

GENERAL TERMS & CONDITIONS
Construction (CON March 2009)

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.
- (d) Agreement means Purchase Order, Subcontract, Price Agreement, Basic Ordering Agreement, Task Order, or Modification thereof.
- (e) Subcontract Administrator means Company's cognizant Contracts Division representative.
- (f) Technical Project Officer means the duly authorized Company representative who will administer the field work.
- (g) Day means calendar day unless otherwise specified.
- (h) Seller's Representative means Seller's full-time on-site field representative.

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 Federal law. To the extent there is no Federal law, Tennessee state law shall apply.

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

1.3 ORDER OF PRECEDENCE

Any inconsistencies between sections of the Agreement shall be resolved in accordance with the following descending order of precedence:

- (a) Special Provisions;
- (b) Inspection and Acceptance;
- (c) Agreement Form; Supplies or Services and Prices/Costs; Delivery, Shipping, Packaging; Performance Period/Payment Information; List of Attachments;
- (d) General Provisions;
- (e) Division One of the Specifications;
- (f) The remaining Divisions of the Specifications/Statement of Work.

1.4 PAYMENT AND ADMINISTRATION

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

1.5 ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement or performing hereunder, 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 a waiver 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

(a) In addition to any other warranties in this Agreement, Seller warrants that work performed under this Agreement conforms to the Agreement requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by Seller or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If Company takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date Company takes possession.

(c) Seller shall remedy at Seller's expense any failure to conform, or any defect. In addition, Seller shall remedy at Seller's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of Seller's failure to conform to applicable requirements, or any defect of equipment, material, workmanship, or design furnished.

(d) Seller shall restore any work damaged in fulfilling the terms and conditions of this clause. Seller's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) Company shall notify Seller, in writing, within a reasonable time after the discovery of any failure, defect, or damage. Seller is responsible for ensuring that all work performed by Seller, subcontractors, manufacturers, or suppliers under this clause is in accordance with Part 1.31 Environmental, Safety and Health Protection.

(f) If Seller fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Company shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Seller's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, Seller shall: (1) obtain all warranties that would be given in normal commercial practice; (2) require all warranties to be executed, in writing, for Company's benefit, as directed; and (3) enforce all warranties for Company's benefit, as directed.

(h) In the event Seller's warranty under paragraph (b) of this clause has expired, Seller agrees to subrogate any of its rights and to aid Company in enforcing lower-tier subcontractor's, manufacturer's, or supplier's warranties.

(i) 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.

1.7 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 MATERIALS AND WORKMANSHIP

(a) All equipment, material, and articles incorporated into the work covered by this Agreement shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Agreement.

(b) Seller shall obtain Company approval of the machinery and mechanical and other equipment to be incorporated into the work. When required by Company, Seller shall also obtain Company's approval of the material or articles which Seller contemplates incorporating into the work. When so directed, Seller shall submit samples for approval at Seller's expense. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) References in the specifications or drawings to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Seller may, with Company's written approval, use any equipment, material, article, or process that is equal to that specified, unless the words "No Substitution" follow the listing of the item in the specifications or drawings. Unless otherwise agreed, modifications due to use of "or equal" supplies, is at Seller's expense.

(d) All work under this Agreement shall be performed in a skillful and workmanlike manner. Company may require, in writing, Seller to remove from the work any employee Company deems incompetent, careless, or otherwise objectionable.

1.9a PERFORMANCE AND PAYMENT BONDS -- CONSTRUCTION

(a) Unless the price of this Agreement is \$100,000 or less, the Seller must furnish performance and payment bonds to the Company as follows:

(1) Performance Bonds (either the Company form available under the title *Special Articles and Forms or Exhibits* at <http://www.ornl.gov/adm/contracts/documents.shtml> or Standard Form 25, available at <http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF>, modified to name the Company as well as the United States of America as an obligee). The penal amount shall be 100 percent of the original Agreement price.

(2) Payment Bonds (either the Company form available under the title *Special Articles and Forms or Exhibits* at <http://www.ornl.gov/adm/contracts/documents.shtml> or Standard Form 25-A, available at <http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF>, modified to name the Company as well as the United States of America as an obligee). The penal amount shall be 100 percent of the original Agreement price.

(3) (i) The Company may require additional performance and payment bond protection if the price is increased. The increase in protection shall generally equal 100 percent of the increase in price.

(ii) The Company may secure the additional protection by directing the Seller to increase the penal amount of the existing bond or to obtain an additional bond.

(b) The Seller shall furnish all executed bonds, including any necessary reinsurance agreements, to the Company

within 10 days after receipt of notice of subcontract award unless otherwise specified in the solicitation, but in any event before starting any site work.

(c) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is available at <http://fms.treas.gov/c570/c570.html>.

1.9b ADDITIONAL BOND SECURITY

The Seller shall promptly furnish additional security required to protect the Company, the Government, and persons supplying labor or materials under this Agreement if:

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this Agreement becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The Agreement price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Company; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Seller does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Company may immediately draw on the ILC.

1.9c PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS

Upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this Agreement for which a payment bond has been furnished, the Seller shall promptly provide a copy of such payment bond to the requester.

1.9d ALTERNATIVE PAYMENT PROTECTIONS (Applicable for Agreements between \$25,000 and \$100,000)

(a) The Seller shall submit one of the following payment protections:

(1) A payment bond (either the Company form available under the title *Special Articles and Forms or Exhibits* at <http://www.ornl.gov/adm/contracts/documents.shtml> or Standard Form 25-A, modified to name the Company as well as the United States of America as an obligee); or

(2) An irrevocable letter of credit.

(b) The amount of the payment protection shall be 100 percent of the Agreement price.

(c) The payment protection must be submitted within ten days of award of the Agreement.

(d) The payment protection shall provide protection for the Agreement's period of performance plus one year.

(e) Except for payment bonds, which provide their own protection procedures, the Company is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a non-payment has occurred and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

1.10 SELLER'S REPRESENTATIVE

(a) Seller shall be responsible to Company for acts and omissions of all employees and subcontractors, at any tier, their agents and employees and all other persons performing any work under a subcontract with Seller, at any tier, or who is under the direct supervision of Seller in the performance of the work.

(b) Seller's Representative shall be assigned to the work site and shall have authority to receive notices and instructions on Seller's behalf and shall be in charge of and responsible for the work. Seller's Representative shall render approvals and decisions promptly and furnish information expeditiously and in time to meet required performance schedule.

