

Terms & Conditions - Construction

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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 Contracts Division representative.
- (f) Technical Project Officer means the duly authorized Company representative who will administer the field work.
- (g) Day means calendar day unless otherwise specified.
- (h) Seller's Representative means Seller's full-time on-site field representative.

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 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 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 a waiver 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) In addition to any other warranties in this Agreement, Seller warrants that work performed under this Agreement conforms to the Agreement requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by Seller or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If Company takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date Company takes possession.
- (c) Seller shall remedy at Seller's expense any failure to conform, or any defect. In addition, Seller shall remedy at Seller's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of Seller's failure to conform to applicable requirements, or any defect of equipment, material, workmanship, or design furnished.
- (d) Seller shall restore any work damaged in fulfilling the terms and conditions of this clause. Seller's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- (e) Company shall notify Seller, in writing, within a reasonable time after the discovery of any failure, defect, or damage. Seller is responsible for ensuring that all work performed by Seller, subcontractors, manufacturers, or suppliers under this clause is in accordance with Part 1.31 Environment, Safety and Health Protection.
- (f) If Seller fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Company shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at Seller's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, Seller shall: (1) obtain all warranties that would be given in normal commercial practice; (2) require all warranties to be executed, in writing, for Company's benefit, as directed; and (3) enforce all warranties for Company's benefit, as directed.
- (h) In the event Seller's warranty under paragraph (b) of this clause has expired, Seller agrees to subrogate any of its rights and to aid Company in enforcing lower-tier subcontractors', manufacturers', or suppliers' warranties.
- (i) 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.

1.8 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 MATERIALS AND WORKMANSHIP

- (a) All equipment, material, and articles incorporated into the work covered by this Agreement shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Agreement.
- (b) Seller shall obtain Company approval of the machinery and mechanical and other equipment to be incorporated into the work. When required by Company, Seller shall also obtain Company's approval of the material or articles which Seller contemplates incorporating into the work. When so directed, Seller shall submit samples for approval at Seller's expense. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- (c) References in the specifications or drawings to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Seller may, with Company's written approval, use any equipment, material, article, or process that is equal to that specified, unless the words "No Substitution" follow the listing of the item in the specifications or drawings. Unless otherwise agreed, modifications due to use of "or equal" supplies are at Seller's expense.
- (d) All work under this Agreement shall be performed in a skillful and workmanlike manner. Company may require, in writing, Seller to remove from the work any employee Company deems incompetent, careless, or otherwise objectionable.

1.9a PERFORMANCE AND PAYMENT BONDS -- CONSTRUCTION

- (a) Unless the price of this Agreement is \$150,000 or less, the Seller must furnish performance and payment bonds to the Company as follows:
 - (1) Performance Bonds (either the Company form available in the [Special Articles and Forms](#) section of our website or Standard Form 25, available at <http://www.gsa.gov/reference/forms/performance-bond> , modified to

name the Company as well as the United States of America as an obligee). The penal amount shall be 100 percent of the original Agreement price.

- (2) Payment Bonds (either the Company form available in the [Special Articles and Forms](#) section of our website or Standard Form 25-A, available at <http://www.gsa.gov/reference/forms/payment-bond>, modified to name the Company as well as the United States of America as an obligee). The penal amount shall be 100 percent of the original Agreement price.
- (3) (i) The Company shall require additional performance and payment bond protection if the price is increased. The increase in protection shall generally equal 100 percent of the total subcontract price.
(ii) The Company may secure the additional protection by directing the Seller to increase the penal amount of the existing bond or to obtain an additional bond.
- (b) The Seller shall furnish all executed bonds, including any necessary reinsurance agreements, to the Company within ten (10) days after receipt of notice of subcontract award unless otherwise specified in the solicitation, but in any event before starting any site work.
- (c) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is available at <https://www.fiscal.treasury.gov/surety-bonds/circular-570.html>.

1.9b ADDITIONAL BOND SECURITY

The Seller shall promptly furnish additional security required to protect the Company, the Government, and persons supplying labor or materials under this Agreement if:

- (a) Any surety upon any bond, or issuing financial institution for other security, furnished with this Agreement becomes unacceptable to the Government;
- (b) Any surety fails to furnish reports on its financial condition as required by the Government;
- (c) The Agreement price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Company;
- (d) The contract price is increased, the increase in protection shall equal the new Agreement price; or
- (e) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Seller does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least thirty (30) days before an ILC's scheduled expiration, the Company may immediately draw on the ILC.

1.9c PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS

Upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this Agreement for which a payment bond has been furnished, the Seller shall promptly provide a copy of such payment bond to the requester.

1.9d ALTERNATIVE PAYMENT PROTECTIONS (Applicable for Agreements greater than \$35,000, but not greater than \$150,000)

- (a) The Seller shall submit one of the following payment protections:
 - (1) A payment bond (either the Company form available in the [Special Articles and Forms](#) section of our website <https://contracts.ornl.gov/special-articles-and-forms/> or Standard Form 25-A, modified to name the Company as well as the United States of America as an obligee); or
 - (2) An irrevocable letter of credit (ILC).
- (b) The amount of the payment protection shall be 100 percent of the Agreement price.
- (c) The payment protection must be submitted within ten (10) days of award of the Agreement.
- (d) The payment protection shall provide protection for the Agreement's period of performance plus one year.
- (e) Except for payment bonds, which provide their own protection procedures, the Company is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a non-payment has occurred and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

1.10 SELLER'S REPRESENTATIVE

- (a) Seller shall be responsible to Company for acts and omissions of all employees and subcontractors, at any tier, their agents and employees and all other persons performing any work under a subcontract with Seller, at any tier, or who is under the direct supervision of Seller in the performance of the work.
- (b) Seller's Representative shall be assigned to the work site and shall have authority to receive notices and instructions on Seller's behalf and shall be in charge of and responsible for the work. Seller's Representative shall render approvals and decisions promptly and furnish information expeditiously and in time to meet required performance schedule.
- (c) Seller's superintendence staff not otherwise designated as Key Personnel shall not be removed or replaced without the expressed written permission of Company. In cases where Seller has identified the need to remove or replace these project superintendence personnel, Seller shall notify the Procurement Officer in writing ten (10) days prior to the change. Seller's notification shall be accompanied by resumes of those persons being considered by Seller as replacements. Company shall issue its written approval of all superintendence personnel replacements prior to their assignment to the work.

