

GENERAL TERMS & CONDITIONS
Cost-Type (CT September 2008)

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 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, General Order Agreement, Basic Ordering Agreement, Task Order, or Modification thereof.
- (e) Subcontract Administrator means the Company's cognizant Contracts Division representative.
- (f) Educational Institution means an entity described in Office of Management and Budget Circular No. A-21.

1.2 RESOLUTION OF DISPUTES

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

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

(c) The parties agree that, subject to (b)(1), substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with Federal law. To the extent there is no Federal law, Tennessee state law shall apply.

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

1.3 ORDER OF PRECEDENCE

Any inconsistencies 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) 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 the requirements indicated herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporates by reference or attachment. Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement that are different from or in addition to those mentioned in this document. Failure of Company to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of the Agreement.

1.6 INSPECTION

(a) Company and Government have the right to inspect and test all services and supplies called for by the Agreement, at all reasonable places, including Seller's location, and all reasonable times during the term of the Agreement. Such inspections and tests shall be conducted in a manner that will not unduly delay the work. Seller and subcontractors shall provide reasonable location and assistance if needed.

(b) If any of the services or supplies are not compliant with the requirements of the Agreement, Company may require Seller to reperform the services or repair or replace the supplies for no additional fee. When the defects cannot be corrected by reperformance, repair, or replacement, Company may (1) require Seller to take necessary action to ensure future compliant performance and (2) reduce any fee payable under the Agreement to reflect the reduced value of the services or supplies.

(c) If Seller fails to promptly correct the defects or take action necessary to ensure future compliant performance, Company may (1) reduce any fee payable by an equitable amount under the circumstances and/or (2) terminate for default.

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 MATERIAL REQUIREMENTS

As provided by FAR 52.211-5 Material Requirements, unless this Agreement specifically requires virgin material or supplies composed of or manufactured from virgin material, Seller shall provide supplies that are composed of unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process. Used, reconditioned, or remanufactured supplies, or unused Government surplus property shall not be provided unless the Company has authorized their use.

1.9 TRANSPORTATION

If transportation is specified "FOB Origin," (a) no insurance cost shall be allowed unless authorized in writing and (b) the bill of lading shall indicate that transportation is for DOE and the actual total transportation charges paid to the carrier(s) by Company shall be reimbursed by the Government pursuant to Contract No. DE-AC05-00OR22725. Confirmation may be made by the DOE Oak Ridge Operations Office, Contracts Division, P. O. Box 2001, Oak Ridge, TN 37831-8756.

1.10 RISK OF LOSS

Where Company is liable to Seller for loss of conforming items occurring after the risk of loss has passed to Company, Company shall pay Seller's cost of replacing such items. Such loss shall entitle Seller to an equitable extension in delivery schedule obligations.

1.11 ALLOWABLE COST AND PAYMENT

(a)(1) Company shall make payments to Seller when requested as work progresses monthly, or at more frequent intervals as determined by Company, in amounts determined to be allowable by the Company in accordance with this Agreement and FAR Subpart 31.3 for Educational Institutions, Subpart 31.6 for state and local governments, Subpart 31.7 for nonprofit organizations, or Subpart 31.2 for all others as supplemented by DEAR Part 931 in effect on the date of this Agreement.

(2) A statement of claimed allowable cost for performing the work under this Agreement shall accompany each invoice or voucher. The statement shall contain all applicable cost elements included in sample invoices found at Company's Contracts web site <http://www.ornl.gov/adm/contracts/docindex.htm> under the title *Special Articles and Forms*. Failure to segregate all necessary cost elements may result in the rejection of the statement and invoice. When applicable, invoices shall include a list of the property acquired by Seller to which title vests in the Government according to the Government Property clause of this Agreement. Payment may be made 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 the electronic funds transfer was made.

(b) For the purpose of reimbursing allowable costs, the term "cost" includes only those items identified in FAR 52.216-7 Allowable Cost and Payment paragraph (b).

(c)(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with FAR Subpart 42.7 in effect for the period covered by the indirect cost rate proposal.

