

GENERAL TERMS & CONDITIONS
Commercial Items (CI January 2012)

PART 1. APPLICABLE TO ALL TRANSACTIONS

1.1 DEFINITIONS

The following terms shall have the meanings below:

- (a) Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- (b) Company means UT-Battelle, LLC, acting under Contract No. DE-AC05-00OR22725 with DOE.
- (c) Seller means the person or organization that has entered into this Agreement with Company.
- (d) Agreement means Purchase Order, Subcontract, Price Agreement, AVID Agreement, Basic Ordering Agreement, Task Order, or Modification thereof.
- (e) Subcontract Administrator means Company's cognizant Contracts Division representative.
- (f) Item means "commercial item" and "commercial component" as defined in FAR 2.101.
- (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) Special Provisions;
- (b) Inspection and Acceptance;
- (c) Agreement Form; Supplies or Services and Prices/Costs; Delivery, Shipping, Packaging; Performance Period/Payment Information; List of Attachments;
- (d) General Provisions;
- (e) Specifications/Statement of Work.

1.4 PAYMENT AND ADMINISTRATION

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

1.5 ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement or 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) 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 3.4, 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 RISK OF LOSS

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

1.11 PAYMENT

Company shall pay the Seller the prices stipulated in this Agreement for supplies delivered and accepted or services rendered and accepted. Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, if required (unless such invoice is not approved), or (2) delivery of items/completion of work if invoice is not required. Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments may be made either by check or electronic funds transfer, at the option of Company. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made. Company may deduct from any amount owed to Seller any amount owed to Company whether or not in connection with this Agreement.

1.12a COMPLIANCE WITH LAWS

(a) Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent rules and regulations (including DOE regulations) and such compliance shall be a material requirement of this Agreement. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits.

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

1.12b FINES AND PENALTIES

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

1.13a TERMINATION FOR DEFAULT

(a) Company may terminate this Agreement for default, in whole or in part, if Seller (1) fails to supply enough properly skilled workers or proper materials or equipment so as to endanger performance of this Agreement; (2) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Seller and the subcontractors; (3) disregards applicable laws, ordinances, rules, regulations, directives, or orders, or instructions of the Company; (4) fails to adhere to the time specified in this Agreement for performance of services or delivery of supplies; or (5) fails to comply with any of the material terms of this Agreement. In that event, Company shall not be liable for any amount

for services or supplies not accepted. The Company's right to terminate this Agreement under (1), (2), (3), or (5) of this paragraph (a) may be exercised if the Seller does not cure such failure within 10 days after receipt of notice from the Company specifying the failure. If Company terminates this Agreement in whole or in part, it may acquire, under the terms and in the manner it considers appropriate, supplies or services similar to those terminated, and Seller will be liable to Company for any excess costs for those supplies or services.

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

(c) 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.

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

1.13b TERMINATION FOR CONVENIENCE

Company reserves the right to terminate this Agreement, or any part hereof, for the convenience of itself or the Government. In the event of such termination, Seller shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work. Subject to the terms of this Agreement, Seller shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Company using its standard record keeping system have resulted from the termination. Seller shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This clause does not give Company or the Government the right to audit Seller's records. Seller shall, within 6 months of the effective date of the termination, submit a final settlement proposal to the Company. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

1.14 BANKRUPTCY

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

1.15 INCORPORATION BY REFERENCE

This Agreement incorporates certain provisions by reference. These articles and clauses apply as if they were set forth in their entirety. For FAR and DEAR provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means Subcontract Administrator. Company clauses incorporated by reference are available 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 52.208-8 Required Sources for Helium and Helium Usage Data (Apr 2002)
- FAR 52.222-21 Prohibition of Segregated Facilities (Feb 1999)
- FAR 52.222-26 Equal Opportunity (Mar 2007) (The required poster is available at <http://www.dol.gov/compliance/topics/posters.htm>.)
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)
- FAR 52.222-50 Combating Trafficking in Persons (Feb 2009)
- FAR 52.223-15 Energy Efficiency in Energy-Consuming Products (Dec 2007)
- FAR 52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (Dec 2007)
- FAR 52.225-1 Buy American Act – Supplies (Feb 2009)
- FAR 52.225-8 Duty-Free Entry (Feb 2000)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (June 2008)
- FAR 52.244-6 Subcontracts for Commercial Items (Dec 2009)
- FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)
- DEAR 952.247-70 Foreign Travel (Aug 2009)
- DOE Order 551.1C Foreign Travel
- Taxes: Fixed-Price (Company – July 2006)
- Confidentiality of Information (Company – June 2007)
- Counterfeit/Suspect Materials (Company – March 2011)
- Hazardous Material Identification and Material Safety Data Sheets (Company – July 2006)
- Exhibit 3 - Authorization and Consent (Company – July 2010)

1.16 ENVIRONMENT, SAFETY AND HEALTH PROTECTION

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

1.17 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.

1.18 EXPORT CONTROL

(a) The Seller must comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, 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.

1.19 GRATUITIES

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

1.20 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.

1.21 PUBLIC RELEASE OF INFORMATION

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

1.22 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).

1.23 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 calendar days of delivery of the Government property. Said equitable adjustment shall be Seller's exclusive remedy.

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

(d) 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 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.

PART 2. APPLICABLE WHEN ITEMS INCLUDE SERVICES

2.1 INCORPORATION BY REFERENCE

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

FAR 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Dec 2007)
FAR 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (May 2008)
Insurance – Form 1 (Company – March 2011)

2.2 CHANGES

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

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

2.3 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.

