

**GENERAL TERMS & CONDITIONS**  
**Time & Material (TM November 2006)**

**PART 1. APPLICABLE TO ALL TRANSACTIONS**

**1.1 DEFINITIONS**

The following terms shall have the meanings below:

- (a) Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- (b) Company means UT-Battelle, LLC, acting under Contract No. DE-AC05-00OR22725 with DOE.
- (c) Seller means the person or organization that has entered into this Agreement.
- (d) Agreement means Purchase Order, Subcontract, Price Agreement, Basic Ordering Agreement, Task Order, or Modification thereof.
- (e) Subcontract Administrator means Company's cognizant Contracts Division representative.
- (f) Educational Institution means those entities described in Office of Management and Budget Circular No. A-21.

**1.2 RESOLUTION OF DISPUTES**

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

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

(c) The parties agree that, subject to (b)(1), substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of Tennessee except for Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses which shall be determined in accordance with federal law.

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

**1.3 ORDER OF PRECEDENCE**

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

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

**1.4 PAYMENT AND ADMINISTRATION**

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

**1.5 ACCEPTANCE OF TERMS AND CONDITIONS**

Seller, by signing this Agreement or performing the services and/or delivering the supplies 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**

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. Any implied warranties of merchantability and fitness for a particular purpose are hereby disclaimed.

### **1.7 ASSIGNMENT**

Seller shall not assign rights or obligations to third parties without the prior written consent of Company. However, Seller may assign rights to be paid amounts due or to become due to a financing institution if Company is promptly furnished written notice and a signed copy of such assignment.

### **1.8 MATERIAL REQUIREMENTS**

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

### **1.9 TRANSPORTATION**

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

### **1.10 RISK OF LOSS**

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

### **1.11 PAYMENT**

(a) Company shall pay Seller upon submission of approved invoices monthly, or at more frequent intervals as determined by Company: (1) The amounts for hourly rates 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. Invoices may be submitted once each month (or at more frequent intervals if approved by Company). Upon request, Seller shall substantiate invoices by evidence of actual payment and by individual daily job timecards, or other substantiation approved by Company. 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 Company's web site <http://www.ornl.gov/adm/contracts/docindex.htm> under the title *Special Articles and Forms*. (2) 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. (3) 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.

(b) Company shall also pay Seller: (1) Allowable costs of direct materials as 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. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. 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. Direct materials, as used in this clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product. (2) The cost of subcontracts authorized under this Agreement shall be reimbursable; provided, that the costs are consistent with subparagraph (1) above. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subtier subcontractor in the same manner as for supplies and services purchased directly for this Agreement. (3) 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 Subcontract Administrator 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 Schedule, 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, subject only to claims:

- (1) in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement,
- (2) based upon the liabilities to third parties arising out of performing this Agreement,
- (3) for reimbursement of costs incurred relating to patents.

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 Company's Contracts web site <http://www.ornl.gov/adm/contracts/docindex.htm> 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.

### 1.12 COMPLIANCE WITH LAWS

(a) Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent orders, DOE directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this Agreement. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits including without limitation, underground utility permit requirements. 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 CFR 1910.1200. Seller shall perform the work under this Agreement in a manner that is safe, healthy, and environmentally acceptable, and shall develop and manage a comprehensive program in support of these objectives.

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

### 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) except for **educational** and other non-profit **institutions**, for default if Seller (i) fails to comply with any of the terms of this Agreement, (ii) disregards laws, safety or environmental regulations, or ordinances, (iii) fails to make progress so as to endanger performance of this Agreement, (iv) fails to provide adequate assurance of future performance, or (v) fails to perform satisfactorily under this Agreement.

(b) Except for defaults of subtier subcontractors, Seller shall not be in default because of failure to perform if the failure arises from causes beyond Seller's reasonable control and without its fault or negligence. Seller will not be deemed to be in default for failure to perform caused by the failure of a subtier subcontractor if the failure was beyond the control of both Seller and subtier subcontractor and without the fault or negligence of either; however, Seller will be in default if Company directed Seller to purchase these supplies or services from another source and Seller failed to comply. A termination which was originally determined to be for default shall be treated as a termination for convenience if Seller was not in default.

