

GENERAL TERMS & CONDITIONS
Cost-Type (April 13, 2017)

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) Procurement Officer 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.
- (g) Day means calendar day unless otherwise specified.

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. The parties may consider the use of alternative disputes resolution (ADR). In the event mediation or arbitration is mutually agreed upon, costs shall be mutually shared by Seller and Company and it is agreed 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) 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 the Chancery Court of Knox or Roane County, Tennessee.

(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) It is agreed that in the event of a dispute, 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) Section H Special Provisions;
- (b) Section E Inspection and Acceptance;
- (c) Section A Agreement Form; Section B Supplies or Services and Prices/Costs; Section D Delivery, Shipping, Packaging; Section F Performance Period/Payment Information, Section I List of Attachments;
- (d) Section G General Provisions;
- (e) Section C 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 delivering the supplies or performing the services identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporates by reference or attachment. Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement that are different from or in addition to those mentioned in this document. Failure of Company to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement.

1.6 INSPECTION AND ACCEPTANCE

(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.

(d) Company shall accept supplies or services that conform to the terms of the Agreement and it reserves the right to reject non-conforming supplies or services. Seller may be subject to specific acceptance requirements in the Agreement.

1.7 ASSIGNMENT, NOVATION, NAME CHANGE

(a) Assignment - Seller shall not assign its rights 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.

(b) Novation – Seller shall inform Company of the transfer of Seller's assets, rights, obligations and/or liabilities under this Agreement to a separate legal entity and submit written proof of such transfer. Company at its sole discretion may recognize the transfer. The novation shall not be effective until all three parties enter into and execute a Novation Agreement.

(c) Change of Name – Seller shall inform Company of a corporate name change and submit documents as proof of such change. Both parties must enter into and execute a Name Change Agreement.

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 Office, Contracts Division, P. O. Box 2001, Oak Ridge, TN 37831-8756.

1.10 TITLE AND RISK OF LOSS

Unless specified elsewhere in this Agreement, title to items furnished under this Agreement shall pass to the Government upon acceptance, regardless of when or where Company takes physical possession. Unless the Agreement specifically provides otherwise, risk of loss or damage to the items provided under this Agreement shall remain with the Seller until delivery of the items to the destination specified in the Agreement.

1.11 ALLOWABLE COST AND PAYMENT

(a)(1) Company shall make payments monthly to Seller when requested as work progresses, 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 <http://www.ornl.gov/adm/contracts/documents.shtml> under the title *Special Articles and Forms*. Travel expenses shall contain the elements found in the sample Travel Expense Statement Form located at <http://www.ornl.gov/adm/contracts/documents.shtml> for reimbursement of travel expenses. 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.

(3) Unless otherwise provided, terms of payment shall be net 30 days from receipt of Seller's proper invoice (unless such invoice is not approved). Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payment shall be made by electronic funds transfer. The form for enrolling is available at <http://web.ornl.gov/adm/contracts/efr.shtml>. Payment shall be deemed to have been made as of the date on which the electronic funds transfer was made.

(4) Applicable IRS forms (available at <http://web.ornl.gov/adm/ap>) must be submitted to ORNL Accounts Payable Department at aptax@ornl.gov. If the appropriate IRS form is not received, payment may be delayed or applicable IRS percentage may be withheld from invoice payment.

(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 Procurement Officer (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. An adequate indirect cost rate proposal shall include the data identified in FAR 52.216-7 Allowable Cost and Payment paragraph (d)(2)(iii) unless otherwise specified by the Procurement Officer (or cognizant audit agency). Supplemental information identified in FAR 52.216-7 paragraph (d)(2)(iv) may be required during the audit process. Seller shall update billings on this Agreement to reflect the final settled rates within 60 days after settlement of final indirect cost rates.

(3) Seller and the Procurement Officer (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 Procurement Officer 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 Procurement Officer may have Seller's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the Procurement Officer not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(i)(1) 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, Company shall pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(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 <http://www.ornl.gov/adm/contracts/documents.shtml> 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 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.