PART 3. APPLICABLE WHEN SELLER PERSONNEL WORK ON DOE SITE

3.1 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 (Sept 2007)
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)

3.2 EMPLOYEE CONCERNS PROGRAM

(a) DOE has established an Employee Concerns Program (ECP) in DOE Order 442.1A available at <http://www.directives.doe.gov/pdfs/doe/doetext/neword/442/o4421a.html>. The ECP applies to any person working for DOE or a contractor or subcontractor on a DOE project. The ECP provides a means for employees to raise good-faith concerns that a policy or practice of DOE or one of its contractors or subcontractors should be improved, modified, or terminated. Concerns can address health, safety, the environment, management practices, fraud, waste, or reprisal for raising a concern. Also, the Differing Professional Opinions (DPO) process may be used to facilitate dialogue and resolution on technical issues involving environment, safety, and health (ES&H) (see <http://www.directives.doe.gov/pdfs/doe/doetext/neword/442/m4421-1.pdf>).

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

(c) The Seller must notify its employees that:

- (1) DOE and the Company have ECPs;
- (2) Employees are encouraged to first seek resolution with first-line supervisors or through existing complaint or dispute resolution systems, but that they have the right to report concerns through the DOE ECP;
- (3) If a concern is not resolved by supervisors, or if the employee elects not to raise the concern with supervisory personnel, the concern may be reported to the DOE Oak Ridge Operations Office (ORO) by calling the ORO Telephone Hotline (865) 241-3267. Concerns related to actions by Company employees may be reported to the Company by calling 1-888-280-0616; and
- (4) DOE and the Company will not tolerate reprisals against or intimidation of employees who have reported concerns.

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

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

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

3.3a FACILITIES ACCESS AND BADGES

(a) This clause applies if the performance of this Agreement requires that the Seller, its agents, employees, or lower-tier subcontractor employees have physical access to Oak Ridge National Laboratory (ORNL) facilities; however, this clause does not control requirements for employees and agents of Seller and any lower-tier subcontractors obtaining a security clearance. The Seller understands and agrees that the Company has a prescribed process with which the Seller, its agents, employees, and lower-tier subcontractor employees must comply in order to receive a badge that allows such physical access. The Seller further understands that it must propose employees and agents of Seller and any lower-tier subcontractors whose background offers the best prospect of obtaining a badge approval for access. The denial or revocation of a badge may occur considering the following criteria, which are not all inclusive and may vary depending on access requirements and circumstances:

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

(b) The Seller shall assure:

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

3.3b 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 \$1,000 per badge. The charge shall be deducted from payments otherwise due the Seller or may be billed to Seller. Refund of charges, previously collected for badges subsequently found, may not be made after the date of final payment to the Seller.

(c) The \$1,000 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.

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

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

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

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

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

(g) 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 onsite activities for compliance with ES&H requirements. The Company's Subcontract Administrator will notify the Seller in writing of observed noncompliances with applicable ES&H requirements. Seller shall take immediate and appropriate corrective action. Seller shall advise the Company's Subcontract Administrator, in writing, within five (5) working days of the corrective action taken on any written noncompliance. Repeated or willful noncompliance with applicable ES&H requirements by the Seller shall constitute a default under other provisions of this contract and Company may terminate the contract in accordance with those provisions.

(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 Subcontract Administrator, the advance approval of the responsible Company Level II Manager, of Seller's plans and proposed activities. Seller must allow in its scheduling for a reasonable amount of time to obtain said approval and Company shall not be responsible for any resulting delay, so long as Company's actions were reasonable. Seller is responsible, at no additional cost to the Company, to provide qualified personnel and compliant personal protective equipment.

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

4A.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 (Aug 2009)

DEAR 952.204-70 Classification/Declassification (Sep 1997)
DEAR 970.5204-1 Counterintelligence (Dec 2000)
Civil Penalties for Classified Information Security Violations (Company – Sept 2008)
Exhibit 7 - Filing of Patent Applications - Classified Subject Matter (Company – July 2010)

4A.2 PERSONNEL SECURITY CLEARANCES

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

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

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

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

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

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

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

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

PART 4B. APPLICABLE WHEN WORK IS UNCLASSIFIED RESEARCH INVOLVING NUCLEAR TECHNOLOGY

4B.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 termination for convenience provision shall apply.

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

PART 5. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$100,000

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 Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006)

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

Utilization of Small Business Concerns (Company – Mar 2009)

PART 6. APPLICABLE ONLY TO CERTAIN AGREEMENTS

6.1 INCORPORATION BY REFERENCE

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

6.2 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 – July 2010) and DEAR 952.204-77 Computer Security (Aug 2006).

6.3 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 (Dec 2008).

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

6.5 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 Subcontract Administrator, 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 – August 2011). The Seller must obtain written approval from the TPO prior to performing any work related to supporting or managing a conference.

6.6 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 (Jan 2009). 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.

6.7 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.

6.8 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.antd.nist.gov/usgv6> 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 Subcontract Administrator of such nonconformance and act in accordance with instructions of the Subcontract Administrator.

6.9 NUCLEAR HAZARDS INDEMNITY

If performance involves risk of public liability for a nuclear incident or precautionary evacuation and Seller is not subject to Nuclear Regulatory Commission (NRC) financial protection requirements or NRC indemnification, this Agreement incorporates by reference DEAR 952.250-70 Nuclear Hazards Indemnity Agreement. For purposes of incorporation, "subcontractor" means lower-tier subcontractor.

6.10 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).