(c) In the event of termination, the Subcontract Administrator shall deliver a notice specifying the extent and effective date. Seller shall immediately: (1) stop all work terminated 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, other material produced or acquired for the work terminated, (ii) completed or uncompleted plans, drawings, information, other property that would be required to be furnished to Company had this Agreement been completed, (iii) jigs, dies, fixtures, and other special tools and

tooling acquired or manufactured for this Agreement the cost of which Seller has been or will be reimbursed under this Agreement; (4) complete performance of the work not terminated; (5) reach settlement with all sub-tier subcontractors who claim monies owed if such settlement is claimed as reimbursable under this Agreement, and obtain approval of Company of such settlements; and, (6) protect and preserve any property in which Company or government has or may acquire an interest.

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

(e) Subject to the terms of this Agreement, Seller, who is a non-profit organization, shall be paid: (1) reasonable cancellation charges incurred by the Seller, (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 Nonprofit 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 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 numbers, 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* from Company's Contracts web site <http://www.ornl.gov/adm/contracts/docindex.htm>. The FAR and DEAR may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. or from Government web sites <http://acquisition.gov/comp/far/index.html> for FAR and <http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Regulation?OpenDocument> for DEAR. The following clauses are incorporated by reference:

FAR 52.222-21 Prohibition of Segregated Facilities (Feb 1999)

FAR 52.222-26 Equal Opportunity (Apr 2002) (The required poster is available at:

<http://www.dol.gov/esa/regs/compliance/posters/eo.htm>)

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

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

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

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

FAR 52.225-8 Duty Free Entry (Feb 2000)

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

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

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

FAR 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003)

DEAR 952.247-70 Foreign Travel (Dec 2000)

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

Taxes: Fixed-Price (Company – July 2006)

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

#### **1.17 SUSPENSION OF WORK**

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

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

#### **1.19 GOVERNMENT PROPERTY**

(a) Company may furnish to Seller property as may be required for performance of work under this Agreement, or have Seller acquire such property as mutually agreed. Title to property furnished or acquired shall vest in the Government, and hereafter be referred to as "Government property." If Seller purchases property for which it is entitled to be reimbursed as a direct item of cost, title shall pass to the Government upon delivery of the property to Seller. Title to all other property, the cost of which is reimbursable to Seller, shall pass to the Government upon the 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 cause all Government property to be clearly marked as Government property. Except as may be authorized in writing, Government property shall be used only for the performance of this Agreement.

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

(e) Upon completion of the work under this Agreement, Seller shall submit, in a form acceptable to Company, inventory schedules covering all 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 solely responsible for all liability and related expenses resulting from (1) injury, death, damage to or loss of property or (2) violation of Part 1.12 Compliance with Laws, which is in any way connected with the 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. 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) Seller shall be solely responsible for all criminal fines and penalties assessed against Seller.

(d) 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.

(e) 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 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 Seller's premises 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, careless, or otherwise objectionable.

(b) If Seller is performing any of the work onsite which is defined as at ORNL or any other DOE or Company owned or leased facility, Seller shall comply with (1) through (7) below.

(1) Seller shall manage and perform work in accordance with a documented Safety Management System (SMS). In fulfilling this requirement, Seller shall (A) comply with the ORNL Integrated Safety Management System (ISMS) program by meeting the ES&H requirements of the Agreement including those specified in the statement of work and the specifications, if any, (B) manage and perform work in accordance with a documented Safety Management Plan consistent with DEAR 970.5223-1, which has been submitted to Company for review and approval, or (C) manage and perform work in accordance with a documented Safety Management Plan consistent with DEAR 970.5223-1 which has been approved by DOE and submitted to Company for review and approval. Until approval by Company is received, Seller shall comply with the ORNL ISMS program.

(2) Seller shall be able to demonstrate through documentation and work practices that its performance of work under this Agreement is in accordance with the Statement of Work and the subcontract specifications, and that its SMS:

(A) defines the scope of work;

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

(C) develops and implements hazard controls;

(D) performs work within controls; and,

(E) provides feedback to Company and Seller's employees on adequacy of controls and continues to improve safety management.

