

GENERAL TERMS & CONDITIONS
Architect-Engineer Cost-Type (AECT 10/01)

PART 1. APPLICABLE TO ALL TRANSACTIONS

1.1 DEFINITIONS

The following terms shall have the meanings below:

- (a) Government means the United States of America and includes the Department of Energy (DOE) or 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.
- (d) Agreement means Subcontract, General Order Agreement, Basic Ordering Agreement, or Modification thereof.
- (e) Subcontract Administrator means the Company's cognizant Procurement representative.
- (f) Educational Institution means an entity described in Office of Management and Budget Circular No. A-21.

1.2 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.

(b) (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 (b)(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) 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.

(c) The parties agree that, subject to (b)(1), 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. Article 2 of the Uniform Commercial Code as adopted by the state law governing substantive issues shall be applied to services performed under this Agreement.

(d) 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 this Agreement between the parties hereto or between Seller and its sub-tier subcontractors.

1.3 ORDER OF PRECEDENCE

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

1.4 TITLE AND ADMINISTRATION

Any right and/or interest which is acquired under the terms of this Agreement shall pass directly from Seller to the Government. 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.

1.5 ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement or performing the requirements indicated herein, agrees to comply with the Agreement in its entirety. 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. All rights and obligations shall survive final performance of the Agreement.

1.6 INSPECTION OF SERVICES

(a) Services, as used in this clause, includes services performed, workmanship, and materials furnished or used in performing services.

(b) Company and Government have the right to inspect and test all services called for by the Agreement, at all reasonable places, including Seller's location, and all reasonable times during the term of the Agreement. Such inspections and tests shall be conducted in a manner that will not unduly delay the work. Seller and subcontractors shall provide reasonable location and assistance if needed.

(c) If any of the services are not compliant with the requirements of the Agreement, Company may require Seller to reperform the services for no additional fee. When the defects in services cannot be corrected by reperformance, Company may (1) require Seller to take necessary action to ensure future compliant performance and (2) reduce any fee payable under the Agreement to reflect the reduced value of the services performed.

(d) If Seller fails to promptly reperform the services or take action necessary to ensure future compliant performance, Company may (1) reperform the services and reduce any fee payable by an equitable amount under the circumstances and/or (2) terminate for default.

1.7 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 financing institution if Company is promptly furnished written notice and a signed copy of such assignment.

1.8 SUBCONTRACTS

This Agreement incorporates by reference FAR 52.244-2 Subcontracts (AUG 1998). Seller shall not subcontract or form any association or cooperative arrangement with any third party for performance of all or any portion of the work without advance written approval of Company. Subcontracts of any tier must include provisions to secure all rights and remedies of Company and Government

provided under this Agreement and must impose upon the lower-tier associate, subcontractor and supplier all of the duties and obligations required to fulfill this Agreement. Copies of all subcontracts shall be provided to Company upon request.

1.9 ALLOWABLE COST AND PAYMENT

(a) Unless otherwise provided, terms of payment shall be net 30 days from receipt of Seller's complete and accurate invoice. Invoices from Seller shall be submitted in reasonable detail to a designated Company representative as work progresses. A statement of the claimed, allowable cost for performing the work under this Agreement shall accompany each invoice. If applicable, invoices shall include a list of the property acquired by Seller to which title vests in the Government according to the Government Property clause of this Agreement. Invoices may be submitted once every month (or at more frequent intervals if approved by Company). Payments may be made 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.

(b) For reimbursement of work performed under this Agreement, Company shall pay to Seller allowable costs in accordance with this Agreement and Subpart 31.3 for **Educational Institutions**, 31.7 for nonprofit organizations, or 31.2 of the FAR for all others as supplemented by Subpart 931.2 of the DEAR in effect on the date of this Agreement. The term "cost" includes only: 1) costs Seller has paid for items or services directly for the Agreement at the time of the invoice; and 2) provided Seller is not delinquent in paying costs of Agreement performance in the ordinary course of business, costs incurred but not necessarily paid for materials from Seller's inventory; direct labor; direct travel; other direct in-house costs; allocable and allowable indirect costs. For the purpose of arriving at agreement on the basis for payment, Seller shall, within ten (10) calendar days after award, submit a proposed breakdown of the various elements of the work and the estimated cost of the work element. Such breakdown shall be directly correlated with the schedule and milestones required in Part 1.23 below. Company shall review Seller's breakdown and determine appropriate tasks and values of the work.

