GENERAL TERMS & CONDITIONS
Cost-Reimbursement – Services
(CTSER 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, AVID Agreement, Basic Ordering Agreement, or Modification thereof.

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

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

(g) Educational Institution means an entity described in Office of Management and Budget Circular No. A-21.

2. ORDER OF PRECEDENCE. Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Articles of the Agreement; (2) Special Terms and Conditions attached thereto, (3) General Terms and Conditions, (4) Statement of Work or description of services.

3. PAYMENT AND ADMINISTRATION. Company shall make payments under this Agreement from Government funds advanced and agreed to be advanced by DOE, and not from its own assets. Administration of this Agreement may be transferred, in whole or in part, to DOE or its designee(s), and to the extent of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

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

5. EMPLOYEE CONCERNS PROGRAM. (a) The Seller shall notify its employees that: (1) DOE and the Company maintain Employee Concerns Program (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.

6. COOPERATING WITH DOE OFFICE OF INSPECTOR GENERAL. (a) Seller shall cooperate fully and promptly with requests from the DOE Office of Inspector General (OIG) for information and data relating to DOE programs and operations. The Seller must ensure that its employees (i) comply with requests by the OIG for interviews and briefings and provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements, and (ii) not impede or hinder another employee's cooperation with the OIG.

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

7. PUBLIC RELEASE OF INFORMATION. (a) Seller shall not publicly disclose information concerning any aspect of the materials or services relating to this Agreement without the prior written approval of the Subcontract Administrator unless specifically required by law.

(b) The interest of the Company in this Agreement may not be used in advertising or publicity without advance written approval of the Company.

8. 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.

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

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

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

10. PROHIBITED ITEMS AT Y-12. (a) General. The prohibitions in this clause apply at the Y-12 National Security Complex and at sites leased by BWXT Y-12, LLC.

(b) Alcohol. Alcoholic beverages are prohibited.

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

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

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

- Bows and arrows
- Explosive devices
- Firearms
- Knives with blades longer than three inches

- Martial arts weapons and equipment
- Weapons or simulated weapons

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

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

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

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

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

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

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

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

11. DOE SECURITY BADGES – LIQUIDATED DAMAGES. (a) All security badges issued by BWXT Y-12 to Seller employees working on site at the Y-12 National Security Complex are Government property. Seller is responsible for safeguarding and returning all badges issued to Seller and its subcontractors at all lower tiers. Badges must be returned to the BWXT Y-12 Visitor Center or to the Company representative designated in this Agreement immediately upon expiration of this Agreement, termination of employment of any employee who has been issued a DOE security badge, or when access to the Y-12 National Security Complex is no longer needed.

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

(c) Seller's payment may be withheld until compliance with all provisions of this clause have been met. Failure to return 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.

12. INDEPENDENT CONTRACTOR (a) Seller shall act in performance of this Agreement as an independent contractor and not as an agent for 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.

(b) Seller shall be solely responsible for all liability and related expenses resulting from injury, death, damage to, or loss of property which is in any way connected with the negligent performance of work under this Agreement. Seller shall also be responsible for all materials and work until acceptance by Company. Seller's responsibility shall apply to activities of Seller, its agents, lower-tier subcontractors, or employees and such responsibility includes the obligation to indemnify, defend, and hold harmless the Government and the Company. However, such liability and indemnity does not apply to injury, death, or damage to property to the extent it arises from the conduct of Company.

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

14. ALLOWABLE COST AND PAYMENT. (a) Invoicing. The Company will make payments to the Seller when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Company in accordance with the terms of this Agreement and the following FAR Subparts, as supplemented by DEAR Subpart 931.2, in effect on the date of this Agreement: (1) FAR Subpart 31.3 for educational institutions, (2) FAR Subpart 31.7 for nonprofit organizations not listed in Attachment C of OMB Circular A-122, and (3) FAR Subpart 31.2 for all others. The Seller may submit to the Company, in such form and reasonable detail as the Company may require, an invoice supported by a statement of the claimed allowable cost for performing this Agreement.

(b) Reimbursing costs. (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for the Agreement;

(ii) When the Seller is not delinquent in paying costs of performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Supplies and services purchased directly for the Agreement and associated financing payments to subcontractors, provided payments determined due will be made in accordance with the terms and conditions of a subcontract or invoice and ordinarily within 30 days of the submission of the Seller's payment request to the Company;

(B) Materials issued from the Seller's inventory and placed in the production process for use on the Agreement;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Seller contributions under employee pension plans shall be excluded until actually paid unless the Seller's practice is to make contributions to the retirement fund quarterly or more frequently, and the contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Seller's indirect costs for payment purposes).

