

Terms & Conditions – Acquisition of Leasehold Interest in Real Property (LRP)

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1. DEFINITIONS

As used throughout this Lease, the following terms shall have the meanings set forth below:

- (a) ANSI/BOMA Office Area (ABOA) means the area "where a tenant normally houses personnel, and/or furniture, for which a measurement is to be computed," as stated by the American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) publication, Z65.1-1996
- (b) "Government" means the United States of America and includes DOE.
- (c) "DOE" means the Department of Energy or any duly authorized representative thereof.
- (d) "Company" means UT-Battelle, LLC, acting under Contract No. DE-AC05-00OR22725 with DOE.
- (e) "Commencement Date" means the first day of the term.
- (f) "Delivery Date" means the date specified in or determined pursuant to the provisions of this Lease for delivery of the premises to the Company, improved in accordance with the provisions of this Lease and substantially complete, as such date may be modified in accordance with the provisions of this Lease.
- (g) "Delivery Time" means the number of days provided by this Lease for delivery of the premises to the Company, as such number may be modified in accordance with the provisions of this Lease.
- (h) "Excusable Delays" mean delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation, (1) acts of God or of the public enemy, (2) acts of the United States of America in either its sovereign or contractual capacity, (3) acts of another contractor in the performance of a contract with the Company, (4) fires, (5) floods, (6) epidemics, (7) quarantine restrictions, (8) strikes, (9) freight embargoes, (10) unusually severe weather, or (11) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.
- (i) "Lessor" means the sub-lessor if this Lease is a sublease.
- (j) "Lessor shall provide" means the Lessor shall furnish and install at Lessor's expense.
- (k) "Notice" means written notice sent by certified or registered mail, Express Mail or comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused.
- (l) "Premises" means the space described on the Company's Lease for Real Property form.
- (m) "Substantially complete" and "substantial completion" mean that the work, the common and other areas of the building, and all other things necessary for the Company's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this Lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.
- (n) "Procurement Officer" means Company's cognizant Contracts Division representative.
- (o) "Usable" in reference to square footage in any clause herein shall mean "ANSI/BOMA Office Area".
- (p) "Usable Space" is the actual space to be occupied by the Company. It is determined as follows:
 - (i) If the space is on a single-tenancy floor, compute the inside gross area by measuring between the inside finish of permanent exterior building walls or from the face of convectors (pipes and other wall-hung fixtures) if the convector occupies at least 50 percent of the length of exterior walls.
 - (ii) If the space is on a multiple-tenancy floor, measure from the exterior building walls as above and to the room side finish of fixed corridor and shaft walls and/or the center of tenant-separating partitions.
 - (iii) In all measurements, make no deductions for columns and projections enclosing the structural elements of the building and deduct the following area from the gross area including their enclosing walls:
 - stairwells and restrooms,
 - elevators and escalator shafts,
 - building equipment and service areas,
 - entrance and elevator lobbies,
 - stacks and shafts, and
 - permanent corridors in place or required by local codes and ordinances and/or required by the Company to provide an acceptable level of safety and/or to provide access to all essential building elements.
 - (iv) The right to use appurtenant areas and facilities is included.
- (q) "Work" means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Company as specified in this Lease.

2. SOURCE OF FUNDS AND ADMINISTRATION

The Company will make payment hereunder from Government funds advanced and agreed to be advanced to it by DOE, and not from its own assets. Administration of this Lease may be transferred from the Company to DOE or its designee, and in case of such transfer and notice thereof to the Lessor, the Company shall have no further responsibilities hereunder. If this Lease is transferred by the Company to DOE, this "Terms and Conditions, Acquisition of Leasehold Interest in Real Property" will be superseded (without adjustments of the type specified in paragraph (b) of the "Changes" clause) by General Services Administration Form 3517B, "General Clauses" (Acquisition of Leasehold Interests in Real Property), current on the date this Lease was entered into.

3. 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.

