GENERAL TERMS & CONDITIONS
Construction (CON APR 2013)

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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), the National Nuclear Security Administration (NNSA), or any duly authorized representative thereof.

(b) Company means Babcock & Wilcox Technical Services Y-12, LLC (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, 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 for performance of the work under this Agreement.

(h) 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. 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.

4. 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.

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 NPO at 1-865-576-6440, 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 or DOE in this Agreement may not be used in advertising or publicity without advance written approval of the Subcontract Administrator.

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

9. COMMERCIAL ACTIVITIES

Neither the Seller nor its employees shall establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on the jobsite or elsewhere at the Y-12 National Security Complex.

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 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.

11. 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) By entering into this Agreement, Seller certifies that it and all associates and subcontractors under the Agreement are licensed, certified, and registered to perform the professional and technical services required to complete the work under this Agreement. Seller shall ensure that such licenses, certifications, and registrations are maintained throughout performance of this Agreement and failure to do so may be cause for default termination.

(d) 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.

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 Y-12.

(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 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 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. 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 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 promptly return badges will result in a charge of $1,000 per badge, to be withheld from payment or billed to the Seller. In addition, failure to return a badge may result in the denial of future access to the Y-12 site for the individual. This $1,000 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 https://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. INDEPENDENT CONTRACTOR

Seller represents that it is licensed to perform the work under this Agreement. Seller shall act in performance of this Agreement as an independent contractor and not as an agent of the 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.

15. 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 indicated, the Agreement is rated DO. E2

16. 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. 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:
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 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 complies 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, ATTORNEY'S 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.

17. REPORTING SAFETY PERFORMANCE

(a) The Seller must immediately notify the STR of all occupational injuries. The Seller must submit written reports to the STR for occupational injuries or illnesses that are recordable under 29 CFR 1904, Subpart C, within two business days after the Seller learns of the injury or illness. Reports shall be made on DOE Form 5484.3, "Individual Accident/Incident Report."

(b) Before the third working day of each month, the Seller shall submit a safety report for the previous month to the STR on the Subcontract Safety Performance Report form, UCN-21439.

(c) The Seller shall include this clause in subcontracts for work to be performed on-site at the Y-12 National Security Complex or a site leased by the Company. The Seller shall forward subcontractor reports to the STR.

18. 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 will require Seller to remove from WSAP covered work any Seller employee who is determined to have used an illegal drug.

(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.

19. 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.

20. PERFORMANCE AND PAYMENT BONDS

(a) As used in this clause, "original Agreement price" means the award price of this Agreement. Original Agreement price does not include the price of any options, except those exercised at the time of award.

(b) If the price of this Agreement is greater than $150,000 the Seller must furnish performance and payment bonds to the Company as follows:

(1) Performance Bonds on the Company form available at http://www.y12.doe.gov. The penal amount shall be 100 percent of the original Agreement price.

(2) Payment Bonds on the Company form available at http://www.y12.doe.gov. The penal amount shall be 100 percent of the original Agreement price.

(3) (i) The Company may require additional performance and payment bond protection if the price is increased. The increase in protection shall generally equal 100 percent of the increase in price.

(ii) The Company may secure the additional protection by directing the Seller to increase the penal amount of the existing bond or to obtain an additional bond.

(c) The Seller shall furnish all executed bonds, including any necessary reinsurance agreements, to the Company within the time specified in the solicitation, but in any event before starting work.

(d) The bonds shall be supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is available at http://fms.treas.gov/c570/c570.html.

21. ALTERNATIVE PAYMENT PROTECTIONS

(a) If the price of this Agreement is greater than $25,000 but not greater than $100,000 the Seller shall submit one of the following payment protections:

(1) A payment bond on the Company form available at http://www.y12.doe.gov; or

(2) An irrevocable letter of credit (see clause 18 below).

(b) The amount of the payment protection shall be 100 percent of the Agreement price.

(c) The payment protection must be submitted within ten calendar days of award of the Agreement.

(d) The payment protection shall provide protection for the Agreement's period of performance plus one year.

(e) Except for payment bonds, which provide their own protection procedures, the Company is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

22. ADDITIONAL BOND SECURITY

The Seller shall promptly furnish additional security required to protect the Company, the Government, and persons supplying labor or materials under this Agreement if--

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this Agreement becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The Agreement price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Company; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Seller does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 calendar days before an ILC's scheduled expiration, the Company may immediately draw on the ILC.

23. PLEDGES OF ASSETS

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

(1) Pledge of assets; and

(2 Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide--

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

24. PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS

Upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this Agreement for which a payment bond has been furnished, the Seller shall promptly provide a copy of such payment bond to the requester.

25. IRREVOCABLE LETTER OF CREDIT

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Company (the beneficiary) of a written demand therefore. Neither the financial institution nor the offeror/Seller can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, as an alternative payment protection, or to secure performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The ILC shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 calendar days after the close of the bid acceptance period;

(2) If used as an alternative payment protection or as security for a performance or payment bond, the offeror/Seller may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 calendar days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Company provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For Agreements exceeding $100,000 the later of--

(a) One year following the expected date of final payment;

(b) For performance bonds only, until completion of any warranty period; or

(c) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For Agreements of $100,000 or less, 90 calendar days following final payment.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Seller shall provide the Company a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial

institution issuing the ILC had letter of credit business of at least $25 million in the past year, ILCs over $5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least $25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date _____

Irrevocable Letter of Credit No. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____ (for reference only)

To: Y12

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States $_____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 calendar days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of Y-12 (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 calendar days after the resumption of our business.

