

**Architect-Engineer/Construction Management Terms and Conditions
(AE/CM 12/97)**

PART 1. APPLICABLE TO ALL TRANSACTIONS

1.1 DEFINITIONS

The following terms shall have the meanings below:

- (a) Government means the United States of America and includes the U. S. Department of Energy (DOE) or any duly authorized representative thereof.
- (b) Company means Lockheed Martin Energy Systems, Inc. (LMES), acting under Contract No. DE-AC05-84OR21400, and on behalf of Lockheed Martin Energy Research Corporation (LMER) under Contract No. DE-AC05-96OR22464, by virtue of a memorandum of understanding effective January 1, 1996.
- (c) Seller means the person or organization that has entered into this Agreement.
- (d) Agreement means Purchase Order, Subcontract, Price Agreement, Basic Ordering Agreement, or Modification thereof.
- (e) Subcontract Administrator means Company's cognizant Procurement Division representative.
- (f) Construction Engineer means the duly authorized Company representative who will administer the field work.

1.2 RESOLUTION OF DISPUTES

- (a) Seller and Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Oak Ridge, Tennessee. Cost shall be allocated by the mediator or arbitrator, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows: (1) Subject to (2) below, any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States District Court for the Eastern District of Tennessee, Northern Division; (2) Provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in either Anderson, Knox or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate.
- (b) The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of Tennessee except for Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses which shall be determined in accordance with federal law.
- (c) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under this Agreement between the parties hereto or between Seller and its sub-tier subcontractors.

1.3 ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (a) contents of the Subcontract; (b) Statement of Work (c) AE/CM Terms and Conditions; (d) the remainder of the specifications; and (e) the drawings.

1.4 TITLE AND ADMINISTRATION

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

1.5 ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement or performing hereunder, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporated by reference or attachment. Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement that are different from or in addition to those mentioned in this document. Failure of Company to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor a waiver of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement.

1.6 WARRANTY

- (a) In addition to any other warranties in this Agreement, Seller warrants that work performed under this Agreement conforms to the Agreement requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by Seller or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If Company takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date Company takes possession.
- (c) Seller shall remedy at Seller's expense any failure to conform, or any defect. In addition, Seller shall remedy at Seller's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of Seller's failure to conform to applicable requirements, or any defect of equipment, material, workmanship, or design furnished.
- (d) Seller shall restore any work damaged in fulfilling the terms and conditions of this clause. Seller's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- (e) Company shall notify Seller, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If Seller fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Company shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Seller's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, Seller shall: (1) obtain all warranties that would be given in normal commercial practice; (2) require all warranties to be executed, in writing, for Company's benefit, as directed; and (3) enforce all warranties for Company's benefit, as directed.
- (h) In the event Seller's warranty under paragraph (b) of this clause has expired, Seller agrees to subrogate any of its rights and to aid Company in enforcing lower-tier subcontractor's, manufacturer's, or supplier's warranties.
- (i) The rights and remedies of Company in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

1.7 ASSIGNMENT

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

1.8 MATERIALS AND WORKMANSHIP

- (a) All equipment, material, and articles incorporated into the work covered by this Agreement shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Agreement.
- (b) Seller shall obtain Company approval of the machinery and mechanical and other equipment to be incorporated into the work. When required by Company, Seller shall also obtain Company's approval of the material or articles which Seller contemplates incorporating into the work. When so directed, Seller shall submit samples for approval at Seller's expense. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- (c) References in the specifications or drawings to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Seller may, with Company's written approval, use any equipment, material, article, or process that is equal to that specified, unless the words "No Substitution" follow the listing of the item in the specifications or drawings. Unless otherwise agreed, modifications due to use of "or equal" supplies, is at Seller's expense.
- (d) All work under this Agreement shall be performed in a skillful and workmanlike manner. Company may require, in writing, Seller to remove from the work any employee Company deems incompetent, careless, or otherwise objectionable.

1.9 BONDS

- (a) Seller shall for construction, alteration, and repair of any public building or public work of the United States, comply with the Miller Act (40 U.S.C. sec. 270) when subcontracting for work covered under the Act and Seller shall procure and maintain such bonds as are required by law or written direction of Company. Seller shall deliver within 10 calendar days after award, and before commencing work, performance and payment bonds as required by Company. Seller may be required, after beginning work, to furnish additional performance and payment bonds, in sufficient amounts and with sureties acceptable to the Subcontract Administrator and maintain such security through performance of this Agreement if any bond furnished becomes unacceptable or the price is increased.

