

GENERAL TERMS & CONDITIONS
Commercial Items (CI JUL 2010)

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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) 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 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 Operations representative.

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

2. ORDER OF PRECEDENCE
ORDER OF PRECEDENCE

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

- (a) Negotiated Alterations or Special Provisions;
- (b) Supplemental Conditions;
- (c) General Terms and Conditions;
- (d) Specifications or statement of work, or other description of services or supplies; and
- (e) Drawings

3. AGREEMENT FOR BENEFIT OF DOE

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

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

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

4. ACCEPTANCE OF TERMS AND CONDITIONS

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

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

5. 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.

6. 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

7. 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.

8. WORK SCHEDULE

(a) 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.

9. 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.

10. 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 require 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.

11. PROHIBITED ITEMS AT Y-12

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

(b) Alcohol. Alcoholic beverages are prohibited.

(c) Cell phones. (1) Cellular telephones that are not owned by the Government or B&W Y-12, LLC are prohibited without prior written approval obtained through the Subcontract Technical Representative (STR). Cellular telephones may be used on Bear Creek Road (using hands-free devices as required) and facility parking lots for telephone purposes only outside of the security fence. Cellular telephones may be secured in the owner's private vehicle within parking areas at the Y-12 National Security Complex and at leased sites. They should remain secured at all times while within the Blue Line (229 boundary) of Y-12 unless required to report a personal emergency within the 229 boundary. A personal emergency is an immediate need for assistance (e.g., an after-hours car – deer accident, a car breakdown, an acute health condition such as a heart attack, etc.). In a personal emergency, the personal cellular telephone should be used to contact the Y-12 Plant Shift Superintendent's Office (574-7172). Calling 911 from a cellular telephone will not notify B&W Y-12 of an emergency, though Company emergency resources would be the closest respondent. Therefore, calling 911 instead of 574-7172 is inappropriate.

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

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

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

(e) Flash memory data storage devices. Memory devices [such as Universal Serial Bus (USB) flash memory drives, USB memory keys, memory sticks, etc.] are prohibited without prior written approval obtained through the STR. Approval will require that the device be labeled according to

B&W Y-12 guidance pertaining to data content type and thereafter properly accounted for and destroyed if required.

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

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

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

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

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

- Cordless telephones
- Devices with infrared capability
- Global Positioning System (GPS) units
- Wireless local area networks (WLAN)
- Wireless mice and keyboards
- Wireless-enabled computers, including laptop computers
- Wireless radios (such as Nextel)
- Wireless wide area networks
- Wireless audio-visual support equipment (such as wireless microphones)
- Wireless scanners and bar code readers
- Wireless Survey Equipment
- Wireless tags
- Wireless special purpose sensors and other wireless instruments
- Wireless data acquisition equipment and data loggers

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

12. DOE SECURITY BADGES AND CLEARANCE REQUIREMENTS

(a) 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 workdays 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 working day of a termination of employment or need for access to the Complex if the employee holds an L or Q clearance in order to provide notification to DOE/NNSA within two business days.

(b) The Seller must immediately notify the Subcontract Administrator in writing when a badge of its employee or the employee of a lower-tier subcontractor is lost or stolen. These employees must report in person to the 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. 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.

(f) On the last Thursday of each month, the Seller shall submit electronically to the STR a Subcontract Badge/Clearance Status report for that month on Form UCN-21709.

13. ENVIRONMENT, SAFETY AND HEALTH

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

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

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

Employees – Seller employees and all lower-tier subcontractor employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

finding investigations of accidents, injuries, occurrences, and near-misses.

COMPANY RIGHTS

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

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

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

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

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

14. PAYMENT

Unless otherwise provided, terms of payment shall be net 30 calendar days from the latter of (1) receipt of Seller's proper invoice, if required (unless such invoice is not approved), or (2) delivery of items/completion of work if invoice is not required. Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments may be made either by check or electronic funds transfer, at the option of Company. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

If an invoice is required under the terms of this subcontract, a final invoice shall be submitted for payment no more than ninety 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 the 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 and not subject to judicial review.

