

GENERAL TERMS & CONDITIONS
Fixed Price Architect-Engineer Services
(FPAE 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. 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. This Agreement may be assigned, in whole or in part, to DOE or its designee(s), and to the extent of such assignment 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 require Seller to hold it in confidence.

(b) Seller shall obtain written agreement, in a form satisfactory to Company, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or

entity except those persons within Seller's organization directly concerned with performance of this Agreement.

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

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

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

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) By entering into this Agreement, Seller certifies that it and all associates and subcontractors under the Agreement are licensed, certified, and registered to perform the professional and technical services required to complete the work under this Agreement. Seller shall ensure that such licenses, certifications, and registrations are maintained throughout performance of this Agreement and failure to do so may be cause for default termination.

(d) 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 Y12 unless required to report a personal emergency within the 229 boundary. A personal emergency is an immediate need for assistance (e.g., an after-hours car – deer accident, a car breakdown, an acute health condition such as a heart attack, etc.). In a personal emergency, the personal cellular telephone should be used to contact the Y-12 Plant Shift Superintendent's Office (574-7172). Calling 911 from a

cellular telephone will not notify BWXT Y-12 of an emergency, though Company emergency resources would be the closest respondent. Therefore, calling 911 instead of 574-7172 is inappropriate.

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

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

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

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

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

(g) PDAs. Personal digital assistants [also called personal electronic devices (PEDs)] such as Blackberry, Pirena, 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, its directors, officers, and employees from any liability arising out of the activities of the Seller, its subcontractors, suppliers, agents, employees, and their officers and directors. 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. EXPORT CONTROL. (a) The Seller must comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement. In the absence of available license exemptions or exceptions, the Seller must obtain required licenses or other approvals for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Seller must obtain export licenses, if required, before using foreign persons in performance of this Agreement, if the foreign person will have access to export-controlled technical data or software.

(c) The Seller is responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions and exceptions.

(d) The Seller shall include this clause in subcontracts hereunder.

15. INSURANCE. (a) The Seller shall provide and maintain professional liability insurance of at least \$1 million per claim. The retroactive date must be before or the same as the date of award of this Agreement. Coverage must continue for three years following completion or termination of this Agreement.

(b) 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.

(c) All insurance required by this clause 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. None of the requirements contained herein as to types, limits, and approval of insurance coverage to be maintained by Seller limits or qualifies the liability and obligations assumed by Seller under this Agreement.

(d) Within five calendar days of award, the Seller shall provide a certificate of insurance to the Subcontract Administrator (or, if the Subcontract Administrator requires, copies of the required policies and endorsements to them). Evidence of renewals must be provided to the Subcontract Administrator no later than five days before an expiration date. The required policies shall contain an endorsement to the effect that any cancellation or any material change adversely affecting Company's interest shall not be effective until 30 days after the insurer gives written notice to Company.

16. PAYMENT. (a) Estimates shall be made monthly of the amount and value of the work performed by the Seller that meets the standards of quality established under this subcontract. The estimates shall be prepared by the Seller and accompanied by any supporting data required by the Subcontract Administrator.

(b) Upon approval of the estimate by the Company, payment upon properly executed vouchers shall be made to the Seller, as soon as practicable, of 90 percent of the approved amount, less all previous payments; *provided*, that payment may be made in full during any months in which the Subcontract Administrator determines that performance has been satisfactory. Also, whenever the Subcontract Administrator determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Company, the Subcontract Administrator may release the excess amount to the Seller.

(c) Before final payment under the subcontract, or before settlement upon termination of the subcontract, and as a condition precedent thereto, the Seller shall execute and deliver to the Subcontract Administrator a release of all claims against the Company arising under or by virtue of the subcontract, other than any claims that are specifically excepted by the Seller from the operation of the release in amounts stated in the release.

17. TRAVEL REIMBURSEMENT. If travel is a line item of the subcontract, the Seller will be reimbursed for travel expenses in accordance with the Company "Travel Reimbursement Policy (FEB 2006)" clause, which is incorporated by reference, up to the amount allowed by the clause or any ceiling amount specified in the subcontract, whichever is less.

18. 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.

19. 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.

20. 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.

21. 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.

