

GENERAL TERMS & CONDITIONS
Time & Material (TM 11/00)

PART 1. APPLICABLE TO ALL TRANSACTIONS

1.1 DEFINITIONS

The following terms shall have the meanings below:

(a) Government means the United States of America and includes the 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.

(d) Agreement means Purchase Order, Subcontract, Price Agreement, Basic Ordering Agreement, or Modification thereof.

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

(f) Educational Institution means those entities described in Office of Management and Budget Circular No. A-21.

1.2 RESOLUTION OF DISPUTES

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

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

(c) The parties agree that, subject to (b)(1), substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of Tennessee except for Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses which shall be determined in accordance with federal law. Article 2 of the Uniform Commercial Code as adopted by the state law governing substantive issues shall apply to services performed under this Agreement.

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

1.3 ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Articles of the Subcontract 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.

1.4 TITLE AND ADMINISTRATION

Any right and/or interest which is acquired under the terms of this Agreement shall pass directly from Seller to the Government. Company shall make payments under this Agreement from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. Administration of this Agreement may be transferred, in whole or in part, to DOE or its designee(s), and to the extent of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

1.5 ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement or performing the services and/or delivering the supplies identified 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. All rights and obligations shall survive final performance of this Agreement.

1.6 WARRANTY

Except for **research** and **development**, and notwithstanding inspection and acceptance by the Company under any provision of this Agreement, Seller warrants that services performed and the supplies furnished under this Agreement shall be free from defects in workmanship, be in accordance with Seller's affirmation, description, sample, or model, and compliant with all requirements of this Agreement. The warranty for services shall begin on acceptance and extend for 6 months. The warranty for supplies shall begin upon acceptance and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if Seller is not the manufacturer and has not modified the supply or (2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer of the supply or has modified it. If any nonconformity appears within that time, Company, in addition to any other rights and remedies provided by law, or under other provisions of this Agreement, may require Seller, at no increase in price, to (1) reperform the services and correct or replace the supplies or (2) reduce the Agreement price to reflect the reduced value of Seller's performance. When supplies are returned, Seller shall bear the transportation cost. If within 10 days of Company's written notice, Seller fails to reperform or correct or replace, as required, Company shall have the right by contract or otherwise to perform the services, replace or correct such supplies, and charge to Seller the cost occasioned the Company thereby and/or terminate this Agreement for default. Any implied warranties of merchantability and fitness for a particular purpose are hereby disclaimed.

1.7 ASSIGNMENT

Seller shall not assign rights or obligations to third parties without the prior written consent of Company. However, Seller may assign rights to be paid amounts due or to become due to a financing institution if Company is promptly furnished written

notice and a signed copy of such assignment.

1.8 NEW MATERIALS

Unless this Agreement otherwise requires virgin material or supplies composed of or manufactured from virgin material, Seller shall provide supplies that are new. Used, reconditioned, remanufactured supplies, or unused former Government surplus property shall not be used unless Company has authorized use of such items. Applicable meanings of new, reconditioned, recovered material, remanufactured, and virgin material are defined in FAR 52.211-5, Material Requirements.

1.9 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.

1.10 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.

1.11 PAYMENT

(a) Company shall pay Seller upon submission of approved invoices: (1) The amounts for hourly rates computed by multiplying the appropriate hourly rates prescribed in the Agreement by the number of direct labor hours (DLH) performed. Fractional parts of an hour shall be payable on a prorated basis. Invoices may be submitted once each month (or at more frequent intervals if approved by Company). Upon request, Seller shall substantiate invoices by evidence of actual payment and by individual daily job timecards, or other substantiation approved by Company. (2) Unless otherwise prescribed in this Agreement, Company shall withhold five percent of the amounts due under this paragraph, with the total amount withheld not to exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by Seller as provided below. (3) Unless this Agreement prescribes otherwise, hourly rates shall not be varied by virtue of Seller having performed work on an overtime basis. If overtime rates are provided, the premium portion will be reimbursable only to the extent the overtime is approved by Company.

