

Terms & Conditions - Purchase Order Commercial Items & Services Under Simplified Acquisition Threshold

1. DEFINITIONS

Unless otherwise indicated, the following terms shall have the meanings below:

- (a) Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- (b) Company means UT-Battelle, LLC, acting under Contract No. DE-AC05-00OR22725 with DOE.
- (c) Seller means the person or organization that has entered into this Agreement with Company.
- (d) Agreement means Purchase Order, Subcontract, Price Agreement or any supplement and/or modification thereof.
- (e) Procurement Officer means Company's cognizant Contracts Division representative.
- (f) Item means "commercial item" and "commercial component" as defined in FAR 2.101.

2. RESOLUTION OF DISPUTES

The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with Federal law. To the extent there is no Federal law, Tennessee state law shall apply. 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 lower-tier subcontractors.

3. ACKNOWLEDGEMENT/ENTIRE AGREEMENT

These terms and the terms on the face of the Purchase Order constitute the entire agreement between the parties and no other additional or conflicting terms submitted by Seller shall be deemed a part hereof unless accepted in writing by the Company's Procurement Officer. Seller's commencement of performance shall constitute acceptance of these terms and conditions without modification. Any change, amendment or modification must be in writing and executed by Company's Procurement Officer.

4. COMMUNICATION AND PRIVACY OF CONTRACT WITH GOVERNMENT

Seller does not have any privity with the Government. Seller shall not communicate with Company's customer or higher tier customer in connection with this Contract, except as expressly permitted by Company. This clause does not prohibit Seller from communicating with the Government with respect to (1) matters Seller is required by law or regulation to communicate to the Government, (2) fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information, (3) any matter for which this Subcontract, including a FAR or FAR Supplement clause included in this Subcontract, provides for direct communication by Seller to the Government, or (4) any material matter pertaining to payment or utilization.

5. WARRANTY AND INSPECTION

- (a) Goods. In addition to the warranties provided for under the Uniform Commercial Code, Seller warrants that all goods furnished under this Agreement will be free from defects, will conform with all requirements of this Order, and, unless manufactured solely in accordance with Company certified manufacturing designs, will be free from defects in design. Any goods corrected or replaced will be covered by this warranty. Seller agrees to notify the Company's Procurement Officer immediately upon becoming aware of a potential problem with goods previously delivered to Company.
- (b) Services. Seller warrants that all services will be performed with the highest standard of professional service, be free from defects, conform to the requirements of this Purchase Order, and be performed in strict compliance with any specified regulatory or international standards. Any services corrected or re-performed will be covered by this warranty. The Company's rights regarding inspection and acceptance of services under this agreement shall be equivalent to those provided for inspection of goods under the Uniform Commercial Code. Nonconforming goods or services will be replaced, corrected, or re-performed at Seller's expense.

6. Electrical Equipment Requirements

Unless stated elsewhere in this Agreement, all electrical equipment, assemblies, or items: (1) Shall be listed by a nationally recognized testing laboratory (NRTL) or (2) Shall be field evaluated and labeled by a NRTL at the Seller's expense. The NRTL's evaluation label must appear on the equipment, and the Seller shall provide the NRTL's evaluation report with the equipment.

7. COMPLIANCE WITH LAWS

Seller shall comply with all applicable federal, state, and local laws and ordinances and regulations. Compliance shall be a material requirement of this Agreement. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits. Seller shall include this clause in all subcontracts, at any tier, involving the performance of this Agreement. In the event that any actions that result in fines and/or penalties are taken by a local, state, or federal agency against Company or the Government for a regulatory and/or permit noncompliance that resulted from a failure of Seller to perform in accordance with this Agreement or local, state, or federal law, Seller shall reimburse Company or the Government for the amount of the resultant fine and/or penalty including the cost of any additional work required as a result of the enforcement action to the extent caused by Seller's and its lower-tier subcontractors' negligence and/or failure. Company may withhold such amounts from the future payment due Seller.

