GENERAL TERMS & CONDITIONS
Cost-Reimbursement – Services
(CTSER SEPTEMBER 2015)

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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), the National Nuclear Security Administration (NNSA), or any duly authorized representative thereof.

(b) Company means Consolidated Nuclear Security, LLC acting under Contract No. DE-NA0001942.

(c) Seller means the person or organization that has entered into this Agreement with the Company.

(d) Agreement means Purchase Order, Subcontract, Price Agreement, AVID Agreement, Basic Ordering Agreement, or Modification thereof.

(e) Article or Clause is the numbered paragraph of General Terms & Conditions.

(f) Procurement Representative means Subcontract Administrator, Buyer, Procurement Specialist, or Contract Specialist acting within the limits of a written authority to enter into, administer, and/or terminate contracts and make related determinations and findings on behalf of the Company.

(g) Subcontract Technical Representative means the duly authorized Company representative who provides technical direction to the Seller in performance of the work under this Agreement.

(h) On-site work means work in furtherance of this Agreement at a DOE-owned or –leased area or Company-owned or –leased area.

(i) The term "FAR" means the Federal Acquisition Regulations including all amendments and changes thereto in effect on the date of issuance of this Agreement.

(j) The term "DEAR" means the DOE Acquisition Regulations, including all amendments and changes thereto in effect on the date of issuance of this Agreement.

(k) The term "U.S.C." means the United States Codes.

(l) The term "Commercial Item/Service" or "Commercial Component" means the same as the definitions for these terms set forth at FAR 2.101.

(m) The term "Pantex" means the Pantex Plant in Amarillo, TX managed and operated by Company.

(n) The term "Y-12" means The Y-12 National Security Complex in Oak Ridge, TN managed and operated by Company.

2. ORDER OF PRECEDENCE

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

(a) The Schedule (excluding Sections C and G);

(b) Schedule Section G:

(1)Negotiated Alterations or Special Provisions;

(2)General Terms and Conditions;

(3)Clauses Incorporated by Reference;

(4) Supplemental Conditions;

(c)Specifications or Statement of Work, or other description of services or supplies (Section C); and

(d) Drawings.

3. AGREEMENT FOR BENEFIT OF DOE

(a) Funding – Company shall make all payments under this Agreement from Government funds advanced and agreed to be advanced by DOE, and not from its own funds. In almost all circumstances, funds recovered by Company from Seller are Government funds.

(b) Administration – 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.

(c) Company Right to Recovery – The Company, a Managing and Operating Contractor, acting under its Prime Contract with DOE, has entered into this Agreement with Seller for the benefit of DOE. If Company seeks recovery from Seller, Seller agrees it shall not plead, assert or raise in any manner a defense that Company has no right to recover (1) because the Company itself, rather than DOE/NNSA, has

suffered no damages on account of the cost-reimbursable nature of Company's Prime Contract with DOE, or (2) because DOE has accepted the project or task performed under this Agreement.

4. ACCEPTANCE OF TERMS AND CONDITIONS

(a) Seller, by signing this Agreement, delivering the supplies, or performing the requirements indicated herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporates by reference or attachment. Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement that are different from or in addition to those mentioned in this Agreement.

(b) Failure of Company to enforce any of the provisions of this Agreement shall not be construed as (1) evidence to interpret the requirements of this Agreement, (2) a waiver of any requirement, or (3) a waiver of the right of Company to enforce each and every provision. In accordance with Tennessee Code, Section 47-50-112(c), no waiver of any provision or part thereof of this Agreement shall be valid unless such waiver is in a writing signed by the Procurement Representative. Any waiver shall be strictly construed and shall apply on a one-time basis unless expressly stated to apply otherwise. All rights and obligations shall survive final performance of the contract.

5. COOPERATING WITH DOE OFFICE OF INSPECTOR GENERAL

(a) Seller shall cooperate fully and promptly with requests from the DOE Office of Inspector General (OIG) for information and data relating to DOE programs and operations. The Seller must ensure that its employees (i) comply with requests by the OIG for interviews and briefings and provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements, and (ii) not impede or hinder another employee's cooperation with the OIG.

(b) Seller must ensure that reprisals are not taken against employees who cooperate with or disclose information to the OIG.

6. REPORTING WASTE, FRAUD, AND ABUSE

(a) General Requirements - Seller shall ensure its employees having information about actual or suspected violations of laws, regulations, or policies including fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems notify an appropriate authority. Examples of violations to be reported include, but are not limited to, allegations of false statements; false claims; bribery; kickbacks; fraud; environmental, safety, and health violations; theft, computer crimes; subcontractor mischarging; conflicts of interest; and conspiracy to commit any of these acts. Seller must ensure that its employees are aware that its employees are required to report actual or suspected violations. Reporting can be as follows: Y-12 Ethics Hotline; phone 865 576-1900); fax 865 574-9656; Pantex 806-477-6777; Fax 806-477-3005; Office of Inspector General; 1-800-541-1625 (M-F 8:00AM – 4PM EST)

(b) Seller Specific Requirements - Seller shall inform its employees annually of their duty to report allegations of information described in General Requirements above; display the OIG hotline telephone number in buildings and common areas under its responsibility such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies; publish the OIG hotline telephone number in telephone books, newsletters, or other means of widespread communication to employees under its responsibility; Seller and its employees shall report to the OIG within a reasonable period of time, but not later than 24 hours after discovery of any alleged violations; shall not take any reprisal action against an employee for reporting actual or suspected violations to the OIG.

(c) Flowdown - Requirements of this clause shall be flowed down to all lower-tier subcontractors

7. PUBLIC RELEASE OF INFORMATION

(a) Seller shall not publicly disclose information concerning any aspect of the materials or services relating to this Agreement without the prior written approval of the Procurement Representative unless specifically required by law.

(b) The interest of the Company in this Agreement may not be used in advertising or publicity without advance written approval of the Company.

(c) This clause shall flow down to all appropriate lower-tier subcontracts.

8. CONFIDENTIALITY OF INFORMATION

(a) To the extent that work under this Agreement requires that Seller be given access to confidential or proprietary business, technical, or financial information belonging to the Government, the Company, or other parties, Seller shall after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by Company in writing. The foregoing obligations, however, shall not apply to (1) information which, at the time of receipt by Seller is in public domain; (2) information which is published after receipt thereof by Seller or otherwise becomes part of the public domain through no fault of Seller; (3) information which Seller can demonstrate was in its possession at time of receipt thereof and was not acquired directly or indirectly from Government or Company; (4) information which Seller can demonstrate was received by it from a third party who did not required Seller to hold it in confidence.

(b) Seller shall obtain written agreement, in a form satisfactory to Company, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within Seller's organization directly concerned with performance of this Agreement.

(c) Seller agrees, if requested by Company or DOE, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying

information to Seller under this Agreement, and to supply a copy of such agreement to Company.

(d) Seller agrees that upon request by Company or DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by Company or DOE, such an agreement shall also be signed by Seller's personnel.

(e) This clause shall flow down to all appropriate lower-tier subcontracts.

9. COMPLIANCE WITH LAWS

(a) In performing work under this Agreement, the Seller shall comply with the requirements of applicable Federal, State, and local laws and regulations, unless relief has been granted in writing by the appropriate regulatory agency.

(b) Except as otherwise directed by the Company, the Seller shall procure all necessary permits or licenses required for the performance of work under this Agreement.

(c) Regardless of the performer of the work, the Seller is responsible for compliance with the requirements of this clause. The Seller is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the Seller's compliance with the requirements.

10. DOE SECURITY BADGES AND CLEARANCE REQUIREMENTS (Y-12 Only)

(a) Security badges issued by the Company to Seller employees and Seller's lower-tier subcontractor employees are Government property. The Seller must ensure that badges issued to its employees and employees of its subcontractors at all tiers are returned to the Company. Employees must return badges upon expiration of this Agreement, termination of employment, or when access to the Y-12 National Security Complex is no longer needed. Employees holding an L or Q clearance must attend a security termination debriefing conducted by the Company when returning badges. When possible, the Seller must notify the STR three business days before an employee holding an L or Q clearance will be returning a badge so that debriefings may be scheduled. However, in all cases, the Personnel Security Clearance Office should be notified by the Seller within one business day of a termination of employment or need for access to the Complex if the employee holds an L or Q clearance in order to provide notification to DOE/NNSA within two business days. DOE/NNSA directives require the termination of an employee security clearance within two business days of termination of employment or need for access to the Complex.

