

Terms & Conditions – University Isotope Production

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PART 1. APPLICABLE TO ALL TRANSACTIONS

1.1 DEFINITIONS

The following terms shall have the meanings below:

- (a) Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- (b) Company means 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, Price Agreement, Basic Ordering Agreement, Task Order, or Modification thereof.
- (e) Procurement Officer means Company's cognizant Acquisition Management Services Division representative.
- (f) Educational Institution means an entity described in Office of Management and Budget Circular No. A-21.
- (g) Day means calendar day unless otherwise specified.

1.2 RESOLUTION OF DISPUTES

- (a) Seller and Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement through discussion and negotiation. 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 may pursue litigation in any court of competent jurisdiction. This agreement shall be interpreted and governed in accordance with applicable federal laws and regulations.
- (b) It is agreed that 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

1.3 ORDER OF PRECEDENCE

Any inconsistencies between sections of the Agreement shall be resolved in accordance with the following descending order of precedence:

- (a) Task Order (If applicable);
- (b) Subcontract Agreement;
- (c) Special Provisions;
- (d) Statement of Work;
- (e) General Provisions – Terms and Conditions;
- (f) Attachments;
- (g) UT-Battelle Prime Supplemental Flowdown Document.

1.4 PAYMENT AND ADMINISTRATION

Company shall make payments under this Agreement from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. Administration of this Agreement may be transferred, in whole or in part, to DOE or its designee(s), and to the extent of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

1.5 ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement, or 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.

1.6 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.

1.7 WARRANTY

- (a) Seller agrees to make reasonable efforts to prepare the radioisotopes ("Supplies") for shipment at the time set forth in this Agreement, to produce the Supplies in accordance with the state of laboratory research art applicable to the Supplies, to be safe and diligent in the assembly and shipping of the Supplies, and upon delivery to convey to Company or Company's designee title to the Supplies free of all liens and encumbrances. Seller further agrees not to materially change its design and specifications for the Supplies without obtaining Company's prior written approval. Seller warrants that the Supplies will be free of defects and in accordance with the specifications in this agreement. In the event of nonconformity with the specifications in this Agreement, Company, in addition to any other rights and remedies provided by law or under other provision of this Agreement, may require Seller, at no increase in price, to correct or replace the Supplies or reduce the Agreement price to reflect the reduced value of Seller's performance. When Supplies are returned, Seller shall bear the transportation costs. If within ten (10) days of Company's written notice, Seller fails to correct or replace the Supplies, as required, Company shall have the right to correct or replace the Supplies and charge the Seller the cost occasioned by the Company thereby and/or terminate this Agreement for default. EXCEPTING ONLY THE FOREGOING, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- (b) When personnel work on DOE site, Seller is responsible for ensuring that all work performed by Seller, subcontractors, manufacturers, or suppliers under this clause is in accordance with Part 1.24, Environment Safety and Health Protection.

1.8 ASSIGNMENT, NOVATION, NAME CHANGE, INVERTED COMPANY

- (a) Assignment - Seller shall not assign its rights 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.
- (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) 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.

1.9 MATERIAL REQUIREMENTS

As provided by FAR 52.211-5 Material Requirements, unless this Agreement specifically requires virgin material or Supplies composed of or manufactured from virgin material, Seller shall provide Supplies that are composed of unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process. Used, reconditioned, or remanufactured Supplies, or unused Government surplus property shall not be provided unless the Company has authorized their use.

1.10 TRANSPORTATION

Delivery is FCA at the point designated in each individual task order. Transportation and insurance charges are not the responsibility of Seller. Seller however, shall assume responsibility for packaging of Supplies, including any claim for personal injury or property damage related to leaking sources or contaminated packaging.

1.11 RISK OF LOSS

Legal and equitable title and risk of loss or damage shall pass when Seller delivers the Supplies to the common carrier specified in each individual task order.

1.12 PAYMENT

Company shall pay the Seller the prices stipulated in this Agreement for Supplies delivered and accepted or services rendered and accepted. 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 on which an electronic funds transfer was made.

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.

1.12a COMPLIANCE WITH LAWS

- (a) Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent rules and regulations (including DOE regulations) and such compliance shall be a material requirement of this Agreement. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits.
- (b) Seller shall include this clause in all subcontracts, at any tier, involving the performance of this Agreement.

1.12b FINES AND PENALTIES

In the event that any actions that result in fines and/or penalties are taken by a local, state, or federal agency against Company or the Government for a regulatory and/or permit noncompliance that resulted from a failure of Seller to perform in accordance with this Agreement or local, state, or federal law, Seller shall reimburse Company or the Government for the amount of the resultant fine and/or penalty including the cost of any additional work required as a result of the enforcement action to the extent caused by Seller's and its lower-tier subcontractors' negligence and/or failure. Company may withhold such amounts from the future payment due Seller

1.13a TERMINATION FOR DEFAULT

- (a) Company may terminate this Agreement for default, in whole or in part, if Seller (disregards applicable laws, ordinances, rules, regulations, directives, or orders, or instructions of the Company; fails to adhere to the time specified in this Agreement for delivery of Supplies; or fails to comply with any of the material terms of this Agreement. In that event, Company shall not be liable for any Supplies not accepted or costs incurred in their production. The Company's right to terminate this Agreement under (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 Supplies similar to those terminated, and Seller will be liable to Company for any excess costs for those Supplies.
- (b) If this Agreement is terminated for default, Company may require Seller to transfer title and deliver to Company any Supplies and materials, manufacturing materials, 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 1.13c 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 1.13c; 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.