8. TERMINATION

Company may at any time, by written notice to the Seller, terminate this Purchase Order in whole or in part either for the convenience of Company or for default. In the event of termination for convenience, Company shall be liable for payments to Seller only for cost for performance rendered up to the effective date of termination. Termination costs shall be determined in accordance with FAR 52.249-1. Company may terminate this order in whole or in part for default if Seller fails to deliver goods or services conforming to the requirements of this order, or in the event of the suspension, or debarment of Seller from participation in Federal or state procurement(s). Seller shall provide immediate notice to Procurement Officer in the event of being suspended, debarred or declared ineligible by any agency or department of the U.S. Government, or upon receipt of a notice of proposed debarment from any agency or department of the U.S. Government or any State Government, during the performance of this Agreement. In the event that this order is terminated for default, Seller shall be liable to pay to Company all amounts incurred for re-procurement of items or services provided for in this Purchase Order, in addition to any other remedies provided by law or this Agreement.

9. EXCUSABLE DELAY

The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, named weather event (i.e., hurricane, typhoon, cyclone/tornado) causing loss, and delays of common carriers. Notwithstanding the foregoing, any loss, failure, or delay arising out of or related to COVID-19 pandemic shall not constitute an excusable delay event. The Seller shall notify the Company in writing within three (3) working days after the commencement of any excusable delay, setting forth the full

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particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Company within three (3) working days of the cessation of such occurrence.

If the Company determines that any failure to perform results from one or more of the causes above, only the delivery schedule shall be revised, subject to the rights of the Company under the termination clause of this Agreement. Notwithstanding the above in (a), any such event to which Seller may be entitled to an adjustment, in schedule delivery, shall be handled in accordance with Part 12 Changes.

10. PUBLIC RELEASE OF INFORMATION

Company does not endorse products or services. Seller agrees not to use Company's name, the name Oak Ridge National Laboratory (ORNL), the name of any of its projects or programs, or identifying characteristics of any of these for advertising or in any way that implies endorsement by UT-Battelle, ORNL, or DOE. Any media releases concerning this Agreement are prohibited without written consent of the Procurement Officer.

11. ACCESS

If Seller is granted access to DOE facilities, Seller shall comply with all rules and policies regarding conduct, security, and safety.

12. CHANGES

Only the Procurement Officer is authorized on behalf of Company to issue changes. If Seller considers that any direction or instruction by Company personnel constitutes such a change, Seller shall not rely upon such instruction or direction without written confirmation from the Procurement Officer.

Company may, at any time, by a written order make changes within the general scope of this Purchase Order.

If any such change causes an increase or decrease in the cost of or the time required for, the performance of any part of the work under this Purchase Order, whether changed or not changed by any such order, an equitable adjustment shall be made in the Purchase Order price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by the Seller of a written notification of change from the Company. Company may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order. Nothing in this clause shall excuse the Seller from proceeding with the Purchase Order as changed.

13. INSURANCE AND INDEMNITY

Seller shall maintain insurance in accordance with Insurance – Form 1 (Company – November 2020). Seller's insurance shall not be deemed to limit Seller's liability. Seller agrees to indemnify, defend and hold harmless Company and the Government from damages, liabilities, and claims arising out of the Seller's performance hereunder that are caused, in whole or in part, by the negligent or wrongful acts or omissions of Seller or anyone employed by Seller for whose acts Seller may be liable.

14. INFORMATION TECHNOLOGY

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at <http://checklists.nist.gov> commensurate with the mission of the subcontract and conducive to the research and development efforts of the ORNL.

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 the purposes of the FAR, DEAR provisions, and DOE Orders incorporated by reference, "Contractor" means Seller; "Government" shall mean Company and/or Government; and "Contracting Officer" means Company's Procurement Officer.