1.11 PAYMENT

- (a) Company shall pay Seller the price as provided in this Agreement.
- (b) (1) Company shall make progress payments monthly as the work proceeds, on estimates of work accomplished which meet the standards of quality established under the Agreement, as approved by Company. Unless otherwise provided, terms of payment shall be net 30 days from receipt of Seller's proper invoice (unless such invoice is not approved). Any offered discount shall be taken if payment is made within the discount period the 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.
- (2) Applicable IRS forms (available at <http://web.ornl.gov/adm/ap>) must be submitted to ORNL Accounts Payable Department at aptax@ornl.gov. If the appropriate IRS form is not received, payment may be delayed or applicable IRS percentage may be withheld from invoice payment.
- (3) Pay estimates shall be submitted using the Application and Certificate for Payment form which is available in the *Documents Index* and then *Special Articles and Forms* section of our website <https://contracts.ornl.gov/> by the 20th day of the month. In the preparation of estimates, Company may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to Seller at locations other than the site may also be taken into consideration if (i) consideration is specifically authorized by this Agreement and (ii) Seller furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Agreement.
- (4) An updated progress report shall be submitted by Seller with each pay estimate.
- (5) Before a request for payment is approved, Seller shall submit to the Procurement Officer and Technical Project Officer all required documents and reports for the work period in question.
- (6) 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.
- (c) Formal schedule of values submittal will be structured where the last work tasks (e.g., punch list, defective work, drawings, manufacturer data, close out actions, demobilization, etc.) comprise as a minimum 5% of the total value of the subcontract.
- (d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as: (1) relieving Seller from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or (2) waiving the right of Company to require the fulfillment of all of the terms of the Agreement.
- (e) Company shall pay the final amount due Seller under this Agreement after: (1) completion and acceptance of all work; and (2) Seller has submitted: (i) "Certified-as-Built" shop drawings and manufacturer's data and a bound copy of certified test data and reports; (ii) a certified statement that all payrolls have been submitted under this Agreement; (iii) a properly executed voucher; and (iv) a release of all claims against Company and the Government arising by virtue of this Agreement. Release may also be required of the assignee if Seller claims amounts payable that have been assigned in accordance with Part 1.8.
- (f) Company may deduct from any amount owed to Seller any amount owed to Company whether or not in connection with this Agreement.

1.12 COMPLIANCE WITH LAWS

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

1.13 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, in whole or in part, if Seller (1) fails to supply enough properly skilled workers or proper materials or equipment so as to endanger performance of this Agreement; (2) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Seller and the subcontractors; (3) disregards applicable laws, ordinances, rules, regulations, directives, or orders, or instructions of the Company; (4) fails to adhere to the time specified in this Agreement for performance of services or delivery of supplies; or (5) fails to comply with any of the material terms of this Agreement. The Company's right to terminate this Agreement under (1), (2), (3), or (5) of this paragraph (a) may be exercised if the Seller does not cure such failure within ten (10) days after receipt of notice from the Company specifying the failure.

- (b) Company may take possession and use any materials, tools, equipment and the construction facilities and premises and finish the work by whatever method Company deems expedient at Seller's expense which includes any increased cost incurred that exceeds the Agreement price.
- (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 – Force Majeure. 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 in writing 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

- (a) 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, Seller shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work and take any action that may be necessary, or that Company directs, for the protection of the property related to this Agreement.
- (b) After termination, Seller may submit to Company a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Company. Seller may request Company to remove those items or enter into an agreement for their storage. Within fifteen (15) calendar days, Company will remove them or enter into a storage agreement. Company may verify the list upon removal of the items, or if stored, within forty-five (45) calendar days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (c) After termination, Seller shall submit a final termination settlement proposal to Company in the form and with the certification prescribed by Company. Seller shall submit the proposal promptly, but no later than 6 months from the effective date of termination, unless extended in writing by Company upon written request of Seller within this 6-month period. If Seller fails to submit the proposal within the time allowed, Company may determine, on the basis of information available, the amount, if any, due Seller because of the termination and shall pay the amount determined.
- (d) 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 have resulted from the termination. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Seller and Company may agree upon the amount to be paid because of the termination. However, the agreed amount may not exceed the Agreement price.
- (e) Company shall exclude from the amounts payable to Seller the fair value, as determined by Company, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable.
- (f) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, as supplemented by Part 931 of the Department of Energy Acquisition Regulation, in effect on the date of this Agreement, shall govern all costs claimed.
- (g) Unless otherwise agreed or required by statute, Seller shall maintain all records and documents relating to the terminated portion of this Agreement for three (3) years after final settlement. This includes all books and other evidence bearing on Seller's costs and expenses under this Agreement. Seller shall make these records and documents available to the Government, at Seller's office, at all reasonable times, without any direct charge. If approved by Company, authentic reproductions may be maintained instead of original records and documents.

