

**Oak Ridge Associated Universities
Cost Terms and Conditions**

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 Oak Ridge Associated Universities, Inc. (ORAU), acting under Contract No. DE-AC05-06OR23100.
- (c) Seller means the person or organization that has entered into this Agreement.
- (d) Agreement means Purchase Order, Subcontract, Blanket Agreement, or Modification thereof.
- (e) Buyer/Contract Specialist means Company's cognizant Procurement representative.
- (f) Educational Institution means an entity identified in Office of Management and Budget Circular No. A-21.

1.2 RESOLUTION OF DISPUTES

- (a) Seller and Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Oak Ridge, Tennessee. Cost shall be allocated by the mediator or arbitrator, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs.
- (b) (1) Where Seller is a State agency, such as an Educational Institution, located in a state which by constitution or statute waives sovereign immunity, the applicable constitutional provisions or statute shall dictate the appropriate forum and law governing substantive issues. (2) In all other cases, subject to (b)(3) below, any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Eastern District of Tennessee, Northern Division; (3) provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in either Anderson, Knox or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate.
- (c) The parties agree that, subject to (b)(1), substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of Tennessee except for Federal Acquisition Regulation (FAR), Department of Energy Acquisition Regulation (DEAR) clauses, DOE Orders, DOE Regulations, DOE Systems of Record, DOE ORO Rules & Regulations, and any applicable U.S. Code section which shall be determined in accordance with federal law. Article 2 of the Uniform Commercial Code as adopted by the state law governing substantive issues shall apply to services performed under this Agreement.
- (d) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under this Agreement between the parties hereto or between Seller and its sub-tier subcontractors.

1.3 ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Articles of the Subcontract or provisions of the Purchase Order (including alterations and special provisions therein), (2) Special Terms and Conditions attached thereto, (3) General Terms and Conditions, (4) Statement of Work or description of services and/or supplies.

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, 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 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

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Agreement, nor a waiver of any requirement, nor of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement.

1.6 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.

1.7 NEW MATERIALS

Unless otherwise specified in this Agreement, all supplies delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. This does not exclude the use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

1.8 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-AC05-06OR23100. Confirmation may be made by the DOE Oak Ridge Operations Office, Procurement and Contracts Division, P.O. Box 2001, Oak Ridge, TN 37831-8756.

1.9 RISK OF LOSS

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

1.10 ALLOWABLE COST AND PAYMENT

(a) Company shall make payments monthly, or at more frequent intervals as determined by Company. 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 FAR Part 31, including Subpart 31.3 for Educational Institutions, 31.6 for state and local governments, 31.7 for nonprofit organizations, or 31.2 of the FAR for all others as supplemented by 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 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

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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.

1.11 COMPLIANCE WITH LAWS

(a) Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent orders, DOE directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this Agreement. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits including without limitation, underground utility permit requirements. Seller warrants that each chemical substance constituting or contained in 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 exception, 29 CFR 1910.1200. Seller shall perform the work under this Agreement in a manner that is safe, healthy, and environmentally acceptable, and shall develop and manage a comprehensive program in support of these objectives.

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

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

(b) In the event of termination, the Contract Specialist 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 subtier 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 subtier subcontractors who claim monies owed if such settlement is claimed as reimbursable under this Agreement, and obtain approval of Company of such settlements; and, (6) protect and preserve any property in which Company or Government has or may acquire an interest.

(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 preapproved by Company, less any claim which Company has against Seller under this Agreement, less the proceeds of sale of materials, supplies, or other things acquired by Seller and sold but not credited to Company, and less all unliquidated advance or other payments; (2) reasonable costs that Seller can demonstrate to the satisfaction of Company have resulted from the termination including approved amounts of settlements with 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 subtier 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

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percentage of completion of work contemplated under the Agreement but excluding subtier subcontract effort included in subtier 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, Revised 2004, 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.

1.13 BANKRUPTCY

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

1.14 TAXES

By reason of Tax Exemption No. 100141955, Seller should not include in the price any state and local taxes incurred in the state of Tennessee except those which were paid by Seller to third parties in acquiring the items which are the subject matter of this Agreement.

The Seller shall comply with the requirements of FAR Part 31 regarding taxes, with respect to work under this Agreement, any related transaction, or property in the custody or control of Seller, which Seller or the Company believes are inapplicable or invalid. Any tax, fee, or charge paid in accordance with the procedures in FAR Part 31 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.