FAR 52.222-21 Prohibition of Segregated Facilities (Feb 1999) (applicable to Agreements in excess of \$10,000)

FAR 52.222-26 Equal Opportunity (Apr 2015)

FAR 52.222-36 Equal Opportunity for Workers with Disabilities (July 2014) (applicable in Agreements in excess of \$15,000)

FAR 52.222-50 Combating Trafficking in Persons (Feb 2009)

FAR 52.225-13 Restrictions on Certain Foreign Purchases (Jun 2008)

FAR 52.222-35 Equal Opportunity for Veterans (July 2014) (applicable to Agreements in excess of \$100,000)

FAR 52.222-37 Employment Reports on Veterans (July 2014) (applicable to Agreements in excess of \$100,000)

FAR 52.222-54 Employment Eligibility Verification (Aug 2013) – in Agreements for more than \$3K and greater than 120 days duration; not applicable to services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications) and performed by the COTS provider.

FAR 52.222-40 Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (applicable to Agreements in excess of \$10,000).

FAR 52.223-13 Acquisition of EPEAT @ - Registered Imaging Equipment (June 2014)

FAR 52.223-14 Acquisition of EPEAT @ - Registered Televisions (June 2014)

FAR 52.223-15 Energy Efficiency in Energy-Consuming Products (Dec 2007) – when ENERGY STAR® Program or FEMP products will be delivered, acquired, furnished, or specified

FAR 52.223-16 Acquisition of EPEAT @ - Personal Computer Products (June 2014)

FAR 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (May 2008)

FAR 52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) - in all subcontracts that exceed the micro-purchase threshold

FAR 52.225-1 Buy American Act – Supplies (May 2014) applicable to Agreements in excess of the micro-purchase threshold

FAR 52.232-39 Unenforceability of Unauthorized Obligations (June 2013)

FAR 52.244-6 Subcontracts for Commercial Items (Oct 2014)

FAR 52.247-63 Preference for U.S.-Flag Air Carriers (June 2003) Commercial Vessels (Feb 2006)

DEAR 970.5225-1 Compliance with Export Control Law and Regulations

DOE Order 227.1 O Independent Oversight Program

DOE Order 221.2 A Cooperation with the Office of Inspector General

DOE Order 411.2 Scientific Integrity

16. APPLICABLE IF SERVICES ARE PERFORMED ON DOE SITE

FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011)

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

DEAR 970.5223-1 DOE Approved Worker Safety and Health Program

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DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites – in subcontracts over \$25K that involve: (i) Access to or handling of classified information or special nuclear materials; (ii) High risk of danger to life, the environment, public health and safety, or national security; or (iii) Transportation of hazardous materials to or from a DOE site.

All electrical equipment, assemblies, or items utilized by Seller or lower-tier: (1) Shall be listed by a nationally recognized testing laboratory (NRTL) or (2) Shall be field evaluated and labeled by a NRTL at the Seller's expense. The NRTL's evaluation label must appear on the equipment, and the Seller or lower-tier shall provide the NRTL's evaluation report with the equipment.

17. APPLICABLE IF PERFORMANCE INVOLVES SPECIAL ITEMS AND SERVICES

FAR 52.208-8 Required Sources for Helium and Helium Usage Data (Apr 2014) – in any subcontract or order that involves a major helium requirement.

FAR 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Sep 2013)

FAR 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (May 2008)

FAR 52.224-1 Privacy Act Notification (Apr 1984)

FAR 52.224-2 Privacy Act (Apr 1984)

FAR 52.225-8 Duty-Free Entry (Oct 2010) Supplies over \$15K - substance of the clause must be included in a subcontract if (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or (2) Other foreign supplies in excess of \$15K may be imported into the customs territory of the United States

Insurance – Form 1 (Company – March 2011)

18. APPLICABLE WHEN SUBCONTRACT INVOLVES SECURITY OR ACCESS TO CLASSIFIED INFORMATION

DEAR 952.204-2 Security (Aug 2016)

DEAR 952.204-70 Classification/Declassification (Sep 1997) – in subcontracts that may involve access to classified information

DEAR 952.204-77 Computer Security – in subcontracts that may provide access to computers owned, leased or operated on behalf of the DOE

19. NOTIFICATION OF VISA DENIAL

If the work to be performed is in or on behalf of a foreign country by workers recruited in the United States, FAR 52.222-29 Notification of Visa Denial (June 2003) applies.

20. Walsh-Healey Public Contracts Act

If this subcontract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.