(c) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR in effect for the applicable period. Within 90 days after expiration of each of its fiscal years, Seller shall submit proposed final indirect cost rates for that period and supporting cost data to Company or the cognizant audit agency, whichever applies. Seller and Company (or the cognizant audit agency) shall determine and execute a written understanding of the final indirect cost rates.

(d) Quick close-out procedures of Subpart 42.7 of the FAR may be used.

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

(f) Seller shall submit a completion invoice no later than one year from the completion date. Upon approval of that invoice and Seller's compliance with the Agreement, Company shall pay any balance of allowable costs and that part of the fee not previously paid. Seller shall pay to Company any refunds, rebates, credits or other amounts accruing to or received by Seller or any assignee under this Agreement to the extent that those amounts are properly allocable to costs for which Seller has been reimbursed by Company. Before final payment under this Agreement, Seller and each assignee shall provide an acceptable assignment to Company of refunds, rebates, credits or other amounts properly allocable to costs for which Seller has been reimbursed by Company under this Agreement and a release discharging Company and the Government, their officers, agents and employees from all liabilities, obligations and claims arising out of or under this Agreement except claims specifically stating the exact basis and amount.

1.10 COMPLIANCE WITH LAWS

(a) Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent orders, DOE directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this Agreement. If Seller discovers any discrepancy or inconsistency between this Agreement and any law, ordinance, order, DOE directive, rule, or regulation (including DOE regulations), Seller shall immediately notify Company in writing. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits including without limitation, underground utility permit requirements; fulfill any other applicable governing authority requirement; and furnish any documentation, bonds, security or deposits required to permit performance of the work. Seller certifies that it and all associates and subcontractors are licensed, certified, and registered to perform the professional and technical services required to complete the work under this Agreement. Such licenses, certifications and registrations shall be maintained throughout performance of this Agreement and failure to do so may be cause for default termination. Seller warrants that each chemical substance constituting or contained in items furnished under this Agreement is on the list of substances published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act as amended. With each delivery Seller shall provide Company any applicable Material Safety Data Sheet as required by the Occupational Safety and Health Act and applicable regulations including, without exception, 29 CFR 1910.1200. Seller shall perform the work under this Agreement in a manner that is safe, healthy, and environmentally acceptable, and shall develop and manage a comprehensive program in support of these objectives.

(b) Seller shall include this clause in all subcontracts, at any tier, involving the performance of this Agreement.

1.11 TERMINATION

(a) Company reserves the right to terminate this Agreement in whole or in part: (1) for convenience if Company determines that a termination is in the interest of Company or the Government; or, (2) except for **educational** and other non-profit institutions, for default if Seller fails to comply with any of the terms of this Agreement, or fails to perform satisfactorily under this Agreement, or fails to provide adequate assurance of future performance. Except for defaults of subtier subcontractors, Seller shall not be in default because of failure to perform if the failure arises from causes beyond Seller's reasonable control and without its fault or negligence. Seller will not be deemed to be in default for failure to perform caused by the failure of a subtier subcontractor if the failure was beyond the control of both Seller and subtier subcontractor and without the fault or negligence of either; however, Seller will be in default if Company directed Seller to purchase these supplies or services from another source and Seller failed to comply. A termination which was originally determined to be for default shall be treated as a termination for convenience if the Seller was not in default.

