

**Oak Ridge Associated Universities
Construction 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-AC05-00OR22750.
- (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) 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 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 subtier 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) Division One ("Special Conditions") of the specifications; (c) General 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.

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- (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 procure and maintain such bonds as are required by law or written direction of Company. Seller shall deliver to Company 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 Buyer/Contract Specialist 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 under Part 1.11.

1.10 SUPERINTENDENCE OF SELLER

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At all times during performance of this Agreement and until the work is completed and accepted, Seller shall directly superintend the work or assign and have at the site a competent superintendent who is satisfactory to Company and has authority to act for Seller.

1.11 PAYMENT

- (a) Company shall pay Seller the price as provided in this Agreement.
- (b) (1) Company shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by Company, on estimates of work accomplished which meets the standards of quality established under the Agreement, as approved by Company. (2) Pay estimates shall be submitted monthly. In the preparation of estimates, Company may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to Seller at locations other than the site may also be taken into consideration if (i) consideration is specifically authorized by this Agreement and (ii) Seller furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Agreement. (3) An updated progress report shall be submitted by Seller with each pay estimate. (4) Before a request for payment is approved, Seller shall submit to the Construction Engineer all required plans and reports for the work period in question.
- (c) In making progress payments, there shall be retained 10% of the estimated amount until final completion and acceptance of the work. However, if Company finds that satisfactory progress was achieved during any period for which a progress payment is to be made, it may authorize any of the remaining progress payments to be made either with a reduced retention or in full without retention. Also, whenever the work is substantially complete, Company, if it considers the amount retained to be in excess of the amount adequate for the protection of Company and the Government, at its discretion, may release to Seller all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Agreement, on which the price is stated separately in the Agreement, payment may be made therefor without retention of a percentage.
- (d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as: (1) relieving Seller from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or (2) waiving the right of Company to require the fulfillment of all of the terms of the Agreement.
- (e) In making these progress payments, Company shall, upon request, reimburse Seller for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after Seller has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.
- (f) Company shall pay the final amount due Seller under this Agreement after: (1) completion and acceptance of all work; and (2) Seller has submitted: (i) "Certified-as-Built" shop drawings and manufacturer's data and a bound copy of certified test data and reports; (ii) a certified statement that all payrolls have been submitted under this Agreement; (iii) a properly executed voucher; and (iv) a release of all claims against Company and the Government arising by virtue of this Agreement, other than claims, in stated amounts, that Seller has specifically excepted from the operation of the release. Release may also be required of the assignee if Seller claims amounts payable that have been assigned in accordance with Part 1.7.

1.12 COMPLIANCE WITH LAWS

- (a) Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent orders, DOE directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this Agreement. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits including, without limitation, underground utility permit requirements. Seller warrants that each chemical substance constituting or contained in 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.
- (b) Seller shall include this clause in all subcontracts, at any tier, involving the performance of this Agreement.

1.13a TERMINATION FOR DEFAULT

- (a) Company may terminate this Agreement, in whole or in part, if Seller: (1) fails to supply enough properly skilled workers or materials so as to endanger timely performance, (2) abandons or unreasonably delays

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performance, (3) persistently disregards laws, safety or environmental regulations, ordinances or the instructions of Company, or (4) fails to comply with any substantive requirement of this Agreement.

- (b) Company may take possession and use any materials, tools, equipment and the construction facilities and premises and finish the work by whatever method Company deems expedient at Seller's expense which includes any increased cost incurred that exceeds the Agreement price.
- (c) The rights and remedies of Company in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

1.13b TERMINATION FOR CONVENIENCE

- (a) Company reserves the right to terminate this Agreement, or any part hereof, for the convenience of itself or the Government by delivering to Seller a Notice of Termination specifying the extent of termination and the effective date. In the event of such termination, Seller shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work and take any action that may be necessary, or that Company directs, for the protection of the property related to this Agreement.
- (b) After expiration of Seller's plant clearance period, Seller may submit to Company a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Company. Seller may request Company to remove those items or enter into an agreement for their storage. Within 15 calendar days, Company will remove them or enter into a storage agreement. Company may verify the list upon removal of the items, or if stored, within 45 calendar days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (c) After termination, Seller shall submit a final termination settlement proposal to Company in the form and with the certification prescribed by Company. Seller shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by Company upon written request of Seller within this 1 year period. If Seller fails to submit the proposal within the time allowed, Company may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.
- (d) Subject to the terms of this Agreement, Seller shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Company, have resulted from the termination. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Seller and Company may agree upon the amount to be paid because of the termination. However, the agreed amount may not exceed the Agreement price.
- (e) Company shall exclude from the amounts payable to Seller the fair value, as determined by Company, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable.
- (f) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Agreement, shall govern all costs claimed.
- (g) Unless otherwise agreed or required by statute, Seller shall maintain all records and documents relating to the terminated portion of this Agreement for 3 years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this Agreement. Seller shall make these records and documents available to the Government, at Seller's office, at all reasonable times, without any direct charge. If approved by Company, authentic reproductions may be maintained instead of original records and documents.

