

## **Terms & Conditions**

### **Purchase Order Commercial Products & Services**

### **Under the Simplified Acquisition Threshold**

#### **1. DEFINITIONS**

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

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

#### **2. RESOLUTION OF DISPUTES**

The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with Federal law. To the extent there is no Federal law, Tennessee state law shall apply. There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under this Agreement between the parties hereto or between Seller and its lower-tier subcontractors.

#### **2.1 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) Purchase Order; (c) Special Provisions; (d) Statement of Work; (e) General Provisions – Terms and Conditions; (f) Attachments; and (g) UT-Battelle Prime Supplemental Flowdown Document.

#### **3. ACKNOWLEDGEMENT/ENTIRE AGREEMENT**

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

#### **4. COMMUNICATION AND PRIVACY OF CONTRACT WITH GOVERNMENT**

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

#### **5. WARRANTY AND INSPECTION**

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

#### **6. 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.

#### **7. ELECTRICAL EQUIPMENT REQUIREMENTS**

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

#### **8. PAYMENT**

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

#### **9. COMPLIANCE WITH LAWS**

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

and its lower-tier subcontractors' negligence and/or failure. Company may withhold such amounts from the future payment due Seller.

#### **10. TERMINATION**

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

#### **11. EXCUSABLE DELAY**

The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, named weather event (i.e., hurricane, typhoon, cyclone/tornado) causing loss, and delays of common carriers. 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.

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 14 Changes.

#### **12. PUBLIC RELEASE OF INFORMATION**

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

#### **13. ACCESS**

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

#### **14. CHANGES**

(a) Only the Procurement Officer is authorized on behalf of Company to issue changes. If Seller considers that any direction or instruction by Company personnel constitutes such a change, Seller shall not rely upon such instruction or direction without written confirmation from the Procurement Officer. Company may, at any time, by a written order make changes within the general scope of this Purchase Order.

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

(b) *Updating terms.* After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as any change to schedule, price, quantity, key personnel, or any term that creates an obligation upon the Company.

#### **15. INSURANCE AND INDEMNITY**

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

#### **16. INFORMATION TECHNOLOGY**

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

#### **17. 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.

#### **18. INCORPORATION BY REFERENCE**

This Agreement incorporates certain provisions by reference. These articles and clauses apply as if they were set forth in their entirety. For the purposes of the FAR, DEAR provisions, and DOE Orders incorporated by reference, "Contractor" means Seller; "Government" shall mean Company and/or Government; and "Contracting Officer" means Company's Procurement Officer. 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/>.

FAR 52.222-50 Combating Trafficking in Persons (Nov 2021)

FAR 52.222-35 Equal Opportunity for Veterans (Jun 2020) (applicable to Agreements in excess of \$200,000)

FAR 52.222-37 Employment Reports on Veterans (Jun 2020) (applicable to Agreements in excess of \$200,000)

FAR 52.222-54 Employment Eligibility Verification (Jan 2025) – in Agreements for more than \$3,500 and greater than 120 days duration; not applicable to services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications) and performed by the COTS provider.

FAR 52.225-1 Buy American Act – Supplies (Oct 2022) applicable to Agreements in excess of the micro-purchase threshold.

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

Supplier Code of Conduct (Company – Feb 2025)

**19. APPLICABLE IF SERVICES ARE PERFORMED ON DOE SITE**

FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011)  
DEAR 952.203-70 Whistleblower Protection for Contractor Employees (Dec 2000)  
DEAR 970.5223-1 DOE Approved Worker Safety and Health Program

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

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

**20. APPLICABLE IF PERFORMANCE INVOLVES SPECIAL PRODUCTS AND SERVICES**

FAR 52.223-2 Reporting of Biobased Products Under Service and Construction Contracts (May 2024)  
FAR 52.224-1 Privacy Act Notification (Apr 1984)  
FAR 52.224-2 Privacy Act (Apr 1984)  
FAR 52.232-78 Commercial Supplier Agreements -Unenforceable Clauses (Feb. 2018)  
Insurance – Form 1 (Company – Nov 2020)

**21. NOTIFICATION OF VISA DENIAL**

If the work to be performed is in or on behalf of a foreign country by workers recruited in the United States, FAR 52.222-29 Notification of Visa Denial (Apr 2015) applies.

**22. WALSH-HEALEY PUBLIC CONTRACTS ACT**

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

**23. 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).

**24. NO AUTOMATIC RENEWALS**

If any license or service tied to periodic payment is provided under this agreement (e.g., annual software or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

**25. 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.

**26. 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.

- (a) 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.
- (b) The Seller is responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions and exceptions.
- (c) The Seller shall include this clause in subcontracts hereunder.

**27. 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 (1-800-676-3267 or 1-865-241-3267), if a concern is not resolved by supervisors, or if the employee elects not to raise the concern with supervisory

- personnel.
- (4) Employees have the right to report differences of professional opinion through the Company ECP (1-888-280-0616), or through the DOE DPO process using contact information contained at <https://www.energy.gov/ehss/doe-differing-professional-opinions>
  - (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.

## 28. 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.