

Terms & Conditions – Individual

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1.1 CONSIDERATION

Company shall pay Seller the specified rate (price) for such time as Seller actually performs services hereunder at the request of the Company, not to exceed dates or time (e.g., hours, days, weeks, or months) set forth in the subcontract period of performance. A day shall be considered to mean a period consisting of eight hours, or more, all told, in any one calendar day. For each two-hour period or fraction of such portion, one quarter of said rate of compensation shall be payable. Nothing contained in this paragraph shall be construed to authorize payment of more than the specified daily rate for any one calendar day. Except as otherwise provided herein, no portion of the daily rate will be payable (i) for time spent in travel for the Seller's convenience during an assignment or (ii) if travel begins after 6 p.m. one day and ends before 8 a.m. the next day (local time zone) and no work was actually performed under the Agreement during these hours.

1.2 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.

1.3 PAYMENT

- (a) Company will pay Seller monthly, upon receipt of a proper invoice in an approved form (unless such invoice is not approved), the consideration stipulated herein, less deductions, if any. Seller shall certify (1) that the claim for payment is just and true in all respects, and (2) that no inventions or discoveries, not previously reported, have been made or conceived during or in connection with the rendering of the services unless such inventions or discoveries are specifically reported in accordance with the "Patent Rights" provisions of this Agreement.
- (b) Invoices shall be submitted using Company's "Individual Subcontractor's Invoice" form. This form is available under the *Documents Index* and then *Special Articles and Forms* section of our website <https://contracts.ornl.gov/>.
- (c) Applicable IRS forms must accompany Seller's initial invoice submission. For U.S. citizens and resident aliens, IRS Form W-9, Request for Taxpayer Identification Number and Certification, is required. Non-resident aliens must submit the applicable form in the IRS W-8 Series (either W-8BEN, W-8ECI, W-8EXP, or W-8IMY), and if applicable,

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IRS Form 8233, Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual. IRS forms are available at <https://www.irs.gov/forms-instructions>.

- (d) Company may withhold payment hereunder until requirements of this clause are fulfilled.
- (e) Payments will 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 on which an electronic funds transfer was made. Company may deduct from any amount owed to Seller any amount owed to Company whether or not in connection with this Agreement.
- (f) 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.

1.4 ORDER OF PRECEDENCE

Any inconsistencies in the documents comprising this Subcontract shall be resolved by giving precedence in the following order: (a) Task Order (If applicable); (b) Subcontract Agreement; (c) Special Provisions; (d) Statement of Work; (e) General Provisions – Terms and Conditions; (f) Attachments; and (g) UT-Battelle Prime Supplemental Flowdown Document.

1.5 TRAVEL REIMBURSEMENT

If travel is authorized and Seller is to be reimbursed for such expenses, Agreement will specify a ceiling amount in dollars for such reimbursement. Seller will be reimbursed for travel expenses in accordance with the Travel Reimbursement Policy, which is incorporated by reference, up to the amount allowed by the policy or the ceiling amount, whichever is less.

1.6 TERMINATION

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 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.

1.7 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. 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 2.1 Changes.

1.8 INDEPENDENT CONTRACTOR

Neither this Agreement nor Seller's performance hereunder shall constitute or create an employee/employer relationship. Seller shall not be eligible for any benefits applicable to active employees of Company. Seller shall act solely as an independent contractor, not as an employee or agent of Company. Seller's authority is limited to providing personal services and Seller shall have no authority, without express written consent of Company, to incur any obligation or liability, or make any commitments on behalf of Company.

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1.9 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 Procurement Officer. 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 FAR and DEAR may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., or from Government web sites <http://acquisition.gov/far/index.html> for FAR and <http://energy.gov/management/office-management/operational-management/procurement-and-acquisition/guidance-procurement> for DEAR and DOE Directives and Orders. The following clauses are incorporated by reference:

Exhibit 1C, Patent Rights – Retention By The Seller (Short Form) (Company – Mar 2001)
Exhibit 9, Technical Data (Company – June 2011)
Individual Conflicts of Interest (Company – July 2006)
Travel Reimbursement Policy (Company – Feb 2025)
DOE Order 551.1D Official Foreign Travel
DOE Order 221.1B Reporting Fraud, Waste, and Abuse to the Office of Inspector General
Terms & Conditions - Commercial Item (10/01/2025) (except Part 2 – Applicable When Items Include Services)
Supplier Code of Conduct (Company – Feb 2025)

1.10 GRATUITIES

Seller, its agent or anyone acting on its behalf, shall not offer any gratuity (e.g., entertainment, gift, or cash) or special treatment to any employee of Company with the intent of obtaining a subcontract or other agreement or favorable treatment. If the Company determines that the provisions of this clause were violated, it may terminate the agreement for default and pursue any other remedies provided by law or this Agreement.