(b) Company shall also pay Seller: (1) Allowable costs of direct materials as determined by Company in accordance with this Agreement and Subpart 31.3 for Educational Institutions, 31.7 for nonprofit organizations, or 31.2 of the FAR for all others as supplemented by Subpart 931.2 of the DEAR in effect on the date of this Agreement. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Seller shall be reimbursed for supplies and services purchased directly only when cash, checks, or other forms of actual payment have been made for such purchased supplies or services. Direct materials, as used in this clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product. (2) The cost of subcontracts authorized under this Agreement shall be reimbursable; *provided*, that the costs are consistent with subparagraph (1) above. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subtier subcontractor in the same manner as for supplies and services purchased directly for this Agreement. (3) To the extent able, Seller shall: (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and (ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of these benefits, Seller shall promptly notify Company and give the reasons. Credit shall be given to Company for such cost reductions, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of Seller, or would have accrued except for the fault or neglect of Seller. The benefits lost without fault or neglect on the part of Seller, or lost through fault of Company, shall not be deducted from gross costs.

(c) Seller agrees to use its best efforts to perform the work specified and all obligations under this Agreement within the ceiling price. Seller shall notify the Subcontract Administrator in writing whenever it has reason to believe that the payments and cost Seller has incurred and expects to incur in the next 30 days, shall exceed 85 percent of the ceiling price in this Agreement. The notice shall include the estimated amount of funds required to continue timely performance with supporting reasons and documentation.

(d) Company is not obligated to pay Seller any amount in excess of the ceiling price in the Agreement, and the Seller shall not be obligated to continue performance if to do so would exceed the ceiling price, and until Company increases the ceiling price. If the ceiling price is increased, any hours expended and material costs incurred by Seller in excess of the ceiling price before the increase, shall be allowable to the same extent as if incurred after the increase, unless Company issues notice directing that the increase is solely to cover termination or other specified expenses.

(e) At any time before final payment Company may have Seller's invoices and substantiating material audited. Any payment may be reduced by amounts found by Company not to have been properly payable. Upon receipt and approval of the invoice designated by the Seller as the "completion invoice" and substantiating material, and upon compliance by Seller with all terms of this Agreement, Company shall promptly pay any balance due. The completion invoice, and substantiating material, shall be submitted by Seller as promptly as practicable following completion of the work, but in no event later than one year from the date of completion.

(f) Seller, and each assignee in effect at the time of final payment under this subcontract, shall execute and deliver, as a condition precedent to final payment, a release discharging Company, the Government, their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Agreement, subject only to claims: (1) in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement, (2) based upon the liabilities to third parties arising out of performing this Agreement, (3) for reimbursement of costs incurred relating to patents. Before final payment Seller and each assignee shall provide an acceptable assignment to Company of refunds, rebates, or credits to or received by Seller or any assignee, that arise under the materials portion of this Agreement.

1.12 COMPLIANCE WITH LAWS

(a) Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent orders, DOE directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this Agreement. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits

including without limitation, underground utility permit requirements. Seller warrants that each chemical substance constituting or contained in items furnished under this Agreement is on the list of substances published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act as amended. With each delivery Seller shall provide Company any applicable Material Safety Data Sheet as required by the Occupational Safety and Health Act and applicable regulations including, without exception, 29 CFR 1910.1200. Seller shall perform the work under this Agreement in a manner that is safe, healthy, and environmentally acceptable, and shall develop and manage a comprehensive program in support of these objectives.

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

1.13 TERMINATION

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

(b) In the event of termination, the Subcontract Administrator shall deliver a notice specifying the extent and effective date. Seller shall immediately: (1) stop all work terminated hereunder; (2) cause any and all of its suppliers and subtier subcontractors to cease work to the extent they relate to the work terminated, and terminate all subcontracts to the extent they relate to the work terminated; (3) transfer and deliver to Company, or use its best efforts to sell, as directed by Company, (i) the fabricated and unfabricated parts, work in process, completed work, supplies, other material produced or acquired for the work terminated, (ii) completed or uncompleted plans, drawings, information, other property that would be required to be furnished to Company had this Agreement been completed, (iii) jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Agreement the cost of which Seller has been or will be reimbursed under this Agreement; (4) complete performance of the work not terminated; (5) reach settlement with all subtier subcontractors who claim monies owed if such settlement is claimed as reimbursable under this Agreement, and obtain approval of Company of such settlements; and, (6) protect and preserve any property in which Company or Government has or may acquire an interest.

