GENERAL TERMS & CONDITIONS
Fixed Price (FP 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 Subcontract or provisions of the Purchase Order (including alterations and special provisions therein), (2) Special Terms and Conditions attached thereto, (3) General Terms and Conditions, (4) Statement of Work or description of services and/or supplies.

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

4. ACCEPTANCE OF TERMS AND CONDITIONS. Seller, by signing this Agreement, 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 in performing this Agreement, maintaining complete control over its employees and all lower-tier subcontractors. Nothing contained in this Agreement or any lower-tier subcontract shall create any contractual relationship between any such lower-tier subcontractor and the Government or Company. Seller is solely responsible for the actions of itself and its lower-tier subcontractors, agents or employees.

(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. MATERIAL REQUIREMENTS. (a) Definitions. As used in this clause—

"New" means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet Agreement requirements, including but not limited to, performance, reliability, and life expectancy.

"Reconditioned" means restored to the original normal operating condition by readjustments and material replacement.

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term

does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

"Remanufactured" means factory rebuilt to original specifications.

"Virgin material" means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this Agreement otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Seller may provide new, used, reconditioned, or remanufactured supplies or unused former Government surplus property, with the approvals required by this clause.

(c) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be provided if the Seller has proposed the use of such supplies, and the Company has approved the proposal.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies.

(e) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

14. 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.

15. 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.

16. 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.

17. 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.

18. PAYMENT. (a) The Company shall pay the Seller, upon the submission of proper invoices or vouchers (if required),

the prices stipulated in this Agreement for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this Agreement. Unless otherwise specified in this Agreement, payment shall be made on partial deliveries accepted by the Company if the amount due on the deliveries warrants it.

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

19. INTEREST. *(This clause does not apply if Seller is a nonprofit organization or a state or local government or instrumentality.)* 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.

20. 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.

21. 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 amounts 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.

22. RESOLUTION OF DISPUTES. (a) Seller and Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Oak Ridge, Tennessee. Cost shall be allocated by the mediator or arbitrator, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs.

(b)(1) Where Seller is a State agency, such as an **Educational Institution**, the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues. (2) In all other cases, subject to (b)(3) below, any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Eastern District of Tennessee, Northern Division; (3) provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in either Anderson, Knox or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate.

(c) The parties agree that, subject to (b)(1), substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of Tennessee except for Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses which shall be determined in accordance with federal law.

(d) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under this Agreement between the parties hereto or between Seller and its sub-tier subcontractors.

23. 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.

24. 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 or price, or both, and the Agreement shall be modified, in writing, accordingly, if the stop-work order results in an increase in the time required for, or cost properly allocable to, performance of this Agreement.

(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.

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

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Company in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery of supplies.

(4) Description of services to be performed.

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

(6) Place of performance of the services.

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

(c) If the Seller's proposal includes the cost of property made obsolete or excess by the change, the Company has the right to prescribe the manner of disposition of the property.

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

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

26. GOVERNMENT-FURNISHED PROPERTY. (a) The Company shall deliver to the Seller, at the time and locations stated in this Agreement, the Government-furnished property described in the specifications or elsewhere in the Agreement. If that property, suitable for its intended use, is not delivered to the Seller, the Company shall equitably adjust affected provisions of this Agreement in accordance with the Changes clause when—

(1) The Seller submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished property shall remain in the Government. The Seller shall use the Government-furnished property only in connection with this Agreement. The Seller shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Company and Government inspection at all reasonable times.

(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 the provisions of this Agreement.

(d) Upon completing this Agreement, the Seller shall follow the instructions of the Company regarding the disposition of all Government-furnished property not consumed in performing this Agreement or previously delivered to the Company. The Seller shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Company. The net proceeds of any such disposal shall be credited to the Agreement price or shall be paid to the Company as directed by the Company.