(b) The Seller must immediately notify the Procurement Representative in writing when a badge of its employee or the employee of a lower-tier subcontractor is lost or stolen. These employees must report in person to the Y-12 Visitor Center Badging Office (or contact PSS after hours/weekends) to complete an affidavit concerning the loss or theft and to obtain replacement badges.

(c) The Seller must immediately notify the Procurement Representative in writing whenever any employee of Seller or a lower-tier subcontractor who has been badged or holds a security clearance under this Agreement terminates employment or no longer needs access to the Complex.

(d) The Seller must ensure that its employees and its lower-tier subcontractors' employees complete the *Y-12 Subcontractor Personnel Exit Checklist*, Form UCN- 4452S, before exiting the site. The employee must take the completed Checklist and badge to the Y-12 Visitor Center badging office. If the Y-12 Visitor Center is closed (hours of operation are Monday-Thursday 6:00 a.m. to 4:30 p.m.) the employee may leave the Checklist and badge with the STR. (In such cases alternate debriefing arrangements will be made for employees holding an L or Q clearance.) The Checklist, signed by the STR or an authorized representative of Personnel Security, is acceptable proof to the Company that a badge has been returned.

(e) Seller's payment may be withheld until all requirements of this clause have been met. Failure by employees of the Seller and its lower-tier subcontractors to promptly return badges will result in a charge of $1,000 per badge, to be withheld from payment or billed to the Seller. In addition, failure to return a badge may result in the denial of future access to the Y-12 site for the individual. This $1,000 charge will not be assessed against badges that are lost or stolen during performance if replacement badges are issued to allow Seller or lower-tier subcontractor employees to return to work.

(f) On the last Thursday of each month, the Seller shall submit to the Company the Subcontract Badge Clearance Status Report (UCN-21709). The Seller must ensure that all security badges issued to its employees and employees of its subcontractors at all tiers are recorded monthly.

11. WORKPLACE SUBSTANCE ABUSE PROGRAM (WSAP)

(a) Applies to -- This clause applies to subcontracts $25,000 or greater and which involve: (1) access to or handling of classified information or special nuclear materials; (2) high risk of danger to life, the environment, public health and safety, or national security; (3) transportation of hazardous materials to or from a DOE site, (4) employees who are required to have L or Q clearances to perform work under this Agreement, or (5) on–site construction activities.

(b) WSAP Covered Work -- For purposes of this clause, "WSAP covered work" means both on-site work, and work that is not on-site but that is performed by subcontractor employees with Q or L clearances at facilities that have Limited Areas (security areas designated by DOE for the protection of classified matter). Facilities that are not DOE-owned or –leased or Company-owned or -leased but that have Limited Areas within them are known as "possessing facilities."

(c) Sub-tier contractors to Seller -- Seller shall include this requirement in its contracts with applicable lower tier subcontractors, and will require those subcontractors to include this requirement in their subcontracts, if the applicability standards listed in the "Applies to" section above are met. References to "Seller" include all lower tier subcontractors falling within the "Applies to" criteria listed in subparagraph (a) above.

(d) Company approval of Seller Program

(1) All work falling within the **"**Applies to**"** criteria above is subject to 10 CFR 707, "Workplace Substance Abuse Programs at DOE Sites." This clause highlights certain provisions of 10 CFR Part 707, but Seller is directed to the entire provision to ensure compliance. The Seller shall develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707. In accordance with 10 CFR 707.5(d), Seller's WSAP requires Company approval. Seller's proposed WSAP must be submitted to the Procurement Representative and approved before the start of work.

(2) Seller shall also submit applicable lower-tier subcontractor WSAPs for Company approval. Seller may either include employees of some or all subcontractors in its WSAP, or include this clause in subcontracts for WSAP covered work and require subcontractors to submit WSAPs for Company approval.

(e) General Workplace Substance Abuse Program Requirements.

(1) Seller's WSAP shall be consistent with the baseline elements in 10 CFR Part 707 and the guidelines of the U.S. Department of Health and Human Services found at: http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/mandatory_guidelines5_1_10.html.

(2) For all WSAP covered work, Seller's WSAP must provide for pre-employment testing for illegal drugs before final selection of applicants for employment, regardless of whether such applicants will fill testing designated positions (TDPs) as described in subparagraph (f) below. Pre-employment testing must comply with all applicable provisions of 10 CFR 707.

(3) Seller must notify the Procurement Representative in writing as soon as possible, or at the latest by the next business day, after Seller receives notice -

- of an employee's conviction under a criminal drug statute, or
- for employees in TDPs (defined below), of a drug related arrest or conviction or a receipt of a positive drug test result.

(4) Seller shall maintain files of chain-of-custody records required by 10 CFR 707.12(a) and 10 CFR 707.16(d) and submit copies to Company upon request. Seller and lower-tier subcontractors shall require that laboratory records relating to positive drug test results be maintained in the manner and for the periods required by 10 CFR 707.16(c).

(5) Seller shall use only drug-testing laboratories certified by the Department of Health and Human Services under Subpart C of the HHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs." [See 10 CFR 707.12(a)]. The HHS Mandatory Guidelines are available at http://dwp.samhsa.gov/. Seller shall provide a copy of the certification to the Procurement Representative upon request. Seller shall retain pre-employment testing records in accordance with 10 CFR 707.16. When an applicant has been tested and determined to have used an illegal drug, Seller must terminate processing for employment and so notify the applicant.

(6) As required by 10 CFR 707.5(d), Company will monitor Seller's implementation of its program for effectiveness and compliance with 10 CFR Part 707. Seller shall submit a written report, if appropriate, to the Procurement Representative of drug tests completed before mobilization or commencing authorized work. At Company's request, Seller shall submit additional reports of tests completed during performance.

(7) Company will require Seller to remove from WSAP covered work any Seller employee who is determined to have used an illegal drug.

(f) Testing Designated Positions

(1) In addition to the general WSAP provisions, Seller shall determine if it has employees in TDPs as defined below and performing WSAP covered work. If Seller has no TDPs (potentially the case for uncleared construction subcontractors employees not possessing a Facility Clearance) the WSAP shall so state. If Seller has employees in TDPs performing WSAP covered work, then prior to beginning work under this Agreement, Seller shall provide the Procurement Representative with a list of all TDP employees, and Seller's WSAP must comply with the provisions of 10 CFR Part 707 regarding TDPs. Thereafter, Seller shall notify the STR of any additions or deletions of employees in TDPs within 48 hours.

(2) TDPs are defined as those positions involving certain high risk work listed in Part 707, access to classified information, construction, and crane operators, and any positions filled by employees holding an L- or Q-clearance.

(3) Seller's employees in TDPs who perform on-site will be subjected to the following drug testing by Company:

(i) Random drug testing at the rates specified in 10 CFR 707.7,

(ii) Drug testing as a result of an occurrence (see 10 CFR 707.9), and

(iii) Drug testing for reasonable suspicion of illegal drug use (see 10 CFR 707.10).

(4) Seller's employees performing on-site work shall be placed in Company's pool of employees for random drug testing, and these employees will be subject to testing by Company's Occupational Health Services (OHS). Seller's employee will be notified by Company's representative when Seller's employee is selected for random drug testing. Company's representative will notify Company's OHS when Seller's employee has been notified of his/her duty to report to Company's OHS. Upon notification by Company's representative, Seller's employee will have one and one-half hours to report to Company's OHS.

(g) Seller's failure to comply with the requirements of 10 CFR Part 707 or to perform in a manner consistent with its approved WSAP may render Seller subject to suspension of payments, termination for default, suspension and debarment, and any other remedies available to Company and/or to DOE.

(h) If Seller believes that an anticipated lower tier subcontract for on-site work may require a WSAP that complies with 10 CFR 707, then Seller must notify the Procurement Representative not later than ten calendar days before Seller awards that subcontract.

12. INDEPENDENT CONTRACTOR

(a) Seller shall act in performance of this Agreement as an independent contractor and not as an agent for Company or

the Government, 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.

13. HOLD HARMLESS

SELLER SHALL BE SOLELY RESPONSIBLE FOR ALL LIABILITY AND RELATED EXPENSES RESULTING FROM INJURY, DEATH, DAMAGE TO, OR LOSS OF PROPERTY WHICH IS IN ANY WAY CONNECTED WITH THE NEGLIGENT PERFORMANCE OF WORK UNDER THIS AGREEMENT. SELLER SHALL ALSO BE RESPONSIBLE FOR ALL MATERIALS AND WORK UNTIL ACCEPTANCE BY COMPANY. 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 CONDUCT OF COMPANY.

