

Terms & Conditions - Global Security Non-Proliferation Program

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1 DEFINITIONS

The following terms shall have the meanings below:

- (a) Government means the United States of America and includes the U.S. Department of Energy (DOE) 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
- (d) Agreement means Purchase Order, Subcontract, Basic Ordering Agreement, Task Order, Work Release, or Modification thereof.
- (e) Procurement Officer means Company's cognizant Contracts Division representative
- (f) Day means calendar day unless otherwise specified

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 agree they must use alternative disputes resolution (ADR). Arbitration shall be in accordance with the then current Rules of Conciliation and Arbitration of the International Chamber of Commerce. In the event mediation or arbitration is agreed upon, the site of the proceedings shall be mutually agreed upon by Seller and Company. Costs shall be mutually shared by Seller and Company and it is agreed that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs.
- (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 United States federal law.
- (c) In the event of a dispute, 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 ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Prime flow downs (2) Articles of the Subcontract or provisions of the Purchase Order (including alterations and special provisions therein), (3) Special Terms and Conditions attached thereto, (4) General Terms and Conditions, (5) Statement of Work or description of services and/or supplies.

4 PAYMENT AND ADMINISTRATION

Company shall pay the Seller the prices stipulated in this Agreement for supplies delivered and accepted or services rendered and accepted. Company may deduct from any amount owed to Seller any amount owed to Company whether or not in connection with this Agreement.

5 ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement, or delivering the supplies or performing the services identified 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 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.

6 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.

7 ASSIGNMENT, NOVATION, NAME CHANGE AND SUBCONTRACTING

- (a) Assignment - Neither this Agreement nor any interest therein nor claim thereunder shall be assigned or transferred by Seller except as expressly authorized in writing by Company. Company may assign the whole or any part of this Agreement to the U.S. Government or its designee.
- (b) Novation – Seller shall inform Company of the transfer of Seller's assets, rights, obligations and/or liabilities under this Agreement to a separate legal entity and submit written proof of such transfer. Company at its sole discretion may recognize the transfer. The novation shall not be effective until all three parties enter into and execute a Novation Agreement.

- (c) Change of Name – Seller shall inform Company of a corporate name change and submit documents as proof of such change. Both parties must enter into and execute a Name Change Agreement.
- (d) Subcontracting - Seller shall not issue lower-tier arrangements for any portion of the work hereunder without the prior written approval of Company. When requesting such approval, Seller shall furnish Company with the name of the proposed lower-tier organization, a description of the work proposed to be performed, and such other information as Company shall require.
- (e) Reorganization – If Seller reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this subcontract, the Company may be prohibited to pay for Seller Activities performed after the date of when it becomes an inverted domestic corporation or subsidiary. The Seller shall immediately notify the Company regarding this change. Company at its sole discretion may recognize the change.

8 PAYMENT

Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, if required (unless such invoice is not approved), or (2) delivery of supplies/completion of work if invoice is not required. Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments shall be made by electronic funds transfer. The form for enrolling is available in the *Electronic Funds Transfer* section of our website <https://contracts.ornl.gov/>. Payment shall be deemed to have been made as of the date the electronic funds transfer was made. Applicable IRS forms (available at <http://web.ornl.gov/adm/ap>) must be submitted to ORNL Accounts Payable Department at aptax@ornl.gov. If the appropriate IRS form is not received, payment may be delayed or applicable IRS percentage may be withheld from invoice payment.

Ariba Network for Suppliers: For detailed payment information or inquiries concerning invoices and payments please access the Ariba Network account for your organization at <https://supplier.ariba.com/> or email your questions to ornlap@ornl.gov.

9 (A) COMPLIANCE WITH LAWS

- (a) Seller shall comply with all applicable United States Federal laws and 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.
- (b) Seller shall include this clause in all subcontracts, at any tier, involving the performance of this Agreement.

(B) FINES AND PENALTIES

In the event that any actions that result in fines and/or penalties are taken 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 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.