(3) If Company has notified Seller of a noncompliance with applicable ES&H regulations or requirements pursuant to (f) below, and Seller fails or refuses to immediately correct the ES&H violation, Company may perform, or cause to be performed, the necessary corrective action and unilaterally charge the Seller for the cost thereof. Such charges will be deducted from payments otherwise due the Seller.

(4) Company, acting on behalf of DOE, will maintain individual occupational radiation exposure records as required for Seller's employees for periods they are employed for work under this Agreement. Should Seller choose, in addition, to maintain its own individual occupational radiation exposure records during the performance of work under this Agreement, Seller's records shall be subject to inspection by Company and/or DOE and shall be preserved by Seller until disposal is authorized by Company, or at the option of Seller, delivered to Company upon completion or termination of the Agreement. If Seller exercises the forgoing option, title to such records shall vest in DOE upon delivery.

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

(B) Before the fifth day of each month the Seller shall report to the Company the number of hours worked onsite the previous month. Reported hours should not include paid, non-work time such as holidays, vacation, or sick leave. This report shall be made on the "Monthly Report of Hours Worked" form, available under the title *Special Articles and Forms or Exhibits* at <http://www.ornl.gov/adm/contracts/docindex.htm>.

(C) The Seller shall forward reports from lower-tier subcontractors to the Company.

(6) Seller may not bring to or use onsite any hoisting and rigging equipment that contains any SAE Grades 5, 8, or 8.2 fasteners or ASTM Grade A325 fasteners identified on the "DOE Suspect Bolt Headmark List" which can be found at Company's Contracts web site (see Part 1.15 for address). For purposes of this paragraph, "hoisting and rigging equipment" means: (i) overhead and gantry cranes as defined in 29 CFR 1910.179; (ii) crawler, locomotive, and truck cranes as defined in 29 CFR 1910.180; derricks, as defined in 29 CFR 1910.181; and associated lifting devices such as slings, lifting fixtures, and lifting attachments.

(7) Working on or near energized parts. (A) Energized parts mean parts that operate at 50 or more volts to ground or contain 10 or more Joules of stored electrical energy.

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

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

(c) 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.

(d) 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.

(e) 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.

(f) Company shall notify Seller by a written Notice of Noncompliance of any observed noncompliance with applicable ES&H regulations or requirements including specified requirements of a documented SMS as referenced in (b)(1) above. Seller shall immediately take appropriate corrective action. Seller shall advise Company in writing, within five (5) working days of the issuance of the Notice of Noncompliance of the corrective action taken.

(g) Seller shall include this clause in all of its subcontracts, at any tier, involving the 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.

### **1.25 REPORTING CONCERNS**

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

### **1.26 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 799, 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 or gift) or special treatment to any employee of Company with the intent of obtaining a subcontract or favorable treatment under a subcontract. 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.

### **1.28 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.

## **PART 2. APPLICABLE WHEN SELLER PERSONNEL WORK ON DOE SITE**

### **2.1 INCORPORATION BY REFERENCE**

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

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

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

DEAR 952.203-70 Whistleblower Protection for Contractor Employees (Dec 2000)

Foreign Nationals (Company – July 2006)

Hazardous Materials Reporting (Company – July 2006)

Insurance - Work on a Government Installation (Company – July 2006)

Required Training (Company – July 2006)

### **2.2 EMPLOYEE CONCERNS PROGRAM**

(a) DOE has established an Employee Concerns Program (ECP) in DOE Order 442.1A available at <http://www.directives.doe.gov/pdfs/doe/doetext/neword/442/o4421a.html>. The ECP applies to any person working for DOE or a contractor or subcontractor on a DOE project. The ECP provides a means for employees to raise good-faith concerns that a policy or practice of DOE or one of its contractors or subcontractors should be improved, modified, or terminated. Concerns can address health, safety, the environment, management practices, fraud, waste, or reprisal for raising a concern.