(b) In the event of termination, the Subcontract Administrator shall deliver a notice specifying the extent and effective date. Seller shall immediately: (1) stop all work terminated thereunder; (2) cause any and all of its suppliers and subtier subcontractors to cease work to the extent it relates to the work terminated, and terminate all subcontracts to the extent they relate to the work terminated; (3) transfer title and deliver to Company, or use its best efforts to sell, as directed by Company, (i) the fabricated and unfabricated parts, work in process, completed work, supplies, other material produced or acquired for the work terminated, (ii) completed or uncompleted plans, drawings, information, other property that would be required to be furnished to Company had this Agreement been completed,

(iii) jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Agreement the cost of which Seller has been or will be reimbursed under this Agreement; (4) complete performance of the work not terminated; (5) reach settlement with all subtier subcontractors who claim monies owed if such settlement is claimed as reimbursable under this Agreement, and obtain approval of Company of such settlements; and, (6) protect and preserve any property in which Company or Government has or may acquire an interest.

(c) Subject to the terms of this Agreement, except where Seller is a non-profit organization, Seller shall be paid: (1) all costs reimbursable under this Agreement, not previously paid, for the performance before the effective date of the termination and those costs incurred after the effective date of the termination that are preapproved by Company, less any claim which Company has against Seller under this Agreement, less the proceeds of sale of materials, supplies, or other things acquired by Seller and sold but not credited to Company, and less all unliquidated advance or other payments; (2) reasonable costs that Seller can demonstrate to the satisfaction of Company have resulted from the termination including approved amounts of settlements with subcontractors; (3) reasonable costs of settlement of the work terminated, including accounting, legal, clerical, and other expenses reasonably necessary to (i) prepare Seller's termination settlement proposal, and (ii) settle subtier subcontracts; and (4) a portion of the fee payable under the contract as follows: (i) if the termination is for convenience, a percentage of the fee (if applicable) equal to the percentage of completion of work contemplated under the Agreement but excluding subtier subcontract effort included in subtier subcontractors' termination proposal which are reimbursable under this Agreement, less previous payments for fee; (ii) if the termination is for default, the fee payable shall be a proportionate part of the fee as the total number of articles or amount of services delivered to and accepted by Company is to the total number of articles or amount of services of a like kind required by the Agreement. If the termination is for default, Seller shall not be paid for any costs for the preparation of Seller's termination settlement proposal.

(d) Subject to the terms of this Agreement, Seller, who is a non-profit organization, shall be paid: (1) reasonable cancellation charges incurred by the Seller, and (2) reasonable loss on outstanding commitments for personal services that the Seller is unable to cancel; provided, Seller exercised reasonable diligence in diverting such commitments to other operations. The Agreement shall be amended and the Seller paid the agreed amount.

(e) Seller shall within 6 months of the effective date of the termination submit a final termination settlement proposal to Company. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. The cost principles in Part 31 of the FAR, in effect on the date of this Agreement, shall govern all costs claimed, agreed to, or determined under this clause. If the Seller is not an **Educational Institution**, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, Cost Principles for Nonprofit Organizations, those cost principles shall apply; provided, that if the Seller is a non-profit organization listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such seller.

(f) The Company and the Seller must agree to any equitable adjustment in fee for the continued portion of a partially terminated Agreement.

1.12 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 agreements for which final payment has not been made.

1.13 CHANGES

(a) Company may at any time, by written notice, make changes within the general scope of this Agreement in any one or more of the following: (1) description of the work to be performed; (2) method and manner of performance; and, (3) the amount of work to be furnished. If any such change causes a difference in the estimated cost, or the time required for performance, an equitable adjustment shall be made in the estimated cost, any fee, and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Agreement signed by both parties. Any claim for adjustment by Seller must be made within 30 days from the date of receipt of Company's change notice, although Company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. Failure to agree to any adjustment shall be settled in accordance with Part 1.2 of this Agreement.

(b) 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 a change, Seller shall not rely upon such instruction or direction without written confirmation from the Subcontract Administrator. Nothing in this clause, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

1.14 SUSPENSION OF WORK

(a) The Subcontract Administrator, may, at any time, by written notice to Seller, require Seller to suspend, delay, or interrupt all or any portion of the work called for by this Agreement for a period up to 90 days after the notice is delivered to Seller, or for any other period to which the parties may agree. Upon receipt of the notice, Seller shall immediately comply with its provisions and take all reasonable steps, as directed by the Subcontract Administrator, to minimize the incurrence of costs associated with such suspension.