(c) Final indirect cost rates. (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Seller shall submit an adequate final indirect cost rate proposal to the Company (or cognizant Federal agency official) and auditor within six months after the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Seller and granted in writing by the Company. The Seller shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Seller's actual cost experience for that period. The appropriate Company or Government representative and the Seller shall establish the final indirect cost rates as promptly as practical after receipt of the Seller's proposal.

(3) The Seller and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in this Agreement.

(4) Within 120 days (or longer period if approved in writing by the Subcontract Administrator) after settlement of the final annual indirect cost rates for all years of a physically complete Agreement, the Seller shall submit a completion invoice to reflect the settled amounts and rates. If the Seller fails to submit a completion invoice within the time specified, the Subcontract Administrator may determine the amounts due to the Seller under the Agreement and record this determination in a unilateral modification to the Agreement.

(d) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

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

(f) Final payment. (1) Upon approval of a completion invoice or voucher submitted by the Seller in accordance with paragraph (c)(4) of this clause, and upon the Seller's compliance with all terms of this Agreement, the Company shall promptly pay any balance of allowable costs and fee (if any) not previously paid.

(2) The Seller shall pay to the Company any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Seller or any assignee under this Agreement, to the extent that those amounts are properly allocable to costs for which the Seller has been reimbursed by the Company. Reasonable expenses incurred by the Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Subcontract Administrator. Before final payment under this Agreement the Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Company, in form and substance satisfactory to the Subcontract Administrator, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Seller has been reimbursed by the Company under this Agreement; and

(ii) A release discharging the Company, the Government, their officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Agreement, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Seller to third parties arising out of the performance of this Agreement; provided, that the claims are not known to the Seller on the date of the execution of the release, and that the Seller gives notice of the claims in writing to the Subcontract Administrator within

six years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Seller under the patent clauses of this Agreement, excluding, however, any expenses arising from the Seller's indemnification of the Company and the Government against patent liability.

15. PREDETERMINED INDIRECT COST RATES . *(This clause is applicable if the Seller is an educational institution and its cognizant agency has established predetermined final indirect cost rates.)*

(a) Notwithstanding the Allowable Cost and Payment clause of this Agreement, allowable indirect costs shall be obtained by applying predetermined final indirect cost rates established in accordance with FAR 42.705-3(b).

(b) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR Subpart 31.3 in effect on the date of this Agreement.

(c) Predetermined rate agreements in effect on the date of this Agreement or subsequently established do not change any monetary ceiling or specific cost allowance or disallowance provided for in this Agreement.

(d) Pending establishment of predetermined indirect cost rates for any fiscal year, the Seller shall be reimbursed either at the rates fixed for the previous fiscal year or at billing rates acceptable to the cognizant agency, subject to appropriate adjustment when the predetermined final rates for that period are established.

(e) If for any fiscal year the Seller and its cognizant agency fail to agree to predetermined indirect cost rates, allowable indirect costs shall be determined in accordance with the Allowable Cost and Payment clause.

16. 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.

17. AUTHORIZATION AND CONSENT. (a) The Government authorizes and consents to all use and manufacture, in performing this Agreement or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Company under this Agreement or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Seller or a subcontractor with (i) specifications or written provisions forming a part of this Agreement or (ii) specific written instructions given by the Company directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this Agreement or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Seller agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

18. PATENT INDEMNITY. (a) The Seller shall indemnify the Company and the Government and their officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this Agreement, or out of the use or disposal by or for the account of the Company or the Government of such supplies or construction work.

(b) This indemnity shall not apply unless the Seller shall have been informed as soon as practicable by the Company or Government of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to—

(1) An infringement resulting from compliance with specific written instructions of the Company directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the Agreement not normally used by the Seller;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the Seller, unless required by final decree of a court of competent jurisdiction.

19. INSURANCE. (a)(1) The Seller shall provide and maintain liability insurance in at least the following amounts:

(i) Workers' Compensation – As required by statute;

(ii) Employer's Liability - $100,000;

(iii) Comprehensive General Liability (bodily injury) - $500,000 per occurrence;

(iv) Comprehensive Automobile Liability - $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage.