1.14 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 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.

1.15a 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. Company clauses incorporated by reference are available from Company's Procurement Internet Home Page at: <http://www.orau.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://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Regulation?OpenDocument>

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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 52.222-21 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)
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 (JULY 2000)
FAR 52.227-1 Authorization and Consent (JUL 1995)
FAR 52.244-6 Subcontracts for Commercial Items (MAY 2002)
FAR 52.247-63 Preference for U.S. Flag Air Carriers (JAN 1997)
DEAR 970.5227-1 Rights in Data – Facilities (DEC 2000)
DEAR 970.5232-3 Accounts, Records and Inspection (DEC 2000) (MODIFIED) (Full text available on the ORAU Procurement Internet Home Page under Full Text Provisions.)
ORO H55 Quality Assurance System Alternate I (AUG 1999) (Reference ORAU Policy GP-810 below)
ORAU Policy GP-810 Quality Assurance, including Attachments 1 & 2.
ORO H65 Confidentiality of Information (MAY 1997)

The following ORAU/ORISE provisions are incorporated by reference:

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

The following clause is incorporated in full text:

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 calendar days' prior written notice to Company if Seller determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance to continue performance of the work under this Agreement as a result of such notification. If Seller elects to terminate performance, the provision of this Agreement Part 1.13b shall apply.
- (b) The provisions of this clause shall be included in applicable subcontracts.

1.15b 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 1.15a.

FAR 52.222-6 Davis-Bacon Act (FEB 1995) (The required poster is available at:
<http://www.dol.gov/esa/regs/compliance/posters/davis.htm>).
FAR 52.222-7 Withholding of Funds (FEB 1988)
FAR 52.222-8 Payrolls and Basic Records (FEB 1988)
FAR 52.222-9 Apprentices and Trainees (FEB 1988)
FAR 52.222-10 Compliance with Copeland Act Requirements (FEB 1988)

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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 (FEB 1999)

1.16 CHANGES

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) specifications (including drawings and designs), (2) method and manner of performance, (3) government furnished facilities, equipment, materials, services and (4) acceleration in performance. If any such change causes a difference in the cost, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Agreement signed by both parties. Any claim for adjustment by Seller must be made within 14 calendar 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. Seller's submission shall include: (1) date, nature and circumstances regarding the change, (2) name of each person knowledgeable about the change, (2) identification of documents and substance of oral communications involving the change, (3) the particular elements of performance impacted by the change, including (i) adjustment in labor and/or materials, (ii) delay or disruption caused, (iii) estimated resulting price and schedule adjustments and (iv) time by which Company must respond to minimize cost, delay, or disruption to performance of the work. Failure to agree to any adjustment shall be settled in accordance with Part 1.2.

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 the period of time the Buyer/Contract Specialist determined appropriate. Upon receipt of written notice, Seller shall immediately comply with its provisions and take all reasonable steps, as directed by the Buyer/Contract Specialist, to minimize the cost associated with such suspension.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended (1) by an act of Company in the administration of this Agreement, or (2) by Company's failure to act within the time specified in this Agreement (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance necessarily caused by the unreasonable suspension, delay, or interruption, and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Seller, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Agreement.
- (c) As full compensation for such unreasonable delay, Seller shall be reimbursed, actual costs, reasonably incurred, without duplication, to the extent the cost result solely and directly from the unreasonable period of the suspension. Claim for such reimbursement shall be submitted within 14 calendar days after the termination of the suspension. A claim under this clause shall not be allowed unless the claim, in an amount stated, is submitted timely.
- (d) When work has been suspended by Seller for any reason other than Company order, Seller shall give the Company 24 hours advance notice of its intention to resume work. Should Seller resume work without such notification, Company reserves the right to use the work areas as it sees fit for a period of 24 hours after Seller's work is resumed. Delays caused by action of Company due to failure on the part of Seller to comply with these provisions will not constitute a basis for any adjustment in the price or time for completion.

1.18 PUBLIC RELEASE OF INFORMATION

Seller shall not publicly disclose information concerning any aspect of the materials or services relating to this Agreement without the prior written approval of the Buyer/Contract Specialist unless specifically required by law.

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

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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.

1.20 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 calendar days of the date due. The interest rate shall be the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) as of the date due, 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 represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the work under this Agreement. 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.
- (c) Seller shall be solely responsible for all liability and related expenses resulting from injury, death or damage to property which is in any way connected with the negligent performance of work under this Agreement. Seller shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Agreement. Seller's responsibility shall apply to activities of Seller, its agents, lower-tier subcontractors, or employees and such responsibility includes the obligation to indemnify, defend, and hold harmless the Government and Company. However, such liability and indemnity does not apply to injury, death, or damage to property arising from the sole conduct of Company.

1.22 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.

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- (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 reinspection 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.

1.23 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.

1.24 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.

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- (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.

1.25 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.
- (d) 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.

