GENERAL TERMS & CONDITIONS
Construction (CON – OCT 2006)

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

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

(b) Company means 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 the Company.

(d) Agreement means Purchase Order, Subcontract, Price 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: (a) contents of the Agreement document; (b) the Supplemental Conditions, (c) General Terms and Conditions; (d) the specifications; and (e) the drawings.

3. ACCEPTANCE OF TERMS AND CONDITIONS. Seller, by signing this Agreement or performing hereunder, 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 a waiver of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement.

4. EMPLOYEE CONCERNS PROGRAM. (a) The Seller shall notify its employees that: (1) DOE and the Company maintain Employee Concerns Programs (ECP). (An "employee concern" is a good-faith expression by an employee that a policy or practice by DOE, the Company, or a Company subcontractor should be improved, modified, or terminated. Concerns can address health, safety, the environment, management practices, fraud, waste, or reprisal for raising a concern.

(2) ECP are designed to inform DOE, Company, and subcontractor employees of the proper forum for consideration of their concerns, ensure that employees can raise issues without fearing reprisal, and address concerns in a timely and objective manner. The DOE ECP is described in DOE Order 442.1A, which is available at http://www.directives.doe.gov

(3) While employees are encouraged first to seek resolution with first-line supervisors or through their

employers' existing complaint- or dispute-resolution systems, they have the right to report concerns through the DOE ECP. Concerns may be reported to DOE by use of the "Employee Concerns Reporting Form (ORO F 440.1-5), which is posted on bulletin boards throughout Y-12, or by the telephone hotline, (865) 241-3267. Concerns related to actions by Company employees may be reported to the Company by calling (865) 576-1900.

(4) Reprisals against employees in response to, or in revenge for, having raised good-faith reasonable concerns about DOE-related operations are prohibited by 10 CFR 708. Employees who believe that they have been the subject of reprisals and who have not, with respect to the same facts, pursued a remedy available under state or other applicable law, may file complaints with the Manager, Oak Ridge Operations Office, U.S. Department of Energy.

(b) The Seller shall include this clause in subcontracts involving work on site at Y-12.

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. 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.

7. 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.

8. DOE SECURITY BADGES – LIQUIDATED DAMAGES. (a) All security badges issued by BWXT Y-12 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 has 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. 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.

10. 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-E1.

11. ENVIRONMENT, SAFETY, AND HEALTH. (a) For the purposes of this clause,

(1) Safety encompasses environment, safety, and health, including pollution prevention and waste minimization; and

(2) Employees include Company, Seller, and lower-tier subcontractor employees.

(b) The Seller shall perform the work under this Agreement safely, in a manner that ensures adequate protection for employees, the public, and the environment. The Seller shall exercise a degree of care commensurate with the work and the associated hazards. The Seller shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Seller's work planning and execution processes. The Seller shall ensure that:

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

(2) Clear and unambiguous lines of authority and responsibility for ES&H matters are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before 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) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards.

(c) The Seller shall comply with ES&H requirements of all applicable laws and regulations, and applicable DOE directives identified in this Agreement. The Seller shall cooperate with Federal, state, and local agencies having jurisdiction over ES&H matters under this Agreement.

(d) The Seller shall promptly evaluate and resolve any noncompliance with ES&H requirements that it discovers or of which it is notified by the Company. If the Seller fails to resolve the noncompliance or if, at any time, the Seller's acts or failures to act cause substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Subcontract Administrator may:

(1) Issue an order stopping work in whole or in part. Any stop work order issued by the Subcontract Administrator under this clause (or issued by the Seller to a subcontractor) shall be without prejudice to any other legal or contractual rights of the Company. If the Subcontract Administrator issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Subcontract Administrator. The Seller shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(2) Require, in writing, that the Seller remove from the work any employee the Company deems unsafe, incompetent, careless, or otherwise objectionable. Replacement of the removed employee shall be at the Seller's expense and not chargeable to the Company.

(3) Require the Seller's participation, at the Seller's expense, in the Company's fact-finding investigations of accidents, injuries, occurrences, and near-misses.

(4) Terminate this Agreement for default and pursue any other remedies provided by law or this Agreement.

(5) Remove the Seller from the Company's list of eligible offerors for future subcontract awards.

(e) Regardless of the performer of the work, the Seller is responsible for compliance with the ES&H requirements applicable to this Agreement. The Seller is responsible for flowing down the ES&H requirements applicable to this Agreement to subcontracts at any tier to the extent necessary to ensure the Seller's compliance with the requirements.