(2) When aircraft are used in connection with performing the Agreement, the Seller shall provide and maintain public and passenger liability insurance. Coverage shall be at least $200,000 per person and $500,000 per occurrence for bodily injury and $200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(3) The Seller may, with the approval of the Subcontract Administrator, maintain a self-insurance program, provided that, with respect to workers' compensation, the Seller is qualified pursuant to statutory authority.

(4) All insurance required by this paragraph shall be in a form and amount and for those periods as the Subcontract Administrator may require or approve and with insurers approved by the Subcontract Administrator.

(5) Upon request, the Seller shall provide proof to the Company that the required coverage has been obtained.

(b) The Seller shall be reimbursed for that portion of the reasonable cost of insurance allocable to this Agreement and required or approved under this clause.

(c) This clause does not restrict the right of the Seller to be reimbursed for the cost of insurance maintained by the Seller in connection with the performance of this Agreement, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this Agreement.

20. LIMITATION OF COST. *(This clause applies if the Agreement is fully funded.)* (a) The parties estimate that performance of this Agreement, exclusive of any fee, will not cost the Company more than (1) the estimated cost specified in the Agreement or, (2) if this is a cost-sharing Agreement, the Company's share of the estimated cost specified in the Agreement. The Seller agrees to use its best efforts to perform the work and all obligations under this Agreement within the estimated cost, which, if this is a cost-sharing Agreement, includes both the Company's and the Seller's share of the cost.

(b) The Seller shall notify the Subcontract Administrator in writing whenever it has reason to believe that—

(1) The costs the Seller expects to incur under this Agreement in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Agreement; or

(2) The total cost for the performance of this Agreement, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Seller shall provide the Subcontract Administrator a revised estimate of the total cost of performing this Agreement.

(d) Except as required by other provisions of this Agreement, specifically citing and stated to be an exception to this clause—

(1) The Company is not obligated to reimburse the Seller for costs incurred in excess of (i) the estimated cost specified in the Agreement or, (ii) if this is a cost-sharing Agreement, the estimated cost to the Company specified in the Agreement; and

(2) The Seller is not obligated to continue performance under this Agreement (including actions under the Termination clause) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Subcontract Administrator (i) notifies the Seller in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this Agreement. If this is a cost-sharing Agreement, the increase shall be allocated in accordance with the formula specified in the Agreement.

(e) No notice, communication, or representation in any form other than that specified in paragraph (d)(2) of this clause, or from any person other than the Subcontract Administrator, shall affect this Agreement's estimated cost to the Company. In the absence of the specified notice, the Company is not obligated to reimburse the Seller for any costs in excess of the estimated cost or, if this is a cost-sharing Agreement, for any costs in excess of the estimated cost to the Company specified in the Agreement, whether those excess costs were incurred during the course of the Agreement or as a result of termination.

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

(g) Change orders are not authorizations to exceed the estimated cost to the Company specified in the Agreement, unless they contain a statement increasing the estimated cost.

(h) If this Agreement is terminated or the estimated cost is not increased, the Company and the Seller shall negotiate an equitable distribution of all property produced or purchased under the Agreement, based upon the share of costs incurred by each.

21. LIMITATION OF FUNDS. *(This clause applies if the Agreement is to be incrementally funded.)* (a) The parties estimate that performance of this Agreement will not cost the Company more than (1) the estimated cost specified in the Agreement or, (2) if this is a cost-sharing Agreement, the Company's share of the estimated cost specified in the Agreement. The Seller agrees to use its best efforts to perform the work and all obligations under this Agreement within the estimated cost, which, if this is a cost-sharing Agreement, includes both the Company's and the Seller's share of the cost.

(b) The Agreement specifies the amount available for payment by the Company and allotted to this Agreement, the items covered, the Company's share of the cost if this is a cost-sharing Agreement, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Company will allot additional funds incrementally to the Agreement up to the full estimated cost to the Company specified in the Agreement, exclusive of any fee.

The Seller agrees to perform, or have performed, work on the Agreement up to the point at which the total amount paid and payable by the Company under the Agreement approximates but does not exceed the total amount actually allotted by the Company to the Agreement.

(c) The Seller shall notify the Subcontract Administrator in writing whenever it has reason to believe that the costs it expects to incur under this Agreement in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the Agreement by the Company or, (2) if this is a cost-sharing Agreement, the amount then allotted to the Agreement by the Company plus the Seller's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Agreement.

