Materials, including sheet, strip, castings, and other forms, and particularly materials for which welding and heat-treating are required for conformance to specifications.
- Welding rod and electrodes.
- Computer memory modules.

(2) Additional guidance on suspect and counterfeit items and their indicators is available at the DOE web sites http://www.eh.doe.gov/sci .

(c) The Seller and its subcontractors and suppliers shall maintain sufficient control to prevent the procurement, installation, use, and delivery of materials and equipment that contain or exhibit suspect or counterfeit item characteristics or conditions. In the event that the Seller identifies or suspects that a suspect/counterfeit item may have been delivered under this Agreement, Seller shall immediately notify the Subcontract Administrator. Seller shall document and provide all available information regarding any item or service furnished under this Agreement that is suspected to be a suspect/counterfeit item, component, subcomponent part or material.

(d) Notwithstanding any other provision of this Agreement, the Seller warrants that all items furnished under this Agreement shall be genuine, new, and unused unless otherwise specified in writing by the Company. The Seller further warrants that all items used by the Seller in the performance of the work under this Agreement at the Y-12 National Security Complex consist of all genuine, original, and new components, or are otherwise suitable for the intended purpose. The Seller's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Company.

(e) DOE has determined that SAE Grades 5, 8, and 8.2 and ASTM Grade A325 fasteners, identified on DOE's Suspect Bolt Headmark List must not be introduced into DOE facilities. (DOE's Suspect Bolt Headmark List may be seen on the "Procurement" link at http://www.y12.doe.gov .) Therefore, such fasteners shall not be provided as deliverable end items or incorporated into deliverable end items under this Agreement.

(f) (1) No "fastener," as defined by the Fastener Quality Act (the Act), 15 U.S.C. 5401 et seq., shall be supplied to the Company as a deliverable end item or incorporated into deliverable end items unless it exhibits grade-identification markings and manufacturer's insignia required by the Act and implementing regulations of the Department of Commerce at 15 CFR Part 280.

(2) Records of conformance required by the Act shall be provided to the Company by the Seller upon request.

(g)(1)Vehicles and equipment with suspect fasteners described in paragraph (e) above or other suspect/counterfeit items in critical applications are not allowed on DOE sites. (A critical application is one in which failure of the item could potentially result in injury to persons or damage to the property, equipment, or environment.)

(2) The Seller must inspect all vehicles and equipment for suspect/counterfeit items and submit the "Suspect/Counterfeit Item Certification" to the STR before bringing them on site. The required Certification form is available on the "Procurement" link at http://www.y12.doe.gov .

(3) Vehicles and equipment on site owned or controlled by the Seller and found to contain suspect/counterfeit items must not be further used pending a Company evaluation. If the Company determines that the suspect/counterfeit items are in critical applications, the items must be repaired or replaced before the vehicles or equipment may be returned to use. Repair or replacement will be at the Seller's expense.

(h) (1) Molded case circuit breakers that cannot be substantiated by Seller as new, or that give an appearance to Company inspectors or electricians of having been used, refurbished, or reconditioned may be rejected by Company on the basis of appearance alone.

(2) The Company may obtain an opinion from the original manufacturer concerning legitimacy of any molded case circuit breaker furnished under this Agreement.

Company may reject any molded case circuit breaker provided by Seller based on the manufacturer's opinion.

(3) (A) If a molded case circuit breaker is not provided by Seller in the original manufacturer's packaging, Seller shall notify Company prior to shipment and shall provide the specific identification and markings of the container(s) to be supplied.

(B) The original manufacturer's markings, date code if used, and labels shall not have been altered or obliterated.

(C) The handle of the molded case circuit breaker shall show the original manufacturer's rating in a "hot stamp" which shall not be subsequently altered or obliterated.

(D) Terminal configuration and hardware shall not have been altered or modified from the original equipment provided by the manufacturer.

(E) All molded case circuit breakers shall be Underwriters' Laboratory (UL) rated, listed, approved, and accordingly labeled.

(i) Equipment or assemblies that consist of or contain electrical components shall exhibit, as applicable, legible amperage and voltage ratings, operating parameters, and the product manufacturer's labels and identification. Electrical components shall exhibit labels from a natioinally recognized testing laboratory.

(j) Materials and equipment delivered under this Agreement shall exhibit the manufacturer's original labels and identification.

(k) The Seller shall indemnify the Company, its agents, and assignees for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts furnished or used under this Agreement that are not genuine, original, and unused, or otherwise not suitable for the intended purpose. The Seller's indemnity includes any financial loss, injury, or property damage resulting directly or indirectly from items furnished or used under this Agreement that are defective, suspect, or counterfeit; or that have been provided under false pretenses; or that are materially altered, damaged, deteriorated, degraded, or result in product failure.