14. LIABILITY FOR FINES AND PENALTIES

The Seller shall be responsible, at no expense to the Company, for the payment of fines, penalties, and other assessments imposed as a result of the Seller's performance. If the fine, penalty, or other assessment results in part from actions or failures to act of the Company or its employees, the Company will be responsible for its *pro rata* share. If the Company is required to pay a fine, penalty, or other assessment for which the Seller is liable under this clause, the Seller shall reimburse the Company the amount of such fine, penalty, or other assessment.

15. 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.

16. ALLOWABLE COST AND PAYMENT

(a) Invoicing. The Company will make payments to the Seller when requested as work progresses, but not more often than once every two weeks, in amounts determined to be allowable by the Company in accordance with the terms of this Agreement and the following FAR Subparts, as supplemented by DEAR Subpart 931.2, in effect on the date of this Agreement: (1) FAR Subpart 31.3 for educational institutions, (2) FAR Subpart 31.7 for nonprofit organizations not listed in Attachment C of OMB Circular A-122, and (3) FAR Subpart 31.2 for all others. The Seller may submit to the Company, in such form and reasonable detail as the Company may require, an invoice supported by a statement of the claimed allowable cost for performing this Agreement.

(b) Reimbursing costs. (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Seller has paid by cash, check, or other form of actual payment for items or services purchased directly for the Agreement;

(ii) When the Seller is not delinquent in paying costs of performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Supplies and services purchased directly for the Agreement and associated financing payments to subcontractors, provided payments determined due will be made in accordance with the terms and conditions of a subcontract or invoice and ordinarily within 30 calendar days of the submission of the Seller's payment request to the Company;

(B) Materials issued from the Seller's inventory and placed in the production process for use on the Agreement;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Seller contributions under employee pension plans shall be excluded until actually paid unless the Seller's practice is to make contributions to the retirement fund quarterly or more frequently, and the contribution does not remain unpaid 30 calendar days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Seller's indirect costs for payment purposes).

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

(2)(i) The Seller shall submit an adequate final indirect cost rate proposal to the Company (or cognizant Federal agency official) and auditor within six months after the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Seller and granted in writing by the Company. The Seller shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Seller's actual cost experience for that period. The appropriate Company or Government representative and the Seller shall establish the final indirect cost rates as promptly as practical after receipt of the Seller's proposal.

(3) The Seller and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in this Agreement.

(4) Within 120 calendar days (or longer period if approved in writing by the Procurement Representative) after settlement of the final annual indirect cost rates for all years of a physically complete Agreement, the Seller shall submit a completion invoice to reflect the settled amounts and rates. If the Seller fails to submit a completion invoice within the time specified, the Procurement Representative may determine the amounts due to the Seller under the Agreement and record this determination in a unilateral modification to the Agreement.

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

(e) Audit. At any time or times before final payment, the Company may have the Seller's invoices and statements of cost audited. Any payment may be reduced by amounts found by the Procurement Representative not to constitute allowable costs or adjusted for prior overpayments or underpayments.

(f) Final payment. (1) Upon approval of a completion invoice or voucher submitted by the Seller in accordance with paragraph (c)(4) of this clause, and upon the Seller's compliance with all terms of this Agreement, the Company shall promptly pay any balance of allowable costs and fee (if any) not previously paid. A final invoice shall be submitted for payment no more than 90 calendar days following the expiration or termination of the subcontract, unless a later or alternate date is agreed to in writing by the Procurement Representative. Said invoices shall be clearly marked "Final Invoice", thus indicating that all payment obligations of the Company under this subcontract have ceased and that no further payments are due or outstanding. If Seller fails to submit a final invoice within time allowed, the Procurement Representative shall determine the final amount owed to the Seller, if any, or the final amount owed by the Seller to the Company. Such determination shall be final and conclusive between the parties without the right of judicial review unless the Seller submits a claim requesting a Senior Supply Chain Manager Final Decision under the Resolution of Disputes clause within 60 calendar days after receipt of the Procurement Representative's determination.

(2) The Seller shall pay to the Company any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Seller or any assignee under this Agreement, to the extent that those amounts are properly allocable to costs for which the Seller has been reimbursed by the Company. Reasonable expenses incurred by the Seller for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Procurement Representative. Before final payment under this Agreement the Seller and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Company, in form and substance satisfactory to the Procurement Representative, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Seller has been reimbursed by the Company under this Agreement; and

(ii) A release discharging the Company, the Government, their officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this Agreement, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Seller to third parties arising out of the performance of this Agreement; provided, that the claims are not known to the Seller on the date of the execution of the release, and that the Seller gives notice of the claims in writing to the Procurement Representative within six years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Seller under the patent clauses of this Agreement, excluding, however, any expenses arising from the Seller's indemnification of the Company and the Government against patent liability.

17. PAYMENT FOR OVERTIME PREMIUMS

(a) The use of overtime is authorized if the overtime premium does not exceed the amount specified in the Agreement or the overtime premium is paid for work—

(1) Necessary to cope with emergencies such as those resulting from accidents or natural disasters;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, maintenance, or accounting;

(3) To perform tests or procedures that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Company.

(b) Any request for estimated overtime premiums that exceeds the amount specified in the Agreement shall include all estimated overtime for completion of performance and shall—

(1) Identify the work unit; *e.g.*, department or section, in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Procurement Representative to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Company Agreements, together with identification of each affected Agreement; and

(4) Provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.

18. TAXES – FIXED-PRICE, FEDERAL, STATE AND LOCAL TAXES

(a) Definitions. As used throughout this clause, the following terms shall have the meaning set forth below:

(1) The term "direct tax" means any tax or duty directly applicable to the completed supplies or services covered by this subcontract, or any other tax or duty from which the Seller or this transaction is exempt. It includes any tax or duty directly applicable to the importation, production, processing, manufacture, construction, sale, or use of such supplies or services; it also includes any tax levied on, with respect to, or measured by sales, receipt from sales, or use of the supplies or services covered by this subcontract. The term does not include transportation taxes, unemployment compensation taxes, social security taxes, income taxes, excess-profits taxes, capital stock taxes, property taxes, and such other taxes as are not within the definition of the term "direct tax" as set forth above in this paragraph.

(2) The term "subcontract date" means the effective date of this subcontract if it is a negotiated subcontract, or the date set for the opening of bids if it is a subcontract entered into as a result of sealed bidding.

(b) Federal Taxes. Except as may be otherwise provided in this subcontract, the subcontract price includes all applicable Federal taxes in effect on the subcontract date.

(c) State or Local Taxes. Except as may be otherwise provided in this subcontract, the subcontract price does not include any State or local direct tax in effect on the subcontract date. For subcontractors providing and installing tangible personal property, which becomes part of real property, the subcontract price should include all state and local direct taxes on such installed tangible personal property.

(d) Evidence of Exemption. The Company agrees, upon request of the Seller, to furnish a tax exemption certificate or other similar evidence of exemption with respect to any direct tax not included in the subcontract price pursuant to this clause; and the Seller agrees, in the event of the refusal of the applicable taxing authority to accept such evidence of exemption, (1) promptly to notify the Company of such refusal, (2) to cause the tax in question to be paid in such manner as to preserve all rights to refund thereof, and (3) if so directed by the Company to take all necessary action, in cooperation with and for the benefit of Government, to secure a refund of such tax (in which event the Company agrees to reimburse the Seller for any and all reasonable expenses incurred at its direction).

(e) Price Adjustment. If, after the subcontract date, the Federal Government or any State or local Government either (1) imposes or increases (or removes an exemption with respect to) any direct tax, or any tax directly applicable to the materials or components used in the manufacture of furnishing of the completed supplies or services covered by this subcontract, or (2) refuses to accept the evidence of exemption, furnished under paragraph (d) hereof, with respect to any direct tax excluded from the subcontract price, and if under either (1) or (2) the Seller is obliged to and does pay or bear the burden of any such tax (and does not secure a refund thereof), the subcontract price shall be correspondingly increased. If, after the subcontract date, the Seller is relieved in whole or in part from the payment or the burden of any direct tax included in the subcontract price, or any tax directly applicable to the materials or components used in the manufacture or furnishing of the completed supplies or services covered by this subcontract, the Seller agrees promptly to notify the Company of such relief, and the subcontract price shall be correspondingly decreased or the amount of such relief paid over to the Company for the benefit of the Government. Invoices or vouchers covering any increase or decrease in the subcontract price pursuant to the provisions of this paragraph shall state the amount thereof, as a separate added or deducted item, and shall identify the particular tax imposed, increased, eliminated, or decreased.