1.26 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.

1.27 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.
- (d) 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.

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1.28 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.

1.29 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

- (a) Seller shall be furnished the number of drawings and specifications specified in Division One at no cost.
- (b) Seller shall keep on the work site a copy of the drawings and specifications and shall at all times give Company access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. Within the specifications, Division One (the "Special Conditions") shall govern. In case of discrepancy in the figures, in the drawings, or in the remainder of the specifications, the matter shall be promptly submitted to the Construction Engineer and the Buyer/Contract Specialist, who shall promptly make a determination in writing. Any adjustment by Seller without such a determination shall be at its own risk and expense. Company shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (c) (1) The drawings and specifications incorporated into this Agreement are intended to include everything requisite and necessary to complete the entire work properly, notwithstanding the fact that every item necessarily involved may not be specifically mentioned. (2) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve Seller from performing such omitted or misdescribed details of the work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications. (3) The specifications and drawings may identify and list quantities of items to be furnished and installed by Seller. These identifications may be incomplete and the quantities are estimates only. Seller is responsible for furnishing the items and quantities manifestly necessary to carry out the intent of the drawings and specifications. (4) The drawings furnished by Company are, in general, to scale. Scales shown on a microfilmed reproduced drawing change in proportion to the reduction of the drawing from original size. Figured dimensions shall always be followed and the drawings not scaled. (5) Prior to fabricating any item (structural steel, piping, ductwork, etc.) Seller shall field-verify all dimensions critical to the installation. Any discrepancies between existing or new conditions and the drawings shall be reported to Company for resolution. (6) The specifications are divided into sections for convenience only, and such sections do not define or establish the limits of work of any subcontractor. It is Seller's responsibility to define lower-tier subcontractors' limits of work and to insure that all lower-tier subcontractors and suppliers at whatever level are familiar with all provisions of this Agreement that may affect their work. (7) The data sheet equipment numbers are not unique. Multiple pieces of equipment may utilize the same number. Seller shall determine the quantity of equipment and material needed to complete the work.

1.30 SAFETY, HEALTH AND ENVIRONMENTAL PROTECTION

- (a) Seller shall take all reasonable precautions in the performance of the work under this Agreement to protect the health and safety of employees and of members of the public and to minimize danger from all hazards to life and property, and shall comply with all health, safety, fire, and environmental protection regulations and requirements (including reporting requirements) of Company and DOE. In the event that Seller fails to comply with said regulations or requirements of Company and DOE, 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.
- (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.

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- (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, prior to commencing work at the site, submit to Company a descriptive outline of his safety program (including the operations of Seller's subcontractors) encompassing aspects of industrial safety, health, and fire prevention and protection.

1.31 BACKCHARGE WORK

- (a) Backcharge work is a cost sustained by Company or the Government and chargeable to Seller for the performance of work which is Seller's responsibility under this Agreement.
- (b) Upon identification of an actual or anticipated backcharge, Company will provide Seller a written notice which shall describe the work to be performed, the schedule for performance, and the cost to be charged the Seller. The cost may include; (i) actual labor cost, (ii) actual material cost including transportation, and (iii) taxes, levies, duties and assessments.
- (c) Seller is required to accept the backcharge or reperform work at Seller's cost. In the event Seller refuses to accept or agrees to performance of the work within 24 hours after receipt of Company's notice, Company may elect to proceed with the backcharge work and setoff the cost for Seller's payment.

1.32 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 price does include all applicable Federal taxes.

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.)
DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites (DEC 2000)
ORO H10 Oversight of Contractor (MAY 1997) (Modified)
ORO H50 Safeguards and Security Awareness Program (MAY 1997) (Note: Updated Nov 1998)
Unclassified Foreign Visits and Assignments (DOE P 142.1 and DOE N 142.1)
Hazardous Materials Reporting (29 CFR 1910.1200)
ORAU Policy ESH-110 Environment, Safety and Health (ES&H), including Attachment 1
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)

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DEAR 952.204-73 Facility Clearance (May 2002)

ORO H50 Safeguards and Security Awareness Program (MAY 1997) (Note: Updated Nov 1998)

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 1997)

FAR 52.215-2 Audit and Records - Negotiation (JUN 1999) Alternate II (APR 1998)

FAR 52.219-8 Utilization of Small Business Concerns (OCT 2000)

FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (SEPT 2000)

FAR 52.223-14 Toxic Chemical Release Reporting (OCT 2000)

FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996)

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 1.15a

The following clauses are incorporated by reference:

FAR 52.219-9 Small Business Subcontracting Plan (OCT 2000) Alternate II (OCT 2000)

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

DEAR 970.5226-2 Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (DEC 2000)

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 1.15a

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 52.215-19 Notification of Ownership Changes (OCT 1997)

PART 6. APPLICABLE ONLY TO CERTAIN AGREEMENTS

6.1 INCORPORATION BY REFERENCE

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

6.2 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.

6.3 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).

6.4 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTORS

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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).