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



- (c) The Seller must notify its employees that:
  - (1) DOE and the Company have ECPs;
  - (2) Employees are encouraged to first seek resolution with first-line supervisors or through existing complaint or dispute resolution systems, but that they have the right to report concerns through the DOE ECP;
  - (3) If a concern is not resolved by supervisors, or if the employee elects not to raise the concern with supervisory personnel, the concern may be reported to the DOE Oak Ridge Operations Office (ORO) by calling the ORO Telephone Hotline, (865) 241-3267. Concerns related to actions by Company employees may be reported to the Company by calling (865) 241-2255; and
  - (4) DOE and the Company will not tolerate reprisals against or intimidation of employees who have reported concerns.
- (d) Notices containing the information in (c)(1) through (c)(4), which are posted in areas where the DOE-related work is performed, will satisfy the notification requirement in subparagraph (c).
- (e) Upon request, the Seller must assist DOE and the Company in resolution of employee concerns.
- (f) The Seller shall include this clause in subcontracts hereunder.

### **2.3 FACILITIES ACCESS AND SECURITY 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 security 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 security badge approval for access. The denial or revocation of a security badge may occur considering the following criteria, which are not all inclusive and may vary depending on access requirements:

- (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 punishable by imprisonment of six (6) months or longer; or
- (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.

(b) The Seller shall assure:

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

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

(c) The Seller understands and agrees that the Company or DOE may unilaterally deny or revoke a facility access or security 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 security 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 security badge 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.

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

### **3A.1 INCORPORATION BY REFERENCE**

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

DEAR 952.204-2 Security (May 2002)  
DEAR 952.204-70 Classification/Declassification (Sep 1997)  
DEAR 970.5204-1 Counterintelligence (Dec 2000)  
Exhibit 7 - Filing of Patent Applications - Classified Subject Matter (Company – Jan 2001)

### **3A.2 PERSONNEL SECURITY CLEARANCES**

(a) The Seller agrees to comply with suitability checks including the submission of information and forms required by DOE M 470.4-5 Personnel Security. The process requires submission of fingerprints and a background check conducted by the Company, outside entities, or DOE. That check may include, without limitation, the following:

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

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

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

### **3B.1 SENSITIVE FOREIGN NATIONS CONTROLS**

(a) In connection with any activities in the performance of this Agreement, Seller agrees to comply with the "Sensitive Foreign Nations Controls" requirements furnished to Seller by Company, relating to those countries, which may from time to time be identified to Seller by written notice as sensitive foreign nations. Seller shall have the right to terminate its performance under this Agreement upon at least 60 days' prior written notice to Company if Seller determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance, to continue performance of the work under this Agreement as a result of such notification. If Seller elects to terminate performance, the provision of Part 1.13 shall apply.

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

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

### **4.1 INCORPORATION BY REFERENCE**

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

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (July 1995)  
FAR 52.203-7 Anti-Kickback Procedures (July 1995)  
FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (June 2003)  
FAR 52.219-8 Utilization of Small Business Concerns (May 2004)  
FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (Sep 2000)  
FAR 52.223-14, Toxic Chemical Release Reporting (Aug 2003), except paragraph (e)  
DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (Aug 2002)

### **4.2 AUDITS AND RECORDS**

(a) As used in this provision, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, computer data, or in any other form.

(b) Seller shall maintain and Company and DOE, or an authorized representative of either, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred (including the accuracy, completeness, and currency of any cost or pricing data relating to subcontract or lower-tier subcontract proposals or modifications) and any of Seller's directly pertinent records involving transactions related to this Agreement or a lower-tier subcontract hereunder.

(c) Seller shall make available at all reasonable times the records, material and other evidence described in paragraphs (a) and (b) for examination, audit, or reproduction until 3 years after final payment under this Agreement.

## **PART 5. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$500,000**

## **5.1 INCORPORATION BY REFERENCE**

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

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

## **PART 6. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$550,000**

### **6.1 INCORPORATION BY REFERENCE**

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

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

## **PART 7. APPLICABLE ONLY TO CERTAIN AGREEMENTS**

### **7.1 INCORPORATION BY REFERENCE**

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

### **7.2 PRINTING**

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

### **7.3 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.

### **7.4 PRIVACY ACT**

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

### **7.5 COMMERCIAL COMPUTER SOFTWARE**

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

### **7.6 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.

### **7.7 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.