(d) Sixty days before the end of the period specified in the Agreement, the Seller shall notify the Subcontract Administrator in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Agreement or for any further period specified in the Agreement or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Agreement or another agreed-upon date, upon the Seller's written request the Subcontract Administrator will terminate this Agreement on that date in accordance with the Termination clause. If the Seller estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Subcontract Administrator may terminate this Agreement on that later date.

(f) Except as required by other provisions of this Agreement, specifically citing and stated to be an exception to this clause—

(1) The Company is not obligated to reimburse the Seller for costs incurred in excess of the total amount allotted by the Company to this Agreement; and

(2) The Seller is not obligated to continue performance under this Agreement (including actions under the Termination clause) or otherwise incur costs in excess of—

(i) The amount then allotted to the Agreement, or

(ii) If this is a cost-sharing Agreement, the amount then allotted by the Company to the Agreement plus the Seller's corresponding share, until the Subcontract Administrator notifies the Seller in writing that the amount allotted has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Company to this Agreement.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Company or, (2) if this is a cost-sharing Agreement, the amount then allotted by the Company plus the Seller's corresponding share, exceeds the estimated cost specified in the Agreement. If this is a cost-sharing Agreement, the increase shall be allocated in accordance with the formula specified in the Agreement.

(h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) of this clause, or from any person other than the Subcontract Administrator, shall affect the amount allotted by the Company to this Agreement. In the absence of the specified notice, the Company is not obligated to reimburse the Seller for any costs in excess of the total amount allotted, whether incurred during the course of the Agreement or as a result of termination.

(i) When and to the extent that the amount allotted by the Company to the Agreement is increased, any costs the Seller incurs before the increase that are in excess of—

(1) The amount previously allotted by the Company or;

(2) If this is a cost-sharing Agreement, the amount previously allotted by the Company to the Agreement plus the Seller's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Subcontract Administrator issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders are not authorizations to exceed the amount allotted by the Company specified in the Agreement, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause affects the right of the Company to terminate this Agreement. If this Agreement is terminated, the Company and the Seller shall negotiate an equitable distribution of all property produced or purchased under the Agreement, based upon the share of costs incurred by each.

(l) If the Company does not allot sufficient funds to allow completion of the work, the Seller is entitled to a percentage of the fee specified in the Agreement equaling the percentage of completion of the work contemplated by this Agreement

22. INTEREST. *(This clause does not apply if Seller is a state or local government or instrumentality or if the Seller is a nonprofit organization and this Agreement has no provision for fee.)* All amounts that become payable to Company by Seller under this Agreement shall bear simple interest from the date due until paid, unless paid within 30 days of the date due. The interest rate shall be the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) as of the date due, 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.

23. ASSIGNMENT. Except as provided in the Assignment of Claims clause, Seller shall not assign rights or obligations to third parties without the prior written consent of Company.

24. ASSIGNMENT OF CLAIMS. (a) The Seller may assign its rights to be paid amounts due or to become due as a result of the performance of this Agreement to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this Agreement, payments to an assignee of any amo unts due or to become due under this Agreement shall not be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under this clause shall cover all unpaid amounts payable under this Agreement, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Agreement.

(c) The Seller shall not furnish or disclose to any assignee under this Agreement any classified document (including this Agreement) or information related to work under this Agreement until the Company authorizes such action in writing.

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

27. STOP-WORK ORDER (a) The Subcontract Administrator, may, at any time, by written order, require Seller to stop all or any portion of the work called for by this Agreement for 90 days, and for any other further period to which the parties may agree. Seller shall immediately comply with the order and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the work stoppage.

(b) Before expiration of the stop-work order, Company may --

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order for default or convenience.

(b) If the order is canceled or expires, the Seller shall resume work. The Company shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the Agreement that may be affected, and the Agreement shall be modified, in writing, accordingly, if the stop-work order results in an increase in the time required for, or cost properly allocable to, performance of this Agreement.

(c) If the work covered by the order is terminated for convenience, the Company shall allow reasonable costs resulting from the order in arriving at the termination settlement.

(d) If the work covered by the order is terminated for default, the Company shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the order.

28. CHANGES. (a) The Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed by the order, or otherwise affects any other terms and conditions of this Agreement, the Subcontract Administrator shall make an equitable adjustment in the—

(1) Estimated cost, delivery or completion schedule, or both;

(2) Amount of any fixed fee; and

(3) Other affected terms and shall modify the Agreement accordingly.