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..
- (b) Seller shall, within twenty-four (24) hours of the commencement of any such delay, give to Company written notice thereof setting forth the full particulars and within seven (7) days of commencement of the delay, a written description of the anticipated impact of the delay on performance and the actions Seller intends or has taken to mitigate any delay impacts. Failure to give any of the above notices shall constitute failure to provide adequate assurance of future performance.
- (c) Seller shall provide written notice, within seven (7) days following cessation of such delay occurrence, providing a revised schedule detailing work activities so as to minimize the effects of the delay and having made due allowance for any instruction to accelerate the work given in accordance with Part 1.16 Changes.
- (d) 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

If Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Procurement Officer within five (5) calendar days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing, by Company Agreement number, of all Company Agreements for which final payment has not been made.

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 [Special Articles and Forms](#) or [Exhibits](#) sections of our [website](#). 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 52.222-55 Minimum Wages Under Executive Order 14026 (Jan 2022)
FAR 52.227-4 Patent Indemnity-Construction Contracts (Dec 2007)
FAR 52.232-39 Unenforceability of Unauthorized Obligations (June 2013)
Exhibit 9 - Technical Data (Company – Oct 2025)
Counterfeit/Suspect Materials (Company – Sept 2013)
Hazardous Material Identification and Material Data Sheets (Company – April 2025)
Insurance – Form 2 (Company – November 2020)
Supplier Code of Conduct (Company – Feb 2025)

1.16 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. Nothing in this clause, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.
- (b) 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) specifications (including drawings and designs), (2) method and manner of performance, (3) government furnished facilities, equipment, materials, and services, and (4) acceleration in performance. 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 fourteen (14) calendar 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.
- (c) Seller's submission shall include: (1) date, nature and circumstances regarding the change, (2) name of each person knowledgeable about the change, (3) identification of documents and substance of oral communications involving the change, and (4) the particular elements of performance impacted by the change, including (i) adjustment in labor and/or materials, (ii) delay or disruption caused, (iii) estimated resulting price and schedule adjustments, and (iv) time by which Company must respond to minimize cost, delay, or disruption to performance of the work. Failure to agree to any adjustment shall be settled in accordance with Part 1.2.

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 the period of time the Procurement Officer determines appropriate. Upon receipt of written notice, Seller shall immediately comply with its provisions and take all reasonable steps, as directed by the Procurement Officer, to minimize the cost associated with such suspension.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended (1) by an act of Company in the administration of this Agreement, or (2) by Company's failure to act within the time specified in this Agreement (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance necessarily caused by the unreasonable suspension, delay, or interruption, and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Seller, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Agreement.
- (c) As full compensation for such unreasonable delay, Seller shall be reimbursed actual costs, reasonably incurred, without duplication, to the extent the costs result solely and directly from the unreasonable period of the suspension. Claim for such reimbursement shall be submitted within fourteen (14) calendar days after the termination of the suspension. A claim under this clause shall not be allowed unless the claim, in an amount stated, is submitted timely.
- (d) When work has been suspended by Seller for any reason other than Company order, Seller shall give the Company twenty-four (24) hours advance notice of its intention to resume work. Should Seller resume work without such notification, Company reserves the right to use the work areas as it sees fit for a period of twenty-four (24) hours

after Seller's work is resumed. Delays caused by action of Company due to failure on the part of Seller to comply with these provisions will not constitute a basis for any adjustment in the price or time for completion.

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.

1.19 GOVERNMENT PROPERTY

- (a) Company may furnish to Seller property as may be required for performance of work under this Agreement, or have Seller acquire such property as mutually agreed. Title to property furnished or acquired shall vest in the Government, and hereafter be referred to as "Government property." If Seller purchases property for which it is entitled to be reimbursed as a direct item of cost, title shall pass to the Government upon delivery of the property to Seller. Title to all other property, the cost of which is reimbursable to Seller, shall pass to the Government upon the earlier of (1) issuance of property for use in performance, (2) processing property for use in performance, or (3) reimbursement of cost of property. Title shall not be affected by the incorporation or attachment to any property not owned by the Government, nor shall any Government property become a fixture or lose its identity because it is affixed to any realty.
- (b) Company shall deliver to Seller the Government property stated in this Agreement. If the property is not suitable for its intended use or is not delivered to Seller as specified in this Agreement, Company shall equitably adjust affected provisions when the facts warrant an equitable adjustment and Seller submits a written request for such adjustment within fourteen (14) calendar days of delivery of the Government property. Said equitable adjustment shall be Seller's exclusive remedy.
- (c) Seller shall establish and maintain a property control program for use, maintenance, repair, protection and preservation of Government property consistent with good business practices and as may be prescribed by Company until disposed of in accordance with this clause. Seller shall report any acquisition of property and materials not considered consumable or general office supplies, as defined in DEAR 970.5245-1 Property. Upon notification, the Seller shall provide requested information regarding Government property and materials by the requested due date (i.e. annual inventory reporting, requests for information regarding acquisitions, audits, reviews, etc.). Seller shall cause all Government property to be clearly marked as Government property. Except as may be authorized in writing, Government property shall be used only for the performance of this Agreement.
- (d) Seller shall be responsible for loss or damage to Government property required for performance of this Agreement. Company and the Government shall have access at all reasonable times to the premises where any Government property is located for the purpose of inspecting the property.
- (e) Upon completion of the work under this Agreement, Seller shall submit, in a form acceptable to Company, inventory schedules covering all Government property not consumed in the performance of this Agreement (including any scrap). Seller shall hold the same at no charge for a period up to sixty (60) days or a longer period if mutually agreed. After this, Seller shall dismantle, prepare for shipment, and at Company direction, store or deliver said property (at Company expense), or make such other disposal of the property as directed by Company. The net proceeds of any such disposal shall be credited to the cost of the work covered by this Agreement or shall be paid as Company may direct.