10 TERMINATION FOR DEFAULT

- (a) Company reserves the right to terminate this Agreement for default, in whole or in part, if Seller (1) fails to supply enough properly skilled workers or proper materials or equipment so as to endanger performance of this Agreement; (2) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Seller and the subcontractors; (3) disregards applicable laws, orders, regulations, rulings, or instructions of the Company; (4) fails to adhere to the time specified in this Agreement for performance of services or delivery of supplies; or (5) fails to comply with any of the material terms of this Agreement. In that event, Company shall not be liable for any services or supplies not accepted. The Company's right to terminate this Agreement under (1), (2), (3), or (5) of this paragraph (a) may be exercised if the Seller does not cure such failure within ten (10) days after receipt of notice from the Company specifying the failure. If Company terminates this Agreement in whole or in part, it may acquire, under the terms and in the manner it considers appropriate, supplies or services similar to those terminated, and Seller will be liable to Company for any excess costs for those supplies or services.
- (b) If this Agreement is terminated for default, Company may require Seller to deliver to Company any supplies and materials, manufacturing materials, and manufacturing drawings, and contract rights that Seller has specifically produced or acquired for the terminated portion of this Agreement. Company shall pay the agreed-upon price for services performed and accepted in addition to completed supplies delivered and accepted. Company and Seller shall agree on the amount of payment for all other deliverables.
- (c) Except for defaults of lower-tier subcontractors, Seller shall not be in default because of failure to perform if the failure arises from causes outlined below in Part 12 Excusable Delay. Seller will not be deemed to be in default for failure to perform caused by the failure of a lower-tier subcontractor if the failure arose from causes outlined below in Part 12; however, Seller will be in default if (1) the subcontracted supplies or services were obtainable from other sources; (2) Company directed Seller to purchase these supplies or services from another source; and (3) Seller failed to reasonably comply with this order. 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.

- (d) 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.

11 TERMINATION FOR CONVENIENCE

Company reserves the right to terminate this Agreement, or any part hereof, for the convenience of itself or the Government. In the event of such termination, the Procurement Officer shall deliver a notice specifying the extent of the termination and its effective date. Seller shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work. 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 Company's satisfaction using its standard record keeping system, have resulted from the termination. Seller shall within six (6) months of the effective date of the termination submit a final 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 and procedures of Part 31 of the Federal Acquisition Regulation, as supplemented by Part 931 of the Department of Energy Acquisition Regulation, in effect on the date of this Agreement, shall govern all costs claimed. In no event shall the agreed amount exceed the total price of the Agreement.

12 EXCUSABLE DELAY

- (a) The Seller may be entitled to an excusable delay and not be in default if the failure to perform or make progress is caused by an occurrence beyond the reasonable control of Seller or its lower-tier subcontractor, and without its or its lower-tier subcontractor's 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 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.
- (b) 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 13 Changes.

13 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) time of performance; (3) place of performance; (4) method and manner of performance; (5) the amount of work to be furnished; (6) drawings, designs or specifications; and (7) time and place of delivery. 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. Any claim for adjustment by Seller must be made within thirty (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 2.
- (b) 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 a change, Seller shall not rely upon such instruction or direction without written confirmation from the Procurement Officer. Nothing in this clause, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

14 SUSPENSION OF WORK

- (a) The Company may, at any time, by written direction to Seller, require Seller to stop all or any part of the work called for by this Agreement for a period of ninety (90) days after direction is delivered to Seller, and for any further period to which the parties may agree. The direction shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the direction, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the direction during the period of work stoppage. Within a period of ninety (90) days after a stop-work order is delivered to Seller, or within any extension of that period to which the parties shall have agreed, Company shall either: (1) cancel the stop-work order; or (2) terminate the work covered by the Agreement as provided in the Termination clause of this Agreement.
- (b) If a stop-work order issued under this clause is canceled or the period of the direction or any extension thereof expires, Seller shall resume work. Company shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if: (1) the stop-work order results in an increase in the time required for, or in Seller's cost properly allocable to, the performance of any part of this Agreement; and (2) Seller asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if Company decides the facts justify the action, Company may receive and act upon the claim submitted at any time before final payment under this Agreement.