- (b) Performance bonds shall remain effective until the warranty period under Part 1.6 has expired and payments bonds shall remain effective until final payment is made.

1.10 COMPLIANCE WITH LAWS

- (a) Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, DOE directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this Agreement. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits including, without limitation, underground utility permit requirements. Seller warrants that each chemical substance constituting or contained in supplies furnished by this Agreement is on the list of substances published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act as amended. With each delivery Seller shall provide Company any applicable Material Safety Data Sheet as required by the Occupational Safety and Health Act and applicable regulations including, without limitation, 29 CFR 1910.1200.
- (b) Seller shall include this clause in all of subcontracts, at any tier, involving the performance of this Agreement.

1.11 TERMINATION

- (a) Company reserves the right to terminate this Agreement in whole or in part: (1) for convenience if Company determines that a termination is in the interest of Company or the Government; or, (2) except for educational and other non-profit institutions, for default if Seller fails to comply with any of the terms of this Agreement, or fails to perform satisfactorily under this Agreement, or fails to provide adequate assurance of future performance. Except for defaults of sub-tier subcontractors, Seller shall not be in default because of failure to perform if the failure arises from causes beyond Seller's reasonable control and without its fault or negligence. Seller will not be deemed to be in default for failure to perform caused by the failure of a sub-tier subcontractor if the failure was beyond the control of both Seller and sub-tier subcontractor and without the fault or negligence of either; however, Seller will be in default if Company directed Seller to purchase these supplies or services from another source and Seller failed to comply. A termination which was originally determined to be for default shall be treated as a termination for convenience if the Seller was not in default.
- (b) In the event of termination, the Subcontract Administrator shall deliver a notice specifying the extent and effective date. Seller shall immediately: (1) stop all work terminated thereunder; (2) cause any and all of its suppliers and sub-tier subcontractors to cease work to the extent it relates to the work terminated, and terminate all subcontracts to the extent they relate to the work terminated; (3) transfer title and deliver to Company, or use its best efforts to sell, as directed by Company, (i) the fabricated and unfabricated parts, work in process, completed work, supplies, other material produced or acquired for the work terminated, (ii) completed or uncompleted plans, drawings, information, other property that would be required to be furnished to Company had this Agreement been completed, (iii) jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Agreement the cost of which Seller has been or will be reimbursed under this Agreement; (4) complete performance of the work not terminated; (5) reach settlement with all sub-tier subcontractors who claim monies owed if such settlement is claimed as reimbursable under this Agreement, and obtain approval of Company of such settlements; and, (6) protect and preserve any property in which Company or Government has or may acquire an interest.
- (c) Subject to the terms of this Agreement, except where Seller is a non-profit organization, Seller shall be paid: (1) all costs reimbursable under this Agreement, not previously paid, for the performance before the effective date of the termination and those costs incurred after the effective date of the termination that are pre-approved by Company, less any claim which Company has against Seller under this Agreement, less the proceeds of sale of materials, supplies, or other things acquired by Seller and sold but not credited to Company, and less all unliquidated advance or other payments; (2) reasonable costs that Seller can demonstrate to the satisfaction of Company have resulted from the termination including approved amounts of settlements with subcontractors; (3) reasonable costs of settlement of the work terminated, including accounting, legal, clerical, and other expenses reasonably necessary to (i) prepare Seller's termination settlement proposal, and (ii) settle sub-tier subcontracts; and (4) a portion of the fee payable under the contract as follows: (i) if the termination is for convenience, a percentage of the fee (if applicable) equal to the percentage of completion of work contemplated under the Agreement but excluding sub-tier subcontract effort included in sub-tier subcontractors' termination proposal which are reimbursable under this Agreement, less previous payments for fee; (ii) if the termination is for default, the fee payable shall be a proportionate part of the fee as the total number of articles or amount of services delivered to and accepted by Company is to the total number of articles or amount of services of a like kind required by the Agreement. If the termination is for default, Seller shall not be paid for any costs for the preparation of Seller's termination settlement proposal.

- (d) Subject to the terms of this Agreement, Seller, who is a non-profit organization, shall be paid: (1) reasonable cancellation charges incurred by the Seller, and (2) reasonable loss on outstanding commitments for personal services that the Seller is unable to cancel; provided, Seller exercised reasonable diligence in diverting such commitments to other operations. The Agreement shall be amended and the Seller paid the agreed amount.
- (e) Seller shall within 6 months of the effective date of the termination submit a final termination settlement proposal to Company. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. The cost principles in Part 31 of the FAR, in effect on the date of this Agreement, shall govern all costs claimed, agreed to, or determined under this clause. If the Seller is not an Educational Institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, Cost Principles for Nonprofit Organizations, July 8, 1980, those cost principles shall apply; provided, that if the Seller is a non-profit organization listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such seller.
- (f) The Company and the Seller must agree to any equitable adjustment in fee for the continued portion of a partially terminated Agreement.

