GENERAL TERMS & CONDITIONS
Time and Materials (TM FEB 2007)

CONTENTS ..... PAGE

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

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

(b) Company means BWXT Y-12, L.L.C., acting under Contract No. DE-AC05-00OR22800.

(c) Seller means the person or organization that has entered into this Agreement with the Company.

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

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

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

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

2. ORDER OF PRECEDENCE. Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Articles of the Subcontract or provisions of the Purchase Order (including alterations and special provisions therein), (2) Special Terms and Conditions attached thereto, (3) General Terms and Conditions, (4) Statement of Work or description of services and/or supplies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. WORK SCHEDULE. (a) BWXT Y-12 has adopted a work schedule of four ten-hour days, Monday through Thursday. Shifts begin at 6:00 a.m., 6:30 a.m., 7:00 a.m., 7:30 a.m., 8:00 a.m., or 8:30 a.m. Seller employees working on site at Y-12 must adopt the work schedule of four ten-hour days and must work shifts acceptable to their Subcontract Technical Representatives.

(b) Shipments will not be received at Y-12 on Fridays. Shipments will be received Mondays through Thursdays from 7:00 a.m. to 1:30 p.m. (7:00 a.m. to 11:00 a.m. for hazardous materials).

(c) The Seller must include this clause in subcontracts requiring work to be performed on site at Y-12.

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

(b) Alcohol. Alcoholic beverages are prohibited.

(c) Cell phones. (1) Cellular telephones that are not owned by the Government or BWXT Y-12, LLC are prohibited without prior written approval obtained through the Subcontract Technical Representative (STR). Cellular telephones may be secured in the owner's private vehicle within parking areas at the Y-12 National Security Complex and at leased sites. They should remain secured at all times while within the Blue Line (229 boundary) of Y-12 unless required to report a personal emergency within the 229 boundary. A personal emergency is an immediate need for assistance (e.g., an after-hours car – deer accident, a car

breakdown, an acute health condition such as a heart attack, etc.). In a personal emergency, the personal cellular telephone should be used to contact the Y-12 Plant Shift Superintendent's Office (574-7172). Calling 911 from a cellular telephone will not notify BWXT Y-12 of an emergency, though Company emergency resources would be the closest respondent. Therefore, calling 911 instead of 574-7172 is inappropriate.

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

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

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

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

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

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

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

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

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

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

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

12. DOE SECURITY BADGES. (a) Security badges issued by the Company to Seller employees and Seller's lower-tier subcontractor employees are Government property. The Seller must ensure that badges issued to its employees and employees of its subcontractors at all tiers are returned to the Company. Employees must return badges upon expiration of this agreement, termination of employment, or when access to the Y-12 National Security Complex is no longer needed. Employees holding an L or Q clearance must attend a security termination debriefing conducted by the Company when returning badges. When possible, the Seller must notify the STR three workdays before an employee holding an L or Q clearance will be returning a badge so that debriefings may be scheduled.

(b) The Seller must immediately notify the Subcontract Administrator in writing when a badge of its employee or the employee of a lower-tier subcontractor is lost or stolen. These employees must report in person to the Visitor Center badging office to complete an affidavit concerning the loss or theft and to obtain replacement badges.

(c) The Seller must immediately notify the Subcontract Administrator in writing whenever any employee of Seller or a lower-tier subcontractor who has been badged under this Agreement terminates employment or no longer needs access to the Complex.

(d) The Seller must ensure that its emp loyees and its lower-tier subcontractors' employees complete the *BWXT Y-12 Subcontractor Personnel Exit Checklist*, Form UCN- 4452S, before exiting the site. The employee must take the completed Checklist and badge to the Visitor Center badging office. If the Visitor Center is closed (hours of operation are Monday-Thursday 6:00 a.m. to 4:30 p.m.) the employee may leave the Checklist and badge with the STR. (In such cases alternate debriefing arrangements will be made for employees holding an L or Q clearance.) The Checklist, signed by the STR or an authorized representative of Personnel Security, is acceptable proof to the Company that a badge has been returned.

(e) Seller's payment may be withheld until all requirements of this clause have been met. Failure by employees of the Seller and its lower-tier subcontractors to return badges will result in a charge of $500 per badge, to be withheld from payment or billed to the Seller. This $500 charge will not be assessed against badges that are lost or stolen during performance if replacement badges are issued to allow Seller or lower-tier subcontractor employees to return to work.