Sincerely,

_____

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address]

(Date)_____

Our Letter of Credit Advice Number _____

Beneficiary: Y-12

Issuing Financial Institution: _____

Issuing Financial Institution's LC No.: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. $_____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 calendar days prior to any such expiration date, we shall notify Y-12, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 calendar days after the resumption of our business.

Sincerely,

_____

[Confirming financial institution]

(g) The following format shall be used by the Company for a sight draft to draw on the Letter of Credit:

Sight Draft

[City, State]

(Date)_____

[Name and address of financial institution]
Pay to the order of Y-12 the sum of United States $_____. This draft is drawn under Irrevocable Letter of Credit No. _____.

Y-12

_____

[By]

26. 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.

27. PATENT INDEMNITY-Construction

The Seller shall indemnify the Company and the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order user 35 U.S.C. 181) arising out of performing this Agreement or out of the use or disposal by or for the account of the Company or the Government of supplies furnished or work performed under this Agreement.

28. PAYMENT AND ADMINISTRATION

Company shall make payments under this Agreement from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. 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.

29. 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.

30. ESTIMATED BILLING

Five calendar days before the end of each Y-12 business month, the Seller must provide to the STR its best estimate of the total billable cost (invoiced plus invoicable) under the subcontract through the current business-month end. This information must be provided by email (preferred), fax, or mail until final payment is made.

31. PAYMENT

(a) Company shall pay Seller the price as provided in this Agreement.

(b)(1) Company shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by Company, on estimates of work accomplished which meets the standards of quality established under the Agreement, as approved by Company.

(2) Pay estimates shall be submitted monthly. In the preparation of estimates, Company may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to Seller at locations other than the site may also be taken into consideration if (i) consideration is specifically authorized by this Agreement and (ii) Seller furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Agreement. (3) An updated progress report shall be submitted by Seller with each pay estimate. (4) Before a request for payment is approved, Seller shall submit to the Subcontract Technical Representative all required plans and reports for the work period in question.

(c) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as: (1) relieving Seller from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or (2) waiving the right of Company to require the fulfillment of all of the terms of the Agreement.

(d) In making these progress payments, Company shall, upon request, reimburse Seller for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after Seller has furnished evidence of full payment to the surety. (e) Company shall pay the final amount due Seller under this Agreement after: (1) completion and acceptance of all work; and (2) Seller has submitted: (i)"Certified-as-Built" shop drawings and manufacturer's data and a bound copy of certified test data and reports; (ii) a certified statement that all payrolls have been submitted under this Agreement; (iii) a properly executed voucher; and (iv) a release of all claims against Company and the Government arising by virtue of this

Agreement, other than claims, in stated amounts, that Seller has specifically accepted from the operation of the release. Release may also be required of the assignee if Seller claims amounts payable that have been assigned in accordance with clause 33 below.

(f) 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 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 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.

32. INTEREST

All amounts due to Company by Seller 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.

33. 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.

34. LIABILITY FOR FINES AND PENALTIES

The Seller shall be responsible, at no expense to the Company, for the payment of fines, penalties, and other assessments imposed as a result of the Seller's performance. If the fine, penalty, or other assessment results in part from actions or failures to act of the Company or its employees, the Company will be responsible for its *pro rata* share. If the Company is required to pay a fine, penalty, or other assessment for which the Seller is liable under this clause, the Seller shall reimburse the Company the amount of such fine, penalty, or other assessment.

35. DIFFERING SITE CONDITIONS

(a) Seller shall promptly, and before the conditions are disturbed, give a written notice to Company of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Agreement, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) Company shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Seller's cost of, or the time required for, performing any part of the work under this Agreement, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Agreement modified in writing accordingly.

(c) No request by Seller for an equitable adjustment under this clause shall be allowed, unless the written notice required in paragraph (a) above is timely given.

36. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

(a) Seller acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. Seller also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Company, as well as from the drawings and specifications made a part of this Agreement. Any failure of Seller to take the actions described and acknowledged in this paragraph will not relieve Seller from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Company.

(b) Company assumes no responsibility for any conclusions or interpretations made by Seller based on the information made available by Company. Nor does the Company assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Agreement, unless that understanding or representation is expressly stated in this Agreement.

37. TITLE TO MATERIALS FOUND

The title to water, soil, rock, gravel, sand, minerals, timber, and any other materials developed or obtained in the excavation or other operations of the Seller or any of its lower-tier subcontractors is hereby expressly reserved by DOE/NNSA. The Seller may, at the sole discretion of the Company, be permitted, without charge, to use in the Work any such materials which meet the requirements of this subcontract.

38. MATERIAL AND WORKMANSHIP

(a) All equipment, material, and articles incorporated into the work covered by this Agreement shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Agreement. References in the specifications or drawings to equipment, material, articles, or

patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Seller may, with Company's written approval, use any equipment, material, article, or process that is equal to that specified, unless the words "No Substitution" follow the listing of the item in the specifications or drawings.

(b) Seller shall obtain Company approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Seller shall furnish to the Company the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by Company, Seller shall also obtain Company's approval of material or articles that Seller contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When so directed, Seller shall submit samples for approval at Seller's expense. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this Agreement shall be performed in a skillful and workmanlike manner. Company may require, in writing, Seller to remove from the work any employee Company deems incompetent, careless, or otherwise objectionable.