15. 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.

16. ASSIGNMENT

Seller shall not assign rights or obligations to third parties without the prior written consent of the Subcontract Administrator. However, Seller may assign rights to be paid amounts due or to become due to a bank, trust company, or other financing institution, including a Federal lending agency, if Subcontract Administrator is promptly furnished written notice and a signed copy of such assignment.

17. AUTHORIZATION AND CONSENT

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

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

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

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

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

18. 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.

19. RESOLUTION OF DISPUTES

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

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

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

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

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

- (ii) The Company shall not be liable for, and shall not pay, any claim of a lower-tier subcontractor to Seller if that claim, without mark-ups by a higher-tier subcontractor or Seller, exceeds \$50,000 unless that claim is accompanied by the below certification from the lower-tier subcontractor that originated the claim.
- (iii) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met.
- (iv) If Seller certified its costs under the Adjustments clause, Seller is not required to certify under this Article as a claim, unless Seller certified more than 180 calendar days before Seller submits its claim or the claim amount exceeds the prior certified amount by more than \$50,000.

CERTIFICATION

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

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

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

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

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

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

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

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

(g) The parties agree that, subject to (f)(1), the resolution of all issues arising from or relating to this Agreement shall be governed to the maximum extent practicable by the common law of federal contracts; provided, however, that (i) the "Christian Doctrine" shall not apply, meaning that federal procurement clauses (e.g., the FAR, including agency supplements) or portions thereof not appearing in this Agreement shall not be read into this Agreement, and (ii) where the language of any clause, provision or term herein differs from the language of a federal procurement clause, provision or term, the differing language of this Agreement shall control. Where the common law of federal contracts does not apply, then subject to (f)(1), resolution shall be governed by the laws of the State of Tennessee.

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

20. BANKRUPTCY

If Seller enters into any proceeding relating to bankruptcy, it shall give written notice via 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 number, of all Company agreements for which final payment has not been made.

21. 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 of 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 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 damages 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.

22. INSPECTION/ACCEPTANCE

The Seller shall only tender for acceptance supplies and services that conform to the requirements of this Agreement. The Company reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Company may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in price. The Company must exercise its post-acceptance rights—

(a) Within a reasonable time after the defect was discovered or should have been discovered; and

(b) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

23. WARRANTY

Seller warrants that items delivered under this Agreement shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of this Agreement. The warranty shall begin upon acceptance and extend for a period of (1): the manufacturer's warranty period or six months, whichever is longer, if Seller is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer of the item or has modified it. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such items or re-perform services. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Seller's expense. If repair or replacement or re-performance of services is not timely, Company may elect to return the nonconforming items or repair or replace them or re-procure the services at Seller's expense. Any implied warranties of merchantability and fitness for a particular purpose are hereby disclaimed.

24. INSURANCE

(a) The 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) Aircraft Insurance. When aircraft are used in performing the subcontract, the Seller must also maintain aircraft public and passenger liability insurance. Coverage

shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, 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 subcontract on site at the Y-12 National Security Complex, the Seller must submit to the Subcontract Administrator a certificate of liability insurance (Acord form 25 or equivalent) certifying that the required insurance has been obtained. All insurers on the certificate must have an A.M. Best Company financial strength rating of "B" or higher. The certificate must:

- (1) include the number of this subcontract,
- (2) identify B&W Y-12, LLC as the certificate holder,
- (3) state that B&W Y-12, LLC and the U.S. Department of Energy have been added as Additional Insureds on all liability policies other than workers' compensation, and
- (4) certify that required policies obligate the insurer to provide the certificate holder 30 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 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 include this clause, modified to identify the parties, in lower-tier subcontracts that require work on site at Y-12 NSC. At least five days before entry of each such subcontractor's personnel into Y-12, the 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.