(f) Refund or Drawback. If any tax or duty has been included in the subcontract price or the price as adjusted under paragraph (e) of this clause, and if the Seller is entitled to a refund or drawback by reason of the export or re-export of supplies covered by this subcontract, or of materials or components used in the manufacture or furnishing of the completed supplies or services covered by this subcontract, the Seller agrees that he will promptly notify the Company thereof and that the amount of any such refund or drawback obtained will be paid over to the Company for the benefit of the Government or credited against amounts due from the Company under this subcontract: Provided, however, That the Seller shall not be required to apply for such refund or drawback unless so requested by the Company.

19. 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, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Agreement. In the absence of available license exemptions or exceptions, the Seller must obtain required licenses or other approvals 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 performance of this Agreement, if 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.

20. AUTHORIZATION AND CONSENT

(a) The Government authorizes and consents to all use and manufacture, in performing this Agreement or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Company under this Agreement or (2) used in machinery,

tools, or methods whose use necessarily results from compliance by the Seller or a subcontractor with (i) specifications or written provisions forming a part of this Agreement or (ii) specific written instructions given by the Company directing the manner of performance. The entire liability to the Government or the Company for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this Agreement or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Seller shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

21. INTEREST

(This clause does not apply if Seller is a state or local government or instrumentality or if the Seller is a nonprofit organization and this Agreement has no provision for fee.)

All amounts that become payable to Company by Seller under this Agreement shall bear simple interest from the date due until paid, unless paid within 30 calendar days of the date due. The interest rate shall be the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) as of the date due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. This clause shall not apply to amounts due under a price reduction for defective cost or pricing data clause or a cost accounting standards clause.

22. ASSIGNMENT

Except as provided in the Assignment of Claims clause**,** Seller shall not assign rights or obligations to third parties without the prior written consent of the Procurement Representative.

23. ASSIGNMENT OF CLAIMS

(a) The Seller may assign its rights to be paid amounts due or to become due as a result of the performance of this Agreement to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this Agreement, payments to an assignee of any amounts due or to become due under this Agreement shall not be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under this clause shall cover all unpaid amounts payable under this Agreement, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Agreement.

(c) The Seller shall not furnish or disclose to any assignee under this Agreement any classified document (including this Agreement) or information related to work under this Agreement until the Procurement Representative authorizes such action in writing.

24. 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 Dispute Resolution (ADR). Whether meditation or binding arbitration is voluntarily agreed to or court ordered, the site of the proceedings shall be Oak Ridge, Tennessee (for Agreements related to Y-12) or Amarillo, TX (for Agreements related to Pantex); the parties shall share the cost of obtaining the mediator or arbiter, and each party shall bear its discretionary costs.

(b) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Agreement terms, or other relief arising from or relating to this Agreement, or its breach. A voucher, invoice, or other routine request for payment (e.g., a request for an equitable adjustment) that is not in dispute when submitted is not a claim, but may be converted to a claim by the Seller as provided in paragraph (c) below.

(c) A claim by the Seller shall be made in writing, cite this clause, and be submitted to the Company's Senior Supply Chain Manager with a request for a Final Decision.

(d) Seller and any lower-tier subcontractors whose portion of the claim exceeds $50,000 shall certify its portion of the claim; provided however, if Seller cannot certify the lower-tier subcontractor's portion of Seller's claim, Seller shall explain in writing why it cannot certify that portion.

(i) The Company shall not be liable for, and shall not pay, any claim originated by the Seller if that claim exceeds $50,000 unless Seller's claim is accompanied by the below certification from the Seller.

(ii) The Company shall not be liable for, and shall not pay, any claim of a lower-tier subcontractor to Seller if that claim, without mark-ups by a higher-tier subcontractor or Seller, exceeds $50,000 unless that claim is accompanied by the below certification from the lower-tier subcontractor that originated the claim.

(iii) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met.

CERTIFICATION

I acknowledge the expectation that any payment by the Company for this requested contract adjustment will be reimbursed by funds of the Federal Government, and, under penalty of law, I certify that this claim request is made in good faith, that the supporting data are accurate and correct to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the Seller and I believe the Company is liable, and that I am duly authorized to certify the request on behalf of [the Seller or lower-tier subcontractor, as appropriate].

(e) (1) A claim from Seller shall be deemed denied if the Senior Supply Chain Manager does not issue a written Final Decision (i) by the date the Senior Supply Chain Manager notified Seller that the decision would be issued, or (ii) within 60 calendar days after receipt of the claim if the Senior Supply Chain Manager did not notify Seller of a date by which the Final Decision would be issued. The Procurement Manger may, but is not required to issue a written Final Decision after a claim is deemed denied.

(2) The Senior Supply Chain Manager's written Final Decision on any Seller claim shall be final and conclusive between the parties with no right of judicial review, provided however, that the Final Decision shall not be final and binding against either party, and shall be given no evidentiary weight by the trier of fact, if the Seller files suit within 90 calendar days of the written Final Decision in the appropriate court as provided for in paragraph (f) below.

(3) Seller shall have no right to file suit prior to the date of the written Final Decision or 60 calendar days from the Senior Supply Chain Manager's receipt of the claim, whichever occurs earlier.

(f) (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 (f)(3) below, any litigation for an Agreement related to the Y-12 site 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; any litigation for an Agreement related to the Pantex site shall be brought and prosecuted exclusively in the United States District Court for the Northern District of Texas, Amarillo Division.

(3) However, in the event the requirements for jurisdiction in Federal District Court are not present, such litigation (if for an Agreement related to Y12 site) shall be brought in either Anderson, Knox, or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate. In the event requirements for jurisdiction in Federal District Court are not present for an Agreement related to the Pantex site, such litigation shall be brought in Carson County, TX or, in the event that such court lacks jurisdiction, in the highest trial court in the state of Texas having jurisdiction.

(4) THE PARTIES AGREE TO TRIAL BY JUDGE ALONE AND HEREBY WAIVE ANY RIGHT TO DEMAND A TRIAL BY JURY.

(5) If a court awards prejudgment interest on a claim, the interest rate shall be the applicable rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563).

(g) The parties agree that, subject to (f)(1), the resolution of all issues arising from or relating to this Agreement shall be governed to the maximum extent practicable by the common law of federal contracts; provided, however, that (i) the "Christian Doctrine" shall not apply, meaning that federal procurement clauses (e.g., the FAR, including agency supplements) or portions thereof not appearing in this Agreement shall not be read into this Agreement, and (ii) where the language of any clause, provision or term herein differs from the language of a federal procurement clause, provision or term, the differing language of this Agreement shall control. Where the common law of federal contracts does not apply, then subject to (f)(1), resolution shall be governed by the laws of the State of Tennessee, without regard to its Conflicts of Laws rules.

(h) 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 or related to this Agreement between the parties or between Seller and its subtier subcontractors.

25. STOP-WORK ORDER

(a) Unless the provisions for stop work under the "Environmental, Safety and Health" clause apply, the Procurement Representative, may under this clause, at any time, by written order, require Seller to stop all or any portion of the work called for by this Agreement for 90 calendar days, and for any other further period to which the parties may agree. Seller shall immediately comply with the order and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the work stoppage.

(b) Before expiration of the stop-work order, Company may

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order for default or convenience.

(c) If the order is canceled or expires, the Seller shall resume work. The Company shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the Agreement that may be affected, and the Agreement shall be modified, in writing, accordingly, if the stop-work order results in an increase in the time required for, or cost properly allocable to, performance of this Agreement. As a condition precedent to an equitable adjustment, Seller shall submit its request for equitable adjustment in writing to the Procurement Representative within 30 calendar days after the work stoppage ends.

(d) If the work covered by the order is terminated for convenience, Company shall allow reasonable costs resulting from the order in arriving at the termination settlement.

(e) If the work covered by the order is terminated for default, Company shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the order.

26. SUSPENSION OF WORK

(a) The Procurement Representative may order the Seller, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time that the Procurement Representative determines appropriate.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Company in the administration of this Agreement, or (2) by the Company's failure to act within the time specified in this Agreement (or within a reasonable time if not specified), an adjustment shall be made

for any increase in the cost of performance of this Agreement (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Seller, or for which an equitable adjustment is provided or excluded under any other term or condition of this Agreement.