(c) Seller's superintendence staff not otherwise designated as Key Personnel shall not be removed or replaced without the expressed written permission of Company. In cases where Seller has identified the need to remove or replace these project superintendence personnel, Seller shall notify the Subcontract Administrator in writing 10 days prior to the change. Seller's notification shall be accompanied by resumes of those persons being considered by Seller as replacements. Company shall issue its written approval of all superintendence personnel replacements prior to their assignment to the work.

1.11 PAYMENT

(a) Company shall pay Seller the price as provided in this Agreement.

(b)(1) Company shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by Company, on estimates of work accomplished which meets the standards of quality established under the Agreement, as approved by Company. 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. (2) Pay estimates shall be submitted using the Application and Certificate for Payment form which is available under the title *Special Articles and Forms* at <http://www.ornl.gov/adm/contracts/documents.shtml> by the 20th day of the month. In the preparation of estimates, Company may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to Seller at locations other than the site may also be taken into consideration if (i) consideration is specifically authorized by this Agreement and (ii) Seller furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Agreement. (3) An updated

progress report shall be submitted by Seller with each pay estimate. (4) Before a request for payment is approved, Seller shall submit to the Technical Project Officer all required documents and reports for the work period in question.

(c) In making progress payments, there shall be retained 10% of the estimated amount until final completion and acceptance of the work. However, if Company finds that satisfactory progress was achieved during any period for which a progress payment is to be made, it may authorize any of the remaining progress payments to be made either with a reduced retention or in full without retention. Also, whenever the work is substantially complete, Company, if it considers the amount retained to be in excess of the amount adequate for the protection of Company and the Government, at its discretion, may release to Seller all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Agreement, on which the price is stated separately in the Agreement, payment may be made therefor without retention of a percentage.

(d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as: (1) relieving Seller from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or (2) waiving the right of Company to require the fulfillment of all of the terms of the Agreement.

(e) In making these progress payments, Company shall, upon request, reimburse Seller for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after Seller has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

(f) Company shall pay the final amount due Seller under this Agreement after: (1) completion and acceptance of all work; and (2) Seller has submitted: (i) "Certified-as-Built" shop drawings and manufacturer's data and a bound copy of certified test data and reports; (ii) a certified statement that all payrolls have been submitted under this Agreement; (iii) a properly executed voucher; and (iv) a release of all claims against Company and the Government arising by virtue of this Agreement. Release may also be required of the assignee if Seller claims amounts payable that have been assigned in accordance with Part 1.7.

(g) Company may deduct from any amount owed to Seller any amount owed to Company whether or not in connection with this Agreement.

1.12a 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.

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

1.12b FINES AND PENALTIES

In the event that any actions that result in fines and/or penalties are taken by a local, state, or federal agency against Company or the Government for a regulatory and/or permit noncompliance that resulted from a failure of Seller to perform in accordance with this Agreement or local, state, or federal law, Seller shall reimburse Company or the Government for the amount of the resultant fine and/or penalty including the cost of any additional work required as a result of the enforcement action to the extent caused by Seller's and its lower-tier subcontractors' negligence and/or failure. Company may withhold such amounts from the future payment due Seller.

1.13a TERMINATION FOR DEFAULT

(a) Company may terminate this Agreement, in whole or in part, if Seller (1) fails to supply enough properly skilled workers or proper materials or equipment so as to endanger performance of this Agreement; (2) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Seller and the subcontractors; (3) disregards applicable laws, ordinances, rules, regulations, directives, or orders, or instructions of the Company; (4) fails to adhere to the time specified in this Agreement for performance of services or delivery of supplies; (5) fails to comply with any of the terms of this Agreement; or (6) fails to perform satisfactorily under this Agreement.

(b) Company may take possession and use any materials, tools, equipment and the construction facilities and premises and finish the work by whatever method Company deems expedient at Seller's expense which includes any increased cost incurred that exceeds the Agreement price.

(c) Except for defaults of subtier subcontractors, Seller shall not be in default because of failure to perform if the failure arises from causes beyond Seller's reasonable control and without its fault or negligence. Seller will not be deemed to be in default for failure to perform caused by the failure of a subtier subcontractor if the failure was beyond the control of both Seller and subtier subcontractor and without the fault or negligence of either; however, Seller will be in default if Company directed Seller to purchase these supplies or services from another source and Seller failed to comply. A termination which was originally determined to be for default shall be treated as a termination for convenience if the Seller was not in default. Seller shall, within twenty-four (24) hours of the commencement of any such delay, give to Company written notice thereof and within seven (7) days of commencement of the delay, a written description of the anticipated impact of the delay on performance. Failure to give any of the above notices shall constitute failure to provide adequate assurance of future performance.

(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.

1.13b TERMINATION FOR CONVENIENCE

(a) 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 and take any action that may be necessary, or that Company directs, for the protection of the property related to this Agreement.

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

(c) After termination, Seller shall submit a final termination settlement proposal to Company in the form and with the certification prescribed by Company. Seller shall submit the proposal promptly, but no later than 6 months from the effective date of termination, unless extended in writing by Company upon written request of Seller within this 6 month period. If Seller fails to submit the proposal within the time allowed, Company may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.

(d) 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, have resulted from the termination. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Seller and Company may agree upon the amount to be paid because of the termination. However, the agreed amount may not exceed the Agreement price.

(e) Company shall exclude from the amounts payable to Seller the fair value, as determined by Company, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable.

(f) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, as supplemented by Part 931 of the Department of Energy Acquisition Regulation, in effect on the date of this Agreement, shall govern all costs claimed.

(g) Unless otherwise agreed or required by statute, Seller shall maintain all records and documents relating to the terminated portion of this Agreement for 3 years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this Agreement. Seller shall make these records and documents available to the Government, at Seller's office, at all reasonable times, without any direct charge. If approved by Company, authentic reproductions may be maintained instead of original records and documents.

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 calendar 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.

1.15a 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 under the title *Special Articles and Forms or Exhibits* at <http://www.ornl.gov/adm/contracts/documents.shtml>. 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://acquisition.gov/far/index.html> for FAR and <http://management.energy.gov/DEAR.htm> for DEAR. The following clauses are incorporated by reference:

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/ofccp/regs/compliance/posters/ofccpost.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 (June 1998)

FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)

FAR 52.223-15 Energy Efficiency in Energy-Consuming Products (Dec 2007)

FAR 52.225-8 Duty Free Entry (Feb 2000)

FAR 52.225-9 Buy American Act - Construction Materials (Jan 2005), with the following words inserted in the indicated space in paragraph (b)(2): "The articles listed in FAR 25.104(a) that are acquired as construction materials."