1.13b 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 and 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 the satisfaction of Company 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. In no event shall the agreed amount exceed the total price of the Agreement.

1.13c 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 1.16 Changes.

1.14 BANKRUPTCY (RESERVED)

1.15 INCORPORATION BY REFERENCE

This Agreement incorporates certain provisions by reference. These articles and clauses apply as if they were set forth in their entirety. For 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 <https://www.acquisition.gov/far/> 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:

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

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.

Taxes: Fixed-Price (Company – July 2006)

Counterfeit/Suspect Materials (Company – Sept 2013)

Hazardous Material Identification and Material Data Sheets (Company – Feb 2021)

Insurance form 1 (Nov 2020) will apply to private educational institutions

Supplier Code of Conduct (Company – Feb 2025)

1.16 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) method and manner of performance, and (3) the amount of work to be furnished. If any such change causes a difference in the cost, or the time required for performance, an equitable adjustment shall be made in the price and/or delivery schedule and other affected provisions. Such adjustment shall be made by written amendment to this Agreement signed by both parties. Any claim for adjustment by Seller must be made within 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 1.2.
- (b) 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 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.

1.17 SUSPENSION OF WORK

- (a) The Procurement Officer may, at any time, by written notice to Seller, require Seller to suspend, delay, or interrupt all or any portion of the work called for by this Agreement for a period up to ninety (90) days after the notice is delivered to Seller, or for any other period to which the parties may agree. Upon receipt of the notice, Seller shall immediately comply with its provisions and take all reasonable steps, as directed by the Procurement Officer, to minimize the incurrence of costs associated with such suspension.
- (b) Prior to the expiration of the suspension notice, Company shall either: (1) cancel or extend the notice; or (2) terminate the work covered by the notice as provided in Part 1.13 of this Agreement. If the suspension notice is canceled or allowed to expire, Seller shall resume work. Any claim by Seller resulting from a Suspension of Work Notice shall be governed by Part 1.17 of this Agreement.

1.18 PUBLIC RELEASE OF INFORMATION

Company does not endorse products or services. Accordingly, Seller agrees not to use Company's name, the name Oak Ridge National Laboratory (ORNL), the name of any of its projects or programs, or identifying characteristics of any of these for advertising, marketing, or other promotional purposes, raising of capital, recommending investments, sale of securities, or in any way that implies endorsement by UT-Battelle, ORNL, or DOE. Any media releases concerning this Agreement are prohibited without written consent of the Procurement Officer. If Seller is an Educational Institution, Seller may acknowledge the Company and Government sponsorship of the work in publications.

1.19 GOVERNMENT PROPERTY (RESERVED)

1.20 INTEREST (RESERVED)

1.21 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, disease, damage to or loss of property or (2) violation of Part 1.12a Compliance with Laws, which is in any way connected with its performance of work under this Agreement.
- (c) 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.

1.22 INSPECTION AND ACCEPTANCE

- (a) Company and Government have the right to inspect and test all services and Supplies called for by this Agreement at all places and times, including the period of manufacture or performance, and in any event before acceptance. If Company specifies an inspection system elsewhere in this Agreement, Seller shall provide and maintain such inspection system covering services and Supplies under this Agreement and shall provide only services and Supplies that have been found to conform to the requirements of this Agreement. Complete records of all inspections shall be maintained and made available to Company during performance and for as long as Agreement requires. Company shall perform inspections and tests in a manner that will not unduly delay the work. Company assumes no contractual obligation to perform any inspection or test for Seller's benefit unless specifically set forth elsewhere in this Agreement. Company failure to inspect the services and Supplies shall not relieve Seller from responsibility, nor impose liability on Company, for nonconformity. If Company performs inspection or test on the premises of Seller or a subcontractor, Seller shall cause to be furnished, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (b) Company may reject or require correction of any nonconformity. If Seller is not ready for inspection at the time specified by Seller, or if prior rejection makes re-inspection or retest necessary, Company may charge Seller the additional cost of inspection or test. Seller shall not tender for acceptance corrected or rejected services or Supplies without disclosing the former rejection or requirement for correction, and shall disclose the corrective action taken.
- (c) Company, in addition to any other rights and remedies provided by law, or under other provisions of this Agreement, may require Seller, at no increase in subcontract price, to (1) correct or replace the non-conforming Supplies or (2) reduce the Agreement price to reflect the reduced value of Seller's performance. When Supplies are returned, Seller shall bear the transportation cost. If within 10 days of Company's written notice, Seller fails to correct or replace, as required, Company shall have the right by contract or otherwise to perform the services, replace or correct such Supplies, and charge to Seller the cost occasioned the Company thereby and/or terminate this Agreement under the provisions of Part 1.13a.
- (d) Company shall accept Supplies or services that conform to the terms of the Agreement and it reserves the right to reject non-conforming Supplies or services. Seller may be subject to specific acceptance requirements in the Agreement.