(f) On the last Thursday of each month, the Seller shall submit to the STR a Subcontract Badge Status report for that month on Form UCN-21709.

13. INDEPENDENT CONTRACTOR (a) Seller shall act in performance of this Agreement as an independent contractor and not as an agent for Company or the Government in performing this Agreement, maintaining complete control over its employees and all lower-tier subcontractors. Nothing contained in this Agreement or any lower-tier subcontract shall create any contractual relationship between any such lower-tier subcontractor and the Government or Company. Seller is solely responsible for the actions of itself and its lower-tier subcontractors, agents or employees.

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

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

15. EXPORT CONTROL. (a) The Seller must comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement. In the absence of available license exemptions or exceptions, the Seller must obtain required licenses or other approvals for exports of hardware, technical data, and software, or for the provision of technical assistance.

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

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

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

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

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

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

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

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

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

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

18. PAYMENT. The Company will pay the Seller as follows upon the submission of invoices approved by the Company:

(a) Hourly rate. (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Agreement by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. 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 the Subcontract Administrator). The Seller shall substantiate invoices by evidence of actual payment and by individual daily job timecards, or other evidence approved by the Subcontract Administrator. Promptly after receipt of each substantiated invoice, the Company shall, except as otherwise provided in this Agreement, and subject to the terms of paragraph (e) of this clause, pay the voucher as approved by the Company.

(2) The Subcontract Administrator may unilaterally issue a change order requiring the Seller to withhold amounts from its billings until a reserve is set aside in an amount that the Company considers necessary to protect its and the Government's interests. The Subcontract Administrator may require withholding of 5 percent of the amounts due under paragraph (a)(1), but the total amount withheld shall not exceed $50,000. The amounts withheld shall be retained until the Seller executes and delivers the release required by paragraph (f) of this clause.

(3) Unless the Agreement prescribes otherwise, the hourly rates in the Agreement shall not be varied by virtue of the Seller's having performed work on an overtime basis. If no overtime rates are provided in the Agreement and overtime work is approved in advance by the Subcontract Administrator, overtime rates shall be negotiated. If the Agreement provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Subcontract Administrator.

(b) Materials and subcontracts. (1) The Company will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this Agreement. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.

(2) The Seller may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Seller's usual accounting practices consistent with Subpart 31.2 of the FAR.

(3) The Company will reimburse the Seller for supplies and services purchased directly for the Agreement when the Seller—

(i) Has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or

(ii) Will make these payments determined due—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Seller's payment request to the Company.

(4)(i) The Company will reimburse the Seller for costs of subcontracts that are authorized under the Subcontracts clause of this Agreement, provided that the costs are consistent with paragraph (b)(5) of this clause.

(ii) The Company will limit reimbursable costs in connection with subcontracts to the amounts paid for supplies and services purchased directly for this Agreement when the Seller has made or will make payments determined due of cash, checks, or other forms of payment to the subcontractor—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Seller's payment request to the Company.

(iii) The Company will not reimburse the Seller for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

(5) To the extent able, the 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 the benefits, the Seller shall promptly notify the Subcontract Administrator and give the reasons. The Seller shall give credit to the Company for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Seller, or would have accrued except for the fault or neglect of the Seller. The Seller shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Seller, or lost through fault of the Company.

(c) Total cost. It is estimated that the total cost to the Company for the performance of this Agreement shall not exceed the ceiling price set forth in the Agreement, and the Seller agrees to use its best efforts to perform the work and all obligations under this Agreement within the ceiling price. If at any time the Seller has reason to believe that the hourly rate payments and material costs that will accrue in performing this Agreement in the next succeeding 30 days, if added to payments and costs previously accrued, will exceed 85 percent of the ceiling price, the Seller shall notify the Subcontract Administrator, giving a revised estimate of the total price to the Company for performing this Agreement with supporting reasons and documentation. If at any time during performance the Seller has reason to believe that the total price will be substantially greater or less than the then stated ceiling price, the Seller shall so notify the Subcontract Administrator, giving a revised estimate of the total price, with supporting reasons and documentation. If at any time during performance, the Company has reason to believe that the work to be required will be substantially greater or less than the stated ceiling price, the Subcontract Administrator will so advise the Seller, giving the then revised estimate of the effort to be required.