(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) for default if Seller (i) fails to supply enough properly skilled workers or proper materials or equipment so as to endanger performance of this Agreement; (ii) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Seller

and the subcontractors; (iii) disregards applicable laws, ordinances, rules, regulations, directives, or orders, or instructions of the Company; (iv) fails to adhere to the time specified in this Agreement for performance of services or delivery of supplies; or (v) fails to comply with any of the material terms of this Agreement. The Company's right to terminate this Agreement for default may be exercised if the Seller does not cure such failure within 10 days after receipt of notice from the Company specifying the failure.

(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 Procurement Officer 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, and other material produced or acquired for the work terminated, (ii) completed or uncompleted plans, drawings, information, and other property that would be required to be furnished to Company had this Agreement been completed, and (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 Non-Profit Organizations, those cost principles shall apply; provided, that if the Seller is a non-profit organization listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply 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 Procurement Officer 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 Procurement Officer. 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 <https://www.acquisition.gov/far/> for FAR and <http://energy.gov/management/office-management/operational-management/procurement-and-acquisition/guidance-procurement> for DEAR and DOE Directives and Orders. The following clauses are incorporated by reference:

FAR 52.204-14 Service Contract Reporting Requirements (Jan 2014)
FAR 52.208-8 Required Sources for Helium and Helium Usage Data (Apr 2014)
FAR 52.222-21 Prohibition of Segregated Facilities (Feb 1999)
FAR 52.222-26 Equal Opportunity (Apr 2015) (The required poster is available at <http://www.dol.gov/compliance/topics/posters.htm>.)
FAR 52.222-36 Equal Opportunity for Workers with Disabilities (July 2014) (applicable to Agreements in excess of \$15,000)
FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)
FAR 52.222-50 Combating Trafficking in Persons (Feb 2009)
FAR 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Sep 2013)
FAR 52.223-13 Acquisition of EPEAT ® - Registered Imaging Equipment (June 2014)
FAR 52.223-14 Acquisition of EPEAT ® - Registered Televisions (June 2014)
FAR 52.223-15 Energy Efficiency in Energy-Consuming Products (Dec 2007)
FAR 52.223-16 Acquisition of EPEAT ® - Personal Computer Products (June 2014)
FAR 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (May 2008)
FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) - in all subcontracts that exceed the micro-purchase threshold
FAR 52.225-1 Buy American Act - Supplies (May 2014)
FAR 52.225-8 Duty-Free Entry (Oct 2010)
FAR 52.225-13 Restrictions on Certain Foreign Purchases (June 2008)
FAR 52.229-8 Taxes – Foreign Cost Reimbursement Contracts (Mar 1990)
FAR 52.232-39 Unenforceability of Unauthorized Obligations (June 2013)
FAR 52.244-6 Subcontracts for Commercial Items (Oct 2014)
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 (Feb 2006)
DEAR 952.247-70 Foreign Travel (June 2010)
DOE Order 551.1D Official Foreign Travel
DOE Order 227.1 O Independent Oversight Program
DOE Order 221.2 A Cooperation with the Office of Inspector General
DOE Order 411.2 Scientific Integrity
DOE Order 420.1C Facility Safety
DEAR 970.5232-3 Accounts, Records and Inspection (Aug 2009), paragraphs (a) through (g) and (h) with paragraph (h)(1) amended by adding "or subcontractor's" after contractor's and by adding "and to interview any current employee regarding such transactions" after "hereunder." "Authorized representative" under paragraph (h)(1) includes the Inspector General.
DEAR 970.5245-1 Property (Jan 2013) Alternate I (Dec 2000) (Deviation)
Confidentiality of Information (Company – June 2007)
Counterfeit/Suspect Materials (Company – Sept 2013)
Hazardous Material Identification and Material Safety Sheets (Company – July 21, 2015)
Insurance – Form 1 (Company – March 2011)

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 Procurement Officer is authorized on behalf of Company to issue changes. 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 Procurement Officer. 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 Procurement Officer, 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 Procurement Officer, to minimize the incurrence of costs associated with such suspension.

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

1.18 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 Procurement Officer. If Seller is an **Educational Institution**, Seller may acknowledge the Company and Government sponsorship of the work in publications.

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 Workers' 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 Procurement Officer 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 Procurement Officer, 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 DOCUMENTS FOR AUDIT

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 Documents for Audit (Feb 2006).