1.12 BANKRUPTCY

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

1.13a INCORPORATION BY REFERENCE

This Agreement incorporates certain provisions by reference. These articles and clauses apply as if they were set forth in their entirety. For (FAR) and (DEAR) provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means Subcontract Administrator. Company clauses incorporated by reference are available from Company's Procurement Internet Home Page (<http://www.ornl.gov/procurement>) at "Doing Business with Procurement". The FAR and DEAR may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. or the Home Page at "Other Related Sites".

The following clauses are incorporated by reference:

- FAR 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors, Debarred, Suspended, or Proposed for Debarment (JUL 1995) except paragraph (b)
- FAR 52.222-26 Equal Opportunity (APR 1984)
- FAR 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)
- FAR 52.222-36 Affirmative Action for Handicapped Workers (APR 1984)
- FAR 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988)
- FAR 52.225-3 Buy American Act-Supplies (JAN 1994) substituting "use" for "deliver" in paragraph (b)
- FAR 52.225-11 Restrictions on Certain Foreign Purchases (October 1996)
- FAR 52.225-15 Buy American Act-Construction Materials Under European Community and North American Free Trade Agreements, (JUN 1997)
- FAR 52.227-1 Authorization and Consent (JUL 1995)
- FAR 52.227-4 Patent Indemnity-Construction Contracts (APR 1984)
- FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components (OCT 1995)
- FAR 52.247-63 Preference for U.S. Flag Carriers (JAN 1997)
- DEAR 970.5204-2 Integration of Environment, Safety, and Health Into Work Planning and Execution (JUN 1997)
- DEAR 970.5204-9 Accounts, Records and Inspection (JUN 1996)
- DEAR 970.5204-60 Facilities Management (FEB 1997)
- DEAR 970.5204-77 Workforce Restructuring Under Section 3161 of the Defense Authorization Act for Fiscal Year 1993 (JUN 1997)
- Exhibit 9 - Rights in Technical Data (Company 10/91)
- Taxes: Fixed-Price (Company-11/96)
- Counterfeit/Suspect Materials (Company-2/94)

1.13b LABOR STANDARDS

The following provisions are applicable to construction of public building and works as defined in FAR Part 22 and apply to this Agreement as if they were set forth in their entirety. For information on clauses incorporated by reference, see Part 1.15.

FAR 52.222-6 Davis-Bacon Act (FEB 1995)
FAR 52.222-7 Withholding of Funds (FEB 1988)
FAR 52.222-8 Payrolls and Basic Records (FEB 1988)
FAR 42.222-9 Apprentices and Trainees (FEB 1988)
FAR 52.222-10 Compliance with Copeland Act Requirements (FEB 1988)
FAR 52.222-11 Subcontracts (Labor Standards) (FEB 1988)
FAR 52.222-12 Contract Termination - Debarment (FEB 1988)
FAR 52.222-13 Compliance with Davis-Bacon and Related Act Regulations (FEB 1988)
FAR 52.222-14 Disputes Concerning Labor Standards (FEB 1988)
FAR 52.222-15 Certification of Eligibility (FEB 1988)
FAR 52.222-16 Approval of Wage Rates (FEB 1988)
FAR 52.222-27 Affirmative Action Compliance for Construction (APR 1984)

1.14 CHANGES

- (a) Company may at any time, by written notice, make changes within the general scope of this Agreement in any one or more of the following: (1) description of the work to be performed; (2) method and manner of performance; and, (3) the amount of work to be furnished. If any such change causes a difference in the estimated cost, or the time required for performance, an equitable adjustment shall be made in the estimated cost, any fee, and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Agreement signed by both parties. Any claim for adjustment by Seller must be made within 30 days from the date of receipt of Company's change notice, although Company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. Failure to agree to any adjustment shall be settled in accordance with Part 1.2 of this Agreement.
- (b) Only the Subcontract Administrator is authorized on behalf of Company to issue changes whether formal or informal. If Seller considers that any direction or instruction by Company personnel constitutes a change, Seller shall not rely upon such instruction or direction without written confirmation from the Subcontract Administrator. Nothing in this clause, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