- (c) If a stop-work order is not canceled and the work covered by the Agreement is terminated for convenience, Company shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the Agreement is terminated for default, Company shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

15 PROPERTY

- (a) Seller shall be fully accountable and responsible for, and shall, in accordance with sound business practice safeguard at all times any property which Seller acquires or manufactures for Company's account and any and all U.S. Government property furnished Seller by Company or by the U.S. Government for performance of this work. Such property shall be used only in performance of work as provided in this Agreement, and Seller shall deliver or dispose of such property when and as Company shall direct. Upon receipt of such property, Seller shall satisfy itself that it is of a quantity, quality, and kind fully suitable for the use indicated in this Agreement. Failure of Seller to properly inspect and reject patently defective property prior to incorporation in the work shall make Seller liable for all services and labor necessary to remedy and correct defects in the work caused thereby. Title to all U.S. Government property furnished by Company or the U.S. Government shall remain in the U.S. Government. Title to Seller-acquired property shall pass to the U.S. Government (1) on the use of such property in performance of this Agreement or (2) upon reimbursement by Company for the cost thereof as specified in this Agreement, whichever occurs first, subject to the U.S. Government's or Company's right to reject such title in the event Seller fails to deliver acceptable materials, supplies or services pursuant to this Agreement. Upon such rejection, Seller shall immediately refund to the U.S. Government or Company, as directed, any and all moneys already paid to Seller as reimbursement for the cost of such property. With respect to U.S. Government property furnished by Company or the U.S. Government, neither the Company nor the U.S. Government shall be liable to Seller for damages or loss of profit by reason of any delay in delivery except that in case of such delay, upon Seller's written request, an equitable adjustment shall be made in delivery or price, or both, pursuant to the Changes Clause of this Agreement. Seller shall maintain adequate control records of all property to which the U.S. Government has title consistent with good business practice and as may be prescribed by Company or the U.S. Government and, if not so marked, shall cause all such property to be marked to show that it is property of the U.S. Government. Seller shall report any acquisition of property and materials not considered consumable or general office supplies, as defined in DEAR 970.5245-1 Property. Upon notification, the Seller shall provide requested information regarding Government property and materials by the requested due date (i.e. annual inventory reporting, requests for information regarding acquisitions, audits, reviews, etc.). Company and the U.S. Government shall at all times have access to the premises wherein property to which the U.S. Government has title is located.
- (b) Loss, Destruction or Damage
 - (1) Unless otherwise provided in this Agreement, Seller assumes the risk of and shall be responsible for any loss or destruction of, or damage to, property in its possession to which the U.S. Government has title, except for reasonable wear and tear and except to the extent that such property is consumed in the performance of the Agreement.
 - (2) Upon the happening of loss or destruction of, or damage to, property to which the U.S. Government has title, Seller shall communicate with Company and shall take all reasonable steps to protect such property, put all such property in the best possible order, and furnish to Company a statement identifying (a) the lost, destroyed, and damaged property, (b) the time, date and cause of the loss, destruction, or damage, (c) all known interests in the commingled property of which such is a part, and (d) the insurance, if any, covering any part of or interest in such commingled property.
 - (3) With the approval of Company after loss or destruction of, or damage to, property to which the U.S. Government has title, and subject to such conditions and limitations as may be imposed by Company, Seller shall, in order to minimize the loss to Company and the U.S. Government or in order to permit resumption of business or the like, sell for the account of Company or the U.S. Government any item of such property which Company determines has been damaged beyond practicable repair, or which Company determines is so commingled or combined with property of others, including Seller, that separation is impracticable. Seller and Company shall attempt to agree on the value of any lost, destroyed or damaged property to which the U.S. Government has title; however, if no agreement can be reached, Company shall have the right to determine such value.
- (c) Company reserves the right to vest title in Seller of U.S. Government-furnished and Seller acquired property at any time from the date of Order award to Order close-out. Prior to Company vesting title in Seller, Seller shall certify in writing that the U.S. Government property was purchased with Agreement funds or provided by Company as U.S. Government-furnished property or equipment, and that no rental use or any other charge or cost for such property shall be included in any future contract with Company or any entity of the U.S. Government.