(l) Suspect/counterfeit items furnished under this Agreement will be impounded by the Company. The Seller must promptly replace them with items acceptable to the Company, and the Seller shall be liable for all costs relating to discovery, removal, impoundment, and replacement of materials and equipment that contain or exhibit suspect or counterfeit item characteristics or conditions.

(m) Detection by the Company of any suspect or counterfeit condition may result in an investigation by the U.S. Government.

(n) The rights of Company in this clause are in addition to any other rights proviced by law or contract.

(o) The Seller shall include this clause in subcontracts hereunder.

40. SUBMISSION OF TRANSPORTATION BILLS.

(a) In accordance with paragraph (b) of this clause, the Seller shall include with its invoices legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services that were charged directly to this Agreement. In accordance with FAR 52.247-67, the Company will forward the documents to the General Services Administration (GSA) for audit.

(b) The Seller shall only submit those CBL's with freight shipment charges exceeding $100.00. Bills under $100.00 shall be retained on-site by the Seller and made available for GSA on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

41. TERMINATION

(a) The Company may terminate performance of work under this Agreement in whole or, from time to time, in part, if—

(1) The Subcontract Administrator determines that a termination is in the Company's interest; or

(2) The Seller defaults in performing this Agreement and fails to cure the default within 10 calendar days (unless extended by the Subcontract Administrator) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Subcontract Administrator shall terminate by delivering to the Seller a Notice of Termination specifying whether termination is for default or for convenience of the Company, the extent of termination, and the effective date. If, after termination for default, it is determined that the Seller was not in default or that the Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Seller as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Company.

(c) After receipt of a Notice of Termination, and except as directed by the Subcontract Administrator, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the Agreement.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Company, as directed by the Subcontract Administrator, all right, title, and interest of the Seller under the subcontracts terminated, in which case the Company shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Agreement;

(6) Transfer title (if not already transferred) and, as directed by the Subcontract Administrator, deliver to the Company.

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the Agreement had been completed, would be required to be furnished to the Company; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Agreement, the cost of which the Seller has been or will be reimbursed under this Agreement.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Subcontract Administrator may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Seller and in which the Company has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Subcontract Administrator, any property of the types referred to in paragraph (c) (6) of this clause; *provided, however*, that the Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Subcontract Administrator. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Company under this Agreement, credited to the price or cost of the work, or paid in any other manner directed by the Subcontract Administrator.

(d) The Seller shall submit complete termination inventory schedules no later than 120 calendar days from the effective date of termination, unless extended in writing by the Subcontract Administrator upon written request of the Seller within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Seller may submit to the Subcontract Administrator a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Subcontract Administrator. The Seller may request the Company to remove those items or enter into an agreement for their storage. Within 15 calendar days, the Company will accept the items and remove them or enter into a storage agreement. The Subcontract Administrator may verify the list upon removal of the items, or if stored, within 45 calendar days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Seller shall submit a final termination settlement proposal to the Subcontract Administrator in the form and with the certification prescribed by the Subcontract Administrator. The Seller shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by the Subcontract Administrator upon written request of the Seller within this six month period. However, if the Subcontract Administrator determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Seller fails to submit the proposal within the time allowed, the Subcontract Administrator may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Seller and the Subcontract Administrator may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Agreement shall be amended, and the Seller paid the agreed amount.

(h) If the Seller and the Subcontract Administrator fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Seller, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this Agreement, not previously paid, for the performance of this Agreement before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Subcontract Administrator; however, the Seller shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement if not included in paragraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Seller's termination settlement proposal may be included.

(4) A portion of the fee payable under the Agreement, determined as follows:

(i) If the Agreement is terminated for the convenience of the Company, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the Agreement, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the Agreement is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Company is to the total number of articles (or amount of services) of a like kind required by the Agreement.

(5) If the settlement includes only fee, it will be determined under paragraph (h) (4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this Agreement, shall govern all costs claimed, agreed to, or determined under this clause.

(k) In arriving at the amount due the Seller under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Seller, under the terminated portion of this Agreement;

(2) Any claim which the Company has against the Seller under this Agreement; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Seller or sold under this clause and not recovered by or credited to the Company.

(l) The Seller and the Subcontract Administrator must agree to any equitable adjustment in fee for the continued portion of the Agreement when there is a partial termination. The Subcontract Administrator shall amend the Agreement to reflect the agreement.

(m)(1) The Company may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the Agreement, if the Subcontract Administrator believes the total of these payments will not exceed the amount to which the Seller will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to the Company upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 calendar days after the date of the retention or disposition, or a later date determined by the Subcontract Administrator because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this Agreement does not include a fee.

42. EXCUSABLE DELAYS

(a) Except for defaults of subcontractors at any tier, the Seller shall not be in default because of any failure to perform this Agreement under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Seller. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Seller. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Seller and subcontractor, and without the fault or negligence of either, the Seller shall not be deemed to be in default, unless—

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Subcontract Administrator ordered the Seller in writing to purchase these supplies or services from the other source; and

(3) The Seller failed to comply reasonably with this order.