4. PAYMENT FOR SPACE

- (a) When space is offered and accepted, the amount of Usable Square Footage delivered will be confirmed by:
 - (1) The Company's measurement of plans submitted by the successful Offeror as approved by the Company, and an inspection of the space to verify that the delivered space is in conformance with such plans or
 - (2) A mutual on-site measurement of the space, if the Procurement Officer determines that it is necessary.
- (b) Payment will not be made for space which is in excess of the amount of Usable Square Footage stated in the lease.
- (c) If it is determined that the amount of Usable Square Footage actually delivered is less than the amount agreed to in the lease, the lease will be modified to reflect the amount of Usable Square Footage delivered and the annual rental will be adjusted as follows:
Usable Square Footage not delivered multiplied by one plus the common area factor (CAF), multiplied by the rate per rentable square foot (RSF). That is: $(1+CAF) \times \text{Rate per RSF} = \text{Reduction in Annual Rent}$
- (d) Electronic Funds Transfer (EFT). Electronic Funds Transfer (EFT) will expedite payments to Lessor and is Company's required method of payment. A remittance notification (email or fax) is automatically generated to you at the time of payment. Lessor must complete the "Vendor Payment Profile" form and submit the completed form to ORNL's Treasury Services Department. To sign up for EFT, revise your banking information, or verify your current payment information, visit the *Electronic Funds Transfer* section of our website <https://contracts.ornl.gov/>.
- (e) 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.

5. SUBLETTING AND ASSIGNMENT

The Company may sublet any part of the premises but shall not be relieved from any obligations under this Lease by reason of any subletting. The Company may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Seller shall not assign rights or obligations to third parties without the prior written consent of Company. However, Seller may assign rights to be paid amounts due or to become due to a financing institution if Company is promptly furnished written notice and a signed copy of such assignment.

6. COMPLIANCE WITH LAWS

Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or lessor, or both, of the building or Premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Company will comply with all Federal, state and local laws applicable to and enforceable against it as a tenant under this Lease. This Lease shall be governed by Tennessee law.

7. INSPECTION FOR HAZARDOUS CONDITIONS – RIGHT OF ENTRY

- (a) At any time and from time to time after receipt of an offer (until the same has been duly withdrawn or rejected), after acceptance thereof and during the term, the agents, employees and contractors of the Company may, upon reasonable prior notice to Offeror or Lessor, enter upon the offered premises or the premises, and all other areas of the building access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the solicitation or this Lease, which purposes shall include, but not be limited to:
 - (1) Inspecting, sampling and analyzing suspected asbestos-containing materials and air monitoring for asbestos fibers;
 - (2) Inspecting the heating, ventilation and air conditioning system, maintenance records, and mechanical rooms for the offered premises or the premises;
 - (3) Inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances; and
 - (4) Inspecting for any current or past hazardous waste operations, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State, and local law.
- (b) Nothing in this clause shall be construed to create a Company duty to inspect for toxic materials or to impose a higher standard of care on the Company than on other lessees. The purpose of this clause is to promote the ease with which the Company may inspect the building. Nothing in this clause shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.

8. SHIPPING TERMS – DELIVERY DRIVERS MUST BE U.S. CITIZENS

All deliverables coming onsite to a DOE laboratory, including Oak Ridge National Laboratory (ORNL), must be delivered by a United States citizen. If a foreign national attempts to deliver anything to the ORNL site, the driver will be instructed to turn around and will not be allowed onsite.

9. CONDITION REPORT

A joint physical survey and inspection report of the premises will be made as of the effective date of this Lease, reflecting the then present condition, and will be signed on behalf of the parties hereto.

10. DELIVERY OF PREMISES

- (a) Unless the Company elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Company reserves the right to determine when the space is substantially complete.
- (b) If the premises do not in every respect comply with the provisions of this Lease, the Company may, in accordance with the Failure in Performance clause, elect to reduce the rent payments.

11. PROGRESSIVE OCCUPANCY

The Company shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire Leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Company. The Company shall pay rent commencing with the first business day following substantial completion of the entire Leased premise unless the Company has elected to occupy the Leased premises incrementally. In case of incremental occupancy, the Company shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm Lease term will be a composite determined from all rent commencement dates.