16 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 responsible for all liability and related expenses resulting from (1) injury, death, damage to, or loss of property or (2) violation of Part 9(A), which is in any way connected with its performance of work under this 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 the Company for Seller's conduct. However, such liability and indemnity does not apply to injury, death, or damage to property to the extent it arises from the negligent or willful misconduct of Company.

- (c) Seller shall be solely responsible for all criminal fines and penalties assessed against Seller.
- (d) If Company's costs are determined to be unallowable, its fee reduced, or it incurs any cost or damages as a result of Seller's violation of applicable laws, orders, rules, regulations, or ordinances, or the submission of defective cost or pricing data, Company may make a reduction in the corresponding amounts in Seller's price.

17 INSPECTION

The materials, supplies or services furnished shall be exactly as specified in this Agreement, shall be free from all defects in Seller's workmanship and materials, and except as otherwise provided in this Agreement, shall be subject to inspection and test by the Company at all times and places. If, prior to final acceptance, any materials, supplies, or services are found to be defective or not as specified, the Company may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such items within a time deemed reasonable to the Company, the Company may terminate the Agreement, in whole or in part, for default. Seller shall bear all risks as to rejected materials, supplies, and services, and, in addition to any cost for which Seller may become liable to the Company under other provisions of this Agreement, shall reimburse Company for all transportation costs, other related costs incurred, or payments to Seller in accordance with the terms of this Agreement for unaccepted materials, supplies, and services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Any test programs and procedures required by this Agreement are in addition to, and do not limit, Company's rights provided in this clause.

18 AUDIT AND RECORDS – NEGOTIATION

THIS CLAUSE APPLIES TO AGREEMENTS EXCEEDING \$25,000 IN VALUE

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the Seller shall maintain and the Company, or an authorized representative of the Company, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement. This right of examination shall include inspection at all reasonable times of the Seller's plants, or parts of them, engaged in performing the Agreement.
- (c) Certified cost or pricing data. If the Seller has been required to submit certified cost or pricing data in connection with any pricing action relating to this Agreement, the Company or an authorized representative of the Company, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Seller's records, including computations and projections, related to -- (1) The proposal for the Agreement, subcontract, or modification; (2) The discussions conducted on the proposal(s), including those related to negotiating; (3) Pricing of the Agreement, subcontract, or modification; or (4) Performance of the Agreement, subcontract or modification.
- (d) Comptroller General. (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Seller's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. (2) This paragraph may not be construed to require the Seller or subcontractor to create or maintain any record that the Seller or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Seller is required to furnish cost, funding, or performance reports, the Company or an authorized representative of the Company shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating: (1) The effectiveness of the Seller's policies and procedures to produce data compatible with the objectives of these reports; and (2) The data reported.
- (f) Availability. The Seller shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this Agreement. In addition: (1) If this Agreement is completely or partially terminated, the Seller shall make available the records relating to the work terminated until three (3) years after any resulting final termination settlement; and (2) The Seller shall make available records relating to appeals under the Resolution of Disputes clause or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- (g) The Seller shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this Agreement that exceed the simplified acquisition threshold, and (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-re-determinable type or any combination of these; (2) For which cost or pricing data are required; or (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- (h) The clause may be altered only as necessary to identify properly the contracting parties.

19 ANTI-KICKBACK PROCEDURES

THIS CLAUSE APPLIES IF THIS AGREEMENT EXCEEDS \$150,000

- (a) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person or organization from: (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the U.S. Government or in the contract price charged by a subcontractor to a prime contractor or higher-tier subcontractor.
- (b) (1) When Seller has reasonable grounds to believe that a violation described in paragraph (a) of this clause may have occurred, Seller shall promptly report, in writing, the possible violation. Such reports shall be made to the Procurement Officer. (2) Seller shall cooperate fully with any federal agency investigating a possible violation. (3) Company may: (A) Offset the amount of the kickback against any monies owed by Company under this Agreement; and/or (B) Withhold sums owed Seller under this Agreement in the amount of the kickback.
- (c) "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a contract relating to a prime contract.
- (d) Seller agrees to incorporate the substance of this clause, including this subparagraph (d), in all lower-tier arrangements under this Agreement which exceed \$150,000.