(2) Seller shall submit an adequate final indirect cost rate proposal to the Subcontract Administrator (or cognizant audit agency) within 6 months following the expiration of each of its fiscal years. The proposal shall include adequate supporting data based on Seller's actual cost experience for that period. Seller and the Subcontract Administrator (or the cognizant audit agency) shall establish the final indirect rate and execute a written understanding setting forth the final indirect cost rates. The understanding shall specify the agreed-upon final annual indirect cost rates and the periods for which the rates apply. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Agreement. The understanding shall be incorporated into this Agreement.

(d) Within 120 days after settlement of the final annual indirect cost rates for all years of a physically complete Agreement, Seller shall submit a Completion Invoice or Voucher to reflect the settled amounts and rates. Said invoice or voucher shall include, at a minimum, individual cost elements, claimed costs by Seller's individual fiscal years covered by the Performance Period, and adjustments of invoiced rates to actual rates in accordance with the final annual indirect rates. If Seller fails to submit a Completion Invoice or Voucher within the time specified, the Subcontract Administrator may (1) determine the amounts due to Seller under this Agreement; and (2) record this determination in a unilateral modification to the Agreement.

(e) Until final annual indirect cost rates are established for any period, the Company shall reimburse the Seller at billing rates established by the Company or the cognizant audit agency, subject to adjustment when the final rates are established. These billing rates:

(1) shall be the anticipated final rates; and

(2) may be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) If Seller is an **Educational Institution** and the work is for **research and development** and predetermined indirect cost rates are to be used, this Agreement incorporates by reference FAR 52.216-15 Predetermined Indirect Cost Rates.

(g) Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

(h) At any time or times before Final Payment, the Subcontract Administrator may have Seller's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Subcontract Administrator not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(i)(1) Final Payment shall be made upon approval of a Completion Invoice or Voucher submitted by Seller in accordance with paragraph (d) of this clause, and upon Seller's compliance with all terms of this Agreement.

(2) Seller shall pay to Company any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by Seller or any assignee under this Agreement, to the extent that those amounts are properly allocable to costs for which Seller has been reimbursed by Company. Before Final Payment under this Agreement, Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver an assignment to Company of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which Seller has been reimbursed by Company under this Agreement and a release discharging Company and the Government, their officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Agreement. Assignment and release forms can be found at Company's Contracts web site <http://www.ornl.gov/adm/contracts/docindex.htm> under the title *Special Articles and Forms*.

(j) 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.

1.13 TERMINATION

(a) Company reserves the right to terminate this Agreement in whole or in part: (1) for convenience if Company determines that a termination is in the interest of Company or the Government; or, (2) except for **educational** and other non-profit **institutions**, for default if Seller (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) 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.

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

owed if such settlement is claimed as reimbursable under this Agreement, and obtain approval of Company of such settlements; and, (6) protect and preserve any property in which Company or Government has or may acquire an interest.

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

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

(f) Seller shall within 6 months of the effective date of the termination submit a final termination settlement proposal to Company. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. The cost principles in Part 31 of the FAR, as supplemented by Part 931 of the DEAR, in effect on the date of this Agreement, shall govern all costs claimed, agreed to, or determined under this clause. If the Seller is not an **Educational Institution**, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, Cost Principles for Nonprofit Organizations, July 8, 1980, those cost principles shall apply; provided, that if the Seller is a non-profit organization listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such Seller.

(g) The Company and the Seller must agree to any equitable adjustment in fee for the continued portion of a partially terminated Agreement.

1.14 BANKRUPTCY

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

1.15 INCORPORATION BY REFERENCE

This Agreement incorporates certain provisions by reference. These articles and clauses apply as if they were incorporated in their entirety. For FAR and DEAR provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means the Subcontract Administrator. Company clauses incorporated by reference are available under the title *Special Articles and Forms or Exhibits* from Company's Contracts web site <http://www.ornl.gov/adm/contracts/docindex.htm>. The FAR and DEAR may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. or from Government web sites <http://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/regs/compliance/posters/eo.htm>)

FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)

FAR 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)

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

FAR 52.225-1 Buy American Act - Supplies (June 2003)

FAR 52.225-8 Duty Free Entry (Feb 2000)

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

FAR 52.229-8 Taxes – Foreign Cost Reimbursement Contracts (Mar 1990)

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)

DEAR 952.247-70 Foreign Travel (Dec 2000)

DEAR 970.5232-3 Accounts, Records and Inspection (Dec 2000)

DEAR 970.5245-1 Property (Dec 2000)
Confidentiality of Information (Company – June 2007)
Counterfeit/Suspect Materials (Company – July 2006)
Hazardous Material Identification and Material Safety Data (Company – July 2006)
Insurance – Form 1 (Company – December 2007)

1.16 CHANGES

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

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

1.17 SUSPENSION OF WORK

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

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

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

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" as defined in DEAR 970.5245-1 Property. If Company is required to deliver to Seller Government Property as stated in this Agreement and such 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.