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

25. RESPONSIBILITY FOR SUPPLIES

(a) Title to supplies furnished under this Agreement shall pass to the Government upon acceptance, regardless of when or where the Company takes physical possession, unless the Agreement specifically provides for earlier passage of title.

(b) Unless the Agreement specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Seller until, and shall pass to the Company upon—

- (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Acceptance by the Company or delivery of the supplies to the Company at the destination specified in the Agreement, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) of this clause shall not apply to supplies that so fail to conform to Agreement requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the Seller until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.

(d) Under paragraph (b) of this clause, the Seller shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Company acting within the scope of their employment.

26. GOVERNMENT PROPERTY

(a) If Seller purchases property for which it is entitled to reimbursement as a direct item of cost, title for said property shall pass directly to the Government upon delivery to the Seller. Title to all other property, the cost of which is reimbursable to Seller, shall pass to the Government upon the earliest of issuance of property for use in performance, or processing property for use in performance, or reimbursement of cost of property

(b) As may be required by the Agreement, the Company shall deliver to Seller at the time and locations stated in this Agreement the Government property described in this Agreement. If the property is not suitable for its intended use or is not delivered to Seller as specified in this Agreement, Company shall equitably adjust affected provisions in accordance with the Changes clause when the facts warrant an equitable adjustment and Seller submits a timely written request for such adjustment. Said equitable adjustment shall be Seller's exclusive remedy.

(c) Title to all Government property, whether provided by the Company or acquired by the Seller, shall remain in the Government. Title shall not be affected by the incorporation or attachment to any property not owned by the Government, nor shall any Government property become a fixture or lose its identity because it is affixed to any realty.

(d) For all Government property in Seller's possession or for which Seller is responsible for, the Seller assumes the risk and responsibility for its loss or damage, except—

- (1) For reasonable wear and tear;
- (2) To the extent property is consumed in performing this Agreement; or
- (3) As otherwise provided for by this Agreement.

(e) Seller shall establish and maintain a property control program for use, maintenance, repair, protection and preservation of Government property consistent with good business practices and as may be prescribed by Company. Except as may be authorized in writing by the Company, Government property shall be used only for the performance of this Agreement.

(f) Upon completion of this Agreement, Seller shall follow the instructions of the Subcontract Administrator regarding the disposition of all Government property not consumed in the performance of this Agreement (including any scrap) or previously delivered to the Company. Seller shall dismantle, prepare for shipment, and at the Subcontract Administrator's direction, store or deliver said property (at Company expense), or dispose of the property as directed by the Subcontract Administrator. The net proceeds of any such disposal shall be

credited to the Agreement price or shall be paid as the Subcontract Administrator may direct.

(g) If this Agreement is to be performed outside the United States and its outlying areas, the words "Government" and "Government Property (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government Property" respectively.

27. 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. The 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 nationally 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 provided by law or contract.

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

28. RISK OF LOSS

Where Company is liable to Seller for loss of conforming items occurring after the risk of loss has passed to Company, Company shall pay Seller the lesser of: (1) the agreed price of such items, or (2) Seller's cost of replacing such items. Such loss shall entitle Seller to an equitable extension in delivery schedule obligations.

29. TRANSPORTATION

If transportation is specified "FOB Origin," (a) no insurance cost shall be allowed unless authorized in writing and (b) the

bill of lading shall indicate that transportation is for DOE and the actual total transportation charges paid to the carrier(s) by Company shall be reimbursed by the Government pursuant to contract No. DE-AC05-00OR22800. Confirmation may be made by **NNSA/YSO/CO**.