(b) Prior to the expiration of the suspension notice, Company shall either: (1) cancel or extend the notice; or (2) terminate the work covered by the notice as provided in Part 1.11 of this Agreement. If the suspension notice is canceled or allowed to expire, Seller shall resume work. Any claim by Seller resulting from a Suspension of Work Notice shall be governed by the changes clause of this Agreement.

1.15a PUBLIC RELEASE OF INFORMATION

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

1.15b. 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 or Company, Seller shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless

specifically authorized by Company in writing. The foregoing obligations, however, shall not apply to (1) information which, at the time of receipt by Seller is in public domain; (2) information which is published after receipt thereof by Seller or otherwise becomes part of the public domain through no fault of Seller; (3) information which Seller can demonstrate was in its possession at time of receipt thereof and was not acquired directly or indirectly from Government or Company; (4) information which Seller can demonstrate was received by it from a third party who did not require Seller to hold it in confidence.

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

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

(d) Seller agrees that upon request by Company or DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by Company or DOE, such an agreement shall also be signed by Seller's personnel.

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

1.16 GOVERNMENT PROPERTY

(a) Company may furnish to Seller property as may be required for performance of work under this Agreement, or have Seller acquire such property as mutually agreed. Title to property furnished or acquired shall vest in the Government, and hereafter be referred to as "Government property." If Seller purchases property for which it is entitled to be reimbursed as a direct item of cost, title shall pass to the Government upon delivery of the property to Seller. Title to all other property, the cost of which is reimbursable to Seller, shall pass to the Government upon the earliest of (1) issuance of property for use in performance, (2) processing property for use in performance, or (3) reimbursement of cost of property. 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.

(b) Company shall deliver to Seller the Government property stated 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 when the facts warrant an equitable adjustment and Seller submits a written request for such adjustment within 14 calendar days of delivery of the Government property. Said equitable adjustment shall be Seller's exclusive remedy.

(c) 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 until disposed of in accordance with this clause. Seller shall cause all Government property to be clearly marked as Government property. Except as may be authorized in writing, Government property shall be used only for the performance of this Agreement.

(d) Responsibility for loss or damage to Government property shall be determined in accordance with the laws applicable to this Agreement under Part 1.2. Company and the Government shall have access at all reasonable times to the premises where any Government property is located for the purpose of inspecting the property.

(e) Upon completion of the work under this Agreement, Seller shall submit, in a form acceptable to Company, inventory schedules covering all items of Government property not consumed in the performance of this Agreement (including any scrap). Seller shall hold the same at no charge for a period up to 60 days or a longer period if mutually agreed. After this, Seller shall dismantle, prepare for shipment, and at Company direction, store or deliver said property (at Company expense), or make such other disposal of the property as directed by Company. The net proceeds of any such disposal shall be credited to the cost of the work covered by this Agreement or shall be paid as Company may direct.

1.17 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

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

1.18 INTEREST

Except for **educational** and non-profit **institutions**, all amounts due to Company by Seller shall accrue interest from the date due until paid, unless paid within 30 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, which rate shall be adjusted every six months. This clause shall not apply to amounts due under a price reduction for defective cost or pricing data clause.

1.19 SELLER'S RESPONSIBILITIES

(a) Seller represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the work under this Agreement. Seller shall act in performance of this Agreement as an independent contractor and not as an agent for Company or the Government in performing this Agreement, 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. Seller shall perform the work using generally accepted professional design and engineering practices of its own choosing subject to compliance with the Agreement.

(b) Seller shall be solely responsible for all criminal fines and penalties assessed against Seller.

(c) Cost and expenses incurred by Company that are determined by DOE to be unallowable that result from the acts or omissions of Seller or its subcontractors may be recovered by Company from Seller.