FAR 52.225-13 Restrictions on Certain Foreign Purchases (Dec 2003)

FAR 52.227-1 Authorization and Consent (Dec 2007)

FAR 52.227-4 Patent Indemnity-Construction Contracts (Dec 2007)

FAR 52.244-6 Subcontracts for Commercial Items (July 2004)

FAR 52.247-63 Preference for U.S.-Flag Air Carriers (June 2003)

FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003)
Exhibit 9 - Technical Data (Company – Nov 2000)
Taxes: Fixed-Price (Company – July 2006)
Confidentiality of Information (Company – June 2007)
Counterfeit/Suspect Materials (Company – July 2006)
Hazardous Material Identification and Material Safety Data (Company – July 2006)
Insurance – Form 2 (Company – December 2007)
Protection of Personally Identifiable Information (PII) (Company – Mar 2008)

1.15b LABOR STANDARDS

The following provisions are applicable to construction of public building and works as defined in FAR Part 22 and apply to this Agreement as if they were set forth in their entirety. For information on clauses incorporated by reference, see Part 1.15.

FAR 52.222-6 Davis-Bacon Act (July 2005) (The required poster is available at:
<http://www.dol.gov/esa/whd/regs/compliance/posters/davis.htm>.)
FAR 52.222-7 Withholding of Funds (Feb 1988)
FAR 52.222-8 Payrolls and Basic Records (Feb 1988)
FAR 52.222-9 Apprentices and Trainees (July 2005)
FAR 52.222-10 Compliance with Copeland Act Requirements (Feb 1988)
FAR 52.222-11 Subcontracts (Labor Standards) (July 2005), including submission of a completed Statement and Acknowledgement Form (SF 1413)
FAR 52.222-12 Contract Termination - Debarment (Feb 1988)
FAR 52.222-13 Compliance with Davis-Bacon and Related Act Regulations (Feb 1988)
FAR 52.222-14 Disputes Concerning Labor Standards (Feb 1988)
FAR 52.222-15 Certification of Eligibility (Feb 1988)
FAR 52.222-27 Affirmative Action Compliance Requirements for Construction (Feb 1999)

1.16 CHANGES

(a) Company may at any time, by written notice, make changes within the general scope of this Agreement in any one or more of the following: (1) specifications (including drawings and designs), (2) method and manner of performance, (3) government furnished facilities, equipment, materials, services and (4) acceleration in performance. If any such change causes a difference in the cost, 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 14 calendar 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.

(b) Seller's submission shall include: (1) date, nature and circumstances regarding the change, (2) name of each person knowledgeable about the change, (3) identification of documents and substance of oral communications involving the change, and (4) the particular elements of performance impacted by the change, including (i) adjustment in labor and/or materials, (ii) delay or disruption caused, (iii) estimated resulting price and schedule adjustments, and (iv) time by which Company must respond to minimize cost, delay, or disruption to performance of the work. Failure to agree to any adjustment shall be settled in accordance with Part 1.2.

1.17 SUSPENSION OF WORK

(a) The Subcontract Administrator may, at any time, by written notice to Seller, require Seller to suspend, delay or interrupt all or any portion of the work called for by this Agreement for the period of time the Subcontract Administrator determines appropriate. Upon receipt of written notice, Seller shall immediately comply with its provisions and take all reasonable steps, as directed by the Subcontract Administrator, to minimize the cost associated with such suspension.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended (1) by an act of Company in the administration of this Agreement, or (2) by Company's failure to act within the time specified in this Agreement (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance necessarily caused by the unreasonable suspension, delay, or interruption, and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Seller, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Agreement.

(c) As full compensation for such unreasonable delay, Seller shall be reimbursed, actual costs, reasonably incurred, without duplication, to the extent the cost result solely and directly from the unreasonable period of the suspension. Claim for such reimbursement shall be submitted within 14 calendar days after the termination of the suspension. A claim under this clause shall not be allowed unless the claim, in an amount stated, is submitted timely.

(d) When work has been suspended by Seller for any reason other than Company order, Seller shall give the Company 24 hours advance notice of its intention to resume work. Should Seller resume work without such notification, Company reserves the right to use the work areas as it sees fit for a period of 24 hours after Seller's work is resumed. Delays caused by action of Company due to failure on the part of Seller to comply with these provisions will not constitute a basis for any adjustment in the price or time for completion.

1.18 PUBLIC RELEASE OF INFORMATION

Company does not endorse products or services. Accordingly, Seller agrees not to use Company's name, the name Oak Ridge National Laboratory (ORNL), the name of any of its projects or programs, or identifying characteristics of any of these for advertising, marketing, or other promotional purposes, raising of capital, recommending investments, sale of securities, or in any way that implies endorsement by UT-Battelle, ORNL, or DOE. Any media releases concerning this Agreement are prohibited without written consent of the Subcontract Administrator.

1.19 GOVERNMENT PROPERTY

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

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

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

(d) To the extent not covered by Part 1.22 Seller's Responsibilities, responsibility for loss or damage to Government property shall be determined in accordance with the laws applicable to this Agreement under Part 1.2. Company and the Government shall have access at all reasonable times to the premises where any Government property is located for the purpose of inspecting the property.

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

1.20 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

This is a rated order certified for national defense, and Seller shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700). Unless otherwise indicted the Agreement is rated DO-E1.

1.21 INTEREST

All amounts due to Company by Seller shall accrue interest from the date due until paid, unless paid within 30 calendar days of the date due. The interest rate shall be the Treasury's Current Value of Funds Rate (prescribed and published by the Secretary of the Treasury in Treasury Financial Manual Bulletins), as of the date due, which rate shall be adjusted every six months. This clause shall not apply to amounts due under a price reduction for defective cost or pricing data clause.

1.22 SELLER'S RESPONSIBILITIES

(a) Seller represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the work under this Agreement. 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 responsible for all liability and related costs resulting from (1) injury, death, damage to or loss of property or (2) violation of Part 1.12a Compliance with Laws, which is in any way connected with its performance of work under this Agreement. 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

Company for Seller's conduct. However, such liability and indemnity does not apply to injury, death, or damage to property to the extent it arises from the negligent or willful misconduct of Company.