(d) Ceiling price. The Company shall not be obligated to pay the 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 set forth in the Agreement, unless the Subcontract Administrator notifies the Seller in writing of a revised ceiling price. When the ceiling price has been increased, any hours expended and material costs incurred by the Seller in excess of the ceiling price before the increase shall be allowable to the same extent

as if the hours had been expended and material costs had been incurred after the increase.

(e) Audit. At any time before final payment under this Agreement the Subcontract Administrator may request audit of the invoices and substantiating material. Each payment previously made may be reduced by amounts that are found by the Subcontract Administrator not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the invoice designated by the Seller as the "completion invoice" and substantiating material, and upon compliance by the Seller with all terms of this Agreement [including, without limitation, terms relating to patents and paragraphs (f) and (g) of this clause], the Company shall promptly pay any balance due the Seller. The completion invoice and substantiating material shall be submitted by the Seller as promptly as practicable following completion of the work under this Agreement, but in no event later than one year (or such longer period as the Subcontract Administrator may approve in writing) from the date of completion.

(f) Assignment. The Seller, and each assignee under an assignment entered into under this Agreement and in effect at the time of final payment under this Agreement, shall execute and deliver, as a condition precedent to final payment under this Agreement, a release discharging the 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 the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Seller.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Seller to third parties arising out of performing this Agreement, that are not known to the Seller on the date of the execution of the release, and of which the Seller gives notice in writing to the Subcontract Administrator not more than six years after the date of the release or the date of any notice to the Seller that the Company is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Seller by reason of its indemnification of the Company and the Government against patent liability), including reasonable incidental expenses, incurred by the Seller under the terms of this Agreement relating to patents.

(g) Refunds. The Seller agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Seller or any assignee, that arise under the materials portion of this Agreement and for which the Seller has received reimbursement, shall be paid by the Seller to the Company. The Seller and each assignee, under an assignment entered into under this Agreement and in effect at the time of final payment under this Agreement, shall execute and deliver, at the time of and as a condition precedent to final payment under this Agreement, an assignment to the Company of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Subcontract Administrator.

19. INTEREST. *(This clause does not apply if Seller is a nonprofit organization or a state or local government or instrumentality.)* All amounts that become payable to Company by Seller under this Agreement shall bear simple interest from the date due until paid, unless paid within 30 days of the date due. The interest rate shall be the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) as of the date due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. This clause shall not apply to amounts due under a price reduction for defective cost or pricing data clause or a cost accounting standards clause.

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

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

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

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

22. RESOLUTION OF DISPUTES . (a) Seller and Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Oak Ridge, Tennessee, 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.

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

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

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

(1) Cancel the stop-work order; or

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

(b) If the order is canceled or expires, the Seller shall resume work. The Company shall make an equitable adjustment in the delivery schedule or price, or both, and the Agreement shall be modified, in writing, accordingly, if the stop-work order results in an increase in the time required for, or cost properly allocable to, performance of this Agreement.

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

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

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

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

(2) Method of shipment or packing.

(3) Place of delivery of supplies.

(4) Description of services to be performed.

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

(6) Place of performance of the services.

(7) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this Agreement, whether or not changed by the order, or otherwise affects any other terms and conditions of this Agreement, the Company will make an equitable adjustment in any one or more of the following and will modify the Agreement accordingly:

(1) Ceiling price.

(2) Hourly rates.

(3) Delivery schedule.

(4) Other affected terms.

(c) 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.

(d) 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.

(e) 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.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

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

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

(vii) A negotiation memorandum reflecting—

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

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

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

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

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

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

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

(2) The Seller is not required to notify the Subcontract Administrator in advance of entering into any subcontract for which consent is not required under this clause.

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

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

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

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

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

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

27. 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.

28. INSPECTION. (a) Definitions. As used in this clause—

"Seller's managerial personnel" means any of the Seller's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

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

(2) All or substantially all of the Seller's operation at any one plant or separate location where this Agreement is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this Agreement.

"Materials" includes data when this Agreement does not include a Warranty of Data clause.

(b) The Seller shall provide and maintain an inspection system acceptable to the Company covering the material, fabricating methods, work, and 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 of this Agreement and for as long afterwards as the Agreement requires.