(d) Seller shall provide and maintain workers' compensation insurance as required by applicable statutes.

(e) Seller shall provide Employer's liability, comprehensive general liability, automobile, and contractual liability insurance properly safeguarding Seller and Company with limits not less than those set forth below and with insurers and under forms of policies satisfactory to Company:

(1) Employer's Liability of not less than \$500,000 each accident or illness.

(2) Commercial General Liability with limits of liability for bodily injury, property damage and personal injury of not less than \$1,000,000 combined single limit for bodily injury and property damage each occurrence; \$1,000,000 personal injury limit each occurrence; \$1,000,000 products-completed operations aggregate limit; and \$2,000,000 general annual aggregate limit (other than products-completed operations).

(3) Automobile liability (owned, hired and non-owned) with combined single limits of liability for bodily injury or property damage of not less than \$500,000 any one occurrence.

(4) Errors and omissions covering Seller's professional negligent acts, errors or omissions with a limit of not less than \$1,000,000 per claim/annual aggregate if the price (i.e., total estimated cost and, if applicable, fee) of this Agreement is \$10,000,000 or less; or a limit of not less than the price (i.e., total estimated cost and, if applicable, fee) of this Agreement per claim/annual aggregate if the price of this Agreement is more than \$10,000,000.

Seller may, with approval of the Subcontract Administrator, maintain self-insurance for insurance requirements herein. If Seller is a State agency, such as an **Educational Institution**, and is not insured because of constitutional or statutory prohibition, the state laws governing liabilities and remedies in these areas shall apply. None of the requirements contained herein as to types, limits and approval of insurance coverage to be maintained by Seller are intended to and shall not in any manner limit or qualify the liability and obligations assumed by Seller under this Agreement.

(f) Before commencing work under this Agreement, Seller shall provide written certification that the required insurance has been obtained or, if appropriate, Seller maintains an adequate self-insurance program. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting Company's interest shall not be effective until 30 days after the insurer gives written notice to Company.

1.20a FEE

(a) Company shall pay Seller the fee as specified for performing this Agreement.

(b) Payment of the fee shall be made as specified in the Agreement; provided, that after payment of 85 percent of the fee, Company may withhold further payment of fee until a reserve is set aside in an amount that Company considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

1.20b NO FEE

Where no fee is to be paid for performing this Agreement, after payment of 80 percent of the total estimated cost shown in the Agreement, the Subcontract Administrator may withhold further payment of allowable cost until a reserve is set aside in an amount considered necessary to protect the Government's interest. This reserve shall not exceed one percent of Company's share of the total estimated cost or \$10,000, whichever is less.

1.21 LIMITATION OF COST AND FUNDS

(a) Seller agrees to use its best efforts to perform the work specified in the Agreement within the estimated specified costs. Company is not obligated to reimburse Seller for costs incurred in excess of the total amount allotted as specified in the Agreement to be paid by Company. Seller is not obligated to continue performance under this Agreement (including actions under the Termination clause of this Agreement) or otherwise incur costs in excess of the total amount allotted as specified in the Agreement, until Company increases allotted funds. If this is a cost-sharing Agreement, the increase shall be allocated in accordance with the formula specified in the Agreement.

(b) Seller shall notify the Subcontract Administrator in writing whenever it has reason to believe that the total costs Seller has incurred and expects to incur in the next 60 days (i) shall exceed 75 percent of the total amount allotted to this Agreement or, (ii) whenever it has reason to believe that the total estimated cost for the performance of this Agreement shall be either greater or substantially less than previously estimated. The notice shall include the estimated amount of funds required to continue timely performance.

(c) No notice, communication, or representation, other than by the Subcontract Administrator, shall affect this Agreement's funding.

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

1.22 TAXES

The Seller shall comply with the requirements of FAR 31.205-41 regarding taxes, with respect to work under this Agreement, any related transaction, or property in the custody or control of Seller, which the Seller or the Company believes are inapplicable or invalid. Any tax, fee, or charge paid in accordance with the procedures in FAR 31.205-41 shall not be disallowed as an item of cost by reason of any subsequent determination that it was in fact inapplicable or invalid. All recoveries or credits regarding the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Company.