1.20 INTEREST

All amounts due to Company by Seller shall accrue interest from the date due until paid, unless paid within thirty (30) calendar days of the date due. The interest rate shall be the Treasury's Current Value of Funds Rate (prescribed and published by the Secretary of the Treasury in Treasury Financial Manual Bulletins), as of the date due, which rate shall be adjusted every six months. This clause shall not apply to amounts due under a price reduction for defective cost or pricing data clause.

1.21 SELLER'S RESPONSIBILITIES

- (a) Seller represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the work under this Agreement. 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 costs resulting from (1) injury, death, disease, damage to or loss of property or (2) violation of Part 1.12 Compliance with Laws, which is in any way connected with its performance of work under this Agreement. Seller's responsibility shall apply to activities of Seller, its agents, lower-tier subcontractors, or employees and such responsibility includes the obligation to indemnify, defend, and hold harmless the Government and Company for Seller's conduct. However, such liability and indemnity does not apply to injury, death, or damage to property to the extent it arises from the negligent or willful misconduct of Company.
- (c) 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) Seller shall maintain an adequate inspection system and perform such inspections and tests as will ensure that the work called for by this Agreement conforms to the applicable requirements. Seller shall maintain complete inspection and test records and make them available to Company. All work shall be conducted under the general direction of Company and is subject to Company and Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of this Agreement.
- (b) Company inspections and tests are for the sole benefit of the Government and do not relieve Seller of responsibility for providing adequate quality control measures, relieve Seller of responsibility for damage to or loss of the material before acceptance, constitute or imply acceptance, or affect the continuing rights of Company after acceptance of the completed work.
- (c) The presence or absence of a Company inspector does not relieve Seller from any requirement, nor is the inspector authorized to change any term or condition of the specification without Company's written authorization.
- (d) Seller shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Company. Company may charge to Seller any additional cost of inspection or test when work is not ready at the time specified by Seller for inspection or test, or when prior rejection makes re-inspection or retest necessary. Company shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in this Agreement.
- (e) Unless otherwise specified in this Agreement, Company shall accept or reject, as promptly as practicable after completion and inspection, all work required by this Agreement or that portion of the work Company determines can be accepted separately that conforms to the Agreement requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by Seller or its lower tier Subcontractors and Suppliers.
- (f) If, before acceptance of the entire work, Company decides to examine already completed work by removing it or tearing it out, Seller, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of Seller or its lower-tier subcontractors, Seller shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet applicable requirements, Company shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (g) Seller shall, without charge, replace or correct work found by Company not to conform to the requirements, unless in the public interest Company consents to accept the work with an appropriate adjustment in price. Seller shall promptly segregate and remove rejected material from the premises.
- (h) If Seller does not promptly replace or correct rejected work, Company may replace or correct the work and charge the cost to Seller or terminate this Agreement for default.

1.23 SHIPPING TERMS – UNCLASSIFIED FOREIGN NATIONAL ACCESS DELIVERY RESTRICTION

All deliveries coming on site to ORNL must be delivered by a United States Citizen or a Foreign National that is registered in the Foreign Access Central Tracking System (FACTS) and approved in the Personnel Access System (PAS). If a Foreign National is not approved in PAS, they will be denied entry. Deliveries made to other DOE sites or facilities must comply with site-specific access restrictions.

1.24 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- (a) Seller acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. Seller also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Company, as well as from the drawings and specifications made a part of this Agreement. Any failure of Seller to take the actions described and acknowledged in this paragraph will not relieve Seller from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to Company.
- (b) Company and Government assume no responsibility for any conclusions or interpretations made by Seller based on the information made available by Company. Nor do the Company and Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Agreement, unless that understanding or representation is expressly stated in this Agreement.

1.25 DIFFERING SITE CONDITIONS

- (a) Seller shall promptly, and before the conditions are disturbed, give a written notice to Company of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Agreement, or (2) physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

- (b) Company shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Seller's cost of, or the time required for, performing any part of the work under this Agreement, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Agreement modified in writing accordingly.
- (c) No request by Seller for an equitable adjustment under this clause shall be allowed, unless the written notice required in paragraph (a) above is timely given.

1.26 PROTECTION OF EXISTING IMPROVEMENTS, EQUIPMENT, UTILITIES, AND ANTIQUITIES

- (a) Seller shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site that are not to be removed and which do not unreasonably interfere with the required work. Seller shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance, or by the careless operation of equipment, or by workmen, Seller shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by Company.
- (b) Seller shall protect from damage all existing improvements and utilities at or near the work site and on adjacent property of a third party, the locations of which are made known to or should be known by Seller. Seller shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Agreement or failure to exercise reasonable care in performing the work. If Seller fails or refuses to repair the damage promptly, Company may have the necessary work performed and charge the cost to Seller.
- (c) Federal law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. Seller shall control the activity at the jobsite to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed. Seller shall report the discovery of any antiquities at the jobsite and, upon discovery of unusual materials (e.g., obsidian chips or flakes, bones, darkly stained soils, "arrowheads"), Seller shall stop work at/or around such materials and notify Company. All wildlife shall be protected from destruction or injury due to Seller's operations.
- (d) Should Seller encounter any utilities, lines, or structures not shown on the drawings or not correctly located thereon, it shall immediately stop all work adjacent thereto. Seller shall immediately notify Company, which will issue instructions indicating the method of proceeding. If Seller damages any utility, line, or structure, whether or not shown on the drawings, Company shall be immediately notified.