(c) If Company's costs are determined to be unallowable, its fee reduced, or it incurs any cost or damages as a result of Seller's violation of applicable laws, orders, rules, regulations, or ordinances, or the submission of defective cost or pricing data, Company may make an equivalent reduction in amounts due Seller.

1.23 INSPECTION OF CONSTRUCTION

(a) Seller shall maintain an adequate inspection system and perform such inspections and tests as will ensure that the work called for by this Agreement conforms to the applicable requirements. Seller shall maintain complete inspection and test records and make them available to Company. All work shall be conducted under the general direction of Company and is subject to Company and Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of this Agreement.

(b) Company inspections and tests are for the sole benefit of the Government and do not, relieve Seller of responsibility for providing adequate quality control measures, relieve Seller of responsibility for damage to or loss of the material before acceptance, constitute or imply acceptance, or affect the continuing rights of Company after acceptance of the completed work.

(c) The presence or absence of a Company inspector does not relieve Seller from any requirement, nor is the inspector authorized to change any term or condition of the specification without Company's written authorization.

(d) Seller shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Company. Company may charge to Seller any additional cost of inspection or test when work is not ready at the time specified by Seller for inspection or test, or when prior rejection makes reinspection or retest necessary. Company shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in this Agreement.

(e) Seller shall, without charge, replace or correct work found by Company not to conform to the requirements, unless in the public interest Company consents to accept the work with an appropriate adjustment in price. Seller shall promptly segregate and remove rejected material from the premises.

(f) If Seller does not promptly replace or correct rejected work, Company may replace or correct the work and charge the cost to Seller, or terminate this Agreement for default.

(g) If, before acceptance of the entire work, Company decides to examine already completed work by removing it or tearing it out, Seller, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of Seller or its lower-tier subcontractors, Seller shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet applicable requirements, Company shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(h) Unless otherwise specified in this Agreement, Company shall accept or reject, as promptly as practicable after completion and inspection, all work required by this Agreement or that portion of the work Company determines can be accepted separately.

1.24 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

(a) Seller acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. Seller also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Company, as well as from the drawings and specifications made a part of this Agreement. Any failure of Seller to take the actions described and acknowledged in this paragraph will not relieve Seller from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Company.

(b) Company and Government assume no responsibility for any conclusions or interpretations made by Seller based on the information made available by Company. Nor do the Company and Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Agreement, unless that understanding or representation is expressly stated in this Agreement.

1.25 DIFFERING SITE CONDITIONS

(a) Seller shall promptly, and before the conditions are disturbed, give a written notice to Company of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Agreement, or (2) physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) Company shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so

differ and cause an increase or decrease in Seller's cost of, or the time required for, performing any part of the work under this Agreement, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Agreement modified in writing accordingly.

(c) No request by Seller for an equitable adjustment under this clause shall be allowed, unless the written notice required in paragraph (a) above is timely given.

1.26 PROTECTION OF EXISTING IMPROVEMENTS, EQUIPMENT, UTILITIES, AND ANTIQUITIES

(a) Seller shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the required work. Seller shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance, or by the careless operation of equipment, or by workmen, Seller shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by Company.

(b) Seller shall protect from damage all existing improvements and utilities at or near the work site and on adjacent property of a third party, the locations of which are made known to or should be known by Seller. Seller shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Agreement or failure to exercise reasonable care in performing the work. If Seller fails or refuses to repair the damage promptly, Company may have the necessary work performed and charge the cost to Seller.

(c) Federal law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. Seller shall control the activity at the jobsite to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed. Seller shall report the discovery of any antiquities at the jobsite and, upon discovery of unusual materials (e.g. obsidian chips or flakes, bones, darkly stained soils, "arrowheads"), Seller shall stop work at/or around such materials and notify Company. All wildlife shall be protected from destruction or injury due to Seller's operations.

(d) Should Seller encounter any utilities, lines, or structures not shown on the drawings or not correctly located thereon, it shall immediately stop all work adjacent thereto. Seller shall immediately notify Company, which will issue instructions indicating the method of proceeding. If Seller damages any utility, line, or structure, whether or not shown on the drawings, Company shall be immediately notified.

1.27 OPERATIONAL AND STORAGE AREAS

(a) Seller shall confine all operations (including storage of materials) on Government premises to areas authorized or Company approved.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Seller only with Company approval. Physical protection and maintenance of temporary buildings and utilities are Seller's responsibility. Temporary buildings and utilities shall remain the property of Seller and shall be removed by Seller at its expense upon completion of the work. With Company written consent, buildings and utilities may be abandoned and need not be removed.

(c) Seller shall, under regulations prescribed by Company, use only established roadways, or use temporary roadways constructed by Seller when and as authorized by Company. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, Seller shall protect them from damage. Seller shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

1.28 USE AND POSSESSION PRIOR TO COMPLETION

(a) Company shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, Company shall furnish Seller a list of items of work remaining to be performed or corrected on those portions of the work that Company intends to take possession of or use. However, failure of Company to list any item of work shall not relieve Seller of responsibility for complying with the terms of this Agreement. Company's possession or use shall not be deemed an acceptance of any work under this Agreement.

(b) While Company has such possession or use, Seller shall be relieved of the responsibility for the loss of or damage to the work resulting from Company's possession or use. If prior possession or use by Company delays the progress of the work or causes additional expense to Seller, an equitable adjustment shall be made in the price or the time of completion, and the Agreement shall be modified in writing accordingly.

1.29 CLEANING UP

Seller shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, Seller shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, Seller shall leave the work area in a clean, neat, and orderly condition satisfactory to Company.

1.30 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

(a) Seller shall be furnished the number of drawings and specifications specified in Division One at no cost.

(b) Seller shall keep on the work site a copy of the drawings and specifications and shall at all times give Company access thereto. 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. Within the specifications, Division One shall govern. In case of discrepancy in the figures, in the drawings, or in the remainder of the specifications, the matter shall be promptly submitted to the Technical Project Officer and the Subcontract Administrator, who shall promptly make a determination in writing. Any adjustment by Seller without such a determination shall be at its own risk and expense. Company shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(c)(1) The drawings and specifications incorporated into this Agreement are intended to include everything requisite and necessary to complete the entire work properly, notwithstanding the fact that every item necessarily involved may not be specifically mentioned.

(2) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve Seller from performing such omitted or misdescribed details of the work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(3) The specifications and drawings may identify and list quantities of items to be furnished and installed by Seller. These identifications may be incomplete and the quantities are estimates only. Seller is responsible for furnishing the items and quantities manifestly necessary to carry out the intent of the drawings and specifications.