1.23 COMMENCEMENT, PROGRESS AND COMPLETION OF WORK

Seller shall furnish sufficient personnel, equipment, and facilities and shall work such hours to assure prosecution of the work to completion in accordance with specified Agreement milestones. Seller shall, from time to time, be required to provide to Company for approval an original and subsequently updated schedule showing all activities and sequence of operations needed for the orderly performance and completion of the work in accordance with specified Agreement milestones. Seller shall adhere to the approved Agreement schedule, submitting periodic progress reports and/or proposed schedule changes in form and manner directed by Company.

1.24 AUTHORIZED REPRESENTATIVES AND NOTICE

Unless otherwise specified, all notices and communications in accordance with or related to this Agreement shall be between authorized representatives designated in writing by the parties. Notices shall be in writing and may be served either personally on the authorized representative of the receiving party, by facsimile, by courier or express delivery, or by certified mail to the facsimile number or address shown on the face of this Agreement or such address as directed by notice.

1.25 STANDARDS AND CODES

Whenever references are made in this Agreement to standards or codes in accordance with which the work under this Agreement is to be performed, the current edition or revision of the standards or codes shall apply, including any revisions published during the performance of this Agreement and prior to final acceptance. In case of any conflict between any referenced standards and codes and any Agreement provisions, Seller shall immediately notify Company of such conflict together with a recommendation for resolution. Company shall confirm the Agreement requirement in writing or direct an alternative solution in accordance with Part 1.13, Changes.

1.26 ASSIGNED PERSONNEL

(a) Company's written approval of all Seller key personnel assigned to perform the work shall be a condition precedent to payment of their costs. If requested, Seller shall submit resumes for each individual setting forth educational and professional qualifications, experience, tasks to be performed, position, and compensation. Seller shall verify all academic degrees and professional credentials and certifies the accuracy of any Seller submitted qualifications.

(b) Company shall review and approve or reject assignments for cause within ten (10) calendar days. Approval of assignments shall not relieve Seller of the full responsibilities of employer and shall create no direct relationship between the individual and Company or Government.

(c) Seller shall assign only competent and qualified personnel and shall at all times be solely responsible for their work quality. Company may request the removal of individual employees for cause at any time and Seller agrees to comply and to promptly provide acceptable replacement personnel.

1.27 ARCHITECT-ENGINEER RESPONSIBILITIES

(a) Seller shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by Seller under this agreement. Seller shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the Company's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Seller shall be and remain liable to the Company in accordance with applicable law for all damages to Company or Government caused by Seller's negligent performance of any of the services furnished under this Agreement.

(c) The rights and remedies of the Company and Government provided for under this Agreement are in addition to any other rights and remedies provided by law.

(d) If Seller is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

1.28 SELLER-FURNISHED DESIGN AND TECHNICAL DOCUMENTS

(a) Seller shall prepare its design, drawings, specifications, and other technical requirements using the Statement of Work or work description, technical documents, and drawings as a basis. Company will, at the times and places specified by Company, convene meetings to review Seller's progress. Seller shall provide qualified technical personnel to participate in such reviews.

(b) Company shall transmit comments and instructions to Seller as a result of such meetings or other document reviews. Seller shall promptly respond to these comments and instructions and, at Company's direction, resubmit any documents and/or reconvene for additional progress review. On resubmittal of additional review, Seller shall direct specific attention to revisions other than those covered by Company in its comments and instructions.

1.29 PROGRESS REPORTS

On a monthly basis Seller shall provide to Company a concise summary report, in form and format and at a time directed by Company, describing the work accomplished during the reporting period, work forecasted to be completed during the next reporting period, and a summary of problem areas.

1.30 REQUIREMENT FOR REGISTRATION OF DESIGNERS

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the district of Columbia.

