

GENERAL TERMS & CONDITIONS
Commercial Items (CI May 2003)

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 UT-Battelle, LLC, acting under Contract No. DE-AC05-00OR22725 with DOE.

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

(f) Item means "commercial item" and "commercial component" as defined in FAR 52.202-1.

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. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows: (1) Subject to (2) 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; (2) 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.

(b) The parties agree that 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.

(c) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this subcontract pending final resolution of any dispute arising under this subcontract 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 delivering the items 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

Seller warrants that items delivered under this Agreement shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of this Agreement. The warranty 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 item or (2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer of the item or has modified it. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such items or reperform services. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Seller's expense. If repair or replacement or reperformance of services is not timely, Company may elect to return the nonconforming items or repair or replace them or reprocur the services at Seller's expense. 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 otherwise specified in this Agreement, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. This does not exclude the use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

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-AC05-00OR22725. 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 items occurring after the risk of loss has passed to Company, Company shall pay Seller the lesser of (1) the agreed price of such items, or (2) Seller's cost of replacing such items. Such loss shall entitle Seller to an equitable extension in delivery schedule obligations.

1.11 PAYMENT

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

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.

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

1.13 TERMINATION FOR DEFAULT

(a) Company may terminate this Agreement for default, in whole or in part, if, after 10 days from Company's written notice, Seller fails to comply with any of the terms of this Agreement, or fails to provide adequate assurance of future performance. In that event, Company shall not be liable for any amount for items not accepted.

(b) If this Agreement is terminated for default, Company may require Seller to deliver to Company any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Agreement. Company shall pay the agreed-upon price for completed items delivered and accepted. Company and Seller shall agree on the amount of payment for all other deliverables.

(c) Seller shall not be liable to Company for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence. However, the delays of Seller's suppliers at any tier must be proved to be beyond the control of both Seller and its suppliers and without fault or negligence of either.

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

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 number, 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 web site (<http://www.ornl.gov/Procurement/docindex.htm>). 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.html>) for DEAR.

The following clauses are incorporated by reference:

FAR 52.222-26 Equal Opportunity (Feb 1999), (The required poster is available at:
<http://www.dol.gov/dol/esa/public/regs/compliance/posters/eo.htm>)

FAR 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998), and
FAR 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)

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

Counterfeit/Suspect Materials (Company-2/94)

Hazardous Material Identification and Material Safety Data (Company Apr 2000)

Year 2000 Warranty (Company-Apr 2000)

Exhibit 3 - Authorization and Consent (Company 7/95)

Exhibit 5 - Patent Indemnity (Company 4/84)

1.16 ENVIRONMENT, SAFETY AND HEALTH PROTECTION

(a) Seller shall perform this Agreement in a manner that ensures adequate protection for workers, the public, and the environment, and shall be accountable for actions of itself and its lower-tier subcontractors, agents and employees. Seller shall exercise a degree of care commensurate with the work and the associated hazards. Seller shall ensure that management of environment, safety and health (ES&H) functions and activities is an integral and visible part of Seller's work planning and execution process. In the event that Seller fails to comply with this Agreement, Company may, without prejudice to any other legal or contractual rights, issue an order stopping all or any part of the work; thereafter a start order for resumption of work may be issued at Company's discretion. Seller shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

(b) If Seller is performing any of the work onsite which is defined as at ORNL or any other DOE or Company owned or leased facility, Seller shall comply with (1) through (6) below.

(1) Seller shall manage and perform work in accordance with a documented Safety Management System (SMS). In fulfilling this requirement, Seller shall (A) comply with the ORNL Integrated Safety Management System (ISMS) program by meeting the ES&H requirements of the subcontract including those specified in the statement of work and the specifications, if any, (B) manage and perform work in accordance with a documented Safety Management Plan consistent with DEAR 970.5223-1, which has been submitted to Company for review and approval, or (C) manage and perform work in accordance with a documented Safety Management Plan consistent with DEAR 970.5223-1 which has been approved by DOE and submitted to Company for review and approval. Until approval by Company is received, Seller shall comply with the ORNL ISMS program.