(4) The drawings furnished by Company are, in general, to scale. Scales shown on a microfilmed reproduced drawing change in proportion to the reduction of the drawing from original size. Figured dimensions shall always be followed and the drawings not scaled.

(5) Prior to fabricating any item (structural steel, piping, ductwork, etc.) Seller shall field-verify all dimensions critical to the installation. Any discrepancies between existing or new conditions and the drawings shall be reported to Company for resolution.

(6) The specifications are divided into sections for convenience only, and such sections do not define or establish the limits of work of any subcontractor. It is Seller's responsibility to define lower-tier subcontractors' limits of work and to ensure that all lower-tier subcontractors and suppliers at whatever level are familiar with all provisions of this Agreement that may affect their work.

(7) The data sheet equipment numbers are not unique. Multiple pieces of equipment may utilize the same number. Seller shall determine the quantity of equipment and material needed to complete the work.

1.31 ENVIRONMENT, SAFETY AND HEALTH PROTECTION

(a) Worker Safety and Health Plans. Seller shall perform work in accordance with a DOE-approved Worker Safety and Health Program (WSHP) (also referred to in DEAR 970.5223-1 as the Safety Management Plan) as described below:

(1) Seller shall demonstrate well-established safety protocols applicable to the scope of work and consistent with the required elements stated in this clause. Prior to the commencement of any work, the Seller shall either:

(A) Accept and agree to work pursuant to Company's DOE-approved WSHP available at http://www.ornl.gov/adm/contracts/wsh_10cfr851.shtml.

(i) Seller shall submit to the Company and obtain approval:

(a) A hazard analysis (HA) of the affected work. Such analyses must:

1. Identify foreseeable hazards and planned protective measures;

2. Address further hazards revealed by supplemental site information (e.g., site characterization data,

as-built drawings);

3. Provide drawings and/or other documentation of protective measures for which applicable Occupational Safety and Health Administration (OSHA) standards require preparation by a Professional Engineer or other qualified professional;

4. Identify competent persons required for workplace inspections of the construction activity, where

required by OSHA standards; and,

5. Address hazards identified in the Statement of Work (SOW) and this Agreement.

(b) A written construction project safety and health plan that addresses how Seller will implement the safety and health requirements of the SOW, this Agreement, the Company's DOE-approved WSHP, and applicable laws and regulations. The plan shall also:

1. Have the level of detail commensurate with the size, complexity and risk level of the construction project.

2. Designate the individual responsible for on-site implementation of the plan and has authority to act on behalf of the Seller. The plan shall state their qualifications.

3. Provide a list of those project activities for which subsequent hazard analyses are to be performed.

(B) Submit its own DOE-approved WSHP that is compliant with 10 C.F.R. § 851 and DEAR 970.5223-1 to the Subcontract Administrator for Company's review and approval. Seller shall submit an HA of the affected work in accordance with (a)(1)(A)(i)(a) of this clause and a written construction project safety and health plan in accordance with (a)(1)(A)(i)(b).

(2) Seller is responsible for complying with applicable Occupational Safety and Health (OSHA) standards and requirements where development of supplemental substance/activity compliance plans and training are required. All plans developed by the Seller shall be made available to the Company for review, upon request.

(3) During periods of active construction, Seller's designated representative shall be present on the construction site. Seller's designated representative must make frequent and regular inspections of the construction worksite to identify any instances of noncompliance with project ES&H requirements.

(4) Seller shall have a disciplinary process for employees failing to utilize appropriate protective measures.

(b) Integrated Safety Management.

(1) Seller shall perform this Agreement in a manner that ensures adequate protection for workers, the public, and the environment, and shall be accountable for the safe performance of work. The Seller shall exercise a degree of care commensurate with the work and the associated hazards. Seller shall ensure that management of ES&H functions and activities is an integral and visible part of Seller's work planning and execution processes. The Seller shall, in the performance of this work, ensure that:

(A) Seller is responsible for the protection of employees, the public, and the environment.

(B) Clear and unambiguous lines of authority and responsibility for ES&H matters are established and maintained at all organizational levels.

(C) Personnel possess the experience, the knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(D) Resources are effectively allocated to address ES&H, programmatic, and operational considerations.

Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(E) Before work is performed, the associated hazards are evaluated and ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(F) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards.

(2) In accordance with the SOW and this Agreement, Seller shall demonstrate through documentation and work practices that its performance of the work under this Agreement:

(A) Fulfill the scope of work as outlined in the SOW and this Agreement;

(B) Identify and analyze hazards associated with the work;

(C) Develop and continuously implement hazard controls related to this work;

(D) Allow the performance of work within the hazard controls; and,

(E) Provide feedback to the Company and Seller's employees on adequacy of hazard controls and opportunities for continuous improvement.

(3) Ensure workers are aware of foreseeable hazards and the protective measures described within the HA prior to beginning work

(c) Exposure Monitoring. Seller shall perform the following additional hazard identification tasks consistent with the WSHP and HA:

(1) Seller shall be responsible for identifying all potential exposures (chemical, biological, radiological, physical) to which its employees and the employees of lower-tier subcontractors may be exposed while performing any work under this Agreement. Seller is responsible for providing the required exposure monitoring and providing employees appropriate personal protective equipment to minimize exposures.

(2) For each of its employees and each of its lower-tier subcontract employees that the Seller has identified to be at risk of potential exposure, the Seller shall notify Company of the potential exposure as part of the HA. Company will review this information before work under this contract can begin.. Seller, upon obtaining the results of any exposure monitoring, shall provide the data to the Company.

(d) Reports. Seller shall make the following reports to the Company.

(1) Seller shall report to the Company within two (2) working days of learning of an occupational injury or illness that is recordable under 29 C.F.R. § 1904.12(c). Reports shall be made on DOE Form 5484.3, *Individual Accident/Incident Report*, which is available under the title *Special Articles and Forms or Exhibits* at <http://www.ornl.gov/adm/contracts/documents.shtml>. Seller shall maintain a record of project injuries and illnesses on the OSHA 300A, *Summary of Work-Related Injuries and Illnesses*, or equivalent, and provide copies of injury and illness information to Company annually or upon request. Seller shall notify the ORNL Laboratory Shift Supervisor (865) 574-6606 of any accident or near miss within two (2) hours of the occurrence. Seller shall also notify the Technical Project Officer of any accident or near miss as required in the SOW or this Agreement.