1.27 OPERATIONAL AND STORAGE AREAS

- (a) Seller shall confine all operations (including storage of materials) on Government premises to areas authorized or Company approved.
- (b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Seller only with Company approval. Physical protection and maintenance of temporary buildings and utilities are Seller's responsibility. Temporary buildings and utilities shall remain the property of Seller and shall be removed by Seller at its expense upon completion of the work. With Company written consent, buildings and utilities may be abandoned and need not be removed.
- (c) Seller shall, under regulations prescribed by Company, use only established roadways, or use temporary roadways constructed by Seller when and as authorized by Company. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, Seller shall protect them from damage. Seller shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

1.28 USE AND POSSESSION PRIOR TO COMPLETION

- (a) Company shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, Company shall furnish Seller a list of items of work remaining to be performed or corrected on those portions of the work that Company intends to take possession of or use. However, failure of Company to list any item of work shall not relieve Seller of responsibility for complying with the terms of this Agreement. Company's possession or use shall not be deemed an acceptance of any work under this Agreement.
- (b) While Company has such possession or use, Seller shall be relieved of the responsibility for the loss of or damage to the work resulting from Company's possession or use. If prior possession or use by Company delays the progress of the work or causes additional expense to Seller, an equitable adjustment shall be made in the price or the time of completion, and the Agreement shall be modified in writing accordingly.

1.29 CLEANING UP

Seller shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, Seller shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, Seller shall leave the work area in a clean, neat, and orderly condition satisfactory to Company.

1.30 SPECIFICATIONS AND DRAWINGS

- (a) Seller shall be furnished the number of drawings and specifications specified in Division One at no cost.

- (b) Seller shall keep on the work site a copy of the drawings and specifications and shall at all times give Company access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. Within the specifications, Division One shall govern. In case of discrepancy in the figures, in the drawings, or in the remainder of the specifications, the matter shall be promptly submitted to the Technical Project Officer and the Procurement Officer, who shall promptly make a determination in writing. Any adjustment by Seller without such a determination shall be at its own risk and expense. Company shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- (c) (1) The drawings and specifications incorporated into this Agreement are intended to include everything requisite and necessary to complete the entire work properly, notwithstanding the fact that every item necessarily involved may not be specifically mentioned.
- (2) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve Seller from performing such omitted or misdescribed details of the work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.
- (3) The specifications and drawings may identify and list quantities of items to be furnished and installed by Seller. These identifications may be incomplete and the quantities are estimates only. Seller is responsible for furnishing the items and quantities manifestly necessary to carry out the intent of the drawings and specifications.
- (4) The drawings furnished by Company are, in general, to scale. Scales shown on a microfilmed reproduced drawing change in proportion to the reduction of the drawing from original size. Figured dimensions shall always be followed and the drawings not scaled.
- (5) Prior to fabricating any item (structural steel, piping, ductwork, etc.), Seller shall field-verify all dimensions critical to the installation. Any discrepancies between existing or new conditions and the drawings shall be reported to Company for resolution.
- (6) The specifications are divided into sections for convenience only, and such sections do not define or establish the limits of work of any subcontractor. It is Seller's responsibility to define lower-tier subcontractors' limits of work and to ensure that all lower-tier subcontractors and suppliers at whatever level are familiar with all provisions of this Agreement that may affect their work.
- (7) The data sheet equipment numbers are not unique. Multiple pieces of equipment may utilize the same number. Seller shall determine the quantity of equipment and material needed to complete the work.

1.31 ENVIRONMENT, SAFETY AND HEALTH PROTECTION

- (a) Worker Safety and Health Plans. Seller shall perform work in accordance with a DOE-approved Worker Safety and Health Program (WSHP) (also referred to in DEAR 970.5223-1 as the Safety Management System) as described below:
 - (1) Seller shall demonstrate well-established safety protocols applicable to the scope of work and consistent with the required elements stated in this clause. Prior to the commencement of any work, the Seller shall either:
 - (A) Accept and agree to work pursuant to Company's DOE-approved WSHP available at http://www.ornl.gov/adm/contracts/wsh_10cfr851.shtml; provided, however, Seller shall be responsible for having its own occupational medicine program that is compliant with 10 C.F.R. § 851.24, Appendix A, Section 8, and Section 1.31(c) hereof.
 - (B) Submit its own DOE-approved WSHP, including an occupational medicine program, that is compliant with 10 C.F.R. § 851 and DEAR 970.5223-1 to the Procurement Officer for Company's review. Seller shall submit, for Company's review, an HA of the affected work in accordance with (a)(2)(A) of this clause and a written construction project safety and health plan in accordance with (a)(2)(B).
 - (2) If performing work in accordance with Company's DOE-approved WSHP pursuant to Section 1.31(a)(1)(A) hereof, prior to initiation of work, Seller shall submit to the Company and obtain approval of:
 - (A) A hazard analysis (HA) of the affected work. Such analyses must:
 - (i) Identify foreseeable hazards and planned protective measures;
 - (ii) Address further hazards revealed by supplemental site information (e.g., site characterization data, as-built drawings);
 - (iii) Provide drawings and/or other documentation of protective measures for which applicable Occupational Safety and Health Administration (OSHA) standards require preparation by a Professional Engineer or other qualified professional;
 - (iv) Identify competent persons required for workplace inspections of the construction activity, where required by OSHA standards; and,
 - (v) Address hazards identified in the Statement of Work (SOW) and this Agreement.
 - (B) A written construction project safety and health plan that addresses how Seller will implement the safety and health requirements of the SOW, this Agreement, the Company's DOE-approved WSHP, and applicable laws and regulations. The plan shall also:
 - (i) Have the level of detail commensurate with the size, complexity and risk level of the construction project.