1.20 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

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

1.21 INTEREST

Except for **state and local governments**, all amounts due to Company by Seller shall accrue interest from the date due until paid, unless paid within 30 days of the date due. The interest rate shall be the 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 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 the 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.

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

(e) Seller shall provide and maintain workers' compensation insurance as required by applicable statutes.

(f) Seller shall provide Worker's Compensation, Employer's Liability, Commercial Automobile Liability, Commercial General Liability, and Professional Liability Insurance in accordance with the Insurance – Form 1 clause included in Part 1.15 of this Agreement. If Seller is a State agency, such as an **Educational Institution**, the state laws governing liabilities and remedies in these areas shall apply.

1.23a FEE

(a) Company shall pay Seller the fee as specified for performing this Agreement.

(b) Payment of the fee shall be made as specified in the Agreement; provided, that after payment of 85 percent of the fee, Company may withhold further payment of fee until a reserve is set aside in an amount that Company considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

1.23b NO FEE

Where no fee is to be paid for performing this Agreement, after payment of 80 percent of the total estimated cost shown in the Agreement, Company may withhold further payment of allowable cost until a reserve is set aside in an amount considered necessary to protect the Government's interest. This reserve shall not exceed one percent of Company's share of the total estimated cost or \$10,000, whichever is less.

1.24 LIMITATION OF COST AND FUNDS

(a) Seller agrees to use its best efforts to perform the work specified in the Agreement within the estimated specified costs. Company is not obligated to reimburse Seller for costs incurred in excess of the total amount allotted as specified in the Agreement to be paid by Company. Seller is not obligated to continue performance under this Agreement (including actions under the Termination clause of this Agreement) or otherwise incur costs in excess of the total amount allotted as specified in the Agreement, until Company increases allotted funds. If this is a cost-sharing Agreement, the increase shall be allocated in accordance with the formula specified in the Agreement.

(b) Seller shall notify the Subcontract Administrator in writing whenever it has reason to believe that the total costs Seller has incurred and expects to incur in the next 60 days (i) shall exceed 75 percent of the total amount allotted to this Agreement or, (ii) whenever it has reason to believe that the total estimated cost for the performance of this Agreement shall be either greater or substantially less than previously estimated. The notice shall include the estimated amount of funds required to continue timely performance.

(c) No notice, communication, or representation, other than by the Subcontract Administrator, shall affect this Agreement's funding.

(d) If the total allotted amount or the estimated cost specified in the Agreement is increased, any costs Seller incurs before the increase that are in excess of the previously allotted amount shall be allowable to the same extent as if incurred afterward, unless Company issues notice directing that the increase is solely to cover termination or other specified expenses.

1.25 TAXES

The Seller shall comply with the requirements of FAR Part 31 regarding taxes, with respect to work under this Agreement, any related transaction, or property in the custody or control of Seller, which Seller or the Company believes are inapplicable or invalid. Any tax, fee, or charge paid in accordance with the procedures in FAR Part 31 shall not be disallowed as an item of cost by reason of any subsequent determination that it was in fact inapplicable or invalid. All recoveries or credits regarding the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Company.

1.26 SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS

Promptly after the end of each month, the Seller shall submit to the Company (for forwarding to the General Services Administration for audit) legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services that will be reimbursed as a direct cost under this Agreement in accordance with FAR 52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit (June 1997).

1.27 ENVIRONMENT, SAFETY AND HEALTH PROTECTION

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

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

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

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

1.28 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.

1.29 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.

1.30 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.

1.31 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.