(f) The Seller shall include a clause substantially the same as this clause in subcontracts involving work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (d) of this clause.

12. 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 working 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.

13. WORKPLACE SUB STANCE ABUSE PROGRAM.

(a) DOE/NNSA has determined that construction work at the Y-12 National Security Complex (Y-12) is subject to 10 CFR 707, "Workplace Substance Abuse Programs at DOE Sites." The Seller must develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR 707.

(b) In accordance with 10 CFR 707.5(d), the Seller's program is subject to Company approval. The Seller's proposed program must be submitted to the Subcontract Technical Representative (STR) and approved before the start of work. Seller must also submit lower-tier construction subcontractors' Workplace Substance Abuse Programs for Company approval. [See paragraph (k) below.]

(c) (1) The Seller's and lower-tier subcontractors' programs must include the baseline elements in 10 CFR 707.5(a)(1) through (6) and identify the medical review officer and collection site persons (see 707.4) and the drugs for which the laboratory will test.

(2) If the Seller or lower-tier subcontractor has testing designated positions (TDPs) [see 707.7(b)], the program must also include the elements in 10 CFR 707.5(b)(1) through (6). The Seller and lower-tier subcontractors must always identify crane operators as TDPs. If the Seller has no TDPs, the program must so state.

(d) Applicants for employment on construction work at the Y-12 National Security Complex (Y-12) must be tested for illegal drugs before final selection for employment. When an applicant has been tested and determined to have used an illegal drug, the Seller must terminate processing for employment and so notify the applicant. (See 10 CFR 707.8.)

(e) Employees in testing designated positions must be subjected to:

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

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

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

(f)(1) The Seller must notify the STR in writing the next business day after the Seller receives notice -

- Under 10 CFR 707.5(a)(3)(ii) of an employee's conviction under a criminal drug statute, or
- Under 10 CFR 707.5(b)(4)(vi) of a drug related arrest or conviction or a receipt of a positive drug test result.

(2) The Seller must immediately remove from a TDP any employee found to have used illegal drugs. If that is the first determination of use of an illegal drug by that employee, the Seller may offer the employee a reasonable opportunity for rehabilitation, consistent with the Seller's policies, and place the employee in a non-TDP, which does not require a security clearance, during rehabilitation. If there is no acceptable non-TDP, the Seller will place the employee on leave for a reasonable period sufficient to permit rehabilitation. The employee may not be returned to a TDP until the employee has –

- Successfully completed counseling or rehabilitation;
- Undergone a drug test with a negative result; and
- Been evaluated by the Company's occupational medical department and determined to be capable of safely returning to duty.

(3) The Seller must in all cases remove from employment at Y-12 any employee who is twice determined to have used illegal drugs.

(g) 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 the Company upon request. The Seller and lower-tier subcontractors must 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).

(h) The Seller and lower-tier subcontractors must 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/ . The Seller shall provide a copy of the certification to the STR upon request.

(i) As required by 10 CFR 707.5(d), the Company will monitor the Seller's implementation of its program for effectiveness and compliance with 10 CFR 707. The Seller must submit a written report to the STR of drug tests completed before mobilization. At the Company's request, the Seller must submit additional reports of tests completed during performance.

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

(k) The Seller may (i) include employees of some or all subcontractors in its program or (ii) include this clause in subcontracts for construction work at Y-12 and require subcontractors to submit workplace substance abuse programs for Company approval.

(l) The Seller must notify the Subcontract Administrator not later than ten days before award of any non-construction subcontract for work at Y-12 that the Seller believes may be subject to 10 CFR 707.

14. 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.

15. 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 $100,000 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/procurement-ext/. 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/procurement-ext/. 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.

16. 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/procurement-ext/; 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 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.

17. 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 days before an ILC's scheduled expiration, the Company may immediately draw on the ILC.

18. 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.

19. 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.

20. 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 therefor. 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 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 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 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: BWXT-Y12, LLC

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 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 BWXT Y-12, LLC (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 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: BWXT Y-12, LLC

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 days prior to any such expiration date, we shall notify BWXT Y-12, LLC, 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 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 BWXT Y-12, LLC the sum of United States $_____. This draft is drawn under Irrevocable Letter of Credit No. _____.

BWXT Y-12, LLC

_____

[By]

21. 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.

22. ESTIMATED BILLING. By the 25th day of each 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 calendar month end. This information must be provided by email (preferred), fax, or mail until final payment is made.