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 ELECTRICAL EQUIPMENT REQUIREMENTS

Unless stated elsewhere in this Agreement, all electrical equipment, assemblies, or items: (1) Shall be listed by a nationally recognized testing laboratory (NRTL) or (2) Shall be field evaluated and labeled by a NRTL at the Seller's expense. The NRTL's evaluation label must appear on the equipment, and the Seller shall provide the NRTL's evaluation

report with the equipment.

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. If the Company determines that the provisions of this clause were violated, it may terminate the agreement for default and pursue any other remedies provided by law or 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.

1.32 FALSE LABELING OF PRODUCTS AS AMERICAN-MADE

Providing products falsely labeled as made in America is prohibited. If the Company becomes aware of a possible violation of the prohibition, the matter shall be reported to DOE for potential debarment of the entity affixing the false label pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

1.33 EMPLOYEE CONCERNS PROGRAM / DIFFERING PROFESSIONAL OPINIONS

(a) DOE Order 442.1A (available at <https://www.directives.doe.gov/directives/0442.1-BOrder-A/view>) establishes an Employee Concerns Program (ECP). 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) DOE Order 442.2 (available at <https://www.directives.doe.gov/directives/0442.2-BOrder/view>) establishes the Differing Professional Opinions (DPO) process. The DPO process is available to employees of contractors or subcontractors to facilitate dialogue and resolution on technical issues involving environment, safety, and health (ES&H), which have not been resolved through routine work processes.

(c) In addition, the Company has its own ECP and a DPO process. Subcontractor employees may raise concerns about actions of the Company or its employees directly with the Company.

(d) The Seller must notify its employees at least quarterly that:

(1) DOE and the Company have ECPs and DPO processes.

(2) Employees are encouraged to first seek resolution with first-line supervisors or through other in-house complaint or dispute resolution systems.

(3) Employees have the right to report concerns through the Company ECP (1-888-280-0616) or the DOE ECP (1-800-676-3267 or 1-865-241-3267), if a concern is not resolved by supervisors, or if the employee elects not to raise the concern with supervisory personnel.

(4) Employees have the right to report differences of professional opinion through the Company ECP (1-888-280-0616), or through the DOE DPO process using contact information contained at <https://hhs.doe.gov/nuclearsafety/ga/dpo.html>.

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

(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.

1.34 INFORMATION TECHNOLOGY

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and

Technology's website at <http://checklists.nist.gov> commensurate with the mission of the subcontract and conducive to the research and development efforts of the ORNL.

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 52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011)
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)
DEAR 970.5204-3 Access to and Ownership of Records (Oct 2014) (Deviation)
Foreign Nationals (Company – July 2006)
Hazardous Materials Reporting (Company – July 2006)
Required Training (Company – July 2006)

2.2a 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 complete any forms, and (iii) that the employee(s) and agent(s) of Seller and any lower-tier subcontractors submit 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) cooperate with Company officials responsible for granting access to ORNL facilities and (ii) provide 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.

2.2b RETURN OF BADGES AND PROXIMITY CARDS

(a) Badges and proximity cards issued to Seller and its lower-tier subcontractor employees remain the property of the U.S. Government and must be returned to the Company at the earliest of any of the following, unless otherwise determined by the Company:

- (1) When no longer needed for Agreement performance.
- (2) Upon completion of the Seller or lower-tier subcontractor employee's employment.
- (3) Upon completion or termination of this Agreement.

Failure to do so may result in the loss of future work with the Company and may delay final payment.

(b) Failure by employees of the Seller and its lower-tier subcontractors to return badges will result in a charge of \$100 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 \$100 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.

2.3 ENVIRONMENT, SAFETY AND HEALTH PROTECTION

(a) This clause applies to the extent 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 System) 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 http://www.ornl.gov/adm/contracts/wsh_10cfr851.shtml; provided, however, Seller shall be responsible for having its own occupational medicine program that is compliant with 10 C.F.R. § 851.24, Appendix A, Section 8, and paragraph (d) hereof. 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, including an occupational medicine program, that is compliant with 10 C.F.R. § 851 and DEAR 970.5223-1 to the Procurement Officer for Company's review.

(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 such 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 shall be 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.

(F) Ensure that line management is responsible for the protection of employees, the public and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(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/Occupational Medicine. 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.