1.11 LOBBYING RESTRICTION

In the performance of this Agreement, Seller shall not attempt, by activity or publication, to influence Congressional action or promote public support or opposition on any legislation or appropriation matters pending before Congress.

1.12 CONFERENCE MANAGEMENT

- (a) If performance involves attendance at a conference, which is defined as a meeting, seminar, retreat, symposium, or similar event that involves official travel, the Seller must obtain written approval of the Company, through the Technical Project Officer (TPO) or the Procurement Officer, prior to attending the conference.
- (b) If performance involves work related to coordinating, planning, or sponsoring a conference, this Agreement incorporates by reference the Conference Management Special Provision (Company – September 2012). The Seller must obtain written approval from the TPO and/or ORNL Conference Office Manager prior to performing any work related to supporting or managing a conference.

1.13 REPRESENTATIONS AND CERTIFICATIONS

This clause contains representations and certifications that are material representations of fact upon which Company will rely in subcontracting with Seller. By submitting an offer or quotation, written or oral, or accepting any Agreement, Seller certifies to the representations and certifications as set forth below. Seller shall provide Company immediate written notice if, at any time, he/she learns that his/her representations or certifications were erroneous when submitted or have become erroneous by reason of changed circumstances.

Responsibility

- (a) Seller certifies that, in accordance with FAR 52.209-5, to the best of his/her knowledge and belief:
 - (1) Seller is not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - (2) Seller has not, within a three-year period preceding award of this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
 - (3) Seller is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this provision;
 - (4) Seller has not, within a three-year period preceding award of this Agreement, been notified of any delinquent Federal taxes in an amount that exceeds \$10,000 for which the liability remains unsatisfied; and
 - (5) Seller has not, within a three-year period preceding award of this Agreement, had one or more contracts terminated for default by any Federal agency.

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- (b) Federal taxes are considered delinquent if both of the following criteria apply:
- (1) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - (2) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in a case where enforced collection is precluded.

Anti-Kickback

Seller certifies that it has not provided, attempted to provide, offered to provide, solicited, accepted, or attempted to accept any kickback; and has not included, directly or indirectly, the amount of any kickback in the price. "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided, directly or indirectly, to any Government prime contractor (e.g., the Company), prime contractor employee, subcontractor at any tier, or employee of a subcontractor at any tier, for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Government prime contractor in connection with a subcontract at any tier relating to a Government prime contract.

Payments to Influence Certain Federal Transactions

Seller certifies that, in accordance with the definitions and prohibitions contained in FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, to the best of his or her knowledge and belief no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this subcontract.

1.14 EMPLOYEE CONCERNS PROGRAM / DIFFERING PROFESSIONAL OPINIONS

- (a) DOE Order 442.1B (available at directives.doe.gov/directives-documents/400-series/0442.1-BOrder-B) 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://www.energy.gov/ehss/doe-differing-professional-opinions>
- (e) DOE and the Company will not tolerate reprisals against or intimidation of employees who have reported concerns.
- (f) Upon request, the Seller must assist DOE and the Company in resolution of employee concerns.
- (g) The Seller shall include this clause in subcontracts hereunder.

1.15 PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION (PII)

To the extent that the work under this Agreement requires the Seller to receive or have access to PII as defined below, this Clause applies.

(a) DEFINITIONS

- (1) "Clause" means this portion of the subcontract.
- (2) "Data" in this Clause means PII and De-Identified Data to which Company provides Seller access to provide the Services, and any information derived therefrom.
- (3) "De-Identified Data" means information from which any personally identifiable information about or relating to any Individual has been removed or coded and where there is a very low risk of identifying a particular Individual in the Data.
- (4) "Individual" in this Clause means any natural person represented in the Data.
- (5) "Law" or "Laws" in this Clause means any law, statute, rule, regulation, order, judgment, notice, opinion, guidance or ordinance of any governmental authority, legislative, judicial, quasi-judicial, regulatory body, local

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government, or any agencies or departments, supervising authorities, and any industry self-regulatory bodies thereof, in each case, as these may be repealed, re-enacted, amended, overruled or replaced from time to time.