(e) If this Agreement is to be performed outside the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

27. INSPECTION OF SUPPLIES. (a) Definition. "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Seller shall provide and maintain an inspection system acceptable to the Company covering supplies under this Agreement and shall tender to the Company for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Seller to be in conformity with Agreement requirements. As part of the system, the Seller shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Company during performance and for as long afterwards as the Agreement requires. The Company may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the Agreement work. The right of review, whether exercised or not, does not relieve the Seller of the obligations under the Agreement.

(c) The Company has the right to inspect and test all supplies called for by the Agreement, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Company shall perform inspections and tests in a manner that will not unduly delay the work. The Company assumes no contractual

obligation to perform any inspection and test for the benefit of the Seller unless specifically set forth elsewhere in this Agreement.

(d) If the Company performs inspection or test on the premises of the Seller or a subcontractor, the Seller shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the Agreement, the Company shall bear the expense of Company inspections or tests made at other than the Seller's or subcontractor's premises; provided, that in case of rejection, the Company shall not be liable for any reduction in the value of inspection or test samples.

(e)(1) When supplies are not ready at the time specified by the Seller for inspection or test, the Company may charge to the Seller the additional cost of inspection or test.

(2) The Company may also charge the Seller for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) The Company has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Agreement requirements. The Company may reject nonconforming supplies with or without disposition instructions.

(g) The Seller shall remove supplies rejected or required to be corrected. However, the Company may require or permit correction in place, promptly after notice, by and at the expense of the Seller. The Seller shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Seller fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Company may either (1) by Agreement or otherwise, remove, replace, or correct the supplies and charge the cost to the Seller or (2) terminate the Agreement for default. Unless the Seller corrects or replaces the supplies within the delivery schedule, the Company may require their delivery and make an equitable price reduction.

(i)(1) If this Agreement provides for the performance of quality assurance at source, and if requested by the Company, the Seller shall furnish advance notification of the time (i) when Seller inspection or tests will be performed in accordance with this Agreement; and (ii) when the supplies will be ready for Company inspection.

(2) The Company's request shall specify the period and method of the advance notification and the Company representative to whom it shall be furnished. Requests shall not require more than two workdays of advance notification if the Company representative is in residence in the Seller's plant, nor more than seven workdays in other instances.

(j) The Company shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the Agreement. Company failure to inspect and accept or reject the supplies shall not relieve the Seller from responsibility, nor impose liability on the Company, for nonconforming supplies.

(k) Inspections and tests by the Company do not relieve the Seller of responsibility for defects or other failures to meet Agreement requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the Agreement.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Company, in addition to any other rights and remedies provided by law, or under other provisions of this Agreement, shall have the right to require the Seller (1) at no increase in Agreement price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Seller's plant at the Company's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Seller and the Company; provided, that the Company may require a reduction in Agreement price if the Seller fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Seller of notice of defects or nonconformance, to repay such portion of the Agreement as is equitable under the circumstances if the Company elects not to require correction or replacement. When supplies are returned to the Seller, the Seller shall bear the transportation cost from the original point of delivery to the Seller's plant and return to the original point when that point is not the Seller's plant. If the Seller fails to perform or act as required in paragraph (l)(1) or (l)(2) of this clause and does not cure such failure within a period of 10 days (or such longer period as the Company may authorize in writing) after receipt of notice from the Company specifying such failure, the Company shall have the right by Agreement or otherwise to replace or correct such supplies and charge to the Seller the cost occasioned the Company thereby.

28. INSPECTION OF SERVICES. (A) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of 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 times and places 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 the Company performs inspections or tests on the premises of the Seller or a subcontractor, the Seller shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with Agreement requirements, the Company may require the Seller to perform the services again at no increase in Agreement price. When the defects in services cannot be corrected by reperformance, the Company may—

(1) Require the Seller to take necessary action to ensure that future performance conforms to Agreement requirements; and

(2) Reduce the Agreement price to reflect the reduced value of the services performed.

(f) If the Seller fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Agreement requirements, the Company may—

(1) By Agreement or otherwise, perform the services and charge to the Seller any cost incurred by the Company that is directly related to the performance of such service; or

(2) Terminate the Agreement for default.