20 FOREIGN CORRUPT PRACTICES ACT

Seller understands and agrees to comply with the United States Foreign Corrupt Practices Act, which prohibits Company and Seller from providing anything of value anything of value to a foreign government official with the intent to influence an award or continuation of business or to gain an unfair advantage. Seller agrees not to give anything of value, including but not limited to business gratuities and reimbursement of travel, to any foreign government officials. Seller agrees to ensure that it complies with all requirements relevant to its business arrangement with Company, including any registration requirements, and warrants that this Agreement is in compliance with all applicable laws and regulations of the country or countries in which it performs any services for the Company

21 RESTRICTION ON SUBCONTRACTOR SALES TO THE GOVERNMENT

THIS CLAUSE APPLIES IF THIS AGREEMENT EXCEEDS \$150,000

- (a) Except as provided in paragraph (b) below, Seller shall not enter into any agreement with any actual or prospective lower-tier subcontractors, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the U.S. Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor under this Agreement or under any follow-on Agreements.
- (b) The prohibition in paragraph (a) above does not preclude Seller from asserting rights that are otherwise authorized by law or regulation.
- (c) Seller agrees to incorporate the substance of this clause, including this paragraph (c), in all lower-tier arrangements under this Agreement exceeding \$150,000.

22 KEY PERSONNEL

Seller shall furnish a list of project personnel to Company for approval and Seller agrees to assign such employees or persons to the performance of the work under this Agreement and shall not reassign or remove any of them without the consent of Company. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the Agreement, Seller shall, with the approval of Company, replace such employee with an employee of substantially equal abilities and qualifications.

23 SUBCONTRACT MANAGEMENT

- (a) All correspondence shall be directed and/or copied to the attention of Company's or Seller's Technical Project Officer for this Agreement, and the Procurement Officer.
- (b) No request, notice, authorization, direction or order received by Seller and issued pursuant to this Agreement, by reference or otherwise, shall be binding, upon either Company or Seller, or serve as a basis for change in the Agreement price or any other provision of this Agreement, unless issued or confirmed in writing by the Procurement Officer. Seller shall immediately notify, in writing, Procurement Officer whenever a change request has been received from someone other than the Procurement Officer which would affect any terms and conditions of this Agreement.

24 TAXES

All financial transactions related and applicable to this Agreement between the Company and the Seller or its suppliers or subcontractors are exempt from taxation to the Company by the Seller, including any value-added tax.

25 LATE DELIVERABLES

Seller understands that the Agreement deliverable due dates negotiated shall be considered to be firm. The Company must approve extensions of individual deliverable due dates. Failure on the part of the Seller to meet negotiated deliverable due dates may result in the cancellation of this Agreement. The Seller shall comply with this Agreement relative to deliverable due

dates. Should the Seller determine that a particular deliverable due date cannot be met, the Seller shall immediately notify Company's Procurement Officer and the Company's Technical Project Officer. This notification shall include the reason why the deliverable due date cannot be met and the proposed new deliverable due date.

26 ACCESS

Consistent with other provisions of the scope of work and terms and conditions of this Agreement, the Seller is responsible to ensure full compliance with work scope, criteria, specifications, performance requirements, functional requirements, standards, etc. The Government and Company shall be given physical access to the facilities and original documents controlled by Seller concerning work performed under this Agreement. The Company shall be informed of all applicable laws and security policies that apply to these facilities and documents, and the Company agrees to comply with said laws and policies that concern physical access to facilities and inspection of original documents. If there is a conflict between the terms of this Agreement and said laws and policies, the Company and Seller agree to negotiate in good faith to reach an alternative means of assurance other than physical inspection or original document review. Failure to reach an agreement on an alternate means of assurance may result in termination of this Agreement.