12. ACCEPTANCE OF SPACE AND CERTIFICATE OF OCCUPANCY

- (a) Ten (10) working days prior to the completion of the Space, the Lessor shall issue written notice to the Company to schedule the inspection of the Space for acceptance. The Company shall accept the Space only if the Premises conforms to all requirements of the Lease and a Certificate of Occupancy has been issued as set forth below.
- (b) The Premises shall be considered substantially complete only if the Premises may be used for its intended purpose and completion of remaining work will not unreasonably interfere with the Company's enjoyment of the Premises. Acceptance shall be final and binding upon the Company with respect to the portion of the Leased Premises actually inspected by the Company, with the exception of items identified on a punchlist generated as a result of the inspection, concealed conditions, latent defects, or fraud, but shall not relieve the Lessor of any other Lease requirements.
- (c) The Lessor shall provide a valid Certificate of Occupancy, issued by the local jurisdiction, for the intended use of the Company. If the local jurisdiction does not issue Certificates of Occupancy or if the Certificate of Occupancy is not available, the Lessor may obtain satisfaction of this condition by obtaining the services of a licensed fire protection engineer to verify that the offered space meets all applicable local codes and ordinances to ensure an acceptable level of safety is provided. Under such circumstances, the Company shall only accept the Premises without a Certificate of Occupancy if a licensed fire protection engineer determines that the offered space is compliant with all applicable local codes and ordinances.

13. DEFAULT IN DELIVERY - TIME EXTENSIONS

- (a) With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date (as such date may be modified pursuant to this Lease), time is of the essence. If the Lessor fails to prosecute the work with the diligence that will ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Company may by notice to the Lessor terminate this Lease, which termination shall be effective when received by Lessor. The Lessor and the Lessor's sureties, if any, shall be jointly and severally liable for any damages to the Company resulting from such termination, as provided in this clause. The Company shall be entitled to the following damages:
 - (1) The Company's aggregate rent and estimated real estate tax and operating cost adjustments for the firm term and all option terms of its replacement Lease or Leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term; provided, if the Company procures replacement premises for a term (including all option terms) in excess of the term, the Lessor shall not be liable for excess Company rent or adjustments during such excess part of such term.
 - (2) All administrative and other costs borne by the Company in procuring a replacement Lease or Leases.
 - (3) Such other, additional relief as may be provided for in this Lease, at law or in equity.Damages to which the Company may be entitled under this clause shall be due and payable thirty (30) days next following the date Lessor receives notice from the Company specifying such damages.
- (b) Delivery by Lessor of less than the usable minimum square footage required by this Lease shall in no event be construed as substantial completion, except as permitted by the Company.
- (c) Notwithstanding paragraph (a) of this clause, this Lease shall not be terminated under this clause nor the Lessor charged with damages under this clause, if (1) the delay in substantially completing the work arises from excusable delays and (2) the Lessor within ten (3) days from the beginning of any such delay (unless extended in writing by

the Company) provides notice to the Company of the causes of delay. The Company shall ascertain the facts and the extent of delay. If the facts warrant such action, the delivery date shall be extended, by the Company, to the extent of such delay at no additional costs to the Company. A time extension is the sole remedy of the Lessor.

14. DEFAULT BY LESSOR DURING THE TERM

- (a) Each of the following shall constitute a default by Lessor under this Lease:
 - (1) Failure to maintain, repair, operate or service the premises as and when specified in this Lease, or failure to perform any other requirement of this Lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days following Lessor's receipt of notice thereof from the Company.
 - (2) Repeated and unexcused failure by Lessor to comply with one or more requirements of this Lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause.
- (b) If a default occurs, the Company may, by notice to Lessor, terminate this Lease for default and if so terminated, the Company shall be entitled to the damages specified in the Default in Delivery-Time Extensions clause.

15. LIQUIDATED DAMAGES

If the Lessor fails to complete the work within the time fixed in the Lease or letter of award, the Lessor shall pay the Company as fixed and agreed liquidated damages, pursuant to this clause, the sum indicated on the "Lease of Real Property" form for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all of the space ready for occupancy by the Company. This remedy is not exclusive and is in addition to any other remedies which may be available under this Lease or in the law.

16. FAILURE IN PERFORMANCE

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this Lease are interdependent. If the Lessor fails to provide any service, utility, maintenance, repair or replacement required under this Lease, the Company may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this Lease, then or thereafter due, the resulting cost to the Company, including all administrative costs. If the Company elects to perform any such requirement, the Company and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Company may deduct from any payment or payments under this Lease, then or thereafter due, an amount which reflects the value of the requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by the Company under this Lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this Lease or at law.

