

GENERAL TERMS & CONDITIONS
Time & Materials (July 21, 2015)

PART 1. APPLICABLE TO ALL TRANSACTIONS

1.1 DEFINITIONS

The following terms shall have the meanings below:

- (a) Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- (b) Company means UT-Battelle, LLC, acting under Contract No. DE-AC05-00OR22725 with DOE.
- (c) Seller means the person or organization that has entered into this Agreement.
- (d) Agreement means Purchase Order, Subcontract, Price Agreement, Basic Ordering Agreement, Task Order, or Modification thereof.
- (e) Procurement Officer means Company's cognizant Contracts Division representative.
- (f) Educational Institution means those entities 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 WARRANTY

(a) Except for **research** and **development**, and notwithstanding inspection and acceptance by the Company under any provision of this Agreement, Seller warrants that services performed and the supplies furnished under this Agreement shall be free from defects in workmanship, be in accordance with Seller's affirmation, description, sample, or model, and compliant with all requirements of this Agreement. The warranty for services shall begin on acceptance and extend for 6 months. The warranty for supplies shall begin upon acceptance and extend for a period of (1) the manufacturer's warranty

period or six months, whichever is longer, if Seller is not the manufacturer and has not modified the supply or (2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer of the supply or has modified it. If any nonconformity appears within that time, Company, in addition to any other rights and remedies provided by law, or under other provisions of this Agreement, may require Seller, at no increase in price, to (1) reperform the services and correct or replace the supplies or (2) reduce the Agreement price to reflect the reduced value of Seller's performance. When supplies are returned, Seller shall bear the transportation cost. If within 10 days of Company's written notice, Seller fails to reperform or correct or replace, as required, Company shall have the right by contract or otherwise to perform the services, replace or correct such supplies, and charge to Seller the cost occasioned the Company thereby and/or terminate this Agreement for default.

(b) When personnel work on DOE site, Seller is responsible for ensuring that all work performed by Seller, subcontractors, manufacturers, or suppliers under this clause is in accordance with Part 2.3, Environment, Safety and Health Protection.

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 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 PAYMENT

(a)(1) Invoices may be submitted once each month. A statement of the amount claimed for performing the work under this Agreement shall accompany each invoice. The statement shall contain all applicable elements included in the sample invoice 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

(2) 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/eft.shtml>. Payment shall be deemed to have been made as of the date on which an electronic funds transfer was made. 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) Company shall pay Seller monthly upon submission of invoices approved by Company as follows:

(1) Hourly rate.

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Agreement by the number of direct labor hours (DLH) performed. Fractional parts of an hour shall be payable on a prorated basis. The hourly rates shall include wages, indirect costs, general and administrative expenses, and profit.

(B) Hourly rate means the rate(s) specified in the Agreement for payment for labor that meets the labor category qualifications of a labor category specified in the Agreement that are performed by the Seller, performed by the subcontractors, or transferred between divisions, subsidiaries, or affiliates of the Seller under a common control.

(C) Labor hours incurred to perform tasks for which labor qualifications were specified in the Agreement will not be paid to the extent the work is performed by individuals that do not meet the specified qualification.

(D) Seller shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the Agreement) by evidence of actual payment and by individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the Agreement, or other substantiation approved by Company.

(E) Unless otherwise prescribed in this Agreement, Company may withhold five percent of the amounts due

under this paragraph, with the total amount withheld not to exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by Seller as provided below.

(F) Unless this Agreement prescribes otherwise, hourly rates shall not be varied by virtue of Seller having performed work on an overtime basis. If overtime rates are provided, the premium portion will be reimbursable only to the extent the overtime is approved by Company.

(2) Materials.

(A) For purposes of this clause *direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service. *Materials* means:

(i) direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Seller under a common control;

(ii) subcontracts for supplies and incidental services for which there is not a labor category specified in the Agreement;

(iii) other direct costs (e.g., incidental services for which there is not a labor category specified in the Agreement, travel, computer usage charges, etc.); and

(iv) applicable material handling charges.

(B) If Seller furnishes its own materials that meet the definition of a commercial item at FAR 2.101, the price to be paid shall not exceed Seller's established catalog or market price, adjusted to reflect quantities being acquired and any modifications necessary because of Agreement requirements.

(C) Except as provided for in (b)(2)(B), Company shall reimburse the Seller for allowable costs of materials. Allowable costs of materials shall be determined by Company in accordance with this Agreement and Subpart 31.3 for Educational Institutions, 31.6 for state and local governments, 31.7 for nonprofit organizations, or 31.2 of the FAR for all others as supplemented by Part 931 of the DEAR in effect on the date of this Agreement.