29. WARRANTY OF SUPPLIES. (a) Definitions. As used in this clause—

"Acceptance" means the act of an authorized representative of the Company acknowledging that supplies conform with requirements of the Agreement.

"Supplies" means the end items furnished by the Seller and related services required under this Agreement.

(b) General. Notwithstanding acceptance by the Company or any provision concerning the conclusiveness thereof, the Seller warrants that for one year after delivery all supplies furnished under this Agreement will be free from defects in material or workmanship and will conform with all requirements of this Agreement.

(c) Remedies.(1) The Company shall give written notice to the Seller of any breach of warranties in paragraph (b) within 45 days after discovery of the defect.

(2) Within a reasonable time after the notice, the Company may either—

(A) Require the prompt correction or replacement of supplies that do not conform with the requirements of this Agreement; or

(B) Retain such supplies and reduce the price by an amount equitable under the circumstances.

(3) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Seller.

(4) Corrected or replaced supplies are subject to this clause to the same extent as supplies initially delivered. The warranty shall be equal in duration to that in paragraph (b) and shall run from the date of delivery of the corrected or replaced supplies.

(d) Sampling. (1) If the Agreement provides for inspection by sampling, conformance of supplies subject to warranty shall be determined by the sampling procedures in the Agreement. The Company—

(A) May, for sampling purposes, group any supplies delivered under this Agreement;

(B) Shall use a sample of the size required by the sampling procedures for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or in other shipments; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(2) Within a reasonable time after notice of any breach of the warranties the Company may exercise one or more of the following options:

(A) Require an equitable adjustment in the price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the Seller's expense and return nonconforming supplies to the Seller for correction or replacement.

(C) Return the supplies grouped for warranty action under this clause to the Seller (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(e)(1) The Company may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Seller the cost occasioned to the Company thereby if the Seller—

(A) Fails to deliver corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Company may authorize in writing) after receipt of notice from the Company specifying such failure.

(2) Instead of correction or replacement by the Company, the Company may require an equitable adjustment of the price. In addition, if the Seller fails to furnish timely disposition instructions, the Company may dispose of the nonconforming supplies for the Seller's account in a reasonable manner. The Company is entitled to reimbursement from the Seller, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(f) The rights of the Company in this clause are in addition to its rights under any other clause of this Agreement.

30. WARRANTY OF SERVICES. (a) Definition. "Acceptance," as used in this clause, means the act of an authorized representative of the Company approving specific services as partial or complete performance of the Agreement.

(b) Notwithstanding inspection and acceptance by the Company or any provision concerning the conclusiveness thereof, the Seller warrants that all services performed under this Agreement will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement. The Company shall give written notice of any defect or nonconformance to the Seller within six months from the date of acceptance. This notice shall state either—

(1) That the Seller shall correct or reperform any defective or nonconforming services; or

(2) That the Company does not require correction or reperformance.

(c) If the Seller is required to correct or reperform, it shall be at no cost to the Company, and any services corrected or reperformed by the Seller shall be subject to this clause to the

same extent as work initially performed. If the Seller fails or refuses to correct or reperform, the Company may, by contract or otherwise, correct or replace with similar services and charge to the Seller the cost occasioned to the Company thereby, or make an equitable adjustment in the price.

(d) If the Company does not require correction or reperformance, the Company shall make an equitable adjustment in the price.

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

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

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

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

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

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

32. SPECIFICATIONS AND DRAWINGS. (a) 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. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Subcontract Administrator, who shall promptly make a determination in writing. Any adjustment by the Seller without such a determination shall be at its own risk and expense.

(b) "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. The term 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.

(c) 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 paragraph (d) of this clause.

(d) 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.

33. 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.

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

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

36. DEFAULT. (a)(1) The Company may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Seller, terminate this Agreement in whole or in part if the Seller fails to—

(i) Deliver the supplies or to perform the services within the time specified in this Agreement or any extension;

(ii) Make progress, so as to endanger performance of this Agreement (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this Agreement (but see paragraph (a)(2) of this clause).