17. ALTERATIONS

The Company shall have the right during the existence of this Lease to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, additions or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Company and may be removed or otherwise disposed of by the Company. If the Lease contemplates that the Company is the sole occupant of the building, for purposes of this clause, the leased premises include the land on which the building is sited and the building itself. Otherwise, the Company shall have the right to tie into or make any physical connection with any structure located on the property as is reasonably necessary for appropriate utilization of the leased space.

18. CHANGES

- (a) The Company may at any time, by written order, make changes within the general scope of this Lease in any one or more of the following:
 - (1) Specifications;
 - (2) Work or services;
 - (3) Facilities or space layout; or
 - (4) Amount of space, provided, in this case, that the Lessor consents to the change.
- (b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this Lease, whether or not changed by the order, the Company shall modify this Lease by:
 - (1) Making an equitable adjustment in the rental rate;
 - (2) Making a lump sum price adjustment; or
 - (3) Revising the delivery schedule.
- (c) Any claim for adjustment by Lessor 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 the Resolution of Disputes clause.
- (d) Only the Procurement Officer is authorized on behalf of Company to issue changes. If Lessor considers that any direction or instruction by Company personnel constitutes a change, Lessor 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 Lessor from proceeding with the Agreement as changed.

- (e) Adjustments for operating expenses in vacant Leased premises will be in accordance with the Adjustment for Vacant Premises clause.
- (f) No services or work for which an additional cost or fee will be charged by the Lessor will be furnished without the prior written authorization of the Company.

19. MAINTENANCE OF PREMISES

The Lessor shall maintain the Property, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this Lease, in good repair and tenantable condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, safety systems, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Company's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Company representative in charge. Upon request of the Procurement Officer, the Lessor shall provide written documentation that building systems have been properly maintained, tested, and are operational within manufacturer's warranted operating standards. The Lessor shall maintain the Premises in a safe and healthful condition according to applicable state and federal standards and all other requirements of this Lease, including standards governing indoor air quality, existence of mold and other biological hazards, presence of hazardous materials, etc. The Company shall have the right, at any time after the Lease Award Date and during the term of the Lease, to inspect all areas of the Property to which access is necessary for the purpose of determining the Lessor's compliance with this clause. The infrastructure for services, utilities, and maintenance shall be provided by the Lessor as part of the rental consideration. The Lessor must have a building superintendent or a locally designated representative available to promptly correct deficiencies.

20. DAMAGE BY FIRE AND OTHER CASUALTY

If the entire premises are destroyed by fire or other casualty, this Lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenable, as determined by the Company, the Company may terminate the Lease by giving written notice to the Lessor within fifteen (15) calendar days of the fire or other casualty; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement effective from the date of such partial destruction or damage. Nothing in this Lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the Company caused by the willful or negligent act or omission of Lessor.

21. ADJUSTMENT FOR VACANT PREMISES

- (a) If the Company fails to occupy any portion of the Leased premises or vacates the premises in whole or in part prior to expiration of the firm term of the Lease, the rental rate will be reduced.
- (b) The rate will be reduced by that portion of the costs per square foot of operating expenses not required to maintain the space. Said reduction must occur after the Company gives thirty (30) calendar days prior notice to the Lessor, and must continue in effect until the Company occupies the premises or the Lease expires or is terminated.

22. MEASUREMENT FOR PAYMENT

When space is offered and accepted, the space will be mutually measured upon substantial completion and delivery. Payment will be made on the basis of actual measurements; however, payment will not be made for delivered space which is in excess of the maximum square footage solicited. The annual rent will be calculated by multiplying the annual square footage rate times square footage.

23. 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.

24. TERMINATION FOR CONVENIENCE

The Company may terminate this Lease, in whole or in part, at any time, for any reason and for its sole convenience. In the event of termination, in whole or in part, the Company shall provide Lessor written notice of said termination not less than 365 days' (12 months) in advance of the termination date. If the Lease is terminated in whole, rental payments shall be payable through the time the Company occupies the Premises. In the event of partial termination, rental payments shall be reduced in proportion to the reduction in usable square feet terminated by the Company.