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

23. DESIGN WITHIN FUNDING LIMITATIONS. (a) The Seller shall accomplish the design services required under this subcontract so as to permit the award of a subcontract for construction of the facilities designed at a price that does not exceed the estimated construction subcontract price set forth in this subcontract. When bids or proposals for the construction subcontract are received that exceed the estimated price, the Seller shall perform such redesign and other services as are necessary to permit subcontract award within the funding limitation. These additional services shall be performed at no increase in the price of this subcontract. However, the Seller shall not be required to perform such additional services at no cost to the Company if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) The Seller will promptly advise the Subcontract Administrator if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Company will review the Seller's revised estimate of construction cost. The Company may, if it determines that the estimated construction subcontract price set forth in this subcontract is so low that award of a construction subcontract not in excess of such estimate is improbable, authorize a change in scope or

materials as required to reduce the estimated construction cost to an amount within the estimated construction subcontract price set forth in this subcontract, or the Company may adjust such estimated construction subcontract price. When bids or proposals are not solicited or are unreasonably delayed, the Company shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

24. RESPONSIBILITY OF THE ARCHITECT-ENGINEER. (a) The Seller shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Seller under this subcontract. The Seller shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

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

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

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

25. SELLER-FURNISHED DESIGN AND TECHNICAL DOCUMENTS. (a) Seller shall prepare its design, drawings, specifications, and other technical requirements using the Scope of Work, technical documents, and drawings as a basis. Company will, at the times and places specified by Company, convene meetings to review Seller's progress. Seller shall provide qualified technical personnel to participate in such reviews.

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

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

27. REQUIREMENTS FOR REGISTRATION OF DESIGNERS. Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States

shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

28. STANDARDS AND CODES. In case of any conflict between any referenced standards and codes and any Agreement provisions, Seller shall immediately notify Company of such conflict together with a recommendation for resolution. Company shall confirm the Agreement requirement in writing or direct an alternative solution in accordance with the Changes clause of this Agreement.

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

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

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

30. 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.

31. SUSPENSION OF WORK. (a) The Subcontract Administrator may order the Seller, in writing, to suspend, delay, or interrupt all or any part of the work of this subcontract for the period of time that the Subcontract Administrator determines appropriate.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Subcontract Administrator in the administration of this subcontract, or (2) by the Subcontract Administrator's failure to act within the time specified in this subcontract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this subcontract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the subcontract modified in writing

accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Seller, or for which an equitable adjustment is provided for or excluded under any other term or condition of this subcontract.

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

(1) For any costs incurred more than 20 days before the Seller shall have notified the Subcontract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the subcontract.

32. 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 the services to be performed.

(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.

(f) No services for which an additional cost or fee will be charged by the Seller shall be furnished without the prior written authorization of the Subcontract Administrator.

33. SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS. Any subcontractors and outside associates or consultants required by the Seller in connection with the services covered by the subcontract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Seller shall obtain the Subcontract Administrator's written consent before making any substitution for these subcontractors, associates, or consultants.

34. 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.

35. 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.

36. 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](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 Y12 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 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.

37. 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.

38. TERMINATION. (a) The Company may terminate this subcontract in whole or, from time to time, in part, for the Government's convenience or because of the failure of the Seller to fulfill the subcontract obligations. The Company shall terminate by delivering to the Seller a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Seller shall—

(1) Immediately discontinue all services affected (unless the notice directs otherwise); and

(2) Deliver to the Subcontract Administrator all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this subcontract, whether completed or in process.

(b) If the termination is for the convenience of the Government, the Subcontract Administrator shall make an equitable adjustment in the subcontract price but shall allow no anticipated profit on unperformed services.

(c) If the termination is for failure of the Seller to fulfill the subcontract obligations, the Company may complete the work by contract or otherwise and the Seller shall be liable for any additional cost incurred by the Company.

(d) If, after termination for failure to fulfill subcontract obligations, it is determined that the Seller had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

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

39. 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 52.222-21 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/eo.htm>)
- FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other eligible Veterans (DEC 2001)
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
- FAR 52.222-37 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 52.244-6 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)
- Exhibit 21 - Rights in Data – Facilities (6/01) (Company)
- Taxes: Fixed-Price (11-96) (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)
- 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 52.223-14 Toxic Chemical Release Reporting (AUG 2003), except paragraph (e)
- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)
- Exhibit 3 – Authorization and Consent (7/95) (Company)

(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)