27 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA

THIS CLAUSE APPLIES TO PRICING ACTIONS EXCEEDING \$2M IN VALUE

- (a) If any price, including profit or fee, negotiated in connection with this Agreement, or any cost reimbursable under this Agreement, was increased by any significant amount because -- (1) The Seller or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) A subcontractor or prospective subcontractor furnished the Seller certified cost or pricing data that were not complete, accurate, and current as certified in the Seller's Certificate of Current Cost or Pricing Data; or (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Agreement shall be modified to reflect the reduction.
- (b) Any reduction in the Agreement price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which -- (1) The actual subcontract; or (2) The actual cost to the Seller, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Seller; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.
- (c) (1) If the Company determines under paragraph (a) of this clause that a price or cost reduction should be made, the Seller agrees not to raise the following matters as a defense: (i) The Seller or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Agreement would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted. (ii) The Company should have known that the certified cost or pricing data in issue were defective even though the Seller or subcontractor took no affirmative action to bring the character of the data to the attention of the Company. (iii) The Agreement was based on an agreement about the total cost of the Agreement and there was no agreement about the cost of each item procured under the Agreement. (iv) The Seller or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Company based upon the facts shall be allowed against the amount of a contract price reduction if -- (A) The Seller certifies to the Company that, to the best of the Seller's knowledge and belief, the Seller is entitled to the offset in the amount requested; and (B) The Seller proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date. (ii) An offset shall not be allowed if (A) The understated data were known by the Seller to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or (B) The Company or Government proves that the facts demonstrate that the Agreement price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (d) If any reduction in the Agreement price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable to and shall pay the Company at the time such overpayment is repaid --
 - (1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date the Company is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the U.S. Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Seller or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

28 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA – MODIFICATIONS

THIS CLAUSE APPLIES TO PRICING OF MODIFICATION ACTIONS EXCEEDING \$2M IN VALUE

- (a) This clause shall become operative only for any modification to this Agreement involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this Agreement, was increased by any significant amount because -- (1) The Seller or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) A subcontractor or prospective subcontractor furnished the Seller certified cost or pricing data that were not complete, accurate, and current as certified in the Seller's Certificate of Current Cost or Pricing Data; or (3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Agreement shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.
- (c) Any reduction in the Agreement price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which -- (1) The actual subcontract; or (2) The actual cost to the Seller, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Seller; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.
- (d) (1) If the Company determines under paragraph (b) of this clause that a price or cost reduction should be made, the Seller agrees not to raise the following matters as a defense: (i) The Seller or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Agreement would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted. (ii) The Company should have known that the certified cost or pricing data in issue were defective even though the Seller or subcontractor took no affirmative action to bring the character of the data to the attention of the Company. (iii) The Agreement was based on an agreement about the total cost of the Agreement and there was no agreement about the cost of each item procured under the Agreement. (iv) The Seller or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
(2) (i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Company based upon the facts shall be allowed against the amount of a contract price reduction if -- (A) The Seller certifies to the Company that, to the best of the Seller's knowledge and belief, the Seller is entitled to the offset in the amount requested; and (B) The Seller proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date. (ii) An offset shall not be allowed if (A) The understated data were known by the Seller to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or (B) The Company or Government proves that the facts demonstrate that the Agreement price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (e) If any reduction in the Agreement price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable to and shall pay the Company at the time such overpayment is repaid --
(1) Interest compounded daily, as required by 26 U.S.C. 6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date the Company is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the U.S. Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
(2) A penalty equal to the amount of the overpayment, if the Seller or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

29 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA

THIS CLAUSE APPLIES TO PRICING ACTIONS EXCEEDING \$2M IN VALUE

- (a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Seller shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.
- (b) The Seller shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (c) In each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4, when entered into, the Seller shall insert either -- (1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or (2) The substance of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data - Modifications.

30 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS

THIS CLAUSE APPLIES TO PRICING OF MODIFICATION ACTIONS EXCEEDING \$2M IN VALUE

- (a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this Agreement involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4; and (2) be limited to such modifications.
- (b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, the Seller shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.
- (c) The Seller shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (d) The Seller shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

31 FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (Apr 2014)

THIS CLAUSE APPLIES TO ACTIONS EXCEEDING \$150,000 IN VALUE

- (a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.
- (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.