(c) The Seller must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Subcontract Administrator decides that the facts justify it, the Subcontract Administrator may receive and act upon a proposal submitted before final payment of the Agreement.

(d) Nothing in this clause shall excuse the Seller from proceeding with the Agreement as changed.

(e) Notwithstanding paragraphs (a) and (b) of this clause, the estimated cost of this Agreement and, if this Agreement is incrementally funded, the funds allotted for the performance of this Agreement, shall not be increased or considered to be increased except by specific written modification of the Agreement indicating the new Agreement estimated cost and, if this Agreement is incrementally funded, the new amount allotted to the Agreement. Until this modification is made, the Seller shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this Agreement.

29. SUBCONTRACTS. (a) Definitions. As used in this clause—

"Approved purchasing system" means a purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Subcontract Administrator's written consent for the Seller to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of this Agreement or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment if this Agreement contains the clause at FAR 52.245-18, Special Test Equipment.

(c) If the Seller does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds either $100,000 or five percent of the ceiling price of this Agreement.

(d)(1) The Seller shall notify the Subcontract Administrator reasonably in advance of placing any subcontract or modification thereof for which consent is required, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other clauses of this Agreement.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other clauses of this Agreement.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Seller did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Seller and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Seller's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Seller has an approved purchasing system and consent is not required under paragraph (c) of this clause, the Seller shall nevertheless notify the Subcontract Administrator reasonably in advance of entering into any (cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either $100,000 of five percent of the total estimated cost of this Agreement. The notification shall include the information required by paragraphs (d)(1)(i) through (d)(1)(iv) of this clause.

(e) Unless the consent specifically provides otherwise, consent by the Subcontract Administrator to any subcontract does not constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this Agreement; or

(3) To relieve the Seller of any responsibility for performing this Agreement.

(f) No subcontract or modification thereof placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(g) The Seller shall give the Subcontract Administrator immediate written notice of any action or suit filed and prompt notice of any claim made against the Seller by any subcontractor or vendor that, in the opinion of the Seller, may result in litigation related in any way to this Agreement, with respect to which the Seller may be entitled to reimbursement from the Company.

30. PROPERTY . (a) Furnishing of Government property. The Company reserves the right to furnish any property or services required for the performance of the work under this Agreement.

(b) Title to property. Except as otherwise provided by the Subcontract Administrator, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Seller, for the cost of which the Seller is entitled to be reimbursed as a direct item of cost under this Agreement, shall pass directly from the vendor to the Government. The Company reserves the right to inspect, and to accept or reject, any item of such property. The Seller shall make such disposition of rejected items as the Subcontract Administrator shall direct. Title to other property, the cost of which is reimbursable to the Seller under this Agreement, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this Agreement, or (2) commencement of processing or use of such property in the performance of this Agreement, or (3) reimbursement of the cost thereof by the Company, whichever first occurs. Property furnished by the Company and property purchased or furnished by the Seller, title to which vests in the Government under this paragraph, are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) Identification. To the extent directed by the Subcontract Administrator, the Seller shall identify Government property coming into the Seller's possession or custody, by marking and segregating in such a way, satisfactory to the Subcontract Administrator, as shall indicate its ownership by the Government.

(d) Disposition. The Seller shall make such disposition of Government property which has come into the possession or custody of the Seller under this Agreement as the Subcontract Administrator may direct during the progress of the work or upon completion or termination of this Agreement. The Seller may, upon such terms and conditions as the Subcontract Administrator may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Subcontract Administrator and the Seller as the fair value thereof. The amount received by the
Seller as the result of any disposition, or the agreed fair value of any such property acquired by the Seller, shall be applied in reduction of costs allowable under this Agreement or shall be otherwise credited to account to the Company, as the Subcontract Administrator may direct. Upon completion of the work or the termination of this Agreement, the Seller shall render an accounting, as prescribed by the Subcontract Administrator, of all government property which had come into the possession or custody of the Seller under this Agreement.

(e) Protection of government property--management of high-risk property and classified materials. (1) The Seller shall take all reasonable precautions, and such other actions as may be directed by the Subcontract Administrator, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Seller's possession or custody.

(2) In addition, the Seller shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property. (1)(i) The Seller shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:

(A) Willful misconduct or lack of good faith on the part of the Seller's managerial personnel;

(B) Failure of the Seller's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Subcontract Administrator to safeguard such property under paragraph (e) of this clause; or

(C) Failure of Seller managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.