23. 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) In making progress payments, there shall be retained 10% of the estimated amount until final completion and acceptance of the work. However, if Company finds that satisfactory progress was achieved during any period for which a progress payment is to be made, it may authorize any of the remaining progress payments to be made either with a reduced retention or in full without retention. Also, whenever the work is substantially complete, Company, if it considers the amount retained to be in excess of the amount adequate for the protection of Company and the Government, at its discretion, may release to Seller all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Agreement, on which the price is stated separately in the Agreement, payment may be made therefor without retention of a percentage.

(d) 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.

(e) 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. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

(f) 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 excepted 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.

24. 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.

25. 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, 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 legal 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 the breach thereof. A voucher, invoice, or other routine request for payment 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 BWXT Y-12 Procurement Manager with a request for a final decision.

(d) After receipt of a claim from the Seller, the Procurement Manager shall, within 60 calendar days, issue a written decision or notify the Seller of the date by which the decision will be made. The decision shall be final and conclusive between the parties unless the Seller files suit in the appropriate court as provided for in paragraph (e) below. Seller shall have no right to file suit prior to the date of the decision or 60 calendar days from the Procurement Manager's receipt of the claim, whichever occurs earlier.

(e)(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 (e)(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.

(f) The parties agree that, subject to (e)(1), substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution related to clauses or portions of clauses that are substantially identical in all material respects to Federal Acquisition Regulation (FAR), Department of Energy Acquisition Regulation (DEAR), or General Services Administration (GSA) clauses shall be determined, to the maximum extent practicable, in accordance with federal law as interpreted by the United States Court of

Appeals for the Federal Circuit, the United States Court of Federal Claims, and the federal agency Boards of Contract Appeals. The parties further agree that, subject to (e)(1), all other 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.

(g) 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 hereto or between Seller and its subtier subcontractors.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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 occur 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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 therefor. 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.

37. 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.

38. 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.

39. 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 for or excluded under any other term or condition of this Agreement.

(c) A claim under this clause shall not be allowed—

(1) For any costs incurred more than 20 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 claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Agreement.

40. STOP WORK AUTHORITY. (a) All persons on the site have the right and responsibility to stop work whenever they discover:

- Conditions that pose an imminent danger to the safety or health of workers or the public.
- Conditions that, if allowed to continue, could adversely affect the safe operation of, or could cause serious damage to, the facility.
- 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.

(b) Stop work authority must be exercised in a justifiable and responsible manner.

(c) The Seller shall immediately notify the STR when work is stopped pursuant to this paragraph.

(d) 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.

41. 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.

42. CHANGES. (a) Company may at any time, without notice to the sureties, if any, by written order, make changes in the work within the general scope of this Agreement, including changes: (1) in the specifications (including drawings and designs), (2) in the method and manner of performance, (3) in government-furnished facilities, equipment, materials, or services, and (4) directing acceleration in performance.

(b) Any other written or oral direction, instruction, interpretation, or determination from the Company that causes a change shall be treated as a change order under this clause; Provided, that the Seller gives the Company written notice stating the date, circumstances, and source of the order, and that the Seller regards the order as a change order.

(c) If any change under this clause causes an increase or decrease in the cost of, or the time required for, performance, the Company shall make an equitable adjustment and modify the Agreement in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Seller gives written notice as required. In the case of defective specifications for which the Company is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Seller in attempting to comply with the defective specifications.

(d) The Seller must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause by submitting to the Company a written statement describing the general nature and amount of the proposal, unless this period is extended by the Company.

(e) No proposal by the Seller for an equitable adjustment shall be allowed if asserted after final payment under this Agreement.

43. 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 working 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 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.

44. EQUITABLE ADJUSTMENTS. (a) Clauses in this Agreement that provide for an equitable adjustment are supplemented by this clause. This clause is not applicable to adjustments under the "Suspension of Work" clause.

(b) Upon request, the Seller shall submit proposals for equitable adjustment for review by the Company. Proposals must include an itemized breakdown of increases and decreases in direct cost for the Seller and each subcontractor in at least the following detail: material quantities and costs; labor hours and rates for each trade; employment taxes; Workers' Compensation Insurance; equipment hours and rates; and bond premiums.

(c) The overhead percentage cited below includes all indirect costs including, but not limited to, field and office supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. "Commission" is profit on work performed by others. The percentages for overhead, profit, and commission in proposals for equitable adjustments are negotiable according to the nature, extent, and complexity of the work involved, but may not exceed the following ceilings:

	Overhead	**Profit**	**Commission**
To Seller and subcontractors on work performed with their own forces	10 %	10 %	Not Applicable
To Seller and subcontractors on work performed by other than their own forces	Not Allowed	Not Allowed	10 %

(d) Commission is not allowed on increased bond premiums or on the overhead, profit, or commission of subcontractors.