39. SUPERINTENDENCE OF SELLER

At all times during performance of this Agreement and until the work is completed and accepted, Seller shall directly superintend the work or assign and have at the site a competent superintendent who is satisfactory to Company and has authority to act for Seller.

40. PERMITS AND RESPONSIBILITIES

The Seller shall, without additional expense to the Company, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Seller shall also be responsible for all damages to persons or property that occurs as a result of the Seller's fault or negligence. The Seller shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Agreement.

41. 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) Aircraft Insurance. When aircraft are used in performing the subcontract, 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, 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 Y-12 as the certificate holder,

(3) state that Y-12 and the U.S. Department of Energy have been added as Additional Insureds on all liability policies other than workers' compensation.

(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 Y-12 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) 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.

42. PROTECTION OF EXISTING IMPROVEMENTS, EQUIPMENT, UTILITIES, AND ANTIQUITIES

(a) Seller shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site that are not to be removed and that do not unreasonably interfere with the required work. Seller shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance, or by the careless operation of equipment, or by workmen, Seller shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by Company.

(b) Seller shall protect from damage all existing improvements and utilities at or near the work site and on adjacent property of a third party, the locations of which are made known to or should be known by Seller. Seller shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Agreement or failure to exercise reasonable care in performing the work. If Seller fails or refuses to repair the damage promptly, Company may have the necessary work performed and charge the cost to Seller.

(c) Federal law provides for the protection of antiquities located on land owned or controlled by the Government, Antiquities include Indian graves or campsites, relics and artifacts. Seller shall control the activity at the jobsite to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed. Seller shall report the discovery of any antiquities at the jobsite and, upon discovery of unusual materials (e.g. obsidian chips or flakes, bones, darkly stained soils, "arrowheads"), Seller shall stop work at/or around such materials and notify Company.

(d) Should Seller encounter any utilities, lines, or structures not shown on the drawings or not correctly located thereon, it shall immediately stop all work adjacent thereto. Seller shall immediately notify Company, which will issue instructions indicating the method of proceeding. If Seller damages any utility, line, or structure, whether or not shown on the drawings, Company shall be immediately notified.

43. OPERATIONS AND STORAGE AREAS

(a) Seller shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Company.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Seller only with Company approval. Physical protection and maintenance of temporary buildings and utilities are Seller's responsibility. Temporary buildings and utilities shall remain the property of Seller and shall be removed by Seller at its expense upon completion of the work. With Company written consent, buildings and utilities may be abandoned and need not be removed.

(c) Seller shall, under regulations prescribed by Company, use only established roadways, or use temporary roadways constructed by Seller when and as authorized by Company. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, Seller shall protect them from damage. Seller shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

44. USE AND POSSESSION PRIOR TO COMPLETION

(a) Company shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, Company shall furnish Seller a list of items of work remaining to be performed or corrected on those portions of the work that Company intends to take possession of or use. However, failure of Company to list any item of work shall not relieve Seller of responsibility for complying with the terms of this Agreement. Company's possession or use shall not be deemed an acceptance of any work under this Agreement.

(b) While Company has such possession or use, Seller shall be relieved of the responsibility for the loss of or damage to the work resulting from Company's possession or use, notwithstanding the terms of the clause in this Agreement entitled “Permits and Responsibilities.” If prior possession or use by Company delays the progress of the work or causes additional expense to Seller, an equitable adjustment shall be made in the price or the time of completion, and the Agreement shall be modified in writing accordingly.

45. CLEANING UP

Seller shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, Seller shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, Seller shall leave the work area in a clean, neat, and orderly condition satisfactory to Company.

46. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

(a) Seller shall be furnished the number of drawings and specifications specified in Division One at no cost.

(b) Seller shall keep on the work site a copy of the drawings and specifications and shall at all times give Company access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. Within the specifications, Division One (the "Special Conditions") shall govern. In case of discrepancy in the figures, in the drawings, or in the remainder of the specifications, the matter shall be promptly submitted to the Construction Engineer and the Subcontract Administrator, who shall promptly make a determination in writing. Any adjustment by Seller without such a determination shall be at its own risk and expense. Company shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(c)(1) The drawings and specifications incorporated into this Agreement are intended to include everything requisite and necessary to complete the entire work properly, notwithstanding the fact that every item necessarily involved may not be specifically mentioned. (2) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve Seller from performing such omitted or misdescribed details of the work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications. (3) The specifications and drawings may identify and list quantities of items to be furnished and installed by Seller. These identifications may

be incomplete and the quantities are estimates only. Seller is responsible for furnishing the items and quantities manifestly necessary to carry out the intent of the drawings and specifications. (4) The drawings furnished by Company are, in general, to scale. Scales shown on a microfilmed reproduced drawing change in proportion to the reduction of the drawing from original size. Figured dimensions shall always be followed and the drawings not scaled. (5) Prior to fabricating any item (structural steel, piping, ductwork, etc.) Seller shall field-verify all dimensions critical to the installation. Any discrepancies between existing or new conditions and the drawings shall be reported to Company for resolution. (6) The specifications are divided into sections for convenience only, and such sections do not define or establish the limits of work of any subcontractor. It is Seller's responsibility to define lower-tier subcontractors' limits of work and to insure that all lower-tier subcontractors and suppliers at whatever level are familiar with all provisions of this Agreement that may affect their work. (7) The data sheet equipment numbers are not unique. Multiple pieces of equipment may utilize the same number. Seller shall determine the quantity of equipment and material needed to complete the work.

