

## GENERAL TERMS & CONDITIONS

### Commercial Items (CI -- JAN 2006)

**1. DEFINITIONS.** The following terms shall have the meanings below:

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

(b) Company means BWXT Y-12, L.L.C., acting under Contract No. DE-AC05-00OR22800.

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

(d) Agreement means Purchase Order, Subcontract, Price Agreement, AVID Agreement, Basic Ordering Agreement, or Modification thereof.

(e) Subcontract Administrator means Company's cognizant Procurement representative.

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

**2. ORDER OF PRECEDENCE.** Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Articles of the Subcontract or provisions of the Purchase Order (including alterations and special provisions therein), (2) Special Terms and Conditions attached thereto, (3) General Terms and Conditions, (4) Statement of Work or description.

**3. TITLE AND ADMINISTRATION.** Title to supplies furnished under this Agreement shall pass directly from Seller to the Government. Company shall make payments under this Agreement from Government funds advanced 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.

**4. ACCEPTANCE OF TERMS AND CONDITIONS.** Seller, by signing this Agreement or delivering the items identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporates by reference or attachment. Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement that are different from or in addition to those mentioned in this document. Failure of Company to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor of the right of Company to enforce each and every provision.

**5. COOPERATING WITH DOE OFFICE OF INSPECTOR GENERAL.** (a) Seller shall cooperate fully and promptly with requests from the DOE Office of Inspector General (OIG) for information and data relating to DOE

programs and operations. The Seller must ensure that its employees (i) comply with requests by the OIG for interviews and briefings and provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements, and (ii) not impede or hinder another employee's cooperation with the OIG.

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

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

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

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

**7. 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 BWXT Y-12, LLC.

(b) Alcohol. Alcoholic beverages are prohibited.

(c) Cell phones. (1) Cellular telephones that are not owned by the Government or BWXT Y-12, LLC are prohibited without prior written approval obtained through the Subcontract Technical Representative (STR). Cellular telephones may be secured in the owner's private vehicle within parking areas at the Y-12 National Security Complex and at leased sites. They should remain secured at all times while within the Blue Line (229 boundary) of Y12 unless required to report a personal emergency within the 229 boundary. A personal emergency is an immediate need for assistance (e.g., an after-hours car – deer accident, a car breakdown, an acute health condition such as a heart attack, etc.). In a personal emergency, the personal cellular telephone should be used to contact the Y-12 Plant Shift Superintendent's Office (574-7172). Calling 911 from a cellular telephone will not notify BWXT Y-12 of an emergency, though Company emergency resources would be the closest respondent. Therefore, calling 911 instead of 574-7172 is inappropriate.

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

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

- Bows and arrows
- Explosive devices
- Firearms
- Knives with blades longer than three inches
- Martial arts weapons and equipment
- Weapons or simulated weapons

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

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

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

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

- Cameras
- Portable tape players
- Portable two-way radios
- Tape recorders
- Video recorders

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

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

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

**8. DOE SECURITY BADGES – LIQUIDATED DAMAGES.** (a) All security badges issued by BWXT Y-12 to Seller employees working on site at the Y-12 National Security Complex are Government property. Seller is responsible for safeguarding and returning all badges issued to Seller and its subcontractors at all lower tiers. Badges must be returned to the BWXT Y-12 Visitor Center or to the Company representative designated in this Agreement immediately upon expiration of this Agreement, termination of employment of any employee who has been issued a DOE security badge, or

when access to the Y-12 National Security Complex is no longer needed.

(b) Seller shall immediately notify BWXT Y-12, in writing, whenever any employee of Seller or Seller's subcontractor who has been badged under this Agreement either terminates employment or no longer needs access to the Complex.

(c) Seller's payment may be withheld until compliance with all provisions of this clause have been met. Failure to return all badges issued to the Seller and its lower tier subcontractors will result in a charge of \$500 per badge, to be withheld from payment or billed to the Seller.

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

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

**11. RESOLUTION OF DISPUTES.** (a) Seller and Company agree 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 disputes resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Oak Ridge, Tennessee. Cost shall be allocated by the mediator or arbitrator, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows: (1) Subject to (2) 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; (2) Provided, however, that 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.

(b) The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of Tennessee except for Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses which shall be determined in accordance with federal law.

(c) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance

of this subcontract pending final resolution of any dispute arising under this subcontract between the parties hereto or between Seller and its subtier subcontractors.

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

**13. CHANGES.** (a) Company may at any time, by written order, make changes within the general scope of this Agreement in any one or more of the following:

- (1) Method of shipment or packing.
- (2) Place of delivery of supplies.
- (3) Description of services to be performed.
- (4) Time of performance of the services (*i.e.*, hours of the day, days of the week, etc.).
- (5) Place of performance of the services.

(b) If any such change causes a difference in the cost of or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Agreement signed by both parties. Any request for adjustment by Seller must be made within 30 days from the date of receipt of Company's change order, although Company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment.