32 EMPLOYEE CONCERNS PROGRAM / DIFFERING PROFESSIONAL OPINIONS

- (a) DOE Order 442.1A (available at <https://www.directives.doe.gov/directives/0442.1-BOrder-A/view>) establishes an Employee Concerns Program (ECP). 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 442.2 (available at <https://www.directives.doe.gov/directives-documents/400-series/0442.2-BOrder-chg1-pgchg>) establishes the Differing Professional Opinions (DPO) process. The DPO process is available to employees of contractors or subcontractors to facilitate dialogue and resolution on technical issues involving environment, safety, and health (ES&H), which have not been resolved through routine work processes.
- (c) In addition, the Company has its own ECP and a DPO process. Subcontractor employees may raise concerns about actions of the Company or its employees directly with the Company.
- (d) The Seller must notify its employees at least annually that:
 - (1) DOE and the Company have ECPs and DPO processes.
 - (2) Employees are encouraged to first seek resolution with first-line supervisors or through other in-house complaint or dispute resolution systems.
 - (3) Employees have the right to report concerns through the Company ECP (1-888-280-0616) or the DOE ECP (1-800-676-3267 or 1-865-241-3267), if a concern is not resolved by supervisors, or if the employee elects not to raise the concern with supervisory personnel.
 - (4) Employees have the right to report differences of professional opinion through the Company ECP (1-888-280-0616), or through the DOE DPO process using contact information contained at <https://hhs.doe.gov/nuclearsafety/qa/dpo.html>.
 - (5) DOE and 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.

33 FAR 52.204-14 Service Contract Reporting requirements (Jan 2014) THIS CLAUSE APPLIES TO AGREEMENTS WITH A VALUE OF \$500,000 OR MORE

- (a) Definition. "First-tier subcontract" means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.
- (b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed under this contract during the preceding Government fiscal year (October 1-September 30).

- (c) The Contractor shall report the following information:
 - (1) Contract number and, as applicable, order number.
 - (2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract.
 - (3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.
 - (4) Data reported by subcontractors under paragraph (f) of this clause.
- (d) The information required in paragraph (c) of this clause shall be submitted via the internet at www.sam.gov. (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the contracting officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor's failure to comply with the reporting requirements a part of the Contractor's performance information under FAR subpart 42.15.
- (e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report or document its rationale for the agency.
- (f)
 - (1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following detailed information to the Contractor in sufficient time to submit the report:
 - (i) Subcontract number (including subcontractor name and DUNS number); and
 - (ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.
 - (2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

34 REPORTING WASTE FRAUD AND ABUSE

If this agreement has a value in excess of \$5.5 million and a period of performance of more than 120 days, DOE Order O 221.1B, Reporting Fraud, Waste, and Abuse to the Office of Inspector General applies.

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

(a) *Definitions.* As used in this clause—

“Coercion” means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced labor” means knowingly providing or obtaining the labor or services of a person—

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract; or
- (3) Use forced labor in the performance of the contract.

- (c) *Contractor requirements.* The Contractor shall—
 - (1) Notify its employees of—
 - (i) The United States Government's zero tolerance policy described in paragraph (b) of this clause; and
 - (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
 - (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.
- (d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—
 - (1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
 - (2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.
- (e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—
 - (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
 - (2) Requiring the Contractor to terminate a subcontract;
 - (3) Suspension of contract payments;
 - (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
 - (5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
 - (6) Suspension or debarment.
- (f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.
- (g) *Mitigating Factor.* The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip> .

36 INCORPORATION BY REFERENCE

This Agreement incorporates certain provisions by reference. These articles and clauses apply as if they were set forth in their entirety. Company clauses incorporated by reference are available in the *Documents Index* and then *Special Articles and Forms* or *Exhibits* section of our website <https://contracts.ornl.gov/>. The following clauses are incorporated by reference:

Information Technology Special Provision (October 11, 2018)