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:

FAR 52.223-6 Drug-Free Workplace (May 2001)

FAR 52.237-2 Protection of Government Buildings, Equipment, and Vegetation (Apr 1984)

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.

2.4 ENVIRONMENT, SAFETY AND HEALTH PROTECTION

(a) This clause applies if Seller is performing any of the work on a DOE site which is defined as a facility that is DOE-owned or leased, or UT-Battelle leased.

(b) Worker Safety and Health Program. 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 on-site work, the Seller shall either:

(A) Accept and agree to work pursuant to Company's WSHP available at Company's Contracts web site http://www.ornl.gov/adm/contracts/ornl_851wsh.htm. In those cases where the Seller's on-site activities are limited to an office or meeting environment, the WSHP and Hazard Analysis (HA) requirements can be met through a site orientation briefing.

(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.

(2) When requested, Seller shall submit to Company for review safety and health plans/programs and a HA, including hazard controls, for the affected work.

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

(c) 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. In performance of this work, the Seller shall:

(A) Establish and maintain clear and unambiguous lines of authority and responsibility for ES&H matters at all organizational levels.

(B) Ensure personnel possess the experience, the knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(C) Effectively allocate resources to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(D) Before work is performed, evaluate the associated hazards and establish ES&H standards and requirements which will protect employees, the public, and the environment from adverse consequences.

(E) Establish tailored administrative and engineering controls to prevent and mitigate hazards for work being performed.

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

(B) Identifies and analyzes hazards associated with the work;

(C) Develops and continuously implements hazard controls related to this work;

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

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

(d) 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 contract. 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.

(e) 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/docindex.htm>. 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/docindex.htm>.

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

(f) Noncompliances. The Seller shall promptly evaluate and resolve any 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.

(g) 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. Seller shall take immediate and 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 contract and Company may terminate the contract in accordance with those provisions.

(h) 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. If Seller maintains its own 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 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.

(i) 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.

(j) 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 can be found at Company's Contracts web site (see Part 1.15 for address). 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.

(k) 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 TPO, 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.

(l) 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.

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

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

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

4.1 INCORPORATION BY REFERENCE

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

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (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) including Alternate II for state and local Governments, educational institutions, and other non-profit organizations
FAR 52.219-8 Utilization of Small Business Concerns (May 2004)
FAR 52.222-2 Payment for Overtime Premiums (July 1990)
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)

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)
Small Business Subcontracting Plan (Company – July 2006)

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 ONLY TO CERTAIN TRANSACTIONS

7.1 INCORPORATION BY REFERENCE

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

7.2 PRINTING

If this Agreement involves the duplication of more than 5,000 copies of a single page or more than 25,000 copies of multiple pages, this Agreement incorporates by reference DEAR 970.5208-1 Printing (Dec 2000).

7.3 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).

7.4 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 (Apr 2000).

7.5 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTORS

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

7.6 SUBCONTRACTS

If Seller proposes to subcontract for (1) cost-reimbursement, time-and-materials, or labor hour type; or (2) fixed-price in

excess of \$100,000 or 5 percent of the total estimated cost of this Agreement; or (3) fabrication, purchase, rental, installation, or other acquisition of special test equipment in excess of \$10,000, this Agreement incorporates by reference FAR 52.244-2 Subcontracts (June 2007) including Alternate I.

7.7 ACCESS TO AND OWNERSHIP OF RECORDS

If the value of this Agreement is greater than \$2 Million or performance involves complex or hazardous work on a DOE site, this Agreement incorporates by reference DEAR 970.5204-3 Access to and Ownership of Records (Jul 2005).

7.8 NOTIFICATION OF VISA DENIAL

If the work to be performed is in or on behalf of a foreign country by workers recruited in the United States, FAR 52.222-29 Notification of Visa Denial (June 2003) applies.

7.9 RESEARCH MISCONDUCT

If this Agreement involves basic, applied, or demonstration research in a field of science, medicine, engineering, or mathematics, including but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subject or animals, this Agreement incorporates by reference DEAR 952.235-71 Research Misconduct (July 2005).

7.10 ACCESS TO COMPANY'S CYBER RESOURCES

If performance involves access to Company's cyber resources, this Agreement incorporates by reference Access to Company's Cyber Resources (Company – Sept 2008).

7.11 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.