(c) Only the Subcontract Administrator is authorized on behalf of Company to issue changes whether formal or informal. If Seller considers that any direction or instruction by Company personnel constitutes such a change, Seller shall not rely upon such instruction or direction without written confirmation from the Subcontract Administrator.

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

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

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

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

**15. WARRANTY.** Seller warrants that items delivered under this Agreement shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of this Agreement. The warranty shall begin upon acceptance and extend for a period of (1) the manufacturer's warranty period or six months, whichever is

longer, if Seller is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer of the item or has modified it. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such items or reperform services. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Seller's expense. If repair or replacement or reperformance of services is not timely, Company may elect to return the nonconforming items or repair or replace them or reprocur the services at Seller's expense. Any implied warranties of merchantability and fitness for a particular purpose are hereby disclaimed.

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

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

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Company or delivery of the supplies to the Company at the destination specified in the Agreement, whichever is later, if transportation is f.o.b. destination.

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

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

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

**18. TRANSPORTATION.** If transportation is specified "FOB Origin," (a) no insurance cost shall be allowed unless authorized in writing and (b) the bill of lading shall indicate that transportation is for DOE and the actual total transportation charges paid to the carrier(s) by Company shall be reimbursed by the Government pursuant to contract No. DE-AC05-00OR22800. Confirmation may be made by the DOE Oak Ridge Operations Office, Procurement and Contracts Division, P.O. Box 2001, Oak Ridge, TN 37831-8756.

**19.** Company may terminate this Agreement for default, in whole or in part, if, after 10 days from Company's written notice, Seller fails to comply with any of the terms of this

Agreement, or fails to provide adequate assurance of future performance. In that event, Company shall not be liable for any amount for items supplies or services not accepted, and the Seller shall be liable to the Company for any and all rights and remedies provided by law. If it is determined that the Company improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

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

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

**22. CLAUSES INCORPORATED BY REFERENCE.** (a) The clauses listed in paragraph (c) below are incorporated herein by reference. The texts of FAR clauses are available at <http://www.arnet.gov/far>, the texts of DEAR clauses are available at <http://www.pr.doe.gov/dear.html> and the texts of Company clauses are available at <http://www.y12.doe.gov/procurement-ext/>. Except as provided in (b) below, in the listed clauses "Contractor" means the Seller, "Government" means the Company, "Contract" means this Agreement, and "Contracting Officer" means the Company's Subcontract Administrator.

(b) "Government" retains its meaning in:

(1) Paragraph (a) of Exhibit 3 - Authorization and Consent.

(2) Exhibit 5 – Patent Indemnity.

(3) Exhibit 7 – Classified Inventions.

(c)(1) The following clauses are incorporated by reference in all Agreements:

- FAR 52.222-26 Equal Opportunity (APR 2002), (The required poster is available at: <http://www.dol.gov/dol/esa/public/regs/compliance/posters/eo.htm>)

- FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
- FAR 52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998)
- FAR 52.225-8 Duty-Free Entry (FEB 2000)
- FAR 52.244-6 Subcontracts for Commercial Items (DEC 2004)
- DEAR 952.250-70 Nuclear Hazards Indemnity Agreement.
- Taxes: Fixed-Price (Company-11/96)
- Counterfeit/Suspect Materials (OCT 2005) (Company)
- Hazardous Material Identification and Material Safety Data (AUG 2005) (Company)
- Exhibit 3 - Authorization and Consent (Company 7/95)
- Exhibit 5 - Patent Indemnity (Company 4/84)

(c)(2) The following clauses are incorporated if this Agreement exceeds \$100,000:

- FAR 52.219-8 Utilization of Small Business Concerns (MAY 2004)
- FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)
- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

(c)(3) The following clause is incorporated if this Agreement exceeds \$500,000: FAR 52.219-9 Small Business Subcontracting Plan (July 2005)

(c)(4) The following clauses are incorporated by reference when Seller personnel work on site at the Y12 National Security Complex:

- DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure Records (APR 1984)
- DEAR 952.203-70 Whistleblower Protection for Contractor Employees (DEC 2000)
- Badging Process for Uncleared Seller Employees (JAN 2006) (Company)
- Foreign Nationals (Company-12/99)
- Hazardous Materials Reporting (AUG 2005) (Company)
- Insurance - Work on a Government Installation (Company-1/97)
- Personal Identity Verification for Seller Employees Requiring Security Clearances (DEC 2005) (Company)
- Required Training (Company-11/00)
- Safety and Health (OCT 2005) (Company)
- Subcontract Administrative Requirements (JAN 2006) (Company)
- Y-12 Appropriate Footwear Policy (OCT 2005)

(c)(5)The following clauses are incorporated when the work involves access to classified information or special nuclear material:

- DEAR 952.204-2 Security (MAY 2002)
- DEAR 952.204-70 Classification/Declassification (SEP 1997)
- DEAR 952.204-73 Facility Clearance (MAY 2002)
- Exhibit 7 - Classified Inventions (Company 5/80)
- FAR 52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 1984)
- Civil Penalties for Classified-Information Security Violations (AUG 2005) (Company)