(2) Before the fifth day of each month, the Seller shall report to the Company the number of hours worked onsite during 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 under the title *Special Articles and Forms or Exhibits* at <http://www.ornl.gov/adm/contracts/documents.shtml>.

(3) Seller shall forward reports from lower-tier subcontractors to the Company consistent with the requirements above.

(e) Noncompliances. The Seller shall promptly evaluate and resolve any noncompliance or potential noncompliance with ES&H requirements. If the Seller fails to resolve the noncompliance or if, at any time, the Seller's acts or failures to act cause substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Company may:

(1) Issue an order stopping work in whole or in part. Any stop work order issued by the Subcontract Administrator under this clause (or issued by the Seller to a subcontractor) shall be without prejudice to any other legal or contractual rights of the Company. If the Subcontract Administrator issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Subcontract Administrator. The Seller shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(2) Require, in writing, that the Seller remove from the work site any employee the Company deems unsafe, incompetent, careless, or otherwise objectionable. Replacement of the removed employee shall be at the Seller's expense and not chargeable to the Company.

(3) Require the Seller's participation, at the Seller's expense, in the Company's fact-finding investigations of accidents, injuries, occurrences, and near-misses.

(4) Terminate the Agreement for default and pursue any other remedies provided by law or this Agreement.

(5) Remove the Seller from consideration for future subcontract awards.

(f) Observation by Company. Representatives of the Company may conduct periodic observations of the Seller's on-site activities for compliance with ES&H requirements. The Company's Subcontract Administrator will notify the Seller in writing of observed noncompliances with applicable ES&H requirements that can not be immediately resolved. Seller shall immediately take appropriate corrective action. Seller shall advise the Company's Subcontract Administrator, in writing, within five (5) working days of the corrective action taken on any written noncompliance. Repeated or willful noncompliance with applicable ES&H requirements by the Seller shall constitute a default under other provisions of this Agreement and Company may terminate the Agreement in accordance with those provisions.

(g) Occupational Radiation Protection Records. Company, acting on behalf of DOE, will maintain individual occupational radiation exposure records as required for Seller's employees for periods that 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.

(h) Chemicals On-site. 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 C.F.R. § 1910.1200.

(i) Hoisting and Rigging. 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 is available under the title *Special Articles and Forms or Exhibits* at <http://www.ornl.gov/adm/contracts/documents.shtml>. For purposes of this paragraph, "hoisting and rigging equipment" means:

- (1) Overhead and gantry cranes as defined in 29 C.F.R. § 1910.179;
- (2) Crawler, locomotive, and truck cranes as defined in 29 C.F.R. § 1910.180;
- (3) Derricks, as defined in 29 C.F.R. § 1910.181; and
- (4) Associated lifting devices such as slings, lifting fixtures, and lifting attachments.

(j) Working on or near energized parts.

(1) Energized parts mean parts that operate at 50 or more volts to ground or contain 10 or more Joules of stored electrical energy.

(2) Seller shall comply with National Fire Protection Association (NFPA) 70E when working on or near energized parts.

(3) Prior to working on or near any energized parts, Seller shall obtain, through the Technical Project Officer, or if there is none, the Subcontract Administrator, the advance approval of the responsible Company Level II Manager, of Seller's plans and proposed activities. Seller must allow in its scheduling for a reasonable amount of time to obtain said approval and Company shall not be responsible for any resulting delay, so long as Company's actions were reasonable. Seller is responsible, at no additional cost to the Company, to provide qualified personnel and compliant personal protective equipment.

(k) Lower-tier Subcontractors. Seller shall include this clause in all of its subcontracts, at any tier, involving 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. Seller shall be responsible for identifying all potential hazards to their lower-tier subcontractors.

1.32 BACKCHARGE WORK

(a) Backcharge work is a cost sustained by Company or the Government and chargeable to Seller for the performance of work which is Seller's responsibility under this Agreement.

(b) Upon identification of an actual or anticipated backcharge, Company will provide Seller a written notice which shall describe the work to be performed, the schedule for performance, and the cost to be charged the Seller. The cost may include:

- (1) actual labor cost,
- (2) actual material cost including transportation, and
- (3) taxes, levies, duties and assessments.

(c) Seller is required to accept the backcharge or reperform work at Seller's cost. In the event Seller refuses to accept or agrees to performance of the work within 24 hours after receipt of Company's notice, Company may elect to proceed with the backcharge work and setoff the cost from Seller's payment. Company has the right to set-off such cost against any amount payable to the Seller whether or not in connection with this Agreement.

1.33 DRUG-FREE WORKPLACE PROGRAM

(a) Program Requirements.

(1)(A) Except as provided in subparagraph (B) below, the Seller and its subcontractors working on the project site must maintain a drug-free workplace program that conforms with Title 50, Chapter 9, of the Tennessee Code and applicable rules adopted pursuant to Chapter 9.

(B) If the Seller is an out-of-state entity, the Company may upon request allow a drug-free workplace program that conforms with Seller's state law.

(2) No employee of the Seller or its subcontractors may work on the project site unless the employee's most recent test under the drug-free workplace program was within the past 12 months and the results of that test were negative.

(3) The Seller must immediately remove from the site any employee who receives a confirmed positive test result. Such employees may not return to the project site earlier than 90 days from the date of the positive test and only after receiving a negative follow-up test result. (The 90-day bar will not necessarily apply to employees who after receiving a confirmed positive test result voluntarily enter an employee assistance program for drug-related or alcohol-related problems or a drug or alcohol rehabilitation program; these employees may return to the project site before the end of the 90-day bar if they complete the program and receive a follow-up negative test result.)

(4) The Seller must require employees who have not received a confirmed positive test result but who voluntarily enter an employee assistance program for drug-related or alcohol-related problems, or a drug or alcohol rehabilitation program, to submit to follow-up drug and alcohol tests within three days after they leave the program.

(b) Reports. (1) Before beginning work on the project site, the Seller and each of its subcontractors must provide to the Company a copy of its most recent Tennessee Drug-Free Workplace Application Form submitted to and certified by the Tennessee Commissioner of Labor and Workforce Development. The required form is available at the State of Tennessee Drug Free Workplace Program web site at <http://tennessee.gov/labor-wfd/dfwp.html>. (Out-of-state entities must submit evidence sufficient to establish that their programs are in effect.) The Seller and its subcontractors must also provide a copy of any certified renewal application forms submitted during the period of this Agreement.