1.31 DESIGN WITHIN FUNDING LIMITATIONS

(a) Seller shall accomplish the design services required under this Agreement so as to permit the award of a contract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction price as set forth in the Agreement. When responsive and responsible bids or proposals for the construction contract are received that exceed the estimated price, the Seller shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this Agreement. However, Seller shall not be required to perform such additional services at no cost to the Company if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) Seller shall promptly advise Company if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, Company will review Seller's revised estimate of construction cost. Company may, if it determines that the estimated construction contract price set forth in this Agreement is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in this Agreement, or Company may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, Company or Government shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

1.32 WORK OVERSIGHT

The extent and character of the work to be done by Seller shall be subject to the general oversight, supervision, direction, control, and approval of Company.

1.33 REPORTING TO AND COOPERATING WITH DOE

(a) Seller and its employees 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 and shall (i) comply with requests by the OIG for interviews, briefings, and other such documentation as may be requested and permitted by law, and (ii) not impede or hinder another employee's cooperation with the OIG.

(b) Seller shall publicize the OIG hotline telephone number and notify its employees annually to (i) report allegations of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems to appropriate authorities, and (ii) report directly to the OIG any information concerning alleged wrongdoing by DOE employees and DOE contractors and subcontractors and their employees. Reports referred to Federal, State, or local law enforcement entities must be reported to the OIG within 24 hours of the referral.

(c) Seller must ensure that reprisals are not taken against employees who cooperate with or disclose information to the OIG or who report fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems and shall report to the OIG any allegations of reprisals.

1.34 INCORPORATION BY REFERENCE

This Agreement incorporates certain provisions by reference which apply as if they were incorporated in their entirety. For FAR and DEAR provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means the Subcontract Administrator. Company clauses incorporated by reference are available from Company's Procurement Internet Home Page (<http://www.y12.doe.gov/procurement-ext>). The FAR and DEAR may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. or from Government web sites (<http://www.arnet.gov/far/>) for FAR and (<http://www1.pr.doe.gov/Dear/dear.html>) for DEAR.

The following clauses are incorporated by reference:

FAR 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JUL 1995) except paragraph (b)

FAR 52.215-15 Pension Adjustments & Asset Reversions (DEC 1998)

FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)

FAR 52.222-26 Equal Opportunity (FEB 1999) (The required poster is available at:

<http://www.dol.gov/dol/esa/public/regs/compliance/posters/eeo.htm>).

FAR 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998)

FAR 52.222-36 Affirmative Action for Workers With Disabilities (JUN 1998)

FAR 52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (JAN 1999)

FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components (OCT 1998)

FAR 52.247-63 Preference for U.S. Flag Carriers (JAN 1997)

DEAR 970.5204-9 Accounts, Records and Inspection (JUN 1996)

DEAR 970.5204-60 Facilities Management (NOV 1997)

DEAR 970.5204-79 Access to and Ownership of Records (JUN 1997)

DEAR 952.247-70 Foreign Travel (FEB 1997) - "Contracting Officer" means DOE

Exhibit 3 - Authorization and Consent (Company-7/95)

Exhibit 5 - Patent Indemnity (Company-4/84)

Exhibit 21 - Rights in Data-Facilities (06/01)

PART 2. APPLICABLE WHEN SELLER PERSONNEL WORK ON DOE SITE

2.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.34.

The following clauses are incorporated by reference:

DEAR 970.5204-2 Integration of Environment, Safety, and Health Into Work Planning and Execution (JUN 1997) (if work is complex or hazardous)

DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure Records (APR 1984)

DEAR 970.5204-58 Workplace Substance Abuse Programs at DOE Sites (AUG 1992)

DEAR 970.5204-59 Whistleblower Protection for Contractor Employees (APR 1999)

Foreign Nationals (Company -12/99)

Hazardous Materials Reporting (Company-11/00)

Required Training (Company- 11/00)

Safety and Health (Company-11/00)

PART 3. APPLICABLE WHEN WORK INVOLVES ACCESS TO CLASSIFIED INFORMATION, SPECIAL NUCLEAR MATERIAL OR AUTHORIZED UNRESTRICTED ACCESS TO AREAS CONTAINING THESE

3.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.34.