(d) Shop drawings means drawings submitted to the Company by the Seller or any lower tier subcontractor showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (*i.e.*, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Seller to explain in detail specific portions of the work. The Company may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Agreement.

(e) If this Agreement requires shop drawings, the Seller shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with requirements of this Agreement and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Company without evidence of the Seller's approval may be returned for resubmission. The Company will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate its reasons therefore. Any work done before such approval shall be at the Seller's risk. Approval by the Company shall not relieve the Seller from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Agreement, except with respect to variations described and approved in accordance with (f) of this clause.

(f) If shop drawings show variations from the requirements of this Agreement, the Seller shall describe such variations in writing, separate from the drawings, at the time of submission. If the Company approves any such variation, the Company shall issue an appropriate modification to this Agreement, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Seller shall submit to the Company for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of the specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Company and one set will be returned to the Seller.

47. OTHER SUBCONTRACTS

The Company may award other subcontracts for work at or near the site of the work under this Agreement. The Seller shall cooperate fully with other subcontractors and with Company employees and shall carefully adapt scheduling and performance of work under this Agreement to accommodate the additional work, heeding any direction that may be provided by the STR. The Seller shall not commit or permit any act that will interfere with performance by other subcontractors or by Company employees.

48. 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 financing institution if Subcontract Administrator is promptly furnished written notice and a signed copy of such assignment.

49. 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.

50. STOP WORK AUTHORITY

(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 or price, or both, 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.

51. 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 numbers, of all Company agreements for which final payment has not been made.

52. 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.

53. CHANGE ORDER ACCOUNTING

Change order accounting is required whenever the estimated cost of a change or series of related changes exceeds $50,000. For each change or series of related changes, the Seller shall establish and maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Seller shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Subcontract Administrator or the matter is conclusively disposed of in accordance with the Resolution of Disputes clause. This clause applies whenever the Seller believes the subcontract has been changed, either because of an ordered change or any other reason.

54. TECHNICAL DIRECTION

(a) Performance of the work under this subcontract is subject to the technical direction of the Subcontract Technical Representative (STR). “Technical direction” means, without limitation:

(1) Providing direction to the Seller that redirects subcontract effort, shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details, or otherwise serves to accomplish the Statement of Work.

(2) Providing written information to the Seller that assists in interpreting drawings, specifications, or technical portions of the work description.

(3) Reviewing and, where required by the subcontract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Seller to the Company.

(b) The Subcontract Administrator will notify the Seller of the identity of the STR.

(c) Technical direction must be within the scope of work stated in the subcontract. The STR does not have the authority to, and may not, issue any technical direction that:

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the “Changes” clause;

(3) In any manner causes an increase or decrease in the subcontract price or total estimated cost, the fee (if any), or the time required for subcontract performance;

(4) Changes any of the expressed terms, conditions or specifications of the subcontract; or

(5) Interferes with the Seller’s right to perform the terms and conditions of the subcontract.

(d) All technical direction shall be issued in writing by the STR.

(e) The Seller must proceed promptly with the performance of technical direction duly issued by the STR in the manner prescribed by this clause and within the STR’s authority. If, in the Seller’s opinion, any direction by the STR falls within one of the categories defined in paragraph (c) of this clause, the Seller must not proceed but must notify the Subcontract Administrator in writing within five business days after receiving it and must request the Subcontract Administrator to modify the subcontract accordingly. Upon receiving the notification, the Subcontract Administrator must:

(1)Advise the Seller in writing within 30 calendar days after receipt of the notification that the technical direction is within the scope of the subcontract and does not constitute a change under the Changes clause;

(2) Advise the Seller writing within a reasonable time that the Company will issue a written change order; or

(3) Advise the Seller in writing within a reasonable time not to proceed with the direction of the STR.

(f) A failure of the Seller and Subcontract Administrator either to agree that the technical direction is within the scope of the subcontract or to agree upon the subcontract action to be taken with respect to the technical direction will be subject to the “Resolution of Disputes” clause.

55. DELAYS

As a condition precedent for entitlement to any price adjustment or schedule extension:

(1) For each separate delay, Seller shall give written notice of the delay-causing event to the Subcontract Administrator. On the basis of the most accurate information available to the Seller, the notice shall state:

(i) date, cause, and circumstances regarding the delay,

(ii) name of each person knowledgeable about the delay,

(iii) identification of documents and substance of oral communications involving the delay, and

(iv) the particular elements of performance impacted by the delay, including

(a) adjustment in labor and/or materials,

(b) estimated resulting price and schedule adjustments, and

(c) time by which Company must respond to minimize cost, delay, or disruption to performance of the work. In no event shall Seller recover any delay costs incurred prior to 14 calendar days before Seller gives such written notice.

(2) Seller shall include with any delay claim a Critical Path Method (CPM) schedule that shows the delay is on the critical path affecting the subcontract's overall completion date.

(b) Notwithstanding any other provision in this Agreement, Seller shall not be entitled to profit for delay costs of any kind, including but not limited to, extended costs and loss of efficiency or productivity, regardless of the theory of recovery.