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

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

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

1.14 BANKRUPTCY

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

1.15 INCORPORATION BY REFERENCE

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

The following clauses are incorporated by reference:

FAR 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred Suspended, or

Proposed for Debarment (JUL 1995) except for paragraph (b)

FAR 25.215-15 Pension Adjustments & Asset Reversions (DEC 1998)

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 (FEB 1999) (The required poster is available at:

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

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

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

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

FAR 52.225-1 Buy American Act-Balance of Payments Program-Supplies (FEB 2000)

FAR 52.225-13 Restrictions on Certain Foreign Purchases (FEB 2000)

FAR 52.225-8 Duty Free Entry (FEB 2000)

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

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

DEAR 952.204-70 Foreign Travel (FEB 1997) - "Contracting Officer" means DOE

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

DEAR 970.5204-63 Facilities Management (NOV 1997)

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

Taxes: Fixed-Price (Company-11/96)

Counterfeit/Suspect Materials (Company-12/99)

Hazardous Material Identification and Material Safety Data (Company-11/00)

1.16 CHANGES

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

(b) Only the Subcontract Administrator is authorized on behalf of Company to issue changes whether formal or informal. If Seller considers that any direction or instruction by Company personnel constitutes a change, Seller shall not rely upon such instruction or direction without written confirmation from the Subcontract Administrator. Nothing in this clause, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

1.17 SUSPENSION OF WORK

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

(b) Prior to the expiration of the suspension notice, Company shall either: (1) cancel or extend the notice; or (2) terminate the work covered by the notice as provided in Part 1.13 of this Agreement. If the suspension notice is canceled or allowed to expire, Seller shall resume work. Any claim by Seller resulting from a Suspension of Work Notice shall be governed by Part 1.16 of this Agreement.

1.18a PUBLIC RELEASE OF INFORMATION

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

1.18b. CONFIDENTIALITY OF INFORMATION

(a) To the extent that work under this Agreement requires that Seller be given access to confidential or proprietary business, technical, or financial information belonging to the Government or Company, Seller shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by Company in writing. The foregoing obligations, however, shall not apply to (1) information which, at the time of receipt by Seller is in public domain; (2) information which is published after receipt thereof by Seller or otherwise becomes part of the public domain through no fault of Seller; (3) information which Seller can demonstrate was in its possession at time of receipt thereof and was not acquired directly or indirectly from Government or Company; (4) information which Seller can demonstrate was received by it from a third party who did not require Seller to hold it in confidence.

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

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

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

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

I.19 GOVERNMENT PROPERTY

(a) Company may furnish to Seller property as may be required for performance of work under this Agreement, or have Seller acquire such property as mutually agreed. Title to property furnished or acquired shall vest in the Government, and hereafter be referred to as "Government property." If Seller purchases property for which it is entitled to be reimbursed as a direct item of cost, title shall pass to the Government upon delivery of the property to Seller. Title to all other property, the cost of which is reimbursable to Seller, shall pass to the Government upon the earliest of (1) issuance of property for use in performance, (2) processing property for use in performance, or (3) reimbursement of cost of property. Title shall not be affected by the incorporation or attachment to any property not owned by the Government, nor shall any Government property become a fixture or lose its identity because it is affixed to any realty.

(b) Company shall deliver to Seller the Government property stated in this Agreement. If the property is not suitable for its intended use or is not delivered to Seller as specified in this Agreement, Company shall equitably adjust affected provisions when the facts warrant an equitable adjustment and Seller submits a written request for such adjustment within 14 days of delivery of the Government property. Said equitable adjustment shall be Seller's exclusive remedy.

(c) Seller shall establish and maintain a property control program for use, maintenance, repair, protection and preservation of Government property consistent with good business practices and as may be prescribed by Company until disposed of in accordance with this clause. Seller shall cause all Government property to be clearly marked as Government property. Except as may be authorized in writing, Government property shall be used only for the performance of this Agreement.

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

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

1.20 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

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

1.21 INTEREST

All amounts due to Company by Seller shall accrue interest from the date due until paid, unless paid within 30 days of the date due. The interest rate shall be the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) as of the date due, which rate shall be adjusted every six months. This clause shall not apply to amounts due under a price reduction for defective cost or pricing data clause.