- (ii) Designate the individual responsible for on-site implementation of the plan and who has authority to act on behalf of the Seller ("designated representative"). The plan shall state their qualifications.
 - (iii) Provide a list of those project activities for which subsequent hazard analyses are to be performed.
- (3) Seller is responsible for complying with applicable Occupational Safety and Health (OSHA) standards and requirements where development of supplemental substance/activity compliance plans and training are required. All plans developed by the Seller shall be made available to the Company for review, upon request.
- (4) During periods of active construction, Seller's designated representative shall be present on the construction site. Seller's designated representative must make frequent and regular inspections of the construction worksite to identify any instances of noncompliance with project ES&H requirements.
- (5) Seller shall have a disciplinary process for employees failing to utilize appropriate protective measures.
- (b) Integrated Safety Management.
 - (1) Seller shall perform this Agreement in a manner that ensures adequate protection for workers, the public, and the environment, and shall be accountable for the safe performance of work. The Seller shall exercise a degree of care commensurate with the work and the associated hazards. Seller shall ensure that management of ES&H functions and activities is an integral and visible part of Seller's work planning and execution processes. In performance of this work, the Seller shall:
 - (A) Establish and maintain clear and unambiguous lines of authority and responsibility for ES&H matters at all organizational levels.
 - (B) Ensure personnel possess the experience, the knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (C) Effectively allocate resources to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment shall be a priority whenever activities are planned and performed.
 - (D) Before work is performed, evaluate the associated hazards and establish ES&H standards and requirements which will protect employees, the public, and the environment from adverse consequences.
 - (E) Establish tailored administrative and engineering controls to prevent and mitigate hazards for work being performed.
 - (F) Ensure that line management is responsible for the protection of employees, the public and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.
 - (2) In accordance with the SOW and this Agreement, Seller shall demonstrate through documentation and work practices that its performance of the work under this Agreement:
 - (A) Fulfills the scope of work as outlined in the SOW and this Agreement;
 - (B) Identifies and analyzes hazards associated with the work;
 - (C) Develops and continuously implements hazard controls related to this work;
 - (D) Allows the performance of work within the hazard controls; and,
 - (E) Provides feedback to the Company and Seller's employees on adequacy of hazard controls and opportunities for continuous improvement.
 - (3) Seller shall ensure workers are aware of foreseeable hazards and the protective measures described within the HA prior to beginning work.
 - (4) Seller shall require that workers acknowledge being informed of the hazards and protective measures associated with assigned work activities.
- (c) Exposure Monitoring/Occupational Medicine. Seller shall perform the following additional hazard identification tasks consistent with the WSHP and HA:
 - (1) Seller shall be responsible for identifying all potential exposures (chemical, biological, radiological, physical) to which its employees and the employees of lower-tier subcontractors may be exposed while performing any work under this Agreement. Seller is responsible for providing the required exposure monitoring and providing employees appropriate personal protective equipment to minimize exposures.
 - (i) Respirable Crystalline Silica (RCS) Exposure- The Seller shall comply with the program requirements found in 29 CFR 1926.1153 Respirable Crystalline Silica. Prior to initiation of work the Seller shall submit to the Company's Procurement Officer and Technical Project Officer (TPO) the Seller's Respirable Crystalline Silica Exposure Control Plan for tasks that will expose workers to RCS. Seller shall ensure the Exposure Control Plan meets the requirements of 29 CFR 1926.1153(g) and shall outline the Seller's plans for conducting exposure assessments and personal exposure monitoring. Seller's HA should be consistent with the [Company's Sample HA for Silica](#). Seller shall comply with the silica Threshold Limit Value (TLV) in the 2016 edition of American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLV) and Biological Exposure Indices (BEI) booklet. The Seller is required to collect and report worker exposure data using ORNL Subcontractor Silica Sampling Report Form (ORNL-1159). The Seller shall submit reports to the Procurement Officer and TPO monthly, or at subcontract completion if duration is less than one month. The Seller is responsible for conducting initial baseline and ongoing exposure monitoring to ensure compliance with the TLV.
 - (2) For each of its employees and each of its lower-tier subcontract employees that the Seller has identified to be at risk of potential exposure, the Seller shall notify Company of the potential exposure as part of the HA.