(2) Seller shall be able to demonstrate through documentation and work practices that its performance of work under this subcontract is in accordance with the Statement of Work and the subcontract specifications, and that its SMS:

(A) defines the scope of work;
(B) identifies and analyzes hazards associated with the work;
(C) develops and implements hazard controls;
(D) performs work within controls; and,
(E) provides feedback to Company and Seller's employees on adequacy of controls and continues to improve safety management.

(3) If Company has notified Seller of a noncompliance with applicable ES&H regulations or requirements pursuant to (f) below, and Seller fails or refuses to immediately correct the ES&H violation, Company may perform, or cause to be performed, the necessary corrective action and unilaterally charge the Seller for the cost thereof. Such charges will be deducted from payments otherwise due the Seller.

(4) Company, acting on behalf of DOE, will maintain individual occupational radiation exposure records as required for Seller's employees for periods they are employed for work under this Agreement. Should Seller choose, in addition, to maintain its own individual occupational radiation exposure records during the performance of work under this Agreement, Seller's records shall be subject to inspection by Company and/or DOE and shall be preserved by Seller until disposal is authorized by Company, or at the option of Seller, delivered to Company upon completion or termination of the Agreement. If Seller exercises the forgoing option, title to such records shall vest in DOE upon delivery.

(5) Reports. (A) The Seller shall report to the Company within two working days of learning of an occupational injury or illness that is recordable under 29 CFR 1904.12(c). Reports shall be made on DOE Form 5484.3, "Individual Accident/Incident Report," which is available at <http://www.ornl.gov/Procurement/docindex.htm>.

(B) Before the fifth day of each month the Seller shall report to the Company the number of hours worked onsite the previous month. Reported hours should not include paid, non-work time such as holidays, vacation, or sick leave. This report shall be made on the "Monthly Report of Hours Worked" form, available at <http://www.ornl.gov/Procurement/docindex.htm>

(C) The Seller shall forward reports from lower-tier subcontractors to the Company.

(6) Seller may not bring to or use onsite any hoisting and rigging equipment that contains any SAE Grades

5,8, or 8.2 fasteners or ASTM Grade A325 fasteners identified on the "DOE Suspect Bolt Headmark List" which can be found at Company's Procurement web site (see Part 1.15 for address). For purposes of this paragraph, "hoisting and rigging equipment" means: (i) overhead and gantry cranes as defined in 29 CFR 1910.179; (ii) crawler, locomotive, and truck cranes as defined in 29 CFR 1910.180; derricks, as defined in 29 CFR 1910.181; and associated lifting devices such as slings, lifting fixtures, and lifting attachments.

(c) If work is going to be performed at the Seller's facility, Seller shall perform work in accordance with its own ES&H requirements and any ES&H requirements included in this subcontract.

(d) If work is going to be performed at a third-party facility, which is a facility not owned or leased by DOE, Company or Seller, the Seller shall follow the ES&H requirements pertaining to the third-party facility and any ES&H requirements of this subcontract.

(e) If Seller is performing any of this work outdoors at a location(s) not owned or leased by DOE, Company or Seller, such work shall be considered "field work." Seller shall follow the ES&H requirements pertaining to the field work location(s). Seller shall also perform work in accordance with the ES&H requirements of this subcontract.

(f) Company shall notify Seller by a written Notice of Noncompliance of any observed noncompliance with applicable ES&H regulations or requirements including specified requirements of a documented SMS as referenced in (b)(1) above. Seller shall immediately take appropriate corrective action. Seller shall advise Company in writing, within five (5) working days of the corrective action taken.

(g) Seller shall include this clause in all of its subcontracts, at any tier, involving the performance of this Agreement. However, such provision in the subcontracts shall not relieve Seller of its obligation to assure compliance with the provisions of this clause for all aspects of the work.

1.17. EMPLOYEE CONCERNS PROGRAM. (a) DOE has established an Employee Concerns Program (ECP) in DOE Order 442.1 (available at <http://www.explorer.doe.gov/1776/htmls/regs/doe/newserieslist.html>). The ECP applies to any person working for DOE or a contractor or subcontractor on a DOE project. The ECP provides a means for employees to raise good-faith concerns that a policy or practice of DOE or one of its contractors or subcontractors should be improved, modified, or terminated. Concerns can address health, safety, the environment, management practices, fraud, waste, or reprisal for raising a concern.

(b) In addition, the Company has an ECP. Subcontractor employees may raise concerns about actions of the Company or its employees directly with the Company.