1.15 INCORPORATION BY REFERENCE

This Agreement incorporates certain provisions by reference. These articles and clauses apply as if they were set forth in their entirety. For FAR and DEAR provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means Buyer/Contract Specialist. DOE-ORO and Company clauses incorporated by reference are available from Company's Procurement Internet Home Page: <http://www.ora.gov/procurement/business.htm> . The FAR and DEAR may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C." or from the following Government web sites, FAR: <http://www.arnet.gov/far/> and DEAR: <http://management.energy.gov/DEAR.htm>

The following clauses are incorporated by reference:

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

FAR 52.222-26 Equal Opportunity (APR 2002) (The required poster is available at: <http://www.dol.gov/esa/regs/compliance/posters/eo.htm>

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

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

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FAR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
FAR 52.225-13 Restrictions on Certain Foreign Purchases (MAR 2005)
FAR 52.227-16 Additional Data Requirements (JUN 1987)
FAR 52.227-17 Rights in Data – Special Works (JUN 1987)
FAR 52.244-6 Subcontracts for Commercial Items (DEC 2004)
FAR 52.247-63 Preference for U.S.-Flag Air Carriers (JUN 2003)
DEAR 952.227-11 Patent Rights – Retention by the Contractor (Short Form) (FEB 1995) Applies to domestic small business or nonprofit organization subcontractors as defined at FAR 27.301.
DEAR 952.227-13 Patent Rights - Acquisition by the Government (SEP 1997) Applies to all other subcontracts
DEAR 952.247-70 Foreign Travel (DEC 2000)
DEAR 970.5227-1 Rights in Data – Facilities (DEC 2000)
DEAR 970.5227-6 Patent Indemnity-Subcontracts (DEC 2000)
DEAR 970.5227-8 Refund of Royalties (AUG 2002)
DEAR 970.5232-3 Accounts, Records and Inspection (DEC 2000)
ORO H.6 Quality Assurance System Alternate I (JUL 2004) (Reference ORAU Policy GP-810, Attachment 1 below)
ORAU Policy GP-810 Quality Assurance, Attachment 1
ORO H.7 Confidentiality of Information (MAY 1997)
ORO H.25 Access To and Ownership of Records (NOV 2004)
ORO H.33 Compliance with Federal Information Processing Standard Publication 201 (FIPS Pub 201) (SEP 2005)

The following ORAU/ORISE provisions are incorporated by reference:

Counterfeit/Suspect Materials (Company 7-00)
Rights in Data General (Company 2/99)

1.16 CHANGES

(a) Company may at any time, by written notice, make changes within the general scope of this Agreement in any one or more of the following: (1) description of the work to be performed; (2) method and manner of performance; and, (3) the amount of work to be furnished. If any such change causes a difference in 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 Contract Specialist 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 Contract Specialist. Nothing in this clause, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

1.17 SUSPENSION OF WORK

- (a) The Buyer/Contract Specialist, 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 Buyer/Contract Specialist, 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 1.12 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.

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1.18 PUBLIC RELEASE OF INFORMATION

Except as provided in the Statement of Work, work description, statutory requirement, or other provisions of this Agreement, no public release of information, including, without limitation, data, photographs, sketches, and advertising, announcements, denials or confirmations related to the work under this Agreement shall be made without the prior written approval of Company. Any request for approval shall include identity of the specific media as well as other pertinent details of the requested release.

1.19 GOVERNMENT PROPERTY

- (a) Company may furnish to Seller property as may be required for performance of work under this Agreement, or have Seller acquire such property as mutually agreed. Title to property furnished or acquired shall vest in the Government, and hereafter be referred to as "Government property." If Seller purchases property for which it is entitled to be reimbursed as a direct item of cost, title shall pass to the Government upon delivery of the property to Seller. Title to all other property, the cost of which is reimbursable to Seller, shall pass to the Government upon the earliest of (1) issuance of property for use in performance, (2) processing property for use in performance, or (3) reimbursement of cost of property. Title shall not be affected by the incorporation or attachment to any property not owned by the Government, nor shall any Government property become a fixture or lose its identity because it is affixed to any realty.
- (b) Company shall deliver to Seller the Government property stated in this Agreement. If the property is not suitable for its intended use or is not delivered to Seller as specified in this Agreement, Company shall equitably adjust affected provisions when the facts warrant an equitable adjustment and Seller submits a written request for such adjustment within 14 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.

1.20 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.

1.21 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.

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(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 Contract Specialist, 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.

1.22 INSPECTION

(a) Company and Government have the right to inspect and test all services and supplies called for by the Agreement, at all reasonable places, including Seller's location, and all reasonable times during the term of the Agreement. Such inspections and tests shall be conducted in a manner that will not unduly delay the work. Seller and subcontractors shall provide reasonable location and assistance if needed.

(b) If any of the services or supplies are not compliant with the requirements of the Agreement, Company may require Seller to reperform the services or repair or replace the supplies for no additional fee. When the defects cannot be corrected by reperformance, repair, or replacement, Company may (1) require Seller to take necessary action to ensure future compliant performance and (2) reduce any fee payable under the Agreement to reflect the reduced value of the services or supplies.