(2) The Company's right to terminate this Agreement under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Seller does not cure such failure within 10 days (or more if authorized in writing by the Company) after receipt of the notice from the Company specifying the failure.

(b) If the Company terminates this Agreement in whole or in part, it may acquire, under the terms and in the manner the Company considers appropriate, supplies or services similar to those terminated, and the Seller will be liable to the Company for any excess costs for those supplies or services. However, the Seller shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Seller shall not be liable for any excess costs if the failure to perform the Agreement arises from causes beyond the control and without the fault or negligence of the Seller. Examples of such causes include (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.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Seller and subcontractor, and without the fault or negligence of either, the Seller shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Seller to meet the required delivery schedule.

(e) If this Agreement is terminated for default, the Company may require the Seller to transfer title and deliver to the Company, as directed by the Company, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Seller has specifically produced or acquired for the terminated portion of this Agreement. Upon direction of the Company, the Seller shall also protect and preserve property in its possession in which the Company has an interest.

(f) The Company shall pay the Agreement price for completed supplies delivered and accepted. The Seller and the Company shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. The Company may withhold from these amounts any sum the Company determines to be necessary to protect the Company against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience.

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

37. TERMINATION FOR CONVENIENCE. (a) The Company may terminate performance of work under this Agreement in whole or, from time to time, in part if the Company determines that a termination is in the Government's interest. The Company shall terminate by delivering to the Seller a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Company, 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) for materials, services, or facilities, 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 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 Company, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

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

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

(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.

(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 the property related to this Agreement that is in the possession of the Seller 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) 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 Company. 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 Company.

(c) 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 Company upon written request of the Seller within this 120-day period.

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

(e) After termination, the Seller shall submit a final termination settlement proposal to the Company in the form and with the certification prescribed by the Company. 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 Company upon written request of the Seller within this one-year period. However, if the Company 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 Company 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.

(f) Subject to paragraph (e) of this clause, the Seller and the Company may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, 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. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

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

(1) The Agreement price for completed supplies or services accepted by the Company (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subAgreements that are properly chargeable to the terminated portion of the Agreement if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Company under 49.202 of the Federal Acquisition Regulation, in effect on the date of this Agreement, 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 under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(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 subAgreements (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 the Seller under paragraph (g) of this clause, the fair value, as determined by the Company, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Company or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Agreement, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Seller shall have the right of appeal, under the Disputes clause, from any determination made by the Company under paragraph (e), (g), or (l) of this clause, except

that if the Seller failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(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 the provisions of this clause and not recovered by or credited to the Company.

(l) If the termination is partial, the Seller may file a proposal with the Company for an equitable adjustment of the price(s) of the continued portion of the Agreement. The Company shall make any equitable adjustment agreed upon. Any proposal by the Seller for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Company.

(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 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.

(n) Unless otherwise provided in this Agreement or by statute, the 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 the Seller's costs and expenses under this Agreement. The Seller shall make these records and documents available to the Company, at the Seller's office, at all reasonable times, without any direct charge. If approved by the Company, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

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

(b) "Government" retains its meaning in:

(1) The phrases "Government property" and "Government-furnished property;"

(2) Paragraph (a) of FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions;

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

(4) DEAR 970.5208-1, Printing.

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

- FAR 52.222-20 Walsh-Healey Public Contracts Act (DEC 1996)
- 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 52.222-35 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 52.225-1 Buy American Act --Supplies (JUNE 2003)
- FAR 52.225-8 Duty-Free Entry (FEB 2000)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (MAR 2005)
- FAR 52.244-6 Subcontracts for Commercial Items (JULY 2004)
- FAR 52.247-63 Preference for U.S. Flag Air Carriers (JUNE 2003)
- DEAR 970.5208-1 Printing (DEC 2000)
- Taxes: Fixed-Price (11-96) (Company)
- Hazardous Material Identification and Material Safety Data (AUG 2005) (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)
- Insurance - Work on a Government Installation (1/97) (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)
- 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)(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)