(c) Upon request of the Seller, the Subcontract Administrator shall ascertain the facts and extent of the failure. If the Subcontract Administrator determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Company under the Termination clause of this Agreement.

43. CLAUSES INCORPORATED BY REFERENCE

(a) The clauses listed in paragraph (c) below are incorporated herein by reference. The texts of FAR clauses are available at https://www.acquisition.gov, 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 the listed clauses "Contractor" means the Seller, "Government" means the Company, "Contract" means this Agreement, and "Contracting Officer" means the Company's Subcontract Administrator.

(b) "Government" retains its meaning in:

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

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

(3) DEAR 970.5208-1, Printing.

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

- FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010)
- FAR 52.215-15 Pension Adjustments & Asset Reversions (OCT 2004)
- FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (July 2005)
- FAR 52.222-3 Convict Labor (JUN 2003)
- FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)
- FAR 52.222-26 Equal Opportunity (MAR 2007) (The required poster is available at: http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm)
- FAR 52.222-29 Notification of Visa Denial (JUN 2003)
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
- FAR 52.222-54 Employee Eligibility Verification (JAN 2009)
- 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 52.229-10 State of New Mexico Gross Receipts and Compensating Tax (APR 2003), if the services will be performed in whole or in part in New Mexico

- FAR 52.244-6 Subcontracts for Commercial Items (JUN 2010)
- FAR 52.247-67 Submission of Transportation Documents for Audit (FEB 2006)
- Nuclear Hazards Indemnity and Price-Anderson Amendments Act (APR 2010) (Company)
- DEAR 952.204-77 Computer Security (AUG 2006)
- DEAR 970.5208-1 Printing (DEC 2000)
- DEAR 970.5232-3 Accounts, Records, and Inspections (AUG 2009)
- Security of Unclassified Controlled and Proprietary Information (APR 2010) (Company)
- Travel Reimbursement Policy (JAN 2010) (Company)
- Hazardous Material Identification and Material Safety Data (APR 2010) (Company)

(c)(2)The following clauses are incorporated when Seller personnel work on-site :

- Badging , Personal Identity Verification and Security Clearances for Seller Employees (NOV 2010) (Company)
- DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure Records (APR 1984)
- Foreign Nationals (APR 2010) (Company)
- Hazardous Materials Reporting (APR 2010) (Company)
- Required Training (JUL 2010) (Company)
- Subcontract Administrative Requirements (APR 2010) (Company)
- Appropriate Footwear Policy (APR 2010) (Company)
- Y-12 Motor Vehicle and Pedestrian Safety (SEPT 2010) (Company)
- Smoking Policy (APR 2010) (Company)

(c)(3) The following clauses are incorporated if the work involves access to classified information or special nuclear material:

- DEAR 952.204-2 Security (AUG 2009)
- DEAR 952.204-70 Classification/Declassification (SEP 1997)
- Exhibit 7 Classified Inventions (JUL 2010) (Company)
- FAR 52.227-10 Filing of Patent Applications-Classified Subject Matter (DEC 2007)
- Civil Penalties for Classified-Information Security Violations (APR 2010) (Company)

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

- FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 2005)
- FAR 52.222-35 Affirmative Action for Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)
- FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)
- FAR 52.223-14 Toxic Chemical Release Reporting (AUG 2003), except paragraph (e)
- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

c)(5) The following clauses are incorporated if this Agreement exceeds $150,000:

- FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006)
- 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 (SEP 2007)
- FAR 52.215-2 Audit and Records - Negotiation (OCT 2010)
- FAR 52.219-8 Utilization of Small Business Concerns (MAY 2004)
- FAR 52.247-63 Preference for U.S. Flag Air Carriers (JUN 2003)
- Sustainable Acquisition Program (NOV 2010) (Company)

(c)(6) The following clauses are incorporated if this Agreement exceeds $500,000:

- DEAR 952.226-74 Displaced Employee Hiring Preference (JUN 1997)
- DEAR 970.5226-2 Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for FY1993 (DEC 2000)

(c)(7) The following clauses are incorporated if this Agreement exceeds $650,000:

- FAR 52.219-9 Small Business Subcontracting Plan (JUL 2010)

(c)(8) The following clauses are incorporated if this Agreement exceeds $700,000:

- FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (OCT 1997)
- FAR 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997)
- Cost Accounting Standards-Clauses (Company) (SEPT 2010) modeled on FAR 52.230-2

(c)(8) The following clauses are incorporated if this Agreement exceeds $2 million:

- DEAR 970.5204-3 Access to and Ownership of Records (JUL 2005)
- Reporting Requirements (APR 2010) (Company)