(c) A request for adjustment under this clause shall not be allowed—

(1) For any costs incurred more than 14 calendar days before the Seller shall have notified the Procurement Representative in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the request for adjustment, in an amount stated, is submitted in writing as soon as practicable, but no later than 180 calendar days, after the termination of the suspension, delay, or interruption. Requests for adjustment not submitted within the 180-day period are waived.

27. CHANGES

(a) The Procurement Representative may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Agreement in any one or more of the following:

(1)Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Company in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery of supplies.

(4) Description of services to be performed.

(5) Time of performance of the services (*i.e.*, hours of the day, days of the week, etc.).

(6) Place of performance of the services.

(b) If any such change causes a difference in the cost, or the time required for performance, the Company shall, subject to the submission requirement in paragraph (d), make an equitable adjustment in the price, delivery/performance schedule, or both, and modify the Agreement in writing. If Seller's proposal includes the cost of property made obsolete or excess by the change, the Company has the right to prescribe the manner of disposition of the property.

(c) Only the Procurement Representative is authorized on behalf of the Company to issue a change, which must be in writing and clearly designated as a change order. If Seller considers that any oral direction or instruction by any Company personnel (including the Procurement Representative) constitutes a change, or if Seller considers that any written direction or instruction by any Company personnel (other than a designated change order issued by the Procurement Representative) constitutes a change, Seller shall not rely upon such direction or instruction and shall not be eligible for an equitable adjustment arising there from, without prior written confirmation from the Procurement Representative directing Seller to perform as stated in the direction or instruction. If such written confirmation from the Procurement Representative to perform also confirms the direction or instruction to be a change, the confirmation shall be deemed a change order for purposes of paragraph (d). If, however, such written confirmation from the Procurement Representative to perform does not confirm the direction or instruction to be a change, any request by Seller for an equitable adjustment arising from such direction or instruction shall comply with paragraph (e).

(d) If the Procurement Representative issues a change order, any request for equitable adjustment by Seller must be submitted in writing to the Procurement Representative within 30 calendar days of receiving the Company's change order. If the request is not submitted within such time, the request shall be late and may be denied by the Procurement Representative whether or not the Company is prejudiced by the late request. If the Company, in its sole discretion, decides to act upon a particular late request submitted prior to final payment, such action shall not constitute or be deemed to be a waiver of this submission requirement with regards to any other late request, nor shall such action be considered in any way in interpreting this provision as a course of dealing or in any other manner.

(e)(1) If the Procurement Representative has not issued a written change order but the Seller considers a change to this Agreement has occurred because, for example: (i) the Company did not satisfy one if its expressed or implied duties under the Agreement, or (ii) the Procurement Representative did not provide written confirmation that a change occurred in response to Seller's request for confirmation as provided for in paragraph (c), then as a condition precedent for entitlement to an equitable adjustment, Seller shall notify the Procurement Representative, in writing, that a change has occurred for which Seller intends to seek an equitable adjustment and identify: (i) date, nature and circumstances regarding the change, (ii) name of each person knowledgeable about the change, (iii) documents and substance of oral communications involving the change, and (iv) the particular elements of performance impacted by the change, including (a) adjustment in labor and/or materials, (b) delay or disruption caused, (c) estimated resulting price and schedule adjustments and (d) time by which Company must respond to minimize cost, delay, or disruption to performance of the work.

(2) In no event shall Seller recover any costs caused by the change incurred prior to 14 calendar days before Seller gives such written notice.

(3) Any request for equitable adjustment by Seller must be submitted in writing to the Procurement Representative no later than 30 calendar days after Seller gives the written notice specified in subparagraph (e)(1). If the request is not submitted within such time, the request shall be late and may be denied by the Procurement Representative whether or not the Company is prejudiced by the late request. If the Company, in its sole discretion, decides to act upon a particular late request submitted prior to final payment, such action shall not constitute or be deemed to be a waiver of this submission requirement with regards to any other late request, nor shall such action be considered in any way in interpreting this provision as a course of dealing or in any other manner.

(f) Nothing in this clause, including any disagreement with Company about an equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

28. SUBCONTRACTS

(a) Definitions. As used in this clause—

"Approved purchasing system" means a purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).

"Consent to subcontract" means the Procurement Representative's written consent for the Seller to enter into a particular subcontract.

"Subcontract" means any contract, as defined in FAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of this Agreement or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment if this Agreement contains the clause at FAR 52.245-18, Special Test Equipment.

(c) If the Seller does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds either $100,000 or five percent of the ceiling price of this Agreement.

(d)(1) The Seller shall notify the Procurement Representative reasonably in advance of placing any subcontract or modification thereof for which consent is required, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other clauses of this Agreement.

(vi) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other clauses of this Agreement.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Seller did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Seller and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Seller's price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) If the Seller has an approved purchasing system and consent is not required under paragraph (c) of this clause, the Seller shall nevertheless notify the Procurement Representative reasonably in advance of entering into any (cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either $100,000 or five percent of the total estimated cost of this Agreement. The notification shall include the information required by paragraphs (d) (1) (i) through (d) (1) (iv) of this clause.

(e) Unless the consent specifically provides otherwise, consent by the Procurement Representative to any subcontract does not constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this Agreement; or

(3) To relieve the Seller of any responsibility for performing this Agreement.

(f) No subcontract or modification thereof placed under this Agreement shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(g) The Seller shall give the Procurement Representative immediate written notice of any action or suit filed and prompt notice of any claim made against the Seller by any subcontractor or vendor that, in the opinion of the Seller, may result in litigation related in any way to this Agreement, with respect to which the Seller may be entitled to reimbursement from the Company.

29. PROPERTY

(a) Furnishing of Government property. The Company reserves the right to furnish any property or services required for the performance of the work under this Agreement.

(b) Title to property. Except as otherwise provided by the Procurement Representative, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Seller, for the cost of which the Seller is entitled to be reimbursed as a direct item of cost under this Agreement, shall pass directly from the vendor to the Government. The Company reserves the right to inspect, and to accept or reject, any item of such property. The Seller shall make such disposition of rejected items as the Procurement Representative shall direct. Title to other property, the cost of which is reimbursable to the Seller under this Agreement, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this Agreement, or (2) commencement of processing or use of such property in the performance of this Agreement, or (3)

reimbursement of the cost thereof by the Company, whichever first occurs. Property furnished by the Company and property purchased or furnished by the Seller, title to which vests in the Government under this paragraph, are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(c) Identification. To the extent directed by the Procurement Representative, the Seller shall identify Government property coming into the Seller's possession or custody, by marking and segregating in such a way, satisfactory to the Procurement Representative, as shall indicate its ownership by the Government.

(d) Disposition. The Seller shall make such disposition of Government property which has come into the possession or custody of the Seller under this Agreement as the Procurement Representative may direct during the progress of the work or upon completion or termination of this Agreement. The Seller may, upon such terms and conditions as the Procurement Representative may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Procurement Representative and the Seller as the fair value thereof. The amount received by the Seller as the result of any disposition, or the agreed fair value of any such property acquired by the Seller, shall be applied in reduction of costs allowable under this Agreement or shall be otherwise credited to account to the Company, as the Procurement Representative may direct. Upon completion of the work or the termination of this Agreement, the Seller shall render an accounting, as prescribed by the Procurement Representative, of all government property which had come into the possession or custody of the Seller under this Agreement.

(e) Protection of government property--management of high-risk property and classified materials. (1) The Seller shall take all reasonable precautions, and such other actions as may be directed by the Procurement Representative, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Seller's possession or custody.

(2) In addition, the Seller shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

(3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.

(f) Risk of loss of Government property. (1)(i) The Seller shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:

(A) Willful misconduct or lack of good faith on the part of the Seller's managerial personnel;

(B) Failure of the Seller's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Procurement Representative to safeguard such property under paragraph (e) of this clause; or

(C) Failure of Seller managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i) (1) of this clause.

(ii) If, after an initial review of the facts, the Procurement Representative informs the Seller that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Seller to show that the Seller should not be required to compensate the Company for the loss, destruction, or damage.

(2) In the event that the Seller is determined liable for the loss, destruction or damage to Government property in accordance with (f) (1) of this clause, the Seller's compensation to the Company shall be determined as follows:

(i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Procurement Representative shall determine the value of such property, consistent with all relevant facts and circumstances.

(ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Procurement Representative shall determine the value of such property, consistent with all relevant facts and circumstances.

(3) The portion of the cost of insurance obtained by the Seller that is allocable to coverage of risks of loss referred to in paragraph (f) (1) of this clause is not allowable.

(g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the Seller with a value above the threshold set out in the Seller's approved property management system, the Seller:

(1) Shall immediately inform the Procurement Representative of the occasion and extent thereof,

(2) Shall take all reasonable steps to protect the property remaining, and

(3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the Procurement Representative. The Seller shall take no action prejudicial to the right of the Company to recover therefore,

and shall furnish to the Company, on request, all reasonable assistance in obtaining recovery.

(h) Use of Government property. Government property shall be used only for the performance of this Agreement.

(i) Property Management. (1) Property Management System. (i) The Seller shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the Agreement. The Seller's property management system shall be submitted to the Procurement Representative for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the Procurement Representative may from time to time prescribe.

(ii) In order for a property management system to be approved, it must provide for:

(A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;

(B) Employee personal responsibility and accountability for Government-owned property;

(C) Full integration with the Seller's other administrative and financial systems; and

(D) A method for continuously improving property management practices through the identification of best practices established by ``best in class" performers.

(iii) Approval of the Seller's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i) (2) of this clause.

(2) Property Inventory. (i) Unless otherwise directed by the Procurement Representative, the Seller shall within six months after execution of the Agreement provide a baseline inventory covering all items of Government property.

(ii) If the Seller is succeeding another Seller in the performance of this Agreement, the Seller shall conduct a joint reconciliation of the property inventory with the predecessor Seller. The Seller agrees to participate in a joint reconciliation of the property inventory at the completion of this Agreement. This information will be used to provide a baseline for the succeeding Agreement as well as information for closeout of the predecessor Agreement.

(j) The term ``Seller's managerial personnel" as used in this clause means the Seller's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

(1) All or substantially all of the Seller's business; or

(2) All or substantially all of the Seller's operations at any one facility or separate location to which this Agreement is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this Agreement; or

(4) A separate and complete major construction, alteration, or repair operation in connection with performance of this Agreement; or

(5) A separate and discrete major task or operation in connection with the performance of this Agreement.

(k) The Seller shall include this clause in all cost reimbursable subcontracts. (Reference DEAR 970.5245-1 (JAN 2013))

30. SUSPECT/COUNTERFEIT ITEMS

(a) Definitions.

(1) "Suspect material" as used in this clause, means any material or item that is not known to conform to established U.S. Company or industry-accepted specifications and national consensus standards. (2) "Counterfeit material" as used in this clause, means any suspect material or item that is a copy or substitute without legal right or authority to do so, or one whose material, performance, or characteristics are knowingly misrepresented by the vendor, supplier, distributor, or manufacturer.

(b) The Seller shall not use or provide suspect or counterfeit materials or parts as part of the end item for delivery, including any fasteners (Grade 5, Grade 8, Grade 8.2, ASTM A325, bolts, studs, cap screws, washers, nuts, etc.), electrical components (circuit breakers, relays, fuses, transformers, etc.), piping components or mechanical piping components (pipe valves, fittings, nipples, flanges, couplings, plugs, spacers, and nozzles, etc.) valves, metal framing (plate fittings, post base, beam clamp channel, spring clips, square washers), wire ripe, lifting materials (shackles, hooks, slings, cables, forklifts, hoists, etc.), welding material (rods, wire, flux, etc.) on any equipment, assemblies, components, or facilities under this Agreement. Any suspect or counterfeit material provided by the Seller to Company is subject to seizure and will not be returned to the Seller. The Seller shall replace any and all suspect or counterfeit material at no additional charge to Company.

(c) Fasteners.

(1) SAE Grades 5, 8 and 8.2 and ASTM Grade A325 fasteners, identified at: http://energy.gov/ehss/downloads/headmark-list-suspect-counterfeit-fasteners-1992 entitled Suspect Fastener Headmark List, cannot be introduced into DOE facilities. Therefore, such fasteners shall not be provided as deliverable end items or incorporated into deliverable end items under this Agreement.

(2) Any fasteners delivered under this Agreement shall be subject to the requirements of the Fastener Quality Act ("the Act"), Public Law 101-592, Title 15, United States Code (U.S.C.), Chapter 80, and those requirements as stated in this Agreement. No fastener, as defined in the Act and regulations issued thereunder by the Secretary of Commerce, shall be supplied to Company, regardless of lot size.

(3) Nothing in this clause shall prohibit Company from requiring in this Agreement, the inspection and testing of a greater number of fasteners from a lot than is specified in the applicable standards or specifications to which the manufacturer represents the fasteners to have been manufactured or in the applicable sampling procedures specified by the Secretary of Commerce.

(d) Electrical Equipment, Items, and Components

(1) All electrical equipment, items and components shall exhibit manufacturers' labels and identification. Specifically the labeling of voltage and current

values for equipment and the marking of purged and pressurized enclosures with an asphyxiation hazard warning where the protective gas is other than air.

(2) Electrical equipment, items or components must be approved by a nationally recognized testing laboratory (NRTL) (e.g., UL, CSA, FMRS, or MET). Equipment approved by an NRTL shall bear written evidence by listing or labeling that it has received certification from the NRTL. If no certification is available, the manufacturer shall provide any test data, design documentation, etc., which certifies the equipment to be free of electrical hazards as recognized by the National Electric Code and OSHA. This documentation may include, where applicable, references to UL Standard 508 and ANSI C Series Standards.

(3) Molded case circuit breakers, that upon inspection gives the appearance of or display evidence of, being used, refurbished, reconditioned, or any other characteristic as identified in http://energy.gov/ehss/downloads/headmark-list-suspect-counterfeit-fasteners-1992 entitled Suspect Fastener Headmark List, may be rejected by Company on the basis of appearance without testing.

(4) Electro-mechanical equipment, where electrical and mechanical components are combined into one system, shall follow requirements in this section.

(5) All electrical equipment used in Class I and Class II hazardous (classified) locations shall follow protection techniques outlined in NFPA 496.

(e) Mechanical Equipment, Items and Components.

(1) All mechanical equipment, systems and components shall exhibit manufacturers' labels and identification.

(2) All mechanical equipment, that has electrical components, is to meet the requirements of clause 20(d) above.

(f) Packaging and Labeling.

(1) Reference to fasteners shall conform to the following format: Size; Style; Grade; and Specifications (i.e., 1/2 x 20 x 6", hex head, cap screws, grade 8, per specification SAE-J429).

(2) All bolts shall be marked with the grade and manufacturers head markings (suspect or counterfeit fasteners are those identified in http://energy.gov/ehss/downloads/headmark-list-suspect-counterfeit-fasteners-1992 (Suspect Fastener Headmark List).

(3) All fasteners shall be separately boxed by lot number, with no mixing of lots.

(4) The manufacturer's lot numbers shall be listed on the packing list as part of the descriptive information.

(5) Each individual box shall be marked with the lot number.

(6) All shipments of graded fasteners indicated in this Agreement, and other items as specified, shall include an authenticated "Certified Material Test Report" traceable to the manufacturer by lot number, such that the manufacturer's test data (such as physical and chemical test reports for fasteners) can be certified by Company, if required.

(7) All remanufactured, refurbished or rebuilt replacement equipment and components, if specifications permit, shall be clearly marked as such and shipped in the manufacturer's original packing, and have any designated serial numbers listed on the packing list.

(8) The Seller shall affix a "certificate of conformance" stamp on each packing list, authenticated by a designated company official responsible for this function, if required by this Agreement.

(g) Confirmation of Source and Performance Characteristics.

(1) Company may obtain an opinion concerning legitimacy of the equipment from the original manufacturer. Such opinion shall be a sufficient basis for rejection of any item provided by the Seller. In addition to other rights provided by law or this Agreement, Company may reject the item or equipment provided by the Seller that does not meet the OEM's published performance requirements.

(h) Reporting of Suspect/Counterfeit Materials and Investigation.

(1) Company investigates incidents of suspect or counterfeit materials. The Seller shall cooperate with such investigations by providing evidence, documentation, or information as may be requested by Company in conducting the investigation.

(2) Company will report to the Office of Inspector General (OIG) any suspect/counterfeit material that is discovered during receipt, maintenance, testing, inspection or use and when there is reason to believe that a fraudulent act occurred during the manufacture, shipping, testing, or certification of the suspect/counterfeit material.