25. LIMITATION REGARDING FEDERAL GOVERNMENT

The Obligations of the Company, or Federal Government, if any, satisfactory to Landlord under this Article are subject to availability of appropriated funds in Prime Contract No. DE-AC05-00OR22725, between the Company and the Department of Energy, at the time the contingency occurs. Nothing herein shall be construed as implying that the United States congress will, at a later date appropriate funds sufficient to meet any deficiencies under the Prime Contract. If any suit or action is filed or any claim is made against Landlord, the cost or expense of which is subject to indemnification under this Lease, Landlord shall

immediately notify Tenant and promptly furnish copies of all papers received. If requested by Tenant, Landlord will authorize the Tenant to defend any claim, to represent, and to take charge of any litigation, employing counsel satisfactory to Landlord.

26. LESSOR'S SUCCESSORS BOUND

The terms and provisions of this Lease and the conditions herein bind the Lessor and the Lessor's heirs, executors, administrators, successors, and assigns.

27. SUBORDINATION, NONDISTURBANCE AND ATTORNMEN

- (a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Company's access to the premises and full use and enjoyment thereof in accordance with the provisions of this Lease. The Company agrees, in consideration of the warranties and conditions set forth in this clause, that this Lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this Lease. Company agrees, however, within twenty (20) business days next following the Company's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this Lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Company under this Lease.
- (b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Company under this Lease so long as the Company is not in default under this Lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this Lease becomes subordinate, or in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Company promptly upon demand.
- (c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Company will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this Lease, so as to establish direct privity of estate and contract between Company and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the Lease had initially been entered into between such purchasers or transferees and the Company; provided, further, that the Company and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this Lease, or other writings, as shall be necessary to document the foregoing relationship.

28. STATEMENT OF LEASE

- (a) The Company will, within thirty (30) days next following the Company's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that
 - (1) the Lease is in full force and effect;
 - (2) the date to which the rent and other charges have been paid in advance, if any; and
 - (3) whether any notice of default has been issued.
- (b) Letters issued pursuant to this clause are subject to the following conditions:
 - (1) That they are based solely upon a reasonably diligent review of the Company's Lease file as of the date of issuance;
 - (2) That the Company shall not be held liable because of any defect in or condition of the premises or building;
 - (3) That the Company does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and
 - (4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government and Company officials.

29. NO WAIVER

No failure by either party to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

30. INTEGRATED AGREEMENT

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

31. MUTUALITY OF OBLIGATION

The obligations and covenants of the Lessor, and the Company's obligation to pay rent and other Company obligations and covenants, arising under or related to this Lease, are interdependent. The Company may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this Lease. No setoff pursuant to this clause shall constitute a breach by the Company of this Lease.

32. RESOLUTION OF DISPUTES

- (a) Lessor and Company agree to make good-faith efforts to settle any dispute or claim that arises under this Lease through discussion and negotiation. The parties may consider the use of alternative disputes resolution (ADR). In the event mediation or arbitration is mutually agreed upon, 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. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows: (1) any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the Eastern District of Tennessee, Northern Division; (2) provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in the Chancery Court of Knox or Roane County, Tennessee.
- (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 Federal law. To the extent there is no Federal law, Tennessee state law shall apply.
- (c) It is agreed that in the event of a dispute, there shall be no interruption in the performance of the work, and Lessor shall proceed diligently with the performance of this Lease pending final resolution of any dispute arising under this Lease between the parties hereto or between Lessor and its sub-tier subcontractors.

33. 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.

34. BANKRUPTCY

If Lessor enters into any proceeding relating to bankruptcy, it shall give written notice by certified mail to the Company within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed and the identity and location of the court.