1.23 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.

1.24 ENVIRONMENT, SAFETY AND HEALTH PROTECTION

- (a) Seller shall perform this Agreement in a manner that ensures adequate protection for workers, the public, and the environment, and shall be accountable for actions of itself and its lower-tier subcontractors, agents and employees. Seller shall exercise a degree of care commensurate with the work and the associated hazards. Seller shall ensure that management of environment, safety and health (ES&H) functions and activities is an integral and visible part of Seller's work planning and execution process. In the event that Seller fails to comply with this Agreement, Company may, without prejudice to any other legal or contractual rights, issue an order stopping all or any part of the work; thereafter a start order for resumption of work may be issued at Company's discretion. Seller shall make no claim for an extension of time or for compensation or damages by reason of or

in connection with such work stoppage. In addition, Company may require, in writing, that Seller remove from the work any employee the Company deems unsafe, incompetent, careless, or otherwise objectionable.

- (b) If work is going to be performed at the Seller's facility, Seller shall perform work in accordance with its own ES&H requirements and any ES&H requirements included in this Agreement.
- (c) If work is going to be performed at a third-party facility, which is a facility not owned or leased by DOE, Company or Seller, the Seller shall follow the ES&H requirements pertaining to the third-party facility and any ES&H requirements of this Agreement.
- (d) If Seller is performing any of this work outdoors at a location(s) not owned or leased by DOE, Company or Seller, such work shall be considered "field work." Seller shall follow the ES&H requirements pertaining to the field work location(s). Seller shall also perform work in accordance with the ES&H requirements of this Agreement.

1.25 EXPORT CONTROL

- (a) The Seller must comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, Export Administration Regulations (EAR), 15 CFR Parts 730 through 774, and Atomic Energy Act of 1954 (Public Law 83-703), Nuclear Regulatory Commission 10 CFR Part 110 and Department of Energy 10 CFR Part 810, in the performance of this Agreement. In the absence of available license exemptions or exceptions, the Seller must obtain the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.
- (b) The Seller must obtain export licenses, if required, before using foreign persons in the performance of this Agreement, where the foreign person will have access to export-controlled technical data or software.
- (c) The Seller is responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions and exceptions.
- (d) The Seller shall include this clause in subcontracts hereunder.

1.26 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. This Agreement may be terminated if the Company determines that the provisions of this clause were violated. The Company may also exercise any other rights and remedies provided by law or under this Agreement.

1.27 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 to a foreign public official in order to obtain or retain business. 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.

1.28 FALSE LABELING OF PRODUCTS AS AMERICAN-MADE

Providing products falsely labeled as made in America is prohibited. If the Company becomes aware of a possible violation of the prohibition, the matter shall be reported to DOE for potential debarment of the entity affixing the false label pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

1.29 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 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 existing 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.

1.30 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 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.

PART 2. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD

2.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15. The following clauses are incorporated by reference:

FAR 52.215-14 Integrity of Unit Prices (Nov 2021), excluding paragraph (b)
Utilization of Small Business Concerns (Company – July 21, 2015)

PART 3 APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$500,000

3.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15. The following clauses are incorporated by reference:

FAR 52.204-14 Service Contract Reporting Requirements (Oct 2016)

PART 4. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$2.5M

4.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15. The following clauses are incorporated by reference:
FAR 52.215-10 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)

PART 5. APPLICABLE ONLY TO CERTAIN AGREEMENTS

5.1 INCORPORATION BY REFERENCE

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

5.2 ACCESS TO COMPANY'S CYBER RESOURCES

If performance involves access to Company's cyber resources, this Agreement incorporates by reference Access to Company's Cyber Resources (Company – Sep 2013) and DEAR 952.204-77 Computer Security (Aug 2006).

5.3 COMMERCIAL COMPUTER SOFTWARE

If performance involves acquisition of existing computer software, the following Company Exhibit is incorporated by reference: CCS Commercial Computer Software License (Company – July 2010).

5.4 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 prior to performing any work related to supporting or managing a conference.

5.5 INTERNET PROTOCOL TECHNOLOGY

- (a) In order to facilitate the wide scale adoption of IPv6, if this Agreement involves the acquisition of products that use Internet Protocol (IP) technology, the Seller agrees (1) that the products shall comply with current IPv6 standards as defined in <http://www-x.antd.nist.gov/usgv6/index.html> and operate with both IPv6 and IPv4 systems and products; and (2) to provide technical support for IPv6 equivalent to that provided for IPv4.
- (b) Should the Seller find that the Statement of Work or specifications of this Agreement do not conform to IPv6 standards, it must notify the Procurement Officer of such nonconformance and act in accordance with instructions of the Procurement Officer.

5.6 RESERVED

5.7 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.