(3) Evidence of deliberate misrepresentation of any item(s) and/or component(s) or provision of any item specifically prohibited under this Agreement, may result in an investigation by the OIG.

(i) Unauthorized Substitution

All equipment and material furnished shall be the exact item as described in this Agreement. Company will not accept any substitutions unless specifically approved in writing by the Company Procurement Representative. Equipment or material for which unauthorized substitution is made shall be considered suspect/counterfeit.

31. DEFECT IDENTIFICATION AND REPORTING

(a) The Seller and its suppliers shall identify and report in writing to Company any actual or potentially defective item or service provided in accordance with the requirements of this clause. The written report shall contain sufficient information to permit Company to evaluate the impact of such deficiencies.

(b) Notification of Defects. The Seller shall notify Company in writing within two (2) calendar days upon knowledge of an actual or potentially defective item or service which has been provided to the Company, or to Seller or supplier. If the first notification, due to anticipated severity and/or significance of impact, is by means other than in writing, a written report shall be submitted within five (5) calendar days from the date of notification The notification shall contain the following:

(1) Name and address of the person making the notification.

(2) Nature of the defect and any substantial safety hazard that could result, if known.

(3) Description of the defective item or service, including the following specific information:

- Manufacturer's name.
- Item model number(s).
- Name and addresses of the original and any intermediate supplier.
- Potential failure modes.
- Identification of the facilities where the defective item(s) and/or service(s) have been supplied, to the extent known.
- Actions that have been taken or are being planned to correct the defective item(s) or service(s), including designation of the organization responsible for implementing the corrective actions and schedule for completion.
- Additional pertinent information.

(c) Follow-up Reporting. In the event the report submitted is only preliminary, a written follow-up report shall be made each forty-eight (48) hours thereafter until a final written report can be made. The final written report shall be submitted to Company as soon as possible, in light of the defect's magnitude, but in no event shall it be provided later than thirty (30) days following discovery of the defect. The final written report should be comprehensive in terms of addressing the defect(s) and any remedial actions required to overcome the fact that the defective item(s) and/or service(s) were provided.

(d) Company Point of Contact for reporting is the Procurement Representative.

Note: Mark document "URGENT - DELIVER IMMEDIATELY".

(e) The responsibility for identifying and reporting a defective item or service shall extend to all levels and individuals of the Seller. The Seller shall include this clause in all subcontracts and purchase orders entered into under this Agreement.

32. SUBMISSION OF TRANSPORTATION BILLS

(a) In accordance with paragraph (b) of this clause, the Seller shall include with its invoices legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services that were charged directly to this Agreement. In accordance with FAR 52.247-67, the Company will forward the documents to the General Services Administration (GSA) for audit.

(b) The Seller shall only submit those CBL's with freight shipment charges exceeding $100.00. Bills under $100.00 shall be retained on-site by the Seller and made available for GSA on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

33. TERMINATION

(a) The Company may terminate performance of work under this Agreement in whole or, from time to time, in part, if—

(1) The Procurement Representative determines that a termination is in the Company's interest; or

(2) The Seller defaults in performing this Agreement and fails to cure the default within 10 calendar days (unless extended by the Procurement Representative) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Procurement Representative shall terminate by delivering to the Seller a Notice of Termination specifying whether termination is for default or for convenience of the Company, the extent of termination, and the effective date. If, after termination for default, it is determined that the Seller was not in default or that the Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Seller as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Company.

(c) After receipt of a Notice of Termination, and except as directed by the Procurement Representative, the Seller shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the Agreement.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Company, as directed by the Procurement Representative, all right, title, and interest of the Seller under the subcontracts terminated, in which case the Company shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Procurement Representative, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Agreement;

(6) Transfer title (if not already transferred) and, as directed by the Procurement Representative, deliver to the Company.

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the Agreement had been completed, would be required to be furnished to the Company; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Agreement, the

cost of which the Seller has been or will be reimbursed under this Agreement.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Procurement Representative may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Seller and in which the Company has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Procurement Representative, any property of the types referred to in paragraph (c) (6) of this clause; provided, however, that the Seller (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Procurement Representative. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Company under this Agreement, credited to the price or cost of the work, or paid in any other manner directed by the Procurement Representative.

(d) The Seller shall submit complete termination inventory schedules no later than 60 calendar days from the effective date of termination, unless extended in writing by the Procurement Representative upon written request of the Seller within this 60-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Seller may submit to the Procurement Representative a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Procurement Representative. The Seller may request the Company to remove those items or enter into an agreement for their storage. Within 15 calendar days, the Company will accept the items and remove them or enter into a storage agreement. The Procurement Representative may verify the list upon removal of the items, or if stored, within 45 calendar days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Seller shall submit a final termination settlement proposal to the Procurement Representative in the form and with the certification prescribed by the Procurement Representative. The Seller shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by the Procurement Representative upon written request of the Seller within this six month period. However, if the Procurement Representative determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Seller fails to submit the proposal within the time allowed, the Procurement Representative may determine, on the basis of information available, the amount, if any, due the Seller because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Seller and the Procurement Representative may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Agreement shall be amended, and the Seller paid the agreed amount.

(h) If the Seller and the Procurement Representative fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Procurement Representative shall determine, on the basis of information available, the amount, if any, due the Seller, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this Agreement, not previously paid, for the performance of this Agreement before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Procurement Representative; however, the Seller shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement if not included in paragraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Seller's termination settlement proposal may be included.

(4) A portion of the fee payable under the Agreement, determined as follows:

(i) If the Agreement is terminated for the convenience of the Company, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the Agreement, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the Agreement is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Company is to the total number of articles (or amount of services) of a like kind required by the Agreement.

(5) If the settlement includes only fee, it will be determined under paragraph (h) (4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this Agreement, shall govern all costs claimed, agreed to, or determined under this clause.

(j) In arriving at the amount due the Seller under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Seller, under the terminated portion of this Agreement;

(2) Any claim which the Company has against the Seller under this Agreement; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Seller or sold under this clause and not recovered by or credited to the Company.

(k) If the termination is partial, the Procurement Representative shall amend the Agreement to reflect any agreed upon equitable adjustment in fee for the continued portion of the Agreement. If Seller and the Procurement Representative fail to agree, the Procurement Representative may determine the amount, if any, of the equitable adjustment in fee for the continued portion of the agreement.

(l)(1) The Company may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Seller for the terminated portion of the Agreement, if the Procurement Representative believes the total of these payments will not exceed the amount to which the Seller will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Seller shall repay the excess to the Company upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Seller to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Seller's termination settlement proposal because of retention or other disposition of termination inventory until 10 calendar days after the date of the retention or disposition, or a later date determined by the Procurement Representative because of the circumstances.

(m) The provisions of this clause relating to fee are inapplicable if this Agreement does not include a fee.

(n)(1) If the Seller failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (f), or (h), respectively, the Procurement Representative's determination under either said paragraph shall be final and conclusive without the right of judicial review.

(n)(2) If the Seller submits the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (f), or (h), the Procurement Representative's determination under paragraph (f), (h), or (k) shall be final and conclusive without the right of judicial review unless the Seller submits a claim requesting a final determination from the Company under the Resolution of Disputes clause within 60 calendar days after receipt of a determination under paragraph (f), (h), or (k).

34. EXCUSABLE DELAYS

(a) Neither Company nor Seller shall be liable to the other party for default to the extent its nonperformance is caused by an occurrence beyond its reasonable control and without its fault or negligence (an "Excusable Delay"), such as Acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, (subject to (b)), unusually severe weather, delays of common carriers, and in the case of Seller's nonperformance, acts of the Government in either its sovereign or contractual capacity.

(b) Seller agrees that any strike, work stoppage, or labor dispute specifically related to work under this Agreement among Seller's employees or its subcontractors' employees are not Excusable Delays.

(c) If Company's or Seller's nonperformance is caused by the default of its subcontractor at any tier, and if the cause of the default is beyond the reasonable control of both the nonperforming party and its subcontractor, and without the fault or negligence of either, the nonperforming party shall be entitled to an Excusable Delay under this article, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the nonperforming party to meet the required delivery schedule.

The party whose performance is affected by an Excusable Delay shall be granted schedule relief only to the extent it justifies and accounts for the claimed period of delay.