(ii) If, after an initial review of the facts, the Subcontract Administrator informs the Seller that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Seller to show that the Seller should not be required to compensate the Company for the loss, destruction, or damage.

(2) In the event that the Seller is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Seller's compensation to the Company shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Seller that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Seller with a value above the threshold set out in the Seller's approved property management system, the Seller:

(1) Shall immediately inform the Subcontract Administrator of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Subcontract Administrator. The Seller shall take no action prejudicial to the right of the Company to recover therefore, and shall furnish to the Company, on request, all reasonable assistance in obtaining recovery.

(h) Use of Government property. Government property shall be used only for the performance of this Agreement.

(i) Property Management. (1) Property Management System. (i) The Seller shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the Agreement. The Seller's property management system shall be submitted to the Subcontract Administrator for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the Subcontract Administrator may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Government-owned property;

(C) Full integration with the Seller's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by ``best in class" performers.

(iii) Approval of the Seller's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory. (i) Unless otherwise directed by the Subcontract Administrator, the Seller shall within six months after execution of the Agreement provide a baseline inventory covering all items of Government property.

(ii) If the Seller is succeeding another Seller in the performance of this Agreement, the Seller shall conduct a joint reconciliation of the property inventory with the predecessor Seller. The Seller agrees to participate in a joint reconciliation of the property inventory at the completion of this Agreement. This information will be used to provide a baseline for the succeeding Agreement as well as information for closeout of the predecessor Agreement.

(j) The term ``Seller's managerial personnel" as used in this clause means the Seller's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

(1) All or substantially all of the Seller's business; or

(2) All or substantially all of the Seller's operations at any one facility or separate location to which this Agreement is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this Agreement; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this Agreement; or

(5) A separate and discrete major task or operation in connection with the performance of this Agreement.

(k) The Seller shall include this clause in all cost reimbursable subcontracts.

31. INSPECTION OF SERVICES. (a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Seller shall provide and maintain an inspection system acceptable to the Company covering the services under this Agreement. Complete records of all inspection work performed by the Seller shall be maintained and made available to the Company during performance and for as long afterwards as the Agreement requires.

(c) The Company has the right to inspect and test all services called for by the Agreement, to the extent practicable at all places and times during the term of the Agreement. The Company shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with Agreement requirements, the Company may require the Seller to perform the services again in conformity with Agreement requirements, for no additional fee. When the defects in

services cannot be corrected by reperformance, the Company may require the Seller to take necessary action to ensure that future performance conforms to Agreement requirements and reduce any fee payable under the Agreement to reflect the reduced value of the services performed.

(e) If the Seller fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with Agreement requirements, the Company may, by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances, or terminate the Agreement for default.

32. 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. 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 natioinally 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.

33. SUBMISSION OF TRANSPORTATION BILLS. (a) In accordance with paragraph (b) of this clause, the Seller shall include with its invoices legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services that were charged directly to this Agreement. In accordance with FAR 52.247-67, the Company will forward the documents to the General Services Administration (GSA) for audit.

(b) The Seller shall only submit those CBL's with freight shipment charges exceeding $100.00. Bills under $100.00 shall be retained on-site by the Seller and made available for GSA on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

34. TERMINATION. (a) The Company may terminate performance of work under this Agreement in whole or, from time to time, in part, if—

(1) The Subcontract Administrator determines that a termination is in the Government's interest; or

(2) The Seller defaults in performing this Agreement and fails to cure the default within 10 days (unless extended by the Subcontract Administrator) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Subcontract Administrator shall terminate by delivering to the Seller a Notice of Termination specifying whether termination is for default or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Seller was not in default or that the Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Seller as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Subcontract Administrator, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), 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 Subcontract Administrator, all right, title, and interest of the Seller under the subcontracts terminated, in which case the Company shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Subcontract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Agreement;

(6) Transfer title (if not already transferred) and, as directed by the Subcontract Administrator, deliver to the Government—

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The 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; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Agreement, the cost of which the Seller has been or will be reimbursed under this Agreement.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Subcontract Administrator may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Seller and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Subcontract Administrator, any property of the types referred to in paragraph (c)(6) of this clause; *provided, however*, that the Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Subcontract Administrator. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Company under this Agreement, credited to the price or cost of the work, or paid in any other manner directed by the Subcontract Administrator.