(3) Seller shall have an occupational medicine program that is compliant with the applicable requirements of 10 C.F.R. § 851.24, Appendix A, Section 8. Seller shall ensure that its employees and the employees of any lower tier subcontractor are medically qualified to perform work associated with any potential exposures and hazards that have been identified. Medical qualification and medical surveillance programs are the sole responsibility of the Seller. In addition, Seller is responsible for maintaining any records associated with the administration of these programs. In the event that an employee of Seller or a lower tier subcontractor requires a medical qualification examination or medical surveillance program, it is the Seller's sole responsibility to obtain these services.

(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* 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 (TPO) 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 on-site 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* 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.

(f) Noncompliances. The Seller shall promptly evaluate and resolve any noncompliance with ES&H requirements. If the Seller fails to resolve the noncompliance within a reasonable period of time 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 Procurement Officer 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 Procurement Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Procurement Officer. 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) Civil Penalties and Indemnification.

(1) 10 CFR Part 851, *Worker Safety and Health Program*, establishes worker safety and health requirements that govern the conduct of contractor activities at DOE sites. Contractors that fail to comply with the Rule are subject to civil penalties issued by DOE up to \$70,000.00 per violation, with each day of violation constituting a separate violation, or contractual penalties.

(2) Seller assumes full responsibility and shall indemnify, hold harmless, and defend the Company, its directors, officers, and employees from any civil liability under §234C of the Atomic Energy Act of 1954 (the AEA), as amended (42 U.S.C. § 2282c), or DOE's implementing regulations at 10 C.F.R. Part 851, Subpart E, *Enforcement Process*, arising out of the activities of the Seller, its subcontractors, suppliers, agents, employees, and their officers and directors. The Seller's obligation to indemnify, hold harmless and defend includes attorneys' fees and other reasonable costs of defending any action or proceeding instituted under Section 234C of the AEA, as amended, or 10 C.F.R. Part 851.

(h) 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 Procurement Officer 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 Procurement Officer, 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.

(i) 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 foregoing option, title to such records shall vest in DOE upon delivery.

(j) 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.

(k) Hoisting and Rigging. Seller may not bring to or use on-site 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* 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.

(l) Working on or near energized parts.

(1) Energized parts mean parts that operate at 50 or more volts to ground or contain 5 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 Procurement Officer, 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.

(m) All electrical equipment, assemblies, or items utilized by Seller or lower-tier: (1) Shall be listed by a nationally recognized testing laboratory (NRTL) or (2) Shall be field evaluated and labeled by a NRTL at the Seller's expense. The NRTL's evaluation label must appear on the equipment, and the Seller or lower-tier shall provide the NRTL's evaluation report with the equipment.

(n) Control of hazardous energy sources that require lockout/tagout will be managed (i.e., identified, assessed, and controlled) by the Company. The Seller is required to follow OSHA (as applicable through 10 CFR 851.23) and NFPA 70E requirements for hazardous energy control which require the Seller to establish a written hazardous energy control process and train employees. These requirements also apply to a single source of hazardous energy.

(o) 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 (Mar 2011) (Deviation Policy Flash 2014-09 and Class Deviation Determination and Findings 10/29/2013)

DEAR 952.204-70 Classification/Declassification (Sep 1997)

DEAR 970.5204-1 Counterintelligence (Dec 2010) (Modified)

Civil Penalties for Classified Information Security Violations (Company – Sept 2008)

Exhibit 7 - Filing of Patent Applications - Classified Subject Matter (Company – July 2010)

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 Order 472.2, 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 52.222-2 Payment for Overtime Premiums (July 1990)

FAR 52.222-35 Equal Opportunity for Veterans (July 2014)

FAR 52.222-37 Employment Reports on Veterans (July 2014)

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

Utilization of Small Business Concerns (Company – July 21, 2015)

PART 5. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$150,000

5.1 INCORPORATION BY REFERENCE

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

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (Sept 2006)

FAR 52.203-7 Anti-Kickback Procedures (May 2014)

FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)

FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees on Whistleblower Rights (Apr 2014)

FAR 52.204-4 Printed or Copied Double-Sided on Post Consumer Fiber Content (May 2011)

FAR 52.215-2 Audit and Records – Negotiation (Oct 2010) including Alternate II for state and local Governments, educational institutions, and other non-profit organizations

FAR 52.215-14 Integrity of Unit Prices (Oct 2010), excluding paragraph (b)