- Company will review this information before work under this contract can begin. Seller, upon obtaining the results of any exposure monitoring, shall provide the data to the Company.
- (3) Seller shall have an occupational medicine program that is compliant with the applicable requirements of 10 C.F.R. § 851.24, Appendix A, Section 8. Seller shall ensure that its employees and the employees of any lower tier subcontractor are medically qualified to perform work associated with any potential exposures and hazards that have been identified. Medical qualification and medical surveillance programs are the sole responsibility of the Seller. In addition, Seller is responsible for maintaining any records associated with the administration of these programs. In the event that an employee of Seller or a lower tier subcontractor requires a medical qualification examination or medical surveillance program, it is the Seller's sole responsibility to obtain these services.
 - (d) Reports. Seller shall make the following reports to the Company:
 - (1) Seller shall report to the Company within two (2) working days of learning of an occupational injury or illness that is recordable under 29 C.F.R. § 1904.12(c). Reports shall be made on DOE Form 5484.3, *Individual Accident/Incident Report*, which is available under the title *Special Articles and Forms* at <http://www.ornl.gov/adm/contracts/documents.shtml>. Seller shall maintain a record of project injuries and illnesses on the OSHA 300A, *Summary of Work-Related Injuries and Illnesses*, or equivalent, and provide copies of injury and illness information to Company annually or upon request. Seller shall notify the ORNL Laboratory Shift Supervisor (865) 574-6606 of any accident or near miss within two (2) hours of the occurrence. Seller shall also notify the Procurement Officer and the Technical Project Officer of any accident or near miss as required in the SOW or this Agreement.
 - (2)
 - (3) Seller shall forward reports from lower-tier subcontractors to the Company consistent with the requirements above.
 - (e) Noncompliances. The Seller shall promptly evaluate and resolve any noncompliance or potential noncompliance with ES&H requirements. If the Seller fails to resolve the noncompliance within a reasonable period of time or if, at any time, the Seller's acts or failures to act cause substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Company may:
 - (1) Issue an order stopping work in whole or in part. Any stop work order issued by the Procurement Officer under this clause (or issued by the Seller to a subcontractor) shall be without prejudice to any other legal or contractual rights of the Company. If the Procurement Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Procurement Officer. The Seller shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
 - (2) Require, in writing, that the Seller remove from the work site any employee the Company deems unsafe, incompetent, careless, or otherwise objectionable. Replacement of the removed employee shall be at the Seller's expense and not chargeable to the Company.
 - (3) Require the Seller's participation, at the Seller's expense, in the Company's fact-finding investigations of accidents, injuries, occurrences, and near-misses.
 - (4) Terminate the Agreement for default and pursue any other remedies provided by law or this Agreement.
 - (5) Remove the Seller from consideration for future subcontract awards.
 - (f) Civil Penalties and Indemnification.
 - (1) 10 CFR Part 851, *Worker Safety and Health Program*, establishes worker safety and health requirements that govern the conduct of contractor activities at DOE sites. Contractors that fail to comply with the Rule are subject to civil penalties issued by DOE, up to \$121,876 per violation, with each day of violation constituting a separate violation, or contractual penalties.
 - (2) Seller assumes full responsibility and shall indemnify, hold harmless, and defend the Company, its directors, officers, and employees from any civil liability under §234C of the Atomic Energy Act of 1954 (the AEA), as amended (42 U.S.C. § 2282c), or DOE's implementing regulations at 10 C.F.R. Part 851, Subpart E, *Enforcement Process*, arising out of the activities of the Seller, its subcontractors, suppliers, agents, employees, and their officers and directors. The Seller's obligation to indemnify, hold harmless and defend includes attorneys' fees and other reasonable costs of defending any action or proceeding instituted under Section 234C of the AEA, as amended, or 10 C.F.R. Part 851.
 - (g) Observation by Company. Representatives of the Company may conduct periodic observations of the Seller's on-site activities for compliance with ES&H requirements. The Company's Procurement Officer will notify the Seller in writing of observed noncompliances with applicable ES&H requirements that cannot be immediately resolved. Seller shall immediately take appropriate corrective action. Seller shall advise the Company's Procurement Officer, in writing, within five (5) working days of the corrective action taken on any written noncompliance. Repeated or willful noncompliance with applicable ES&H requirements by the Seller shall constitute a default under other provisions of this Agreement and Company may terminate the Agreement in accordance with those provisions.
 - (h) Occupational Radiation Protection Records. Company, acting on behalf of DOE, will maintain individual occupational radiation exposure records as required for Seller's employees for periods that they are employed for work under this Agreement. Should Seller choose, in addition, to maintain its own individual occupational radiation exposure records during the performance of work under this Agreement, Seller's records shall be subject to inspection by Company and/or DOE and shall be preserved by Seller until disposal is authorized by Company, or

at the option of Seller, delivered to Company upon completion or termination of the Agreement. If Seller exercises the foregoing option, title to such records shall vest in DOE upon delivery.

- (i) Chemicals On-site. Seller warrants that each chemical substance constituting or contained in items furnished under this Agreement is on the list of substances published by the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act as amended. With each delivery, Seller shall provide Company any applicable Material Safety Data Sheet as required by the Occupational Safety and Health Act and applicable regulations including, without exception, 29 C.F.R. § 1910.1200.
- (j) Hoisting and Rigging. Seller may not bring to or use on-site any hoisting and rigging equipment that contains any SAE Grades 5, 8, or 8.2 fasteners or ASTM Grade A325 fasteners identified on the "DOE Suspect Bolt Headmark List" which is available under the title *Special Articles and Forms* at <http://www.ornl.gov/adm/contracts/documents.shtml>. For purposes of this paragraph, "hoisting and rigging equipment" means:
 - (1) Overhead and gantry cranes as defined in 29 C.F.R. § 1910.179;
 - (2) Crawler, locomotive, and truck cranes as defined in 29 C.F.R. § 1910.180;
 - (3) Derricks, as defined in 29 C.F.R. § 1910.181; and
 - (4) Associated lifting devices such as slings, lifting fixtures, and lifting attachments.
- (k) Working on or near energized parts.
 - (1) Energized parts mean parts that operate at 50 or more volts to ground or contain 5 or more Joules of stored electrical energy.
 - (2) Seller shall comply with National Fire Protection Association (NFPA) 70E when working on or near energized parts.
 - (3) Prior to working on or near any energized parts, Seller shall obtain through the Procurement Officer the advance approval of the responsible Company Level II Manager, of Seller's plans and proposed activities. Seller must allow in its scheduling for a reasonable amount of time to obtain said approval and Company shall not be responsible for any resulting delay, so long as Company's actions were reasonable. Seller is responsible, at no additional cost to the Company, to provide qualified personnel and compliant personal protective equipment.
- (l) Control of hazardous energy sources that require lockout/tagout will be managed (i.e., identified, assessed, and controlled) by the Company. The Seller is required to follow OSHA (as applicable through 10 CFR 851.23) and NFPA 70E requirements for hazardous energy control which require the Seller to establish a written hazardous energy control process and train employees. These requirements also apply to a single source of hazardous energy.
- (m) Lower-tier Subcontractors. Seller shall include this clause in all of its subcontracts, at any tier, involving performance of this Agreement. However, such provision in the subcontracts shall not relieve Seller of its obligation to assure compliance with the provisions of this clause for all aspects of the work. Seller shall be responsible for identifying all potential hazards to their lower-tier subcontractors.
- (n) Construction Safety. During periods of active construction (i.e., excluding weekends, weather delays, or other periods of work inactivity), the construction contractor must have a designated representative on the construction worksite who is knowledgeable of the project's hazards and has full authority to act on behalf of the construction contractor. The contractor's designated representative must make frequent and regular inspections of the construction worksite to identify and correct any instances of noncompliance with project safety and health requirements.