(c) The Company has the right to inspect and test all materials furnished and services performed under this Agreement, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Company may also inspect the plant or plants of the Seller or any subcontractor engaged in performance of this Agreement. The Company shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Company performs inspection or test on the premises of the Seller or a subcontractor, the Seller shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the Agreement, the Company shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(f) At any time during performance, but not later than six months (or such other time as may be specified in the Agreement) after acceptance of the services or materials last delivered under this Agreement, the Company may require the Seller to replace or correct services or materials that at time of delivery failed to meet Agreement requirements. Except as otherwise specified in paragraph (h) of this clause, the cost of replacement or correction shall be determined under the Payments clause of this Agreement, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Seller shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g) If the Seller fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Company), the Company may—

(1) By contract or otherwise, perform the replacement or correction, charge to the Seller any increased cost, or deduct such increased cost from any amounts paid or due under this Agreement; or

(2) Terminate this Agreement for default.

(h) Notwithstanding paragraphs (f) and (g) of this clause, the Company may at any time require the Seller to remedy by correction or replacement, without cost to the Company, any failure by the Seller to comply with the requirements of this Agreement, if the failure is due to—

(1) Fraud, lack of good faith, or willful misconduct on the part of the Seller's managerial personnel; or

(2) The conduct of one or more of the Seller's employees selected or retained by the Seller after any of the Seller's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this Agreement.

(j) The Seller has no obligation or liability under this Agreement to correct or replace materials and services that at time of delivery do not meet Agreement requirements, except as provided in this clause or as may be otherwise specified in the Agreement.

(k) Unless otherwise specified in the Agreement, the Seller's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

29. SPECIFICATIONS AND DRAWINGS. (a) Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the

specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Subcontract Administrator, who shall promptly make a determination in writing. Any adjustment by the Seller without such a determination shall be at its own risk and expense.

(b) "Shop drawings" means drawings submitted to the Company by the Seller or any lower-tier subcontractor showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (*i.e.,* fit and attachment details) of materials or equipment. The term includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Seller to explain in detail specific portions of the work. The Company may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Agreement.

(c) If this Agreement requires shop drawings, the Seller shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with requirements of this Agreement and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Company without evidence of the Seller's approval may be returned for resubmission. The Company will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate its reasons therefor. Any work done before such approval shall be at the Seller's risk. Approval by the Company shall not relieve the Seller from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Agreement, except with respect to variations described and approved in accordance with paragraph (d) of this clause.

(d) If shop drawings show variations from the requirements of this Agreement, the Seller shall describe such variations in writing, separate from the drawings, at the time of submission. If the Company approves any such variation, the Company shall issue an appropriate modification to this Agreement, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

30. SUSPECT/COUNTERFEIT ITEMS. (a) Definitions. (1) A suspect item is one that visual inspection, testing, or other means indicate may not conform to established Government or industry-accepted specifications or national consensus standards; or one whose documentation, appearance, performance, material, or other characteristics may have been misrepresented by the supplier or manufacturer.

(2) A counterfeit item is a suspect item that has been copied or substituted without legal right or authority or whose material, performance, or other characteristics are misrepresented by the supplier or manufacturer.

(b)(1) Items furnished under this Agreement are intended for use in a U.S. Department of Energy (DOE) facility. Suspect and counterfeit items in the following categories have been discovered at DOE sites:

- Threaded fasteners, including fasteners in assemblies such as ratchet tie-down straps, and in particular fasteners in critical load paths of lifting equipment such as fixed and mobile cranes, forklifts, scissor lifts, manlifts, balers, truck and dock lifts, elevators, conveyors, and slings.
- Electrical components (circuit breakers, semi-conductors, current and potential transformers, fuses, resistors, switchgear, overload and protective relays, motor control centers, heaters, motor generator sets, DC power supplies, AC inverters, transmitters, GFCI's).
- Piping components (fittings, flanges, valves and valve replacement products, couplings, plugs, spacers, nozzles, pipe supports).
- Materials, including sheet, strip, castings, and other forms, and particularly materials for which welding and heat-treating are required for conformance to specifications.
- Welding rod and electrodes.
- Computer memory modules.