(c) Recovery of unabsorbed overhead or under-absorbed overhead shall be denied unless Seller satisfies all federal contract law requirements for using the "Eichleay Formula."

56. LOSS OF PRODUCTIVITY

This clause does not create a right to recover loss of productivity. However, where Seller can establish entitlement to loss of productivity under another clause, Seller's recovery is subject to the additional requirements contained herein.

(a) Time Limits. (1) Seller shall initiate any request for adjustment (excluding profit) for loss of productivity within 14 days from the beginning of the loss of productivity. A request for adjustment shall be initiated by written notice to the Subcontract Administrator and shall explicitly state that the request is due to loss of productivity. Seller shall not recover for loss of productivity occurring more than 14 days prior to Seller's initiating its request.

(2) After initiating its request for adjustment, Seller shall attend the weekly productivity meeting addressed in paragraph (b). The purpose of the weekly meeting is to enable the Company to verify experienced, and the parties to mitigate future, loss of productivity.

(b) Weekly Productivity Meeting

(1)After Seller has initiated its request for adjustment for loss of productivity, the Company shall establish a weekly meeting to address loss of productivity. Seller, and a representative from each subcontractor to Seller that incurred a loss of productivity in the prior week, shall attend the weekly productivity meeting.

(2)At the weekly productivity meeting, Seller and each subcontractor to Seller shall address:

(i) any loss of productivity incurred during the prior week;

(ii) specifics regarding that loss of productivity; and

(iii) how to mitigate or avoid that loss in the current week and future weeks.

(3) Seller and each subcontractor to Seller attending the weekly meeting shall:

(i) identify the specific impacted tasks (by type and area) on which it suffered a loss of productivity in the prior week;

(ii) by each impacted task and area, estimate the percentage loss of productivity suffered the prior week and explain the basis of this estimate;

(iii) by each impacted task and area, identify the total labor hours expended the prior week, and of that total, identify the number of labor hours the subcontractor attributes to loss of productivity;

(iv) by each impacted task and area, identify the change(s) in working conditions that caused the loss of productivity for the prior week – if more than one cause is identified, estimate the loss of productivity attributable to each cause. If a cause is due to changed work, identify the specific changes;

(v) list by name and position any employee for whom loss of productivity is claimed due to excessive overtime; and

(vi) suggest ways to mitigate or avoid the loss of productivity going forward.

(4) Attendance and presentation at the weekly meeting of all the information required in subparagraph (3) shall be a condition precedent to recovery of any amount for loss of productivity for the prior week.

(5) When Seller no longer experiences a loss of productivity for which it seeks an upward adjustment to the Subcontract price, Seller may submit a written request to the Subcontract Administrator to cancel the weekly productivity meetings and the Subcontract Administrator shall cancel the meetings.

(c) No profit. Seller and subcontractors to Seller shall not receive profit on requests for adjustment due to loss of productivity.

57. ADJUSTMENTS

(a) Clauses in this Agreement that provide for an adjustment or for an equitable adjustment are supplemented by paragraphs (b) through (j).

(b) Requests for adjustments or equitable adjustments, whether submitted in response to a request by the Company for a proposal or submitted on Seller's initiative, must include an itemized breakdown of cost for the Seller and each lower-tier subcontractor in at least the following detail: direct material quantities and costs; direct labor hours and rates for each trade; employment taxes; Workers' Compensation Insurance; equipment hours and rates; and bond premiums paid for Seller's bonds (Seller shall not be entitled to any adjustment for bond premiums paid by its lower-tier subcontractors).

(c) When submitting a request for adjustment or an equitable adjustment exceeding $50,000, the originator of the request (whether the Seller or a lower-tier subcontractor), shall, as a condition precedent to any recovery, submit sufficient data supporting the request and certify as follows:

CERTIFICATION

I certify that this request for adjustment 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].

The aggregate amount of both increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met.

(d) The cost principles and procedures of 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.

(e) Only those reasonable proposal preparation costs incurred in response to the Subcontract Administrator's written change order or written request for a proposal are recoverable, but only to the extent the costs are fully documented and exclude overhead or profit; provided however, that in no event shall the Company pay for (and Seller shall not include in its proposal) any proposal preparation costs relating to delay, schedule analysis, cumulative impacts, loss of productivity, or any time-related costs.

(f) Seller shall not be entitled to any adjustment for bond premiums paid by its lower-tier subcontractor(s)

(g) The overhead, profit and commission percentages in the table below apply to Seller and lower-tier subcontractors.

	Overhead	**Profit**	**Commission**
CATEGORY ONE To Seller and subcontractors on work performed with their own forces	10 %	10 % (Only as specified in Note 2 below)	Not Applicable
CATEGORY TWO To Seller and subcontractors on work performed by other than their own forces	Not Allowed	Not Allowed	1st $100,000 -- 10 % Next $150,000 -- 8% Amount above $250,000 -- 6% **(with certification)**
CATEGORY THREE To Seller and subcontractors on work performed by other than their own forces	Not Allowed	Not Allowed	3% **(without certification)**

NOTES:

1. The percentages for overhead and profit are subject to negotiation according to the nature, extent, and complexity of the work involved but in no event shall exceed the stated percentage.
2. No profit is allowed under CATEGORY ONE where recovery is sought under a clause (i) providing for an adjustment as opposed to an equitable adjustment, or (ii) stating profit is not allowed.
3. The percentage for overhead includes all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations.
4. Category Two applies where the Seller or higher–tier subcontractor certifies the originating lower-tier subcontractor's request.
5. Category Three applies where the Seller or higher-tier subcontractor does not certify the originating lower-tier subcontractor's request.
6. Neither Seller nor higher-tier subcontractors shall recover commission on the overhead, profit or commission of lower-tier subcontractors.