- (6) "Personally Identifiable Information" or "PII" means information about a specific individual that either directly identifies the individual or can otherwise be associated to the individual. PII includes, but is not limited to, an individual's first name or first initial and last name in combination with any one or more of the following Data elements including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts, etc.
- (7) "Security Incident" means any unauthorized access, use, disclosure, modification, or destruction of Data or interference with system operations in an information system containing Data. "Security Incident" includes the re-identification of an Individual in De- Identified Data.
- (b) PERMITTED USE AND DISCLOSURE
 - (1) The Seller may use or disclose PII solely for the purpose of providing Services in accordance with this Agreement. The Seller may not use PII for its own purposes.
 - (2) The Seller agrees to allow access to PII only to those employees who need the PII to perform the Services under this Agreement. The Seller shall ensure that its employees will not discuss, divulge, or disclose any such PII to any person or entity except those persons within the Seller's organization directly concerned with the performance of the Services.
 - (3) The Seller agrees not to disclose PII to third-parties unless specifically authorized by the company in writing.
- (c) SECURITY REQUIREMENTS
 - (1) Seller will implement and maintain appropriate safeguards to prevent any use or disclosure of Data for purposes other than those permitted by this Agreement, including administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of any electronic Data that Seller creates, receives, maintains, and transmits on behalf of Company. These safeguards must meet or exceed the security controls set forth in the current National Institute of Standards and Technology (NIST) Special Publication SP 800-171, "Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations" or equivalent privacy and security controls. Upon request of Company, Seller will provide evidence to Company that these safeguards are in place and are properly managed. Any changes to the security safeguards shall be subject to Company approval. All electronic copies of PII must be protected with NIST FIPS 140-2 compliant encryption while in transit.
- (d) SECURITY INCIDENTS
 - (1) Seller will report all Security Incidents to Company within one (1) hour of learning of the event.
 - (2) Seller will cooperate in any investigation related to a Security Incident and will take immediate steps to mitigate harm to Individuals and Company arising from such Security Incident and reasonable mitigation efforts as requested by Company.
 - (3) Where a Security Incident was caused by Seller or Seller's personnel, agents or subcontractors, the Seller will reimburse Company for any reasonable expenses Company incurs in investigating the Security Incident (including but not limited to forensic analysis), in reporting any Security Incident as required by applicable Laws (including but not limited to governmental authorities and individuals whose Data is affected in the Security Incident), and in mitigating harm to those Individuals.
- (e) COMPLIANCE WITH LAW AND THIS CLAUSE
 - (1) The Seller shall administer a monitoring process to ensure compliance with the provisions of this clause, promptly report any breaches to the Company's technical representative, and implement immediate, appropriate corrective actions to contain and prevent recurrence.
 - (2) The Seller agrees to protect and handle all PII in accordance with applicable Federal, State, and other regulatory requirements for the collection, use, and protection of personally identifiable information.
- (f) TERMINATION
 - (1) The Company may terminate this Agreement for default if Seller or an employee of the Seller fails to comply with the provisions of this clause. The Company may also exercise any other rights and remedies provided by law or this Agreement.
 - (2) Upon termination or expiration of this Agreement, the Seller shall destroy Data and certify such destruction in writing to Company within 60 business days of termination or expiration of the Agreement.
- (g) INSPECTIONS AND AUDITS
 - (1) Company and its auditors (including external auditors) as designated from time to time, once annually (or at an additional time if good cause exists) shall have the right to: (i) conduct an audit during business hours and upon reasonable advance notice with respect to Seller use and disclosure of Data to confirm compliance with the terms of this Agreement; and (ii) examine controls and security practices and procedures with respect to Data as set forth in Section (c) (Security Requirements).
- (h) INDEMNIFICATION
 - (1) Seller will defend, hold harmless and indemnify Company and its employees, agents, officers, directors, corporate affiliates and contractors ("Company Indemnitees") from and against any claims, losses, damages,

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liabilities, costs, expenses, penalties or obligations (including attorneys' fees), which a Company Indemnitee may incur as a result of: (i) Seller's gross negligence or willful misconduct; (ii) a Security Incident caused by Seller or Seller's personnel, agents or subcontractors; or (iii) any unauthorized use or disclosure of Data by Seller or Seller's personnel, agents or subcontractors.

(i) **INSURANCE REQUIREMENT**

- (1) At all times during the Term of this Agreement and for one (1) year thereafter, Seller, at Seller's sole cost and expense, shall procure and maintain insurance in amounts and form customary in the industry for comparable businesses and sufficient for the business conducted under this Agreement, provided that they include Commercial General Liability in an amount not less than USD \$2,000,000 annual aggregate limit, Professional Liability/E&O in amounts not less than \$2,000,000 annual aggregate limit, and Cyber Liability in any amount not less than USD 2,000,000 annual aggregate limit. Insurance carriers must have an A.M. Best Rate or better of A-/VIII.

(j) **MISCELLANEOUS**

- (1) The Seller agrees to execute any additional agreements or modifications to this agreement necessary to protect the Data from disclosure or in order to comply with Company's contractual obligations, law, regulation, or its Prime Contract with the U.S. Department of Energy.
- (2) The Seller shall include this clause in all appropriate subcontracts. However, such provision in the subcontracts shall not relieve Seller of its obligation to assure compliance with the provisions of this clause.
- (3) Seller obtains no rights in the Data and expressly disclaims all right of ownership thereto. Seller agrees, and shall ensure, that the PII will at all times remain within the United States

2.1 CHANGES

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

2.2 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 injury, death, damage to or loss of property and related costs resulting from its performance of work under this Agreement or its violation of Part 1.15 Compliance with Laws of the General Terms and Conditions – Commercial Items. 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.

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 an equivalent reduction in amounts due Seller.