35. IDENTITY VERIFICATION OF PERSONNEL

- (a) The Company reserves the right to verify identities of personnel with routine access to Company space. The Lessor shall comply with the agency personal identity verification procedures below that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended.
- (b) The Lessor shall insert this paragraph in all subcontracts when the subcontractor is required to have physical access to a federally controlled facility or access to a federal information system.
- (c) Lessor compliance with subparagraphs 1 through 4 below will suffice to meet the Lessor's requirements under HSPD-12, OMB M-05-24, and FIPS PUB Number 201.
 - (1) The Company reserves the right to conduct background checks on Lessor personnel and contractors with routine access to Company leased space.
 - (2) Upon request, the Lessor shall submit completed fingerprint charts and background investigation forms for each employee of the Lessor, as well as employees of the Lessor's contractors or subcontractors, who will provide building operating services requiring routine access to the Company's leased space for a period greater than six (6) months. The Company may also require this information for the Lessor's employees, contractors, or subcontractors who will be engaged to perform alterations or emergency repairs in the Company's space.
 - (3) The Lessor must provide Form FD-258, Applicant Fingerprint Card (available from the Government Printing Office at <http://bookstore.gpo.gov>), and Standard Form 85P, Questionnaire for Public Trust Positions, completed by each person and returned to the Procurement Officer (or the Procurement Officer's designated representative) within thirty (30) days from receipt of the forms. Based on the information furnished, the Company will conduct background investigations of the employees. The Procurement Officer will advise the Lessor in writing if an employee fails the investigation, and, effective immediately, the employee will no longer be allowed to work or be assigned to work in the Company's space.
 - (4) Throughout the life of the lease, the Lessor shall provide the same data for any new employees, contractors, or subcontractors who will be assigned to the Company's space. In the event the Lessor's contractor or subcontractor is subsequently replaced, the new contractor or subcontractor is not required to submit another set of these forms for employees who were cleared through this process while employed by the former contractor or subcontractor. The Lessor shall resubmit Form FD-258 and Standard Form 85P for every employee covered by this paragraph on a 5-year basis.

36. EMPLOYEE CONCERNS PROGRAM / DIFFERING PROFESSIONAL OPINIONS

- (a) DOE Order 442.1B (available at [directives.doe.gov/directives-documents/400-series/0442.1-BOrder-B](https://www.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 (1-800-701-9966), 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>.
 - (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.

37. INCORPORATION BY REFERENCE

- (a) The clauses listed in paragraph (c) below are incorporated herein by reference. These clauses apply as if they were set forth in their entirety. The texts of FAR clauses are available at <https://www.acquisition.gov/far/>, and the texts of DEAR and DOE clauses, Directives and orders are available at <http://energy.gov/management/office-management/operational-management/procurement-and-acquisition/guidance-procurement>. Except as provided in paragraph (b) below, in the listed clauses "Contractor" means Lessor, "Contract" means this Lease, "Government" means the Company, and "Contracting Officer" means the Company employee administering this Lease (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/>.
- (b) "Government" retains its meaning in (1) Paragraph (a) of FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (Sept 2005); and (2) Paragraph (d) of DEAR 970.5232-3, Accounts, Records, and Inspection (Dec 2000).
- (c) (1) The following clauses are incorporated by reference:
 - DEAR 970.5232-3 Accounts, Records and Inspection (Dec 2024), paragraphs (a) through (g) and (h) with paragraph (h)(1) amended by adding "or subcontractor's" after contractor's and by adding "and to interview any current employee regarding such transactions" after "hereunder." "Authorized representative" under paragraph (h)(1) includes the Inspector General.
 - FAR 52.222-37 Employment Reports on Veterans (Jun 2020) (Applicable to agreements over \$200,000.)
 - Utilization of Small Business Concerns (Company – July 21, 2015) (Applicable if the Lease exceeds the Simplified Acquisition Threshold.)
 - FAR 52.215-2 Audit and Records - Negotiation (Jun 2020) (Including Alternate II for state and local governments, educational institutions, and other nonprofit organizations if the Lease exceeds the Simplified Acquisition Threshold.)
- (2) The following clauses are incorporated if this Lease exceeds \$500,000:
 - Displaced Employee Hiring Preference (Company – July 2006)
- (3) The following clauses are incorporated if this Lease exceeds \$2.5M:
 - FAR 52.215-10 Price Reduction for Defective Certified Cost or Pricing Data (Aug 2011)
 - FAR 52.215-11 Price Reduction for Defective Certified Cost or Pricing Data – Modifications (Jun 2020)
- (4) The following clauses are applicable to certain Leases:
 - (A) **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.
- (5) Supplier Code of Conduct Company – (Feb 2025)

38. 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 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, liabilities, costs, expenses, penalties or obligations (including attorneys' fees), which a Company Indemnatee 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 \$2,000,000 USD annual aggregate limit, Professional Liability/E&O in amounts not less than \$2,000,000 USD annual aggregate limit, and Cyber Liability in any amount not less than \$2,000,000 USD 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.