35. REQUIREMENTS FOR REGISTRATION OF DESIGNERS

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

36. STANDARDS AND CODES

In case of any conflict between any referenced standards and codes and an Agreement provision, Seller shall immediately notify Company of such conflict together with a recommendation for resolution. Company shall confirm the Agreement requirement in writing or direct an alternative solution in accordance with the Changes clause of this Agreement

37. SUBCONTRACTORS, OUTSIDE ASSOCIATES, AND CONSULTANTS

Any subcontractors and outside associates or consultants required by the Seller in connection with the services covered by the subcontract will be limited to individuals or firms that were specifically identified in the Seller's proposal, or during negotiations, and agreed to. The Seller shall obtain the Procurement Representative's written consent before making any substitution for these subcontractors, associates, or consultants.

38. CLAUSES INCORPORATED BY REFERENCE

(a) The clauses listed in paragraph (c) below are incorporated herein by reference. The texts of FAR clauses and DEAR clauses are available at a variety of Internet Sites including URL: http://farsite.hill.af.mil/ and the texts of Company clauses are available on the "Procurement" link at http://www.y12.doe.gov. Except as provided in (b) below, in the listed clauses "Contractor" means the Seller, "Government" means the Company, "Contract" means this Agreement, and "Contracting Officer" means the Company's Procurement Representative.

(b) "Government" retains its meaning in:

(1) The phrases "Government property" and "Government-furnished property;" and

(2) Paragraph (a) of FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions; and

(3) DEAR 970.5208-1, Printing.

(c)(1) The following clauses are incorporated into this Agreement:

- FAR 52.215-15 Pension Adjustments & Asset Reversions (OCT 2010) (applicable when cost and pricing data required)
- FAR 52.211-5 Material Requirements (AUG 2000)
- FAR 52.222-50 Combating Trafficking in Persons (FEB 2009)
- FAR 52.223-2 Affirmative Procurement of Bio-Based Products Under Service and Construction Contracts (SEPT 2013)
- FAR 52.223-7 Notice of Radioactive Materials (JAN 1997)
  (paragraph (a) shall read 45 days prior)
- FAR 52.223-15 Energy Efficiency and Energy Consuming Products (DEC 2007)
- FAR 52.223-16 IEEE 1680 Standard for Environmental Assessment of Personal Computer Products (DEC 2007)
- FAR 52.223-17 Affirmative Procurement of EPA Designated Items in Service and Construction Contracts (May 2008)
- FAR 52.224-2 Privacy Act (APR 1984)
  (Applies to scope of work for system of records on individuals)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (JUN 2008)
- FAR 52.229-8 Taxes-Foreign Cost Reimbursement Contracts (MAR 1990)
- FAR 52.244-6 Subcontracts for Commercial Items (DEC 2013)
- FAR 52.246-3 Inspection of Supplies – Cost-Reimbursement (MAY 2001)
- FAR 52.246-5 Inspection of Services – Cost-Reimbursement (APR 1984)
- FAR 52.247-64 Preference for Privately-Owned U.S.-Flag Commercial Vessels (FEB 2006)
- Nuclear Hazards Indemnity and Price-Anderson Amendments Act (UCN-22433) (JUL 2014) (Company)
- DEAR 952.204-71 Sensitive Foreign Nations Controls (MAR 2011)
- DEAR 952.204-77 Computer Security (AUG 2006)
- DEAR 952.208-70 Printing (APR 1984)
- DEAR 970.5232-3 Accounts, Records, and Inspections (DEC 2010)
- Security of Unclassified Controlled and Proprietary Information (UCN-22414) (JUL 2014) (Company)
- Travel Reimbursement Policy (UCN-22427) (JUL 2014) (Company)
- Hazardous Material Identification and Material Safety Data (UCN-22480) (JUL 2014) (Company)

(c)(2) The following clauses are incorporated if the work involves access to classified information or special nuclear material:

- FAR 52.227-10 Filing of Patent Applications-Classified Subject Matter (DEC 2007)
- DEAR 952.204-2 Security (MAR 2011)
- DEAR 952.204-70 Classification/Declassification (SEP 1997)
- DEAR 970.5204-1 Counterintelligence (DEC 2010)
- Exhibit 7 Classified Inventions (UCN-22508) (JUL 2014) (Company)
-
- Civil Penalties for Classified-Information Security Violations (UCN-22381) (JUL 2014) (Company)

(c)(3) The following clauses are incorporated if this Agreement exceeds $2,500:

- FAR 52.222-41 Service Contract Act of 1965 (May 2014)
- FAR 52.222-42 Statement of Equivalent Rates for Federal Hires (May 2014)
- FAR 52.222-43 Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year & Option Contracts) (May 2014)
- FAR 52.222-44 Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment (May 2014)

(c)(4) The following clauses are incorporated if this Agreement exceeds $3,000:

- FAR 52.222-3 Convict Labor (JUN 2003)
- FAR 52.222-54 Employee Eligibility Verification (AUG 2013) (not applicable to COTS as defined by FAR)
- FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)
- FAR 52.225-1 Buy American Act – Supplies (FEB 2009)

(c)(5) The following clauses are incorporated if this Agreement exceeds $10,000:

- 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/ofccp/regs/compliance/posters/ofccpost.htm)
- FAR 52.222-29 Notification of Visa Denial (JUN 2003)
- FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)

(c)(6) The following clauses are incorporated if this Agreement exceeds $15,000:

- FAR 52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000 (May 2014) (formerly Walsh-Healey Public Contracts Act (OCT 2010))
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (OCT 2010)

(c)(7) The following clauses are incorporated if this Agreement exceeds $25,000:

- FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2013)

(c)(8) The following clauses are incorporated when the Agreement exceeds $30,000:

- FAR 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (AUG 2013)

(c)(9) The following clauses are incorporated if this Agreement exceeds $100,000:

- FAR 52.222-35 Equal Opportunity for Veterans (SEP 2010)
- FAR 52.222-37 Employment Reports on Veterans (SEP 2010)
- DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

(c)(10) The following clauses are incorporated if this Agreement exceeds $150,000:

- FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (SEP 2006)
- FAR 52.203-7 Anti-Kickback Procedures (OCT 2010), (except paragraph (c)(1))
- FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)
- FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (SEP 2013) (Sunsets January 1, 2017)
- FAR 52.215-2 Audit and Records - Negotiation (OCT 2010)
- FAR 52.215-23 Limitations on Pass-Through Charges (OCT 2009)
- FAR 52.219-8 Utilization of Small Business Concerns (JUL 2013)
- FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 2005)
- FAR 52.242-13 Bankruptcy (JUL 1995)
- FAR 52.247-63 Preference for U.S. Flag Air Carriers (JUN 2003)
- Sustainable Acquisition Program (UCN-22645) (JUL 2014) (Company)

(c)(11)The following clauses are incorporated if this Agreement exceeds $500,000:

- DEAR 952.226-74 Displaced Employee Hiring Preference (JUN 1997)
- DEAR 970.5226-2 Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for FY1993 (DEC 2000)

(c)(12)The following clauses are incorporated if this Agreement exceeds $650,000:

- FAR 52.219-9 Small Business Subcontracting Plan (JUL 2013) (Alternate II (OCT 2001)

(c)(13)The following clauses are incorporated if this Agreement exceeds $700,000:

- FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (AUG 2011)
- FAR 52.215-12 Subcontractor Certified Cost or Pricing Data (OCT 2010)
- FAR 52.215-13 Subcontractor Certified Cost or Pricing Data-Modification (OCT 2010)
- Cost Accounting Standards-Clauses (UCN-22380) (Company) (JUL 2014) modeled on FAR 52.230-2

(c)(14)The following clauses are incorporated if this Agreement exceeds $2 million:

- Reporting Requirements (UCN-22407) (JUL 2014) (Company)

(c)(15)The following clause is incorporated if this Agreement exceeds $5 million:

- FAR 52.203-13 Contractor Code of Business Ethics and Conduct (APR 2010)
  (with a performance period of more than 120 days)
- FAR 52.203-14 Display of Hotline Poster(s) (b)(3) (DEC 2007) Required poster is: 'DOE Hotline Poster ' http://energy.gov/ig/downloads/office-inspector-general-hotline-poster'

(c)(16)The following clause is incorporated if this Agreement requires printing (as defined in Title I, Definitions of the U.S. Government Printing and Binding Regulations (http://jcp.senate.gov/jcpregs.pdf))

- DEAR 970.5208-1 Printing (DEC 2000)