(e) Equitable adjustments for deleted work shall include credits, limited to the same restrictions for overhead, profit, and commission in paragraphs (c) and (d) of this clause.

(f) 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.

45. GOVERNMENT-FURNISHED PROPERTY

(a) Company shall deliver to Seller at the time and locations stated in this Agreement the Government-furnished 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.

(b) Title to Government-furnished property shall remain in the Government.

(c) Upon delivery of Government-furnished property to the Seller, 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.

(d) 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.

(e) Upon completion of this Agreement, Seller shall follow the instructions of the Company regarding the disposition of all Government-furnished 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 Company's direction, store or deliver said property (at Company expense), or dispose of the property as directed by Company. The net proceeds of any such disposal shall be credited to the Agreement price or shall be paid as Company may direct.

46. 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 acceptance, 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 reinspection 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 fromthe 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 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.

47. 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 that 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.

48. 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 and http://www.eh.doe.gov/sci/SCI_Awareness_Training_Manual_12-07-04.pdf

(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.

(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 Seller shall include this clause in subcontracts hereunder.

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

49. SUBCONRACTOR PERFORMANCE 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.

50. 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 proceed with the backcharge work and setoff the cost for Seller's payment.

51. 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.

52. 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 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.

53. 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 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) 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.

(k) 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 days from the effective date of termination.

(l)(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 days after the date of the retention or disposition, or a later date determined by the Company because of the circumstances.

(m) 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 Government, 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.

54. 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 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

(3) Paragraph (a) of FAR 52.227-1, Authorization and Consent.

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

- FAR 52.222-6 Davis-Bacon Act (JUL 2005) (The required poster is available at: http://www.dol.gov/dol/esa/public/regs/compliance/posters/davis.htm).
- FAR 52.222-7 Withholding of Funds (FEB 1988)
- FAR 52.222-8 Payrolls and Basic Records (FEB 1988)
- 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 (APR 2002)(The required poster is available at: http://www.dol.gov/dol/esa/public/regs/compliance/posters/eeo.htm).
- FAR 52.222-27 Affirmative Action Compliance Requirements for Construction (FEB 1999)
- FAR 52.222-29 Notification of Visa Denial (JUN 2003)
- FAR 52.222-35 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 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
- FAR 52.225-8 Duty-Free Entry (FEB 2000)
- FAR 52.225-9 Buy American Act - Construction Materials (JUN 2003)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (MAR 2005)
- FAR 52.227-1 Authorization and Consent (JUL 1995)
- FAR 52.227-4 Patent Indemnity-Construction Contracts (APR 1984)
- FAR 52.244-6 Subcontracts for Commercial Items (July 2004)
- FAR 52.247-63 Preference for U.S. Flag Air Carriers (JUN 2003)
- DEAR 952.203-70 Whistleblower Protection for Contractor Employees (DEC 2000)
- DEAR 952.223-75 Preservation of Individual Occupational Exposure Records (APR 1984)
- Foreign Nationals (Company-12/99)
- Hazardous Material Identification and Material Safety Data (Company - AUG 2005)
- Hazardous Materials Reporting (Company - AUG 2005)
- Insurance - Work on a Government Installation (Company 1/97)
- Required Training (Company-11/00)
- Taxes: Fixed-Price (Company-11/96)
- Y-12 Appropriate Footwear Policy (OCT 2005)

(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 (MAY 2002)
- DEAR 952.204-70 Classification/Declassification (SEP 1997)
- Civil Penalties for Classified-Information Security Violations (Company – AUG 2005)

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

- FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995)
- FAR 52.203-7 Anti-Kickback Procedures (JUL 1995), except paragraph (c)(1)
- FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (SEPT 2005)
- FAR 52.215-2 Audit and Records - Negotiation (JUN 1999)
- FAR 52.219-8 Utilization of Small Business Concerns (MAY 2004)
- FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (JULY 2005)
- FAR 52.223-14 Toxic Chemical Release Reporting (AUG 2003), except paragraph (e)
- FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003)
- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

(c)(4) 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)(5)The following clauses are incorporated if this Agreement exceeds $650,000

- FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (OCT 1997)
- FAR 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997)

(c)(6) The following clause is incorporated if this Agreement exceeds $1 million:

- FAR 52.219-9 Small Business Subcontracting Plan (JULY 2005)