(2) Additional guidance on suspect and counterfeit items and their indicators is available at the DOE web sites http://www.eh.doe.gov/sci and http://www.eh.doe.gov/sci/SCI_Awareness_Training_Manual_12-07-04.pdf

(c) The Seller and its subcontractors and suppliers shall maintain sufficient control to prevent the procurement, installation, use, and delivery of materials and equipment that contain or exhibit suspect or counterfeit item characteristics or conditions.

(d) Notwithstanding any other provision of this Agreement, the Seller warrants that all items furnished under this Agreement shall be genuine, new, and unused unless otherwise specified in writing by the Company. The Seller further warrants that all items used by the Seller in the performance of the work under this Agreement at the Y-12 National Security Complex consist of all genuine, original, and new components, or are otherwise suitable for the intended purpose. The Seller's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Company.

(e) DOE has determined that SAE Grades 5, 8, and 8.2 and ASTM Grade A325 fasteners, identified on DOE's Suspect Bolt Headmark List must not be introduced into DOE facilities. (DOE's Suspect Bolt Headmark List may be seen on the "Procurement" link at http://www.y12.doe.gov .) Therefore, such fasteners shall not be provided as deliverable end items or incorporated into deliverable end items under this Agreement.

(f) (1) No "fastener," as defined by the Fastener Quality Act (the Act), 15 U.S.C. 5401 et seq., shall be supplied to the Company as a deliverable end item or incorporated into deliverable end items unless it exhibits grade-identification markings and manufacturer's insignia required by the Act and implementing regulations of the Department of Commerce at 15 CFR Part 280.

(2) Records of conformance required by the Act shall be provided to the Company by the Seller upon request.

(g)(1)Vehicles and equipment with suspect fasteners described in paragraph (e) above or other suspect/counterfeit items in critical applications are not allowed on DOE sites. (A critical application is one in which failure of the item could potentially result in injury to persons or damage to the property, equipment, or environment.)

(2) The Seller must inspect all vehicles and equipment for suspect/counterfeit items and submit the "Suspect/Counterfeit Item Certification" to the STR before bringing them on site. The required Certification form is available on the "Procurement" link at http://www.y12.doe.gov .

(3) Vehicles and equipment on site owned or controlled by the Seller and found to contain suspect/counterfeit items must not be further used pending a Company evaluation. If the Company determines that the suspect/counterfeit items are in critical applications, the items must be repaired or replaced before the vehicles or equipment may be returned to use. Repair or replacement will be at the Seller's expense.

(h) (1) Molded case circuit breakers that cannot be substantiated by Seller as new, or that give an appearance to Company inspectors or electricians of having been used, refurbished, or reconditioned may be rejected by Company on the basis of appearance alone.

(2) The Company may obtain an opinion from the original manufacturer concerning legitimacy of any molded case circuit breaker furnished under this Agreement. Company may reject any molded case circuit breaker provided by Seller based on the manufacturer's opinion.

(3) (A) If a molded case circuit breaker is not provided by Seller in the original manufacturer's packaging, Seller shall notify Company prior to shipment and shall provide the specific identification and markings of the container(s) to be supplied.

(B) The original manufacturer's markings, date code if used, and labels shall not have been altered or obliterated.

(C) The handle of the molded case circuit breaker shall show the original manufacturer's rating in a "hot stamp" which shall not be subsequently altered or obliterated.

(D) Terminal configuration and hardware shall not have been altered or modified from the original equipment provided by the manufacturer.

(E) All molded case circuit breakers shall be Underwriters' Laboratory (UL) rated, listed, approved, and accordingly labeled.

(i) Equipment or assemblies that consist of or contain electrical components shall exhibit, as applicable, legible amperage and voltage ratings, operating parameters, and the product manufacturer's labels and identification. Electrical components shall exhibit labels from a natioinally recognized testing laboratory.

(j) Materials and equipment delivered under this Agreement shall exhibit the manufacturer's original labels and identification.

(k) The Seller shall indemnify the Company, its agents, and assignees for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts furnished or used under this Agreement that are not genuine, original, and unused, or otherwise not suitable for the intended purpose. The Seller's indemnity includes any financial loss, injury, or property damage resulting directly or indirectly from items furnished or used under this Agreement that are defective, suspect, or counterfeit; or that have been provided under false pretenses; or that are materially altered, damaged, deteriorated, degraded, or result in product failure.