1.22 SELLER'S RESPONSIBILITIES

(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 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 arising from the sole conduct of Company.

(c) If Seller is a State agency, such as an **Educational Institution**, all liabilities and remedies shall be determined in accordance with the laws applicable to this Agreement under Part 1.2.

1.23 INSPECTION

(a) Company has the right to inspect and test all services and supplies called for by this Agreement at all places and times, including the period of manufacture or performance, and in any event before acceptance. If Company specifies an inspection system elsewhere in this Agreement, Seller shall provide and maintain an inspection system acceptable to Company covering services and supplies under this Agreement and shall provide only services and supplies that have been inspected in accordance with said system and have been found to conform to the requirements of this Agreement. Complete records of all inspections shall be maintained and made available to Company during performance and for as long as this Agreement requires. Company shall perform inspections and tests in a manner that will not unduly delay the work. Company assumes no contractual obligation to perform any inspection and test for Seller's benefit unless specifically set forth elsewhere in this Agreement. Company failure to inspect the services and supplies shall not relieve Seller from responsibility, nor impose liability on Company, for nonconformity. If Company performs inspection or test on premises of Seller or a subcontractor, Seller shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(b) Except for research and development, Company may reject or require correction of any nonconformity. If Seller is not ready for inspection at the time specified by Seller, or if prior rejection makes reinspection or retest necessary, Company may charge Seller the additional cost of inspection or test. Seller shall not tender for acceptance corrected or rejected services or supplies without disclosing the former rejection or requirement for correction, and shall disclose the corrective action taken.

(d) Except for research and development, Company, in addition to any other rights and remedies provided by law, or under other provisions of this Agreement, may require Seller, at no increase in subcontract price, to (1) reperform the services and correct or replace the supplies at the original point of delivery or at the Seller's plant at the Company's election or (2) reduce the Agreement price to reflect the reduced value of Seller's performance. When supplies are returned, Seller shall bear the transportation cost. If the Seller fails to reperform or correct or replace, as required, within 10 days of Company notice specifying the nonconformity,

Company shall have the right by contract or otherwise to perform the services, replace or correct such supplies, and charge to Seller the cost occasioned the Company thereby and/or terminate this Agreement for cause.

PART 2. APPLICABLE WHEN SELLER PERSONNEL WORK ON DOE SITE

2.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15.

(a) The following clauses are incorporated by reference:

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

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

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

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

Foreign Nationals (Company-12/99)

Hazardous Materials Reporting (Company-11/00)

Insurance - Work on a Government Installation (Company - 1/97)

Required Training (Company-11/00)

Safety and Health (Company- 11/00)

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

3.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15.

(a) The following clauses are incorporated by reference:

DEAR 952.204-2 Security (SEP 1997)

DEAR 952.204-70 Classification/Declassification (SEP 1997)

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

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

Exhibit 7 - Classified Inventions (Company 5/80)

FAR 52.227-10 Filing of Patent Applications - Classified Subject Matter (APR1984)

DEAR 970.5204-1 Security - Counterintelligence (SEP 1997)

3.2 SENSITIVE FOREIGN NATIONS CONTROLS

(a) In connection with any activities in the performance of this Agreement, Seller agrees to comply with the "Sensitive Foreign Nations Controls" requirements furnished to Seller by Company, relating to those countries, which may from time to time, be identified to Seller by written notice as sensitive foreign nations. Seller shall have the right to terminate its performance under this Agreement upon at least 60 days' prior written notice to Company if Seller determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance to continue performance of the work under this Agreement as a result of such notification. If Seller elects to terminate performance, the provision of Part 1.13 shall apply.

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

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

4.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15.

The following clauses are incorporated by reference:

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995)

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

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

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

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

FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 1995)

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

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

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

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

5.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15.

The following clauses are incorporated by reference:

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

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

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

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

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

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

PART 6. APPLICABLE ONLY TO CERTAIN AGREEMENTS

6.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15.

6.2 PRINTING

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

6.3 NUCLEAR HAZARDS INDEMNITY

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

6.4 PRIVACY ACT

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

6.5 COMMERCIAL COMPUTER SOFTWARE

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

6.6 EQUAL OPPORTUNITY PREAMBLED CLEARANCE OF SUBCONTRACTORS

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