(d) The Seller shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Subcontract Administrator upon written request of the Seller within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Seller may submit to the Subcontract Administrator a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Subcontract Administrator. The Seller may request the Company to remove those items or enter into an agreement for their storage. Within 15 days, the Company will accept the items and remove them or enter into a storage agreement. The Subcontract Administrator may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Seller shall submit a final termination settlement proposal to the Subcontract Administrator in the form and with the certification prescribed by the Subcontract Administrator. The Seller shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the Subcontract Administrator upon written request of the Seller within this one-year period. However, if the Subcontract Administrator determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If the Seller fails to submit the proposal within the time allowed, the Subcontract Administrator may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Seller and the Subcontract Administrator may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Agreement shall be amended, and the Seller paid the agreed amount.

(h) If the Seller and the Subcontract Administrator fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Seller, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this Agreement, not previously paid, for the performance of this Agreement before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Subcontract Administrator; however, the Seller shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement if not included in paragraph (h)(1) of this clause.

(3) 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. If the termination is for default, no amounts for the preparation of the Seller's termination settlement proposal may be included.

(4) A portion of the fee payable under the Agreement, determined as follows:

(i) If the Agreement is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the Agreement, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the Agreement is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Company is to the total number of articles (or amount of services) of a like kind required by the Agreement.

(5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.

(i) The cost principles and procedures in 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.

(k) In arriving at the amount due the Seller under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Seller, under the terminated portion of this Agreement;

(2) Any claim which the Company has against the Seller under this Agreement; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Seller or

sold under this clause and not recovered by or credited to the Company.

(l) The Seller and the Subcontract Administrator must agree to any equitable adjustment in fee for the continued portion of the Agreement when there is a partial termination. The Subcontract Administrator shall amend the Agreement to reflect the agreement.

(m)(1) The Company may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the Agreement, if the Subcontract Administrator 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 Subcontract Administrator because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this Agreement does not include a fee.

35. EXCUSABLE DELAYS. (a) Except for defaults of subcontractors at any tier, the Seller shall not be in default because of any failure to perform this Agreement under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Seller. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Seller. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Seller and subcontractor, and without the fault or negligence of either, the Seller shall not be deemed to be in default, unless—

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Subcontract Administrator ordered the Seller in writing to purchase these supplies or services from the other source; and

(3) The Seller failed to comply reasonably with this order.

(c) Upon request of the Seller, the Subcontract Administrator shall ascertain the facts and extent of the failure. If the Subcontract Administrator determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Company under the Termination clause of this Agreement.

36. 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 on the "Procurement" link at http://www.y12.doe.gov. Except as provided in (b) below, in the listed clauses "Contractor" means the Seller, "Government" means the Company, "Contract" means this Agreement, and "Contracting Officer" means the Company's Subcontract Administrator.

(b) "Government" retains its meaning in:

(1) 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) DEAR 970.5208-1, Printing.

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

- FAR 52.215-15 Pension Adjustments & Asset Reversions (OCT 2004)
- FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (July 2005)
- 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/esa/regs/compliance/posters/eeo.htm)
- FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other eligible Veterans (DEC 2001)
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
- FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (MAR 2005)
- FAR 52.229-10 State of New Mexico Gross Receipts and Compensating Tax (APR 2003), if the services will be performed in whole or in part in New Mexico
- FAR 52.244-6 Subcontracts for Commercial Items and Components (DEC 2004)
- FAR 52.247-63 Preference for U.S. Flag Air Carriers (JUNE 2003)
- DEAR 970.5208-1 Printing (DEC 2000)
- DEAR 970.5232-3 Accounts, Records, and Inspections (DEC 2000)
- Travel Reimbursement Policy (FEB 2006) (Company)

(c)(2)The following clauses are incorporated when Seller personnel work on a DOE site:

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

(c)(3) The following clauses are incorporated if the work involves access to classified information or special nuclear material:

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

(c)(4)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), including Alternate II for state and local governments, educational institutions, and other nonprofit organizations
- 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)
- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

(c)(5) The following clauses are incorporated if this Agreement exceeds $500,000:

- FAR 52.219-9 Small Business Subcontracting Plan (JULY 2005)
- FAR 52.222-29 Notification of Visa Denial (JUNE 2003)
- 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 FY1993 (DEC 2000)

(c)(6) 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)(7) The following clause is incorporated if this Agreement exceeds $2 million: DEAR 970.5204-3 Access to and Ownership of Records (DEC 2000)