(2) Before the fifth day of each month of performance, the Seller must certify to the Company that every employee working on site has been tested as required by the drug-free workplace program and this clause and that the test results were negative.

(c) Audit. The Company may audit any drug-free workplace program required by this clause and shall have access to all relevant records of the Seller and its subcontractors for this purpose, provided such access does not violate requirements for confidentiality of records.

(d) Hold Harmless. The Seller shall defend and hold the Company harmless from any suits or claims by its or its subcontractors' employees relating to enforcement of this clause.

(e) Subcontracts. The Seller shall include this clause, including this paragraph (e), in all subcontracts hereunder involving work on the project site.

1.34 REPORTING CONCERNS

Seller shall notify, by posting or otherwise, all of its employees performing work under this Agreement that they have the right and responsibility to report concerns relating to environmental compliance, safety, health, or management aspects of DOE-related activities. Concerns may be reported to the DOE Oak Ridge Operations Office (ORO) by calling the ORO Telephone Hotline at (865) 241-3267, or they may be reported to the Company by calling (865) 241-2255.

1.35 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, Export Administration Regulations (EAR), 15 CFR Parts 730 through 774, and Atomic Energy Act of 1954 (Public Law 83-703), Nuclear Regulatory Commission 10 CFR Part 110 and Department of Energy 10 CFR Part 810, in the performance of this Agreement. 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 Agreement, 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.

1.36 OTHER CONTRACTS

The Company or Government may undertake or award other contracts for additional work at or near the Seller's work site. Seller shall fully cooperate with the other contractors and with Company and Government employees and shall carefully adapt scheduling and performing the work under this Agreement to accommodate the additional work, heeding any direction that may be provided by Company. Seller shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Company or Government employees.

1.37 GRATUITIES

Seller, its agent or anyone acting on its behalf, shall not offer any gratuity (e.g., entertainment, gift, or cash) or special treatment to any employee of Company with the intent of obtaining a subcontract or other agreement or favorable treatment. This Agreement may be terminated if the Company determines that the provisions of this clause were violated. The Company may also exercise any other rights and remedies provided by law or under this Agreement.

1.38 FOREIGN CORRUPT PRACTICES ACT

Seller understands and agrees to comply with the United States Foreign Corrupt Practices Act, which prohibits Company and Seller from providing anything of value to a foreign public official in order to obtain or retain business. Seller agrees not to give anything of value, including but not limited to business gratuities and reimbursement of travel, to any foreign government officials. Seller agrees to ensure that it complies with all requirements relevant to its business arrangement with Company, including any registration requirements, and warrants that this Agreement is in compliance with all applicable laws and regulations of the country or countries in which it performs any services for the Company.

1.39 EXECUTION OF WORK

In connection with the services covered by this Agreement, the Seller agrees to execute the work using the method or plan for performance agreed to during negotiations concerning the performer of the work (i.e., Seller personnel or subcontractors or outside associates or consultants). The Seller shall obtain the Subcontract Administrator's written consent before making changes in the method or plan for performance proposed and agreed to during negotiations concerning the performer of the work.

PART 2. APPLICABLE WHEN SELLER PERSONNEL WORK ON DOE SITE

2.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15. The following clauses are incorporated by reference:

DEAR 952.203-70 Whistleblower Protection for Contractor Employees (Dec 2000)
Foreign Nationals (Company – July 2006)
Hazardous Materials Reporting (Company – July 2006)
Required Training (Company – July 2006)

2.2. EMPLOYEE CONCERNS PROGRAM

(a) DOE has established an Employee Concerns Program (ECP) in DOE Order 442.1A available at <http://www.directives.doe.gov/pdfs/doe/doetext/neword/442/o4421a.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) 241-2255; and

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

(d) Notices containing the information in (c)(1) through (c)(4), which are posted in areas where the DOE-related work is performed, will satisfy the notification requirement in subparagraph (c).

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

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

2.3a FACILITIES ACCESS AND BADGES

(a) This clause applies if the performance of this Agreement requires that the Seller, its agents, employees, or lower-tier subcontractor employees have physical access to Oak Ridge National Laboratory (ORNL) facilities; however, this clause does not control requirements for employees and agents of Seller and any lower-tier subcontractors obtaining a security clearance. The Seller understands and agrees that the Company has a prescribed process with which the Seller, its agents, employees, and lower-tier subcontractor employees must comply in order to receive a badge that allows such physical

access. The Seller further understands that it must propose employees and agents of Seller and any lower-tier subcontractors whose background offers the best prospect of obtaining a badge approval for access. The denial or revocation of a badge may occur considering the following criteria, which are not all inclusive and may vary depending on access requirements and circumstances:

- (1) is, or is suspected of being, a terrorist;
- (2) is the subject of an outstanding warrant;
- (3) has deliberately omitted, concealed, or falsified relevant and material facts from any Questionnaire for National Security Positions (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form;
- (4) has presented false or forged identity source documents;
- (5) has been barred from Federal employment;
- (6) is currently awaiting a hearing or trial or has been convicted of a crime;
- (7) is awaiting or serving a form of pre-prosecution probation, suspended or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer; or
- (8) positive drug test for the presence of illegal substances.

(b) The Seller shall assure:

(1) In initiating the process for gaining physical access, (i) compliance with procedures established by the Company in providing employee(s) and agent(s) of Seller and any lower-tier subcontractors with any forms directed by the Company, (ii) that the employee(s) and agent(s) of Seller and any lower-tier subcontractors properly completes any forms, and (iii) that the employee(s) and agent(s) of Seller and any lower-tier subcontractors submits the forms to the person designated by the Company.

(2) In completing the process for gaining physical access, that employee(s) and agent(s) of Seller and any lower-tier subcontractors (i) cooperates with Company officials responsible for granting access to ORNL facilities and (ii) provides additional information, requested by those Company officials.

(c) The Seller understands and agrees that the Company or DOE may unilaterally deny or revoke a facility access or badge to an employee or agent of Seller or lower-tier subcontractor and that the denial or revocation remains effective for that employee or agent of Seller or lower-tier subcontractor unless the Company or DOE subsequently determines that access may be granted or restored. Upon notice from the Company or DOE that an employee's application for a badge is or will be denied or revoked, the Seller shall promptly identify and submit the forms referred to in subparagraph (b)(1) of this clause for the substitute employee or agent. The denial or revocation of a badge to access ORNL to individual employees or agents of Seller or any lower-tier subcontractor by the Company or DOE shall not be cause for extension of the period of performance of this Agreement or any Seller claim against the Company or DOE.