(l) Suspect/counterfeit items furnished under this Agreement will be impounded by the Company. The Seller must promptly replace them with items acceptable to the Company, and the Seller shall be liable for all costs relating to discovery, removal, impoundment, and replacement of materials and equipment that contain or exhibit suspect or counterfeit item characteristics or conditions.

(m) Detection by the Company of any suspect or counterfeit condition may result in an investigation by the U.S. Government.

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

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

31. 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.

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

(1) For the convenience of the Government; or

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

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

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

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of this Agreement.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Company, as directed by the Subcontract Administrator, all right, title, and interest of the Seller under the subcontracts terminated, in which case the Company shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

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

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

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

(ii) The completed or partially completed plans, drawings, information, and other property that, if the Agreement had been completed, would be required to be furnished to the Company; and

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

(7) Complete performance of the work not terminated.

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

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

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

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

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

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

(h) If the Seller and the Subcontract Administrator fail to agree in whole or in part on the amount to be paid because of the termination of work, the Subcontract Administrator shall determine, on the basis of information available, the amount, if any, due the Seller and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include—

(i) An amount for direct labor hours (as defined in the Agreement) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Agreement, less any hourly rate payments already made to the Seller;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Seller;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by the Subcontract Administrator; however, the Seller shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this Agreement; and

(v) The reasonable costs of settlement of the work terminated, including—

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default, include the amounts computed under paragraph (h)(1) of this clause but omit—

(i) Any amount for preparation of the Seller's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Company.

(i) If the termination is partial, the Seller may propose an equitable adjustment of price(s) for the continued portion of the Agreement. The Subcontract Administrator shall make any equitable adjustment agreed upon. Any proposal by the Seller for an equitable adjustment shall be requested within 90 days from the effective date of termination, unless extended in writing by the Subcontract Administrator.

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

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

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

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Seller or sold under this clause and not recovered by or credited to the Company.

(k)(1) The Company may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the Agreement, if the Subcontract Administrator believes the total of these payments will not exceed the amount to which the Seller will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to the Company upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Subcontract Administrator because of the circumstances.

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

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

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

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

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

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

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

(b) "Government" retains its meaning in:

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

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

(3) DEAR 970.5208-1, Printing.

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

- FAR 52.215-15 Pension Adjustments & Asset Reversions (OCT 2004)
- FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (July 2005)
- FAR 52.222-20 Walsh-Healey Public Contracts Act (DEC 1996)
- FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)
- FAR 52.222-26 Equal Opportunity (APR 2002) (The required poster is available at:

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

- FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other eligible Veterans (DEC 2001)
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
- FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
- FAR 52.225-1 Buy American Act --Supplies (JUNE 2003)
- FAR 52.225-8 Duty-Free Entry (FEB 2000)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (MAR 2005)
- FAR 52.244-6 Subcontracts for Commercial Items (DEC 2004)
- FAR 52.247-63 Preference for U.S. Flag Air Carriers (JUNE 2003)
- DEAR 970.5208-1 Printing (DEC 2000)
- Taxes: Fixed-Price (11-96) (Company)
- Hazardous Material Identification and Material Safety Data (AUG 2005) (Company)

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

- DEAR 952.203-70 Whistleblower Protection for Contractor Employees (DEC 2000)
- DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure Records (APR 1984)
- Badging Process for Uncleared Seller Employees (JAN 2006) (Co mpany)
- Foreign Nationals (12-99) (Company)
- Hazardous Materials Reporting (AUG 2005) (Company)
- Insurance - Work on a Government Installation (1/97) (Company)
- Personal Identity Verification for Seller Employees Requiring Security Clearances (DEC 2005) (Company)
- Required Training (11/00) (Company)
- Safety and Health (OCT 2006) (Company)
- Subcontract Administrative Requirements (FEB 2007) (Company)
- Y-12 Appropriate Footwear Policy (OCT 2005)

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

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

(c)(4)The following clauses are incorporated if this Agreement exceeds $100,000:

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

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

- FAR 52.219-9 Small Business Subcontracting Plan (JULY 2005)
- FAR 52.222-29 Notification of Visa Denial (JUNE 2003)
- DEAR 952.226-74 Displaced Employee Hiring Preference (JUN 1997)
- DEAR 970.5226-2 Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for FY1993 (DEC 2000)

(c)(6) The following clauses are incorporated if this Agreement exceeds $650,000:

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