30. TERMINATION FOR DEFAULT

Company may terminate this Agreement for default, in whole or in part, if, after 10 calendar days from Company's written notice, Seller fails to comply with any of the terms of this Agreement, or fails to provide adequate assurance of future performance. In that event, Company shall not be liable for any amount for items supplies or services not accepted, and the Seller shall be liable to the Company for any and all rights and remedies provided by law. If it is determined that the Company improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

31. EXCUSABLE DELAYS

The Seller shall not be liable for default if its nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify the Subcontract Administrator in writing as soon as reasonably possible after any excusable delay begins and ends.

32. TERMINATION FOR CONVENIENCE

Company reserves the right to terminate this Agreement, or any part hereof, for the convenience of itself or the Government. In the event of such termination, Seller shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work. Subject to the terms of this Agreement, Seller shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Company using its standard record keeping system, have resulted from the termination. Seller shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This clause does not give Company or the Government the right to audit Seller's records. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

33. 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 <http://www.arnet.gov/far>, the texts of DEAR clauses are available at <http://www.management.energy.gov/DEAR.htm> and the texts of Company clauses are available on the "Procurement" link at: <http://www.y12.doe.gov>. Except as provided in (b) below, in 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) Exhibit 7 – Classified Inventions.

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

- FAR 52.204-10 Reporting Subcontract Awards (JUL 2010)
- FAR 52.222-26 Equal Opportunity (MAR 2007) (The required poster is available at: <http://www.dol.gov/dol/esa/public/regs/compliance/posters/eo.htm>)
- FAR 52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998)
- FAR 52.222-54 Employment Eligibility Verification (JAN 2009) (not applicable to COTS as defined by FAR)
- FAR 52.224-2 Privacy Act (APR 1984)
(Applies to scope of work for system of records on individuals)
- FAR 52.225-1 Buy American Act—Supplies (FEB 2009)
- FAR 52.225-8 Duty-Free Entry (FEB 2000)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (JUN 2008)
- FAR 52.239-1 Privacy or Security Safeguards (AUG 1996)
- FAR 52.244-6 Subcontracts for Commercial Items (AUG 2009)
- DEAR 952.204-77 Computer Security (AUG 2006)
- Hazardous Material Identification and Material Safety Data (APR 2010) (Company)
- Hazardous Material Reporting (APR 2010) (Company)
- Nuclear Hazards Indemnity and Price-Anderson Amendments Act (APR 2010) (Company)
- Security of Unclassified Controlled and Proprietary Information (APR 2010) (Company)
- Travel Reimbursement Policy (APR 2010) (Company)

(c) (2) The following clause is incorporated if the this agreement exceeds \$25,000 and requires “L” or “Q” clearance

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

(c) (3) The following clauses are incorporated if this Agreement exceeds \$100,000:

- FAR 52.219-8 Utilization of Small Business Concerns (MAY 2004)
- FAR 52.222-35 Affirmative Action for Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006)
- FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)
- FAR 52.247-63 Preference for U.S. Flag Air Carriers (JUN 2003)
- DEAR 970.5227-5 Notice and Assistance Regarding

Patent and Copyright Infringement (AUG 2002)

(c) (4) The following clause is incorporated if this Agreement exceeds \$550,000:

- FAR 52.219-9 Small Business Subcontracting Plan (APR 2008)

(c) (5) The following clauses are incorporated by reference when Seller performs personnel work on site at the Y-12 National Security Complex:

- Badging , Personal Identity Verification and Security Clearances for Seller Employees (APR 2010) (Company)
- DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure Records (APR 1984)
- DEAR 952.203-70 Whistleblower Protection for Contractor Employees (DEC 2000)
- Foreign Nationals (APR 2010)(Company)
- Hazardous Materials Reporting (APR 2010) (Company)
- Required Training (Company-JUL 2010)
- Subcontract Administrative Requirements (APR 2010) (Company)
- Workplace Substance Abuse Program (APR 2010) (Company)
- Appropriate Footwear Policy (APR 2010) (Company)
- Y-12 Motor Vehicle and Pedestrian Safety (JUL 2010) (Company)
- Smoking Policy (APR 2010) (Company)

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

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