1.15 SUSPENSION OF WORK

- (a) The Subcontract Administrator, may, at any time, by written notice to Seller, require Seller to suspend, delay, or interrupt all or any portion of the work called for by this Agreement for a period up to 90 days after the notice is delivered to Seller, or for any other period to which the parties may agree. Upon receipt of the notice, Seller shall immediately comply with its provisions and take all reasonable steps, as directed by the Subcontract Administrator, to minimize the incurrence of costs associated with such suspension.
- (b) Prior to the expiration of the suspension notice, Company shall either: (1) cancel or extend the notice; or (2) terminate the work covered by the notice as provided in Part 1.13 of this Agreement. If the suspension notice is canceled or allowed to expire, Seller shall resume work. Any claim by Seller resulting from a Suspension of Work Notice shall be governed by the changes clause of this Agreement.

1.16 GOVERNMENT PROPERTY

- (a) Company may furnish to Seller property as may be required for performance of work under this Agreement, or have Seller acquire such property as mutually agreed. Title to property furnished or acquired shall vest in the Government, and hereafter be referred to as "Government property." If Seller purchases property for which it is entitled to be reimbursed as a direct item of cost, title shall pass to the Government upon delivery of the property to Seller. Title to all other property, the cost of which is reimbursable to Seller, shall pass to the Government upon the earlier of (1) issuance of property for use in performance, (2) processing property for use in performance, or (3) reimbursement of cost of property. Title shall not be affected by the incorporation or attachment to any property not owned by the Government, nor shall any Government property become a fixture or lose its identity because it is affixed to any realty.
- (b) Company shall deliver to Seller the Government property stated in this Agreement. If the property is not suitable for its intended use or is not delivered to Seller as specified in this Agreement, Company shall equitably adjust affected provisions when the facts warrant an equitable adjustment and Seller submits a written request for such adjustment within 14 calendar days of delivery of the Government property. Said equitable adjustment shall be Seller's exclusive remedy.
- (c) Seller shall establish and maintain a property control program for use, maintenance, repair, protection and preservation of Government property consistent with good business practices and as may be prescribed by Company until disposed of in accordance with this clause. Seller shall cause all

- Government property to be clearly marked as Government property. Except as may be authorized in writing, Government property shall be used only for the performance of this Agreement.
- (d) Responsibility for loss or damage to Government property shall be determined in accordance with the laws applicable to this Agreement under Part 1.2. Company and the Government shall have access at all reasonable times to the premises where any Government property is located for the purpose of inspecting the property.
 - (e) Upon completion of the work under this Agreement, Seller shall submit, in a form acceptable to Company, inventory schedules covering all Government property not consumed in the performance of this Agreement (including any scrap). Seller shall hold the same at no charge for a period up to 60 days or a longer period if mutually agreed. After this, Seller shall dismantle, prepare for shipment, and at Company' direction, store or deliver said property (at Company expense), or make such other disposal of the property as directed by Company. The net proceeds of any such disposal shall be credited to the cost of the work covered by this Agreement or shall be paid as Company may direct.

1.17 **INTEREST**

Except for **educational** and non-profit **institutions**, all amounts due to Company by Seller shall accrue interest from the date due until paid, unless paid within 30 days of the date due. The interest rate shall be the 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, which rate shall be adjusted every six months. This clause shall not apply to amounts due under a price reduction for defective cost or pricing data clause.

1.18 **SELLER'S RESPONSIBILITIES**

- (a) Seller shall act in performance of this Agreement as an independent contractor and not as an agent for Company or the Government in performing this Agreement, maintaining complete control over its employees and all lower-tier subcontractors. Nothing contained in this Agreement or any lower-tier subcontract shall create any contractual relationship between any such lower-tier subcontractor and the Government or Company. Seller is solely responsible for the actions of itself and its lower-tier subcontractors, agents or employees.
- (b) Seller shall be solely responsible for all criminal fines and penalties assessed against Seller.
- (c) Cost and expenses incurred by Company that are determined by DOE to be unallowable that result from the acts or omissions of Seller or its subcontractors may be recovered by Company from Seller.
- (d) Seller shall provide and maintain workers' compensation insurance as required by applicable statutes.
- (e) Seller shall provide Employer's liability, comprehensive general liability, automobile, and contractual liability insurance properly safeguarding Seller and Company against liability for injuries to persons, including injuries resulting in death and damage to or destruction of property, in no less than \$500,000 for injuries to one person and \$1,000,000 for injuries to two or more persons in any one accident; and \$500,000 for damage to or destruction of property in any one accident. Seller may, with approval of the Subcontract Administrator, maintain self-insurance for insurance requirements herein. If Seller is a State agency, such as an **Educational Institution**, and is not insured because of constitutional or statutory prohibition, the state laws governing liabilities and remedies in these areas shall apply.
- (f) Before commencing work under this Agreement, Seller shall provide written certification that the required insurance has been obtained or, if appropriate, Seller maintains an adequate self-insurance program. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting Company's interest shall not be effective until 30 days after the insurer gives written notice to Company.