(c) The Seller must notify its employees that:

(1) DOE and the Company have ECPs;

(2) Employees are encouraged to first seek resolution with first-line supervisors or through existing complaint or dispute resolution systems, but that they have the right to report concerns through the DOE ECP;

(3) If a concern is not resolved by supervisors, or if the employee elects not to raise the concern with supervisory personnel, the concern may be reported to the DOE Oak Ridge Operations Office (ORO) by calling the ORO Telephone Hotline, (865) 241-3267. Concerns related to actions by Company employees may be reported to the Company by calling (865) 576-2432; and

(4) DOE and the Company will not tolerate reprisals against or intimidation of employees who have reported concerns.

(d) Upon request, the Seller must assist DOE and the Company in resolution of employee concerns.

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

1.18 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 subcontract. In the absence of available license exemptions or exceptions, the Seller must obtain the appropriate licenses or other approvals, if required, 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 the performance of this subcontract, where 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.

1.19 BADGES AND PROXIMITY CARDS

The Seller's employees or subcontractors may require the use of DOE badges and proximity cards issued by the Company in order to perform work under this subcontract. DOE badges and proximity cards remain the property of the U.S. Government and must be returned to the Company upon completion of this subcontract. Failure to do so could result in the loss of future work with the Company.

PART 2. APPLICABLE WHEN ITEMS INCLUDE SERVICES

2.1 APPLICATION OF UNIFORM COMMERCIAL CODE

For the purposes of items that include services, the Uniform Commercial Code Article 2, Parts 1, 3, 5, 6, and 7 as adopted by the State of Tennessee shall apply to this Agreement.

2.2 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 services to be performed; (2) place of performance; and (3) the amount of services to be furnished. If any such change causes a difference in the cost of, 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 of this Agreement.

(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 such 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.

PART 3. APPLICABLE WHEN SELLER PERSONNEL WORK ON DOE SITE INCORPORATION BY REFERENCE

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

The following clauses are incorporated by reference:

- DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites (DEC 2000)
- DEAR 952.203-70 Whistleblower Protection for Contractor Employees (DEC 2000)
- Foreign Nationals (Company-10/99)
- Hazardous Materials Reporting (Company-Apr 2000)
- Insurance - Work on a Government Installation (Company-1/97)
- Required Training (Company-Aug 2000)

PART 4. APPLICABLE WHEN WORK INVOLVES ACCESS TO CLASSIFIED INFORMATION, SPECIAL NUCLEAR MATERIAL OR AUTHORIZED UNRESTRICTED ACCESS TO AREAS CONTAINING THESE

4.1 INCORPORATION BY REFERENCE

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

The following clauses are incorporated by reference:

- DEAR 952.204-2 Security (Sep 1997)
- DEAR 952.204-70 Classification /Declassification (Sep 1997)
- DEAR 952.204-74 Foreign Ownership, Control, or Influence over Contractor (APR 1984)

4.2 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 provisions of Part 5.2 shall apply.

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

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 52.219-8 Utilization of Small Business Concerns (OCT 2000)
- FAR 52.219-9 Small Business Subcontracting Plan (JAN 2002)

5.2 TERMINATION FOR CONVENIENCE

Company reserves the right to terminate this Agreement, or any part hereof, for the convenience of itself or the Government. In the event of such termination, Seller shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work. Subject to the terms of this Agreement, Seller shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Company using its standard record keeping system, have resulted from the termination. Seller shall not be required to comply with the

cost accounting standards or contract cost principles for this purpose. This clause does not give Company or the Government the right to audit Seller's records. Seller shall, within 6 months of the effective date of the termination, submit a final settlement proposal to the Company. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

PART 6. APPLICABLE ONLY TO CERTAIN AGREEMENTS

6.1 NUCLEAR HAZARDS INDEMNITY

If performance involves risk of public liability for a nuclear incident or 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 Seller's subcontractor.

6.2 COMMERCIAL COMPUTER SOFTWARE

If performance involves acquisition of existing computer software, the following Company Exhibit is incorporated by reference: CCS Commercial Computer Software. For information on clauses incorporated by reference, see Part 1.15.

6.3 EQUAL OPPORTUNITY PREAWARD 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.