(D) Except as provided for in FAR 31.205-26(e) and (f), Company will not pay profit or fee to Seller on materials.

(E) A material handling charge may be included in the charge for material to the extent such a charge is specified in the Agreement, is clearly excluded from the hourly rate, and is not applied to subcontracts that are paid at the hourly rates.

(F) Seller shall be reimbursed for supplies and services purchased directly only when cash, checks, or other forms of actual payment have been made for such purchased supplies or services.

(G) To the extent able, Seller shall: (i) obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials and (ii) take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of these benefits, Seller shall promptly notify Company and give the reasons. Credit shall be given to Company for such cost reductions, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of Seller, or would have accrued except for the fault or neglect of Seller. The benefits lost without fault or neglect on the part of Seller, or lost through fault of Company, shall not be deducted from gross costs.

(c) Seller agrees to use its best efforts to perform the work specified and all obligations under this Agreement within the ceiling price. Seller shall notify the Procurement Officer in writing whenever it has reason to believe that the payments and cost Seller has incurred and expects to incur in the next 30 days shall exceed 85 percent of the ceiling price in this Agreement. The notice shall include the estimated amount of funds required to continue timely performance with supporting reasons and documentation.

(d) Company is not obligated to pay Seller any amount in excess of the ceiling price in the Agreement, and the Seller shall not be obligated to continue performance if to do so would exceed the ceiling price, and until Company increases the ceiling price. If the ceiling price is increased, any hours expended and material costs incurred by Seller in excess of the ceiling price before the increase, shall be allowable to the same extent as if incurred after the increase, unless Company issues notice directing that the increase is solely to cover termination or other specified expenses.

(e) At any time before final payment Company may have Seller's invoices and substantiating material audited. Any payment may be reduced by amounts found by Company not to have been properly payable. Upon receipt and approval of the invoice designated by the Seller as the "completion invoice" and substantiating material, and upon compliance by Seller with all terms of this Agreement, Company shall promptly pay any balance due. The completion invoice, and substantiating material, shall be submitted by Seller as promptly as practicable following completion of the work, but in no event later than 1 year from the date of completion.

(f) Seller, and each assignee in effect at the time of final payment under this Agreement, shall execute and deliver, as a condition precedent to final payment, a release discharging Company, the Government, their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Agreement. Before final payment Seller and each assignee shall provide an acceptable assignment to Company of refunds, rebates, or credits to or received by Seller or any assignee that arise under the materials portion of 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*.

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

1.12a COMPLIANCE WITH LAWS

(a) Seller shall comply with all applicable federal, state, and local laws and ordinances and 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 part by written notice: (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 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 hereunder; (2) cause any and all of its suppliers and subtier subcontractors to cease work to the extent they relate 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, if the termination is for convenience, Seller shall be paid: (1) an amount for direct labor hours (as defined in the Agreement) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Agreement, less any hourly rate payments already made to the Seller; (2) an amount (computed under the provisions for payments of materials) for material expenses incurred before the effective date of termination, not previously paid to the Seller; (3) an amount for labor and material expenses incurred after the effective date of termination that are pre-approved by Company. If the termination is for default, the Seller shall not be paid (i) any amount for preparation of a termination settlement proposal and (ii) the portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Company. The amount due the Seller shall be less (i) any advance or other payments; (ii) any claims which the Company has against Seller under this Agreement; and (iii) the agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by Seller or sold under this clause and not recovered by or credited to Company.

(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 Seller is unable to cancel; provided, Seller exercised reasonable diligence in diverting such commitments to other operations. The Agreement shall be amended and 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.

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 set forth in their entirety. For FAR and DEAR provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means 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>. 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 52.208-8 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 Affirmative Action 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 52.244-6 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 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.
Taxes: Fixed-Price (Company – July 2006)
Confidentiality of Information (Company – June 2007)
Counterfeit/Suspect Materials (Company – Sept 2013)
Hazardous Material Identification and Material Data Sheets (Company – July 21, 2015)
Insurance – Form 1 (Company – March 2011)
Travel Reimbursement Policy (Company – July 21, 2015)

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 any hourly rate, the ceiling price, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Agreement signed by both parties. Any claim for adjustment by Seller must be made within 30 days from the date of receipt of Company's change notice, although Company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. Failure to agree to any adjustment shall be settled in accordance with Part 1.2.