1.19a **FEE** (*Not applicable to fixed price task orders*)

- (a) Company shall pay Seller the fee as specified for performing work required by this Agreement.
- (b) Payment of the fee shall be made as specified in the Agreement and/or Task Orders issued as a part of this Agreement; provided, that after payment of 85 percent of the fee, Company may withhold further payment of fee until a reserve is set aside in an amount that Company considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee for each Task Order or \$100,000 for each Task Order, whichever is less.

1.19b **NO FEE** (*Not applicable to fixed price task orders*)

Where no fee is to be paid for performing work required by this Agreement and/or Task Orders issued as a part of this Agreement, after payment of 80 percent of the total estimated cost shown in the Agreement, the Subcontract Administrator may withhold further payment of allowable cost until a reserve is set aside in an amount considered necessary to protect the Government's interest. This reserve shall not exceed one percent of Company's share of the total estimated cost of any Task Order or \$10,000 for any Task Order, whichever is less.

1.20 ALLOWABLE COST AND PAYMENT *(Not applicable to fixed price task orders)*

- (a) Invoices from Seller shall be submitted in reasonable detail to a designated Company representative as work progresses. A statement of the claimed, allowable cost for performing the work under this Agreement shall accompany each invoice. If applicable, invoices shall include a list of the property acquired by Seller to which title vests in the Government according to the Government Property clause of this Agreement. Invoices may be submitted once every month (or at more frequent intervals if approved by Company). Payments may be made by check or electronic funds transfer, at the option of Company. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.
- (b) For reimbursement of work performed under this Agreement, Company shall pay to Seller allowable costs in accordance with this Agreement and Subpart 31.3 for **Educational Institutions**, 31.7 for nonprofit organizations, or 31.2 of the FAR for all others as supplemented by Subpart 931.2 of the DEAR in effect on the date of this Agreement. The term "cost" includes only: 1) costs Seller has paid for items or services directly for the Agreement at the time of the invoice; and 2) provided Seller is not delinquent in paying costs of Agreement performance in the ordinary course of business, costs incurred but not necessarily paid for materials from Seller's inventory; direct labor; direct travel; other direct in-house costs; allocable and allowable indirect costs.
- (c) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR in effect for the applicable period. Within 90 days after expiration of each of its fiscal years, Seller shall submit proposed final indirect cost rates for that period and supporting cost data to Company or the cognizant audit agency, whichever applies. Seller and Company (or the cognizant audit agency) shall determine and execute a written understanding of the final indirect cost rates.
- (d) Quick close-out procedures of Subpart 42.7 of the FAR may be used.
- (e) At any time before final payment, Company may have Seller's invoices and statements of cost audited. Any payment may be reduced by amounts found by Company not to constitute allowable costs or adjusted for prior overpayments or underpayments.
- (f) Seller shall submit a completion invoice for any Task Order no later than one year from the completion date. Upon approval of that invoice and Seller's compliance with the Agreement, Company shall pay any balance of allowable costs and that part of the fee not previously paid. Seller shall pay to Company any refunds, rebates, credits or other amounts accruing to or received by Seller or any assignee under this Agreement to the extent that those amounts are properly allocable to costs for which Seller has been reimbursed by Company. Before final payment under this Agreement, Seller and each assignee shall provide an acceptable assignment to Company of refunds, rebates, credits or other amounts properly allocable to costs for which Seller has been reimbursed by Company under this Agreement and a release discharging Company and the Government, their officers, agents and employees from all liabilities, obligations and claims arising out of or under this Agreement except claims specifically stating the exact basis and amount.
- (g) If Seller is an **Educational Institution** and the work is for **research and development** and predetermined indirect cost rates are to be used, this Agreement incorporates by reference FAR 52.216-15 Predetermined Indirect Cost Rates.