FAR 52.222-4 Contract Work Hours and Safety Standards Act – Overtime Compensation (May 2014)

PART 6. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$500,000

6.1 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)

PART 7. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$650,000

7.1 INCORPORATION BY REFERENCE

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

FAR 52.219-9 Small Business Subcontracting Plan (Oct 2014)

PART 8. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$700,000

8.1 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 Certified Cost or Pricing Data (Aug 2011)
FAR 52.215-11 Price Reduction for Defective Certified Cost or Pricing Data – Modifications (Aug 2011)
FAR 52.215-12 Subcontractor Certified Cost or Pricing Data (Oct 2010)
FAR 52.215-13 Subcontractor Certified Cost or Pricing Data – Modifications (Oct 2010)

PART 9. APPLICABLE ONLY TO CERTAIN AGREEMENTS

9.1 INCORPORATION BY REFERENCE

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

9.2 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 2013) and DEAR 952.204-77 Computer Security (Aug 2006).

9.3 BUSINESS ETHICS AND CONDUCT

If this Agreement exceeds \$5 million and the performance period exceeds 120 days, this Agreement incorporates by reference FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010).

9.4 COMMERCIAL COMPUTER SOFTWARE

If performance involves acquisition of existing computer software, the following Company Exhibit is incorporated by reference: CCS Commercial Computer Software License (Company – July 2010).

9.5 CONFERENCE MANAGEMENT

(a) If performance involves attendance at a conference, which is defined as a meeting, seminar, retreat, symposium, or similar event that involves official travel, the Seller must obtain written approval of the Company, through the Technical Project Officer (TPO) or the Procurement Officer, prior to attending the conference.

(b) If performance involves work related to coordinating, planning, or sponsoring a conference, this Agreement incorporates by reference the Conference Management Special Provision (Company – September 2012). The Seller must obtain written approval from the TPO prior to performing any work related to supporting or managing a conference.

9.6 DISPLAY OF HOTLINE POSTERS

If this Agreement exceeds \$5 million, is not for commercial items, and unless performance is entirely outside the United States, this Agreement incorporates by reference FAR 52.203-14 Display of Hotline Poster(s) (Dec 2007). Required posters may be obtained from the U.S. Department of Energy Office of Inspector General at <http://energy.gov/ig/downloads/office-inspector-general-hotline-poster>.

9.7 EMPLOYMENT ELIGIBILITY VERIFICATION

If this Agreement exceeds \$3,000 and is for services in the United States, this Agreement incorporates by reference

FAR 52.222-54 Employment Eligibility Verification (Aug 2013). This clause is not applicable to services purchased with a commercially available off-the-shelf (COTS) item or a COTS item with minor modifications performed and normally provided for the item by the COTS provider.

9.8 EQUAL OPPORTUNITY PREAMWARD 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.

9.9 INTERNET PROTOCOL TECHNOLOGY

(a) In order to facilitate the wide scale adoption of IPv6, if this Agreement involves the acquisition of products that use Internet Protocol (IP) technology, the Seller agrees (1) that the products shall comply with current IPv6 standards as defined in <http://www-x.antd.nist.gov/usgv6/index.html> and operate with both IPv6 and IPv4 systems and products; and (2) to provide technical support for IPv6 equivalent to that provided for IPv4.

(b) Should the Seller find that the Statement of Work or specifications of this Agreement do not conform to IPv6 standards, it must notify the Procurement Officer of such nonconformance and act in accordance with instructions of the Procurement Officer.

9.10 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.

9.11 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 and Seller is indemnified to the terms and conditions of that clause. For purposes of incorporation, "subcontractor" means lower-tier subcontractor.

9.12 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).

9.13 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).

9.14 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). By executing this agreement, the Subcontractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct. The Subcontractor is responsible for inserting the substance of this clause in all sub-tier agreements that involve research.

9.15 SUBCONTRACTS

If Seller proposes to subcontract for (1) cost-reimbursement, time-and-materials, or labor hour type; or (2) fixed-price in excess of \$150,000 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 (Oct 2010) including Alternate I.

9.16 REPORTING WASTE FRAUD AND ABUSE

If this agreement has a value in excess of \$5.5 million and a period of performance of more than 120 days, DOE Order O 221.1B, Reporting Fraud, Waste, and Abuse to the Office of Inspector General applies.