The following clauses are incorporated by reference:

DEAR 952.204-2 Security (SEP 1997)

DEAR 952.204-70 Classification/Declassification (SEP 1997)

DEAR 952.204-73 Facility Clearance (AL 99-03)

DEAR 952.204-74 Foreign Ownership, Control, or Influence over Contractor (AL 99-03)

Exhibit 7-Classified Inventions (Company 5/80)

FAR 52.227-10 Filing of Patent Applications - Classified Subject Matter (APR 1984)

DEAR 970.5204-1 Security - Counterintelligence (SEP 1997)

3.2 SENSITIVE FOREIGN NATIONS CONTROLS

(a) In connection with any activities in the performance of this Agreement, Seller agrees to comply with the "Sensitive Foreign Nations Controls" requirements furnished to Seller by Company, relating to those countries, which may from time to time, be identified to Seller by written notice as sensitive foreign nations. Seller shall have the right to terminate its performance under this Agreement upon at least 60 days prior written notice to Company if Seller determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance, to continue performance of the work under this Agreement as a result of such notification. If Seller elects to terminate performance, the provisions of Part 1.11 shall apply.

(b) The provisions of this clause shall be included in applicable subcontracts.

PART 4. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$100,000

4.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.34.

The following clauses are incorporated by reference:

FAR 52.203-7 Anti-Kickback Procedures (JUL 1995)

FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997)

FAR 52.215-2 Audit and Records - Negotiation (JUN 1999) including Alternate II for state and local Governments, educational institutions, and other non-profit organizations.

FAR 52.219-8 Utilization of Small Business Concerns (OCT 1999)

FAR 52.222-2 Payment for Overtime Premiums (JUL 1990)

FAR 52.223-6 Drug-Free Workplace (MAY 2001)

FAR 52.223-14 Toxic Chemical Release Reporting (OCT 1996), except paragraph (e)

FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)

FAR 52.247-64 Preference for Privately Owned U.S.- Flag Commercial Vessels (JUN 1997)

PART 5. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$500,000

5.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.34.

The following clauses are incorporated by reference:

FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (OCT 1997)

FAR 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997)

FAR 52.219-9 Small Business Subcontracting Plan (OCT 1999)

FAR 52.222-29 Notification of Visa Denial (FEB 1999)

DEAR 952.226-74 Displaced Employee Hiring Preference (JUN 1997)

DEAR 970.5204-77 Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for FY1993 (JUN 1997)

PART 6. APPLICABLE ONLY TO CERTAIN TRANSACTIONS

6.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.34.

6.2 PRINTING

If this Agreement involves the duplication of more than 5,000 copies of a single page or more than 25,000 copies of multiple pages, this Agreement incorporates by reference DEAR 970.5204-19 Printing (APR 1984).

6.3 NUCLEAR HAZARDS INDEMNITY

If performance involves risk of public liability for a nuclear incident or precautionary evacuation and Seller is not subject to Nuclear Regulatory Commission (NRC) financial protection requirements or NRC indemnification, this Agreement incorporates by reference DEAR 952.250-70 Nuclear Hazards Indemnity Agreement. For purposes of incorporation, subcontractor means lower-tier subcontractor.

6.4 PRIVACY ACT

If performance involves design, development or operation of a system of records on individuals, this Agreement incorporates by reference FAR 52.224-1 Privacy Act Notification (APR 1984), and FAR 52.224-2 Privacy Act (APR 1984).

6.5 COMMERCIAL COMPUTER SOFTWARE

If performance involves acquisition of existing computer software, the following Company Exhibit is incorporated by reference: CCS Commercial Computer Software (11/00).

6.6 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTORS

Notwithstanding any other provisions of this Agreement, if the estimated or actual amount of the Agreement exceeds \$10 million, Company must have written evidence of Seller's compliance with the equal opportunity requirements of FAR 52.222-26 Equal Opportunity.