1.21 LIMITATION OF COST AND FUNDS *(Not applicable to fixed price task orders)*

- (a) Seller agrees to use its best efforts to perform the work specified in the Agreement within the estimated specified costs for each Task Order. Company is not obligated to reimburse Seller for costs incurred in excess of the total amount allotted as specified in each Task Order to be paid by Company. Seller is not obligated to continue performance under each Task Order (including actions under the Termination clause of this Agreement) or otherwise incur costs in excess of the total amount allotted as specified in each Task Order, until Company increases allotted funds. In the case of a cost-sharing Task Order, the increase shall be allocated in accordance with the formula specified in each Task Order.
- (b) Seller shall notify the Subcontract Administrator in writing whenever it has reason to believe that the total costs Seller has incurred and expects to incur in the next 60 days (i) shall exceed 75 percent of the total amount allotted to each Task Order or, (ii) whenever it has reason to believe that the total estimated cost for the performance of each Task Order shall be either greater or substantially less than previously estimated. The notice shall include the estimated amount of funds required to continue timely performance.
- (c) No notice, communication, or representation, other than by the Subcontract Administrator, shall affect this Agreement's funding.
- (d) If the total allotted amount or the estimated cost specified in each Task Order is increased, any costs Seller incurs before the increase that are in excess of the previously allotted amount shall be allowable to the same extent as if incurred afterward, unless Company issues notice directing that the increase is solely to cover termination or other specified expenses.

1.22 TAXES

The Seller shall comply with the requirements of FAR 31.205-41 regarding taxes, with respect to work under this Agreement, any related transaction, or property in the custody or control of Seller, which the Seller or the Company believes are inapplicable or invalid. Any tax, fee, or charge paid in accordance with the procedures in FAR 31.205-41 shall not be disallowed as an item of cost by reason of any subsequent determination that it was in fact inapplicable or invalid. All recoveries or credits regarding the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Company.

1.23 TRANSPORTATION

If transportation is specified "FOB Origin," (a) no insurance cost shall be allowed unless authorized in writing and (b) the bill of lading shall indicate that transportation is for DOE and the actual total transportation charges paid to the carrier(s) by Company shall be reimbursed by the Government pursuant to Contract No. DE-AC05-84OR21400 or DE-AC05-96OR22464. Confirmation may be made by the DOE Oak Ridge Operations Office, Procurement and Contracts Division, P.O. Box 2001, Oak Ridge, TN 37831-8756.

1.24 INSPECTION OF CONSTRUCTION

- (a) Seller shall maintain an adequate inspection system and perform such inspections and tests as will ensure that the work called for by this Agreement conforms to the applicable requirements. Seller shall maintain complete inspection and test records and make them available to Company. All work shall be conducted under the general direction of Company and is subject to Company inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of this Agreement.
- (b) Company inspections and tests are for the sole benefit of the Government and do not, relieve Seller of responsibility for providing adequate quality control measures, relieve Seller of responsibility for damage to or loss of the material before acceptance, constitute or imply acceptance, or affect the continuing rights of Company after acceptance of the completed work.
- (c) The presence or absence of a Company inspector does not relieve Seller from any requirement, nor is the inspector authorized to change any term or condition of the specification without Company's written authorization.
- (d) Seller shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Company. Company may charge to Seller any additional cost of inspection or test when work is not ready at the time specified by Seller for inspection or test, or when prior rejection makes re-inspection or retest necessary. Company shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in this Agreement.
- (e) Seller shall, without charge, replace or correct work found by Company not to conform to the requirements, unless in the public interest Company consents to accept the work with an appropriate adjustment in price. Seller shall promptly segregate and remove rejected material from the premises.
- (f) If Seller does not promptly replace or correct rejected work, Company may replace or correct the work and charge the cost to Seller, or terminate this Agreement for default.
- (g) If, before acceptance of the entire work, Company decides to examine already completed work by removing it or tearing it out, Seller, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of Seller or its lower-tier subcontractors, Seller shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet applicable requirements, Company shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (h) Unless otherwise specified in this Agreement, Company shall accept or reject, as promptly as practicable after completion and inspection, all work required by this Agreement or that portion of the work Company determines can be accepted separately.

1.25 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- (a) Seller acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. Seller also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered

insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Company, as well as from the drawings and specifications made a part of this Agreement. Any failure of Seller to take the actions described and acknowledged in this paragraph will not relieve Seller from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Company.

- (b) Company assumes no responsibility for any conclusions or interpretations made by Seller based on the information made available by Company. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this subcontract, unless that understanding or representation is expressly stated in this Agreement.