(c) If Seller fails to promptly correct the defects or take action necessary to ensure future compliant performance, Company may (1) reduce any fee payable by an equitable amount under the circumstances and/or (2) terminate for default.

1.23a FEE

(a) Company shall pay Seller the fee as specified for performing this Agreement.

(b) Payment of the fee shall be made as specified in the 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 possible maximum fee or \$100,000, whichever is less.

1.23b NO FEE

Where no fee is to be paid for performing this Agreement, after payment of 80 percent of the total estimated cost shown in the Agreement, the Contract Specialist 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 or \$10,000, whichever is less.

1.24 LIMITATION OF COST AND FUNDS

(a) Seller agrees to use its best efforts to perform the work specified in the Agreement within the estimated specified costs. Company is not obligated to reimburse Seller for costs incurred in excess of the total amount allotted as specified in the Agreement to be paid by Company. Seller is not obligated to continue performance under this Agreement (including actions under the Termination clause of this Agreement) or otherwise incur costs in excess of the total amount allotted as specified in the Agreement, until Company increases allotted funds. If this is a cost-sharing Agreement, the increase shall be allocated in accordance with the formula specified in the Agreement.

(b) Seller shall notify the Contract Specialist 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 this Agreement or, (ii) whenever it has reason to believe that the total estimated cost for the performance of this Agreement 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 Contract Specialist, shall affect this Agreement's funding.

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(d) If the total allotted amount or the estimated cost specified in the Agreement 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.

1.25 SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS.

Promptly after the end of each month, the Seller shall submit to the Company (for forwarding to the General Services Administration for audit) legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's) passenger coupons, and other supporting documents for transportation services that will be reimbursed as a direct cost under this Agreement in accordance with FAR 52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit (JUN 1997).

1.26 ENVIRONMENT, SAFETY AND HEALTH PROTECTION

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

(b) If Seller is performing any of the work onsite which is defined as at ORAU or any other DOE or Company owned or leased facility, Seller shall comply with Part 2 of these terms and conditions below.

1.27 EMPLOYEE CONCERNS PROGRAM

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

(b) DOE Order 442.1A is supplemented by DOE Policy 442.1 "Differing Professional Opinions on Technical Issues Related to Environment, Safety, and Health," that covers resolution of differing professional opinions from employees on technical issues relating to ES&H. Employees for purposes of the Policy are any persons working for DOE, including the NNSA or a DOE contractor or subcontractor on a DOE project.

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

(d) The Seller must notify its employees that:

(1) DOE and the Company have ECPs;

(2) Employees are encouraged to first seek resolution with first-line supervisors or through existing complaint or dispute resolution systems, but that they have the right to report concerns through the DOE ECP;

(3) If a concern is not resolved by supervisors, or if the employee elects not to raise the concern with supervisory personnel, the concern may be reported to the DOE Oak Ridge Operations Office (ORO) by calling the ORO Telephone Hotline, (865) 241-3267. Concerns related to actions by Company employees may be reported to the Company by calling (865) 576-3054; and

(4) The Company will not tolerate reprisals against or intimidation of employees who have reported concerns.

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

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

1.28 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 subcontract. In the absence of available license exemptions or

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exceptions, the Seller must obtain the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Seller must obtain export licenses, if required, before using foreign persons in the performance of this subcontract, where the foreign person will have access to export-controlled technical data or software.

(c) The Seller is responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions and exceptions.

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

1.29 BADGES AND PROXIMITY CARDS

The Seller's employees or subcontractors may require the use of ORAU or DOE badges and proximity cards issued by the Company in order to perform work under this subcontract. ORAU and DOE badges and proximity cards remain the property of the U.S. Government and must be returned to the Company upon completion of this subcontract. Failure to do so could result in the loss of future work with the Company.

PART 2. APPLICABLE WHEN SELLER PERSONNEL WORK ON DOE SITE

2.1 INCORPORATION BY REFERENCE

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

The following clauses are incorporated by reference:

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

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

DEAR 952.223-75 Preservation of Individual Occupational Radiation Exposure Records (APR 1984)

DEAR 970.5223-1 Integration of Environment, Safety, and Health Into Work Planning and Execution (DEC 2000)

(Applies if specifically notified in this subcontract that work is complex or hazardous.)

ORAU\ORISE 10 C.F.R. § 851 Worker Safety and Health Protection Program (May 2007).

(Seller may propose its own DOE-approved 10 C.F.R. § 851 WSHP.)

DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites (DEC 2000)

ORO H.3 Oversight of Contractor (OCT 2004)

ORO H.5 Safeguards and Security Awareness Program (MAY 1997)

ORO H.35 Access to DOE-Owned or Leased Facilities (OCT 2005)

Unclassified Foreign Visits and Assignments (DOE P 142.1 and DOE N 142.1)

Hazardous Materials Reporting (29 CFR 1910.1200)

ORAU Policy ESH-100 Integrated Safety Management, including Attachment 1. If work is performed at other DOE sites the Integrated Safety Management Plan of each site where work is performed shall be applicable.

ORAU Policy HR-1010 Drug/Alcohol Free Workplace, Subcontractor Requirements

ORAU Facilities Management Section Procedure FMS-7, Safe Subcontractor Work

ORAU Visitor and Subcontractor Handbook

Insurance - Work on a Government Installation (Company 4-99)

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:

FAR 52.227-10 Filing of Patent Applications-Classified Subject Matter (APR 1984)

DEAR 952.204-2 Security (MAY 2002)

DEAR 952.204-70 Classification/Declassification (SEP 1997)

DEAR 952.204-73 Facility Clearance (MAY 2002)

DEAR 952.223-76 Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health (JAN 2004)

DEAR 970.5227-10 Patent Rights-Management and Operating Contracts, Nonprofit Organization or Small Business Firm Contractor (AUG 2002)

ORO H5 Safeguards and Security Awareness Program (MAY 1997)

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3.2 DRUG TESTING OF SUBCONTRACTOR PERSONNEL WITH SECURITY CLEARANCES

Consistent with 10 CFR 707 - Workplace Substance Abuse Programs at DOE Sites and DOE Acquisition Letter 2008-03, Drug Testing and Security Clearances of Contractor Personnel; all subcontractor positions that require a security clearance ("Q" or "L") and all employees in positions that currently have security clearances have the potential to significantly affect the environment, public health and safety, or national security. Therefore, all such positions will be considered to be in Testing Designated Positions (TDP), which means that they are subject to applicant, random and for cause drug testing and heretofore will be administered at subcontractor's expense. ORAU reserves the right to designate drug test time and location.

The subcontractor agrees to comply with the following requirements during the performance of this subcontract.

1. If notified of a requirement for a drug test by ORAU the subcontractor shall have the individual identified for the drug test report to the designated facility within the time frame specified in the official ORAU notification to complete the required drug test.

2. The subcontractor shall be responsible for payment of the cost of all required drug tests and will not be reimbursed by ORAU. If payment of the cost of the drug test(s) is made to the providing Lab or medical facility by ORAU on behalf of the subcontractor or applicant, the subcontractor agrees that the cost thereof shall be deducted from any invoice for equipment or services rendered by the subcontractor to ORAU.

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

4.1 INCORPORATION BY REFERENCE

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

The following clauses are incorporated by reference:

FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995)
FAR 52.203-7 Anti-Kickback Procedures (JUL 1995)
FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (JUN 2003)
FAR 52.219-8 Utilization of Small Business Concerns (MAY 2004)
FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 2005)
FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)
FAR 52.223-14 Toxic Chemical Release Reporting (AUG 2003)
FAR 52.227-1 Authorization and Consent (JUL 1995)
FAR 52.248-1 Value Engineering (FEB 2000)
DEAR 952.209-72 Organizational Conflicts of Interest (JUN 1997)
DEAR 970.5227-4 Authorization and Consent (AUG 2002)
DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

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

5A.1 INCORPORATION BY REFERENCE

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

The following clauses are incorporated by reference:

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

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PART 5B. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$550,000

5B.1 INCORPORATION BY REFERENCE

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

The following clauses are incorporated by reference:

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

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

FAR 52.215-15 Pension Adjustments and Asset Reversions (OCT 2004)

FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (JUL 2005)

FAR 52.215-19 Notification of Ownership Changes (OCT 1997)

FAR 52.219-9 Small Business Subcontracting (JUL 2005) Alternate II (OCT 2001) including paragraph (j) as modified by DOE Acquisition Letter 2006-01

FAR 52.219-16 Liquidated Damages – Subcontracting Plan (JAN 1999)

PART 6. APPLICABLE ONLY TO CERTAIN AGREEMENTS

6.1 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 (JUN 1996). For purposes of incorporation, subcontractor means lower-tier subcontractor.

6.2 PRIVACY ACT

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

6.3 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 (APR 2002).

6.4 SUBCONTRACTS

If Seller proposes to subcontract for (1) cost-reimbursement, time-and-materials, or labor hour type; or (2) fixed price in excess of \$100,000 or 5 percent of the total estimated cost of this Agreement; or (3) 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 (AUG 1998) including Alternate II (MAR 2005).