(h) Equitable adjustments for deleted work shall include credits, limited to the same restrictions for overhead, profit, and commission in paragraph (g) of this clause.

(i) On proposals covering both increases and decreases in price, the overhead, profit, and commission shall be applied to the net change in direct costs for the Seller or the subcontractor performing the work.

(j) The Subcontractor Administrator may make adjustments by unilateral modification to the subcontract (for example, for a no-cost change or where the parties fail to agree on an increase or decrease in price or time). The unilateral modification 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 unilateral modification.

58. 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.

59. EXPEDITING

The equipment and materials furnished and work performed under this subcontract shall be subject to expediting by the Company or its representatives, who shall be afforded full and free access to the shops, factories, and other places of business of the Seller and its suppliers and subcontractors of any tier for expediting purposes. As required by the Company, the Seller shall provide detailed schedules and progress reports for use in expediting and shall cooperate with the Company in expediting activities.

60. INSPECTION OF CONSTRUCTION

(a) *Definition.* "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) Seller shall maintain an adequate inspection system and perform such inspections and tests as will ensure that the work performed under this Agreement conforms to the applicable requirements. Seller shall maintain complete inspection and test records and make them available to Company. All work shall be conducted under the general direction of Company and is subject to Company inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of this Agreement.

(c) Company inspections and tests are for the sole benefit of the Government and do not relieve Seller of responsibility for providing adequate quality control measures, relieve Seller of responsibility for damage to or loss of the material before acceptance, constitute or imply or affect the continuing rights of Company after acceptance of the completed work.

(d) The presence or absence of a Company inspector does not relieve Seller from any requirement, nor is the inspector authorized to change any term or condition of the specification without Company's written authorization.

(e) Seller shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Company. Company may charge to Seller any additional cost of inspection or test when work is not ready at the time specified by Seller for inspection or test, or when prior rejection makes re-inspection or retest necessary. Company shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in this Agreement.

(f) Seller shall, without charge, replace or correct work found by Company not to conform to the requirements, unless in the public interest Company consents to accept the work with an appropriate adjustment in price. Seller shall promptly segregate and remove rejected material from the premises.

(g) If Seller does not promptly replace or correct rejected work, Company may replace or correct the work and charge the cost to Seller, or terminate for default the Seller's right to proceed.

(h) If, before acceptance of the entire work, Company decides to examine already completed work by removing it or tearing it out, Seller, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of Seller or its lower-tier subcontractors, Seller shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet applicable requirements, Company shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in this Agreement, Company shall accept or reject, as promptly as practicable after completion and inspection, all work required by this Agreement or that portion of the work Company determines can be accepted separately. Acceptance by the Company shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

61. WARRANTY

(a) In addition to any other warranties in this Agreement, Seller warrants that work performed under this Agreement conforms to the Agreement requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by Seller or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of one year from the date of final acceptance of the work. If Company takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date Company takes possession.

(c) Seller shall remedy at Seller's expense any failure to conform, or any defect. In addition, Seller shall remedy at Seller's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of Seller's failure to conform to applicable requirements, or any defect of equipment, material, workmanship, or design furnished.

(d) Seller shall restore any work damaged in fulfilling the terms and conditions of this clause. Seller's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.

(e) Company shall notify Seller, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If Seller fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Company shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Seller's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, Seller shall: (1) obtain all warranties that would be given in normal commercial practice; (2) require all warranties to be executed, in writing, for Company's benefit, as directed; and (3) enforce all warranties for Company's benefit, as directed.

(h) If Seller's warranty under paragraph (b) of this clause has expired, Seller agrees to subrogate any of its rights and to aid Company in enforcing lower-tier subcontractor's, manufacturer's, or supplier's warranties.

(i) Unless a defect is caused by the negligence of the Seller or subcontractor or supplier at any tier, the Seller shall not be liable for the repair of any defects of material or design furnished by the Company nor for the repair of any damage those results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Company's rights under the Inspection of Construction clause of this Agreement with respect to latent defects, gross mistakes, or fraud.

62. 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.

63. SUBCONTRACTORPERFORMANCE EVALUATION PROGRAM

In keeping with its goal of continuous improvement, the Company has established a Subcontractor Performance Evaluation Program. This program is intended to create structured mechanisms for improving communications with subcontractors, monitoring and evaluating performance, improving quality and timeliness, and fostering safety and security. Any subcontract awarded by the Company is a candidate for evaluation under this program, and any subcontractor may request an evaluation of its performance.

64. BACKCHARGE WORK

(a) Backcharge work is a cost sustained by Company or the Government and chargeable to Seller for the performance of work which is Seller's responsibility under this Agreement.

(b) Upon identification of an actual or anticipated backcharge, Company will provide Seller a written notice which shall describe the work to be performed, the schedule for performance, and the cost to be charged the Seller. The cost may include; (i) actual labor cost, (ii) actual material cost including transportation, and (iii) taxes, levies, duties and assessments.

(c) Seller is required to accept the backcharge or reperform work at Seller's cost. If the Seller refuses to accept the backcharge or agree to reperform within 24 hours after receipt of Company's notice, Company may precede with the backcharge work and setoff the cost for Seller's payment.