1.26 DIFFERING SITE CONDITIONS

- (a) Seller shall promptly, and before the conditions are disturbed, give a written notice to Company of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Agreement, or (2) physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.
- (b) Company shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Seller's cost of, or the time required for, performing any part of the work under this Agreement, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Agreement modified in writing accordingly.
- (c) No request by Seller for an equitable adjustment under this clause shall be allowed, unless the written notice required in paragraph (a) above is timely given.

1.27 PROTECTION OF EXISTING IMPROVEMENTS, EQUIPMENT, UTILITIES, AND ANTIQUITIES

- (a) Seller shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the required work. Seller shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance, or by the careless operation of equipment, or by workmen, Seller shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by Company.
- (b) Seller shall protect from damage all existing improvements and utilities at or near the work site and on adjacent property of a third party, the locations of which are made known to or should be known by Seller. Seller shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Agreement or failure to exercise reasonable care in performing the work. If Seller fails or refuses to repair the damage promptly, Company may have the necessary work performed and charge the cost to Seller.
- (c) Federal law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics, and artifacts. Seller shall control the activity at the job site to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed. Seller shall report the discovery of any antiquities at the job site and, upon discovery of unusual materials (e.g. obsidian chips or flakes, bones, darkly stained soils, "arrowheads"), Seller shall stop work at/or around such materials and notify Company. All wildlife shall be protected from destruction or injury due to Seller's operations.
- (c) Should Seller encounter any utilities, lines, or structures not shown on the drawings or not correctly located thereon, it shall immediately stop all work adjacent thereto. Seller shall immediately notify Company, which will issue instructions indicating the method of proceeding. If Seller damages any utility, line, or structure, whether or not shown on the drawings, Company shall be immediately notified.

1.28 OPERATIONAL AND STORAGE AREAS

- (a) Seller shall confine all operations (including storage of materials) on Government premises to areas authorized or Company approved.
- (b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Seller only with Company approval. Physical protection and maintenance of temporary buildings and utilities are Seller's responsibility. Temporary buildings and utilities shall remain the property of Seller and shall be removed by Seller at its expense upon completion of the work. With Company written consent, buildings and utilities may be abandoned and need not be removed.

- (c) Seller shall, under regulations prescribed by Company, use only established roadways, or use temporary roadways constructed by Seller when and as authorized by Company. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, Seller shall protect them from damage. Seller shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

1.29 USE AND POSSESSION PRIOR TO COMPLETION

- (a) Company shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, Company shall furnish Seller a list of items of work remaining to be performed or corrected on those portions of the work that Company intends to take possession of or use. However, failure of Company to list any item of work shall not relieve Seller of responsibility for complying with the terms of this Agreement. Company's possession or use shall not be deemed an acceptance of any work under this Agreement.
- (b) While Company has such possession or use, Seller shall be relieved of the responsibility for the loss of or damage to the work resulting from Company's possession or use. If prior possession or use by Company delays the progress of the work or causes additional expense to Seller, an equitable adjustment shall be made in the price or the time of completion, and the Agreement shall be modified in writing accordingly.

1.30 CLEANING UP

Seller shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, Seller shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, Seller shall leave the work area in a clean, neat, and orderly condition satisfactory to Company.

1.31 SAFETY, HEALTH AND ENVIRONMENTAL PROTECTION

- (a) Seller shall perform this Agreement in a manner that ensures adequate protection for workers, the public, and the environment, and shall be accountable for actions of itself and its lower-tier subcontractors, agents and employees. Seller shall exercise a degree of care commensurate with the work and the associated hazards. Seller shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of Seller's work planning and execution process. In the event that Seller fails to comply with this Agreement, Company may, without prejudice to any other legal or contractual rights, issue an order stopping all or any part of the work; thereafter a start order for resumption of work may be issued at Company's direction. Seller shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.
- (b) Company, acting on behalf of DOE, will maintain individual occupational radiation exposure records as required for Seller's employees for periods they are employed for work under this Agreement. Should Seller choose, in addition, to maintain its own individual occupational radiation exposure records during the performance of work under this Agreement, Seller's records shall be subject to inspection by Company and/or DOE and shall be preserved by Seller until disposal is authorized by Company, or at the option of Seller, delivered to Company upon completion or termination of the Agreement. If Seller exercises the foregoing option, title to such records shall vest in DOE upon delivery.
- (c) Seller shall include in all of its subcontracts involving performance of work at the site, the provisions of this clause. However, such provision in the subcontracts shall not relieve Seller of its obligation to assure compliance with the provisions of this clause for all aspects of the work.
- (d) Seller shall manage and perform work in accordance with a documented Safety Management System (System) which shall be submitted to Company for review and approval. The System shall be made appropriate for the work by an evaluating of the work and the associated hazards and identifying and appropriately tailoring a set of standards, practices and controls consistent with DEAR 970.5204.2.