(d) The Seller shall return to the Company the badge(s) or other credential(s) provided by the Company pursuant to this clause, granting physical access to ORNL facilities by employees and agents of Seller and any lower-tier subcontractors, upon (1) the termination of this Agreement; (2) the expiration of this Agreement; (3) the termination of employment on this Agreement by an individual employee or agent of Seller or any lower-tier subcontractor; or (4) demand by the Company or DOE for return of the badge.

(e) The Seller shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Agreement, in which an employee(s) or agent of the subcontractor will require physical access to ORNL facilities.

2.3b RETURN OF BADGES AND PROXIMITY CARDS

(a) Badges and proximity cards remain the property of the U.S. Government and must be returned to the Company upon completion of this Agreement. Failure to do so may result in the loss of future work with the Company.

(b) Upon termination of employment or completion of the Seller's work, all badges issued to Seller and its lower-tier subcontractor employees shall be returned to the Company. Failure by employees of the Seller and its lower-tier subcontractors to return badges will result in a charge of \$1,000 per badge. The charge shall be deducted from payments otherwise due the Seller or may be billed to Seller. Refund of charges, previously collected for badges subsequently found may not be made after the date of final payment to the Seller.

(c) The \$1000 charge will not be assessed against badges that are lost or stolen during performance of the Agreement if replacement badges are issued to allow Seller or lower-tier subcontractor employees to return to work.

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

3A.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 (May 2002)
- DEAR 952.204-70 Classification/Declassification (Sep 1997)
- DEAR 970.5204-1 Counterintelligence (Dec 2000)
- Civil Penalties for Classified Information Security Violations (Company – Sept 2008)
- Exhibit 7 - Filing of Patent Applications - Classified Subject Matter (Company – Jan 2001)

3A.2 PERSONNEL SECURITY CLEARANCES

(a) The Seller shall not permit any individual to have access to any classified information or special nuclear material unless the individual possesses a current access authorization from DOE for the particular level and category of classified information or particular category of special nuclear material to which access is required.

(b) The Seller and its employees or agents agree to comply with background checks including the submission of information and forms required by DOE M 470.4-5 Personnel Security. The process requires submission of fingerprints, a urine analysis testing for the presence of illegal substances, and a background check conducted by the Company, outside entities, or DOE. That check may include, without limitation, the following:

(1) credit check;

(2) verification of a high school degree or diploma or a degree or diploma granted by an institution of higher learning within the past five (5) years;

(3) contacts with listed references;

(4) contacts with listed employers for the past three (3) years (excluding employment of less than 60 working days duration, part-time employment, and craft/union employment); and

(5) local law enforcement checks as allowed by state or local law, statute, or regulation and when the individual has resided in the State of Tennessee.

(c) Individuals that have a positive urine analysis for the presence of illegal substances will not be granted a security clearance.

(d) Individuals with a security clearance will be subject to random drug testing.

(e) The Seller shall include this clause in any subcontract in which an employee of the subcontractor will require a security clearance.

(f) "Classified information" means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as National Security Information.

(g) "Special Nuclear Material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2701 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

PART 3B. APPLICABLE WHEN WORK IS UNCLASSIFIED RESEARCH INVOLVING NUCLEAR TECHNOLOGY

3B.1 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 calendar days' prior written notice to Company if Seller determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance, to continue performance of the work under this Agreement as a result of such notification. If Seller elects to terminate performance, the provision of this Agreement Part 1.13b shall apply.

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

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

4.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15. The following clauses are incorporated by reference:

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

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

FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (June 2003)

FAR 52.215-2 Audit and Records – Negotiation (June 1999)

FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (Sep 2000)

FAR 52.223-14 Toxic Chemical Release Reporting (Aug 2003), except paragraph (e)

DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (Aug 2002)

Utilization of Small Business Concerns (Company – Mar 2009)

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:

DEAR 970.5226-2 Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Dec 2000)
Displaced Employee Hiring Preference (Company – July 2006)

5.2 PERFORMANCE EVALUATION PROGRAM

(a) Company has established a performance evaluation program to (1) assist Seller in improving performance and (2) aid in the source selection process relative to future work. The program applies to this Agreement.

(b) Ratings are used by Company to recognize outstanding performance, as well as to identify areas of deficient performance in order that corrective actions can be taken to foster continuous improvement. Key areas to be evaluated and their order of importance are: (1) Safety and Health; (2) Field Operations and Execution; (3) Quality; (4) Project Commissioning, Closeout, and Post-Project Support; (5) Environmental; (6) Project Control; (7) Contract Administration; (8) Health Physics; (9) Security; and (10) Diversity. The Evaluation Report will be prepared jointly by the Subcontract Administrator and the Technical Project Officer and will include input from other project team members.

(c) At completion of this Agreement, every 12 months during the term of the Agreement or underlying task order, or at shorter intervals at Company's sole discretion, Company's Subcontract Administrator will provide a Performance Evaluation Report to the Seller's senior management regarding the Seller's performance. Seller shall be notified of performance determined to be Marginal or Unsatisfactory in any key process area. Seller is expected to take immediate action to correct any identified deficiency. If Seller disagrees with the rating, Seller shall have 30 calendar days from the date of the notice to respond with factual information relating to its performance. Any disputed rating shall be reviewed and a final determination made by the Company's Director of Contracts, exclusively. All disputes concerning the evaluation of Seller's performance are not subject to review by any agency, board, or judicial entity.

PART 6. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$650,000

6.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15. The following clauses are incorporated by reference:

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

PART 7. APPLICABLE TO AGREEMENTS IN EXCESS OF \$1 MILLION IF SELLER IS NOT A SMALL BUSINESS

For information on clauses incorporated by reference, see Part 1.15. The following clause is incorporated by reference:

Small Business Subcontracting Plan (Company – July 2006)

PART 8. APPLICABLE ONLY TO CERTAIN AGREEMENTS

8.1 INCORPORATION BY REFERENCE

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

8.2 COMMERCIAL COMPUTER SOFTWARE

If performance involves acquisition of existing computer software, the following Company Exhibit is incorporated by reference: CCS Commercial Computer Software - Restricted Rights (Company – Apr 2000).

8.3 PRIVACY ACT

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

8.4 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 lower-tier subcontractor.