65. COMPANY'S RIGHT TO SETOFF

The Company may collect any amount determined by the Subcontract Administrator to be owed the Company by setting off the amount against any payment due the Seller under this or any other Agreement it has with the Company.

66. TERMINATION FOR DEFAULT

(a) Company may by written notice to the Seller terminate the right to proceed with the work (or a separable part of the work) if Seller: (1) refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Agreement, (2) fails to complete the work within this time, (3) persistently disregards laws, safety or environmental regulations, ordinances or the instructions of Company, or (4) fails to comply with any substantive requirement of this Agreement.

(b) In this event, the Company may take over the work and complete it by contract or otherwise, and may take possession and use any materials, appliances, and plant on the work site

necessary for completing the work. The Seller and its sureties shall be liable for any damage to the Company resulting from the termination, including any increased cost incurred by the Company in completing the work.

(c) The Seller's right to proceed shall not be terminated if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Seller (Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another Contractor in the performance of a subcontract with the Company, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Seller and the subcontractors or suppliers); and

(2) The Seller, within 10 calendar days from the beginning of any delay (unless extended by the Company), notifies the Company in writing of the causes of delay. The Company shall ascertain the facts and the extent of delay. If the facts warrant, the time for completing the work shall be extended.

(d) If, after termination of the Seller's right to proceed, it is determined that the Seller was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(e) The rights and remedies of Company in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

67. TERMINATION FOR CONVENIENCE

(a) Company may terminate performance of work under this Agreement in whole or from time to time in part by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, the Seller shall immediately:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts, 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 Company, all interest of the Seller under the subcontracts terminated, in which case the Company may settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval of the Company, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.

(6) As directed by the Company, transfer title and deliver to the Company—

(i) Work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) 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.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Company may direct, for the protection and preservation of property in the Seller's possession and in which the Company has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Company, any property of the types referred to in paragraph (b)(6); *provided*, however, that the Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under conditions prescribed by, and at prices approved by, the Company. The proceeds of any sale will be applied to reduce any payments to be made by the Company under this Agreement.

(c) The Seller shall submit complete termination inventory schedules within 120 calendar days from the effective date of termination.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, Seller may submit to Company a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Company. Seller may request Company to remove those items or enter into an agreement for their storage. Within 15 calendar days, Company will remove them or enter into a storage agreement. Company 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.

(e) Seller shall submit a final termination settlement proposal in the form and with the certification prescribed by Company within six months from the effective date of termination. If Seller fails to submit the proposal within the time allowed, Company may determine the amount, if any, due Seller and pay that amount.

(f) Seller and Company may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. However, the agreed amount, whether under this paragraph (f) or paragraph (g), exclusive of costs shown in paragraph (g)(2), may not exceed the total Agreement price as reduced by (1) the amount of payments previously made and (2) the Agreement price of work not terminated. The Agreement shall be modified, and the Seller paid the agreed amount.

(g) If the Seller and Company fail to agree on the whole amount to be paid, the Company shall pay the Seller amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f):

(1) For work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement; and

(iii) A sum, as profit on subdivision (g) (1) (i) of this clause, determined by the Company under 49.202 of the Federal Acquisition Regulation to be fair and reasonable; however, if it appears that the Seller would have sustained a

loss on the entire Agreement had it been completed, the Company shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.

(2) 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.

(h) Except for normal spoilage, and except to the extent that the Company expressly assumed the risk of loss, the Company shall exclude from the amounts payable to Seller under paragraph (g) the fair value, as determined by Company, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Company or to a buyer.

(i) The cost principles and procedures of 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.\

(j) The Seller shall separately track all proposal preparation costs relating to delay, schedule analysis, cumulative impacts, loss of productivity, or any time-related costs and shall exclude such named proposal preparation costs from its termination settlement proposal. In no event shall the Company pay for any such named proposal preparation costs.

(k) ~~(j)~~ 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) If the termination is partial, the Seller may request an equitable adjustment of the price(s) of the continued portion of the Agreement. Any such request shall be made within 90 calendar days from the effective date of termination.

(m) (1) The Company may make partial payments and payments against costs incurred by the Seller for the terminated portion of the Agreement, if the Company 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 Company because of the circumstances.

(n) Unless otherwise provided in this Agreement or required by statute, Seller shall maintain all records and documents relating to the terminated portion of this Agreement for three years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this Agreement. Seller shall make these records and documents available to the Company at Seller's office, at all reasonable times, without charge. Photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

68. 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.acquisition.gov, the texts of DEAR clauses are available at http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation and the texts of Company clauses are available 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 subcontract, 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

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

- FAR 52.211-5 Material Requirements (AUG 2000)
- FAR 52.222-3 Convict Labor (JUN 2003)
- FAR 52.222-6 Davis-Bacon Act (JUL 2005) (The required poster is available at: http://www.dol.gov/whd/regs/compliance/posters/davis.htm).
- FAR 52.222-7 Withholding of Funds (FEB 1988)
- FAR 52.222-8 Payrolls and Basic Records (JUN 2010)
- FAR 52.222-9 Apprentices and Trainees (JUL 2005)
- FAR 52.222-10 Compliance with Copeland Act Requirements (FEB 1988)
- FAR 52.222-11 Subcontracts (Labor Standards) (JUL 2005)
- FAR 52.222-12 Contract Termination - Debarment (FEB 1988)
- FAR 52.222-13 Compliance with Davis-Bacon and Related Act Regulations (FEB 1988)
- FAR 52.222-14 Disputes Concerning Labor Standards (FEB 1988)
- FAR 52.222-15 Certification of Eligibility (FEB 1988)
- FAR 52.222-16 Approval of Wage Rates (FEB 1988)