1.32 KEY PERSONNEL

The persons, if any, specified elsewhere in this agreement as "key personnel" are considered to be essential to the work being performed hereunder and such key personnel shall be dedicated to the work required by this agreement for a minimum period of one (1) year. No changes in the project management or key personnel shall be made without the written approval of the Company.

PART 2. APPLICABLE WHEN SELLER PERSONNEL WORK ON DOE SITE

2.1 INCORPORATION BY REFERENCE

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

The following clauses are incorporated by reference:

DEAR 970.5204-58 Workplace Substance Abuse Programs at DOE Sites (AUG 1992)
DEAR 970.5204-59 Whistleblower Protection for Contractor Employees (JAN 1993)
Foreign Nationals (Company -7/93)
Hazardous Materials Reporting (Company-1/97)
Required Training (Company- 1/97)
Safety and Health (Company-10/94)

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

3.1 INCORPORATION BY REFERENCE

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

The following clauses are incorporated by reference:

DEAR 952.204-2 Security (SEP 1997)
DEAR 952.204-70 Classification (APR 1993 AL 92-2R)
DEAR 952.204-74 Foreign Ownership, Control, or Influence over Contractor (APR 1984)

3.2 SENSITIVE FOREIGN NATIONS CONTROLS

(a) In connection with any activities in the performance of this Agreement, Seller agrees to comply with the "Sensitive Foreign Nations Controls" requirements furnished to Seller by Company, relating to those countries, which may from time to time, be identified to Seller by written notice as sensitive foreign nations. Seller shall have the right to terminate its performance under this Agreement upon at least 60 days prior written notice to Company if Seller determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance, to continue performance of the work under this Agreement as a result of such notification. If Seller elects to terminate performance, the provisions of Part 11 shall apply.

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

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

4.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 13

The following clauses are incorporated by reference:

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995)
FAR 52.203-7 Anti-Kickback Procedures (JUL 1995)
FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 1997)
FAR 52.215-2 Audit and Records - Negotiation (OCT 1995) including Alternate II for non-profit institutions
FAR 52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns (JUN 1997)
FAR 52.222-2 Payment for Overtime Premiums (JUL 1990)
FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 1995)
FAR 52.223-2 Clean Air and Water (APR 1984)
FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (APR 1984)
FAR 52.247-64 Preference for Privately Owned U.S.- Flag Commercial Vessels (JUN 1997)

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

5.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 13

The following clauses are incorporated by reference:

FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (OCT 1997)

FAR 52.215-12 Subcontractor Cost or Pricing Data (OCT 1997)

FAR 52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (AUG 1996)

FAR 52.222-29 Notification of Visa Denial (APR 1984)

DEAR 952.226-74 Displaced Employee Hiring Preference (JUN 1997)

PART 6. APPLICABLE ONLY TO CERTAIN TRANSACTIONS

6.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.13a

6.2 PRINTING

If this Agreement involves the duplication of more than 5,000 copies of a single page or more than 25,000 copies of multiple pages, this Agreement incorporates by reference DEAR 970.5204-19 Printing (APR 1984).

6.3 NUCLEAR HAZARDS INDEMNITY

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

6.4 PRIVACY ACT

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

6.5 COMMERCIAL COMPUTER SOFTWARE

If performance involves acquisition of existing computer software, the following Company Exhibit is incorporated by reference: CCS Commercial Computer Software.

6.6 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTORS

Notwithstanding any other provisions of this Agreement, if the estimated or actual amount of the Agreement exceeds \$10 million, Company must have written evidence of Seller's compliance with the equal opportunity requirements of FAR 52.222-26 Equal Opportunity.

6.7 SUBCONTRACTS

If Seller proposes to subcontract for (1) cost-reimbursement, time-and-materials, or labor hour type; or (2) fixed-price in excess of \$25,000 or 5 percent of the total estimated cost of this Agreement; or (3) experimental, developmental or research work; or (4) fabrication, purchase, rental, installation, or other acquisition of special test equipment in excess of \$10,000, this Agreement incorporates by reference FAR 52.244-2 Subcontracts (DEC 1985)

6.8 ACCESS TO AND OWNERSHIP OF RECORDS

If the value of this Agreement is greater than \$2 million or performance involves complex or hazardous work on a DOE site, this Agreement incorporates by reference DEAR 970.5204-79 – Access to and Ownership of Records (June 1997).