(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.

1.19 GOVERNMENT PROPERTY

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

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

(c) Seller shall establish and maintain a property control program for use, maintenance, repair, protection and preservation of Government property consistent with good business practices and as may be prescribed by Company until disposed of in accordance with this clause. Seller shall report any acquisition of property and materials not considered consumable or general office supplies, as defined in DEAR 970.5245-1 Property. Upon notification, the Seller shall provide requested information regarding Government property and materials by the requested due date (i.e. annual inventory reporting, requests for information regarding acquisitions, audits, reviews, etc.). Seller shall cause all Government property to be clearly marked as Government property. Except as may be authorized in writing, Government property shall be used only for the performance of this Agreement.

(d) Seller shall be responsible for loss or damage to Government property required for performance of this Agreement. Company and the Government shall have access at all reasonable times to the premises where any Government property is located for the purpose of inspecting the property.

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

1.20 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

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

1.23 INSPECTION

(a) Company and Government have the right to inspect and test all services and supplies called for by this Agreement at all places and times, including the period of manufacture or performance, and in any event before acceptance. If Company specifies an inspection system elsewhere in this Agreement, Seller shall provide and maintain an inspection system acceptable to Company covering services and supplies under this Agreement and shall provide only services and supplies that have been inspected in accordance with said system and have been found to conform to the requirements of this Agreement. Complete records of all inspections shall be maintained and made available to Company during performance and for as long as this Agreement requires. Company shall perform inspections and tests in a manner that will not unduly delay the work. Company assumes no contractual obligation to perform any inspection and test for Seller's benefit unless specifically set forth elsewhere in this Agreement. Company failure to inspect the services and supplies shall not relieve Seller from responsibility, nor impose liability on Company, for nonconformity. If Company performs inspection or test on the premises of the Seller or a subcontractor, Seller shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(b) Except for research and development, Company may reject or require correction of any nonconformity. If Seller is not ready for inspection at the time specified by Seller, or if prior rejection makes reinspection or retest necessary, Company may charge Seller the additional cost of inspection or test. Seller shall not tender for acceptance corrected or rejected services or supplies without disclosing the former rejection or requirement for correction, and shall disclose the corrective action taken.

(c) Except for research and development, Company, in addition to any other rights and remedies provided by law, or under other provisions of this Agreement, may require Seller, at no increase in subcontract price, to (1) reperform the services and correct or replace the supplies at the original point of delivery or at the Seller's plant at the Company's election or (2) reduce the Agreement price to reflect the reduced value of Seller's performance. When supplies are returned, Seller shall bear the transportation cost. If the Seller fails to reperform or correct or replace, as required, within 10 days of Company notice specifying the nonconformity, Company shall have the right by contract or otherwise to perform the services, replace or correct such supplies, and charge to Seller the cost occasioned the Company thereby and/or terminate this Agreement for cause.

1.24 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.

1.25 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.

1.26 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.

1.27 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.

1.28 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.

1.29 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).

1.30 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/qa/dpo.html>

(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.

1.31 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)
- 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 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 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, a

urine analysis testing for the presence of illegal substances, and a background check conducted by the Company, outside entities, or DOE. That check may include, without limitation, the following:

- (1) credit check;
- (2) verification of a high school degree or diploma or a degree or diploma granted by an institution of higher learning within the past five (5) years;
- (3) contacts with listed references;
- (4) contacts with listed employers for the past three (3) years (excluding employment of less than 60 working days duration, part-time employment, and craft/union employment); and
- (5) local law enforcement checks as allowed by state or local law, statute, or regulation and when the individual has resided in the State of Tennessee.

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

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

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

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

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

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

3B.1 SENSITIVE FOREIGN NATIONS CONTROLS

(a) In connection with any activities in the performance of this Agreement, Seller agrees to comply with the "Sensitive Foreign Nations Controls" requirements furnished to Seller by Company, relating to those countries, which may from time to time be identified to Seller by written notice as sensitive foreign nations. Seller shall have the right to terminate its performance under this Agreement upon at least 60 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 52.222-35 Equal Opportunity for Veterans (July 2014)
- FAR 52.222-37 Employment Reports on Veterans (July 2014)
- FAR 52.223-14 Toxic Chemical Release Reporting (Aug 2003), except paragraph (e)
- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (Aug 2002)
- Utilization of Small Business Concerns (Company – 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 52.215-2 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 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.

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 within 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).