- 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 52.222-27 Affirmative Action Compliance Requirements for Construction (FEB 1999)
- FAR 52.222-29 Notification of Visa Denial (JUN 2003)
- FAR 52.222-36 Affirmative Action for Workers With Disabilities (OCT 2010) (Alternate I DEC 2001)
- FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)
- FAR 52.222-50 Combating Trafficking in Persons (FEB 2009)
- FAR 52.222-54 Employee Eligibility Verification (JUL 2012) (not applicable to COTS as defined by FAR)
- FAR 52.223-2 Affirmative Procurement of Bio-Based Products Under Service and Construction Contracts (JUL 2012)
- FAR 52.223-7 Notice of Radioactive Materials (JAN 1997)
  (paragraph (a) shall read 45 days prior)
- FAR 52.223-15 Energy Efficiency and Energy Consuming Products (DEC 2007)
- FAR 52.223-17 Affirmative Procurement of EPA Designated Items in Service and Construction Contracts (May 2008)
- FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)
- FAR 52.224-2 Privacy Act (APR 1984)
  (Applies to scope of work for system of records on individuals)
- FAR 52.225-9 Buy American Act - Construction Materials (SEP 2010)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (JUN 2008)
- FAR 52.227-10 Filing of Patent Applications—Classified Subject Matter (DEC 2007)
- FAR 52.237-2 Protection of Government Building, Equipment and Vegetation (APR 1984)
- FAR 52.244-6 Subcontracts for Commercial Items (DEC 2010)
- FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)
- Nuclear Hazards Indemnity and Price-Anderson Amendments Act (APR 2012) (Company)
- DEAR 952.204-77 Computer Security (AUG 2006)
- DEAR 952.223-75 Preservation of Individual Occupational Exposure Records (APR 1984)
- Foreign Nationals (APR 2010)(Company)
- Hazardous Material Identification and Material Safety Data (Company – APR 2010)
- Hazardous Materials Reporting (APR 2010) (Company)
- Required Training (Company-JUL 2010)
- Appropriate Footwear Policy (UCN-22374) (Company)
- Y-12 Motor Vehicle and Pedestrian Safety (UCN-22527) (Company)
- Smoking Policy (UCN-22375) (Company)
- Security of Unclassified Controlled and Proprietary Information (OCT 2012) (Company)
- Travel Reimbursement Policy (MAR 2013) (Company)
- Badging , Personal Identity Verification and Security Clearances for Seller Employees (FEB 2013) (Company)

(c)(2) The following clauses are incorporated when the work involves access to classified information, special nuclear material, or authorized unrestricted access to areas containing classified information or special nuclear material:

- DEAR 952.204-2 Security (AUG 2009)
- DEAR 952.204-70 Classification/Declassification (SEP 1997)
- Civil Penalties for Classified-Information Security Violations (Company – APR 2010)

(c)(3) The following clauses are incorporated if this Agreement exceeds $25,000:

- FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010)

(c)(4) The following clauses are incorporated when the Agreement exceeds $30,000:

- FAR 52.209-6 (DEC 2010) Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

(c)(5) The following clauses are incorporated if this Agreement exceeds $100,000:

- FAR 52.222-35 Equal Opportunity for Veterans (SEP 2010) (Alternate I DEC 2001)
- FAR 52.222-37 Employment Reports on Veterans (SEP 2010)
- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

(c)(6) 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 (OCT 2010), except paragraph (c)(1)
- FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)
- FAR 52.215-2 Audit and Records - Negotiation (OCT 2010)
- FAR 52.219-8 Utilization of Small Business Concerns (JAN 2011)

- FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 2005)

- FAR 52.225-8 Duty-Free Entry (OCT 2010)
- FAR 52.247-63 Preference for U.S. Flag Air Carriers (JUN 2003)
- Sustainable Acquisition Program--Construction (NOV 2010) (Company)

(c)(7) 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 FY 1993 (DEC 2000)

(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 (AUG 2011)
- FAR 52.215-12 Subcontractor Certified Cost or Pricing Data (OCT 2010)
- FAR 52.215-13 Subcontractor Certified Cost or Pricing Data-Modification (OCT 2010)
- Cost Accounting Standards-Clauses (Company) (SEPT 2010) modeled on FAR 52.230-2

(c)(9) The following clause is incorporated if this Agreement exceeds $1 million:

- Bid Escrow Documents (AUG 2012) (Company)

(c)(10) The following clause is incorporated if this Agreement exceeds $1.5 million:

- FAR 52.219-9 Small Business Subcontracting Plan (JAN 2011) (Alternate II)

(c)(11) The following clause is incorporated if this Agreement exceeds $5 million:

- FAR 52.203-14 Display of Hotline Poster(s) (b)(3) Required poster is: 'DOE Hotline Poster http://energy.gov/ig/downloads/office-inspector-general-hotline-poster'

(c)(12) The following clause is incorporated if this Agreement exceeds $7,777,000:

- FAR 52.225-11 Buy American Act – Construction Materials Under Trade Agreements (SEP 2010)