1.32 ELECTRICAL EQUIPMENT REQUIREMENTS

Unless stated elsewhere in this Agreement or considered low hazard equipment that does not exceed the safety thresholds given in Thresholds for Hazardous Electrical Energy Levels exhibit, all electrical equipment, assemblies, or products utilized by Seller or lower-tier supplier: (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 supplier shall provide the NRTL's evaluation report with the equipment.

1.33 BACKCHARGE WORK

- (a) Backcharge work is a cost sustained by Company or the Government and chargeable to Seller for the performance of work which is Seller's responsibility under this Agreement.
- (b) Upon identification of an actual or anticipated backcharge, Company will provide Seller a written notice which shall describe the work to be performed, the schedule for performance, and the cost to be charged the Seller. The cost may include:
 - (1) actual labor cost,
 - (2) actual material cost including transportation, and
 - (3) taxes, levies, duties and assessments.
- (c) Seller is required to accept the backcharge or reperform work at Seller's cost. In the event Seller refuses to accept or agrees to performance of the work within twenty-four (24) hours after receipt of Company's notice, Company may elect to proceed with the backcharge work and set-off the cost from Seller's payment. Company has the right to set-off such cost against any amount payable to the Seller whether or not in connection with this Agreement.

1.34 DRUG-FREE WORKPLACE PROGRAM

- (a) Program Requirements.

- (1) (A) Except as provided in subparagraph (B) below, the Seller and its subcontractors working on the project site must maintain a drug-free workplace program that conforms with Title 50, Chapter 9, of the Tennessee Code and applicable rules adopted pursuant to Chapter 9.
- (B) If the Seller is an out-of-state entity, the Company may upon request allow a drug-free workplace program that conforms with Seller's state law.
- (2) No employee of the Seller or its subcontractors may work on the project site unless the employee's most recent test under the drug-free workplace program was within the past twelve (12) months and the results of that test were negative.
- (3) The Seller must immediately remove from the site any employee who receives a confirmed positive test result. Such employees may not return to the project site earlier than ninety (90) days from the date of the positive test and only after receiving a negative follow-up test result. (The 90-day bar will not necessarily apply to employees who after receiving a confirmed positive test result voluntarily enter an employee assistance program for drug-related or alcohol-related problems or a drug or alcohol rehabilitation program; these employees may return to the project site before the end of the 90-day bar if they complete the program and receive a follow-up negative test result.)
- (4) The Seller must require employees who have not received a confirmed positive test result but who voluntarily enter an employee assistance program for drug-related or alcohol-related problems, or a drug or alcohol rehabilitation program, to submit to follow-up drug and alcohol tests within three (3) days after they leave the program.
- (b) Reports.
 - (1) Upon Request, the Seller and each of its subcontractors must provide to the Company a copy of its most recent Tennessee Drug-Free Workplace Application Form submitted to and certified by the Tennessee Commissioner of Labor and Workforce Development unless the Company has a current and valid form on file. The required form is available at the State of Tennessee Drug Free Workplace Program web site at <https://www.tn.gov/workforce/injuries-at-work/employers/employers/drug-free-workplace-program.html> (Upon request out-of-state entities must submit evidence sufficient to establish that their programs are in effect.) If requested the Seller and its subcontractors must also provide a copy of any certified renewal application forms submitted during the period of this Agreement.
 - (2) Before the fifth day of each month of performance, the Seller must certify to the Company that every employee working on site has been tested as required by the drug-free workplace program and this clause and that the test results were negative.
- (c) Audit. The Company may audit any drug-free workplace program required by this clause and shall have access to all relevant records of the Seller and its subcontractors for this purpose, provided such access does not violate requirements for confidentiality of records.
- (d) Hold Harmless. The Seller shall defend and hold the Company harmless from any suits or claims by its or its subcontractors' employees relating to enforcement of this clause.
- (e) Subcontracts. The Seller shall include this clause, including this paragraph (e), in all subcontracts hereunder involving work on the project site.

1.35 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.

1.36 OTHER CONTRACTS

The Company or Government may undertake or award other contracts for additional work at or near the Seller's work site. Seller shall fully cooperate with the other contractors and with Company and Government employees and shall carefully adapt scheduling and performing the work under this Agreement to accommodate the additional work, heeding any direction that may be provided by Company. Seller shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Company or Government employees.

1.37 GRATUITIES

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

1.38 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.

1.39 EXECUTION OF WORK

In connection with the services covered by this Agreement, the Seller agrees to execute the work using the method or plan for performance agreed to during negotiations concerning the performer of the work (i.e., Seller personnel or subcontractors or outside associates or consultants). The Seller shall obtain the Procurement Officer's written consent before making changes in the method or plan for performance proposed and agreed to during negotiations concerning the performer of the work.

1.40 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).

1.41 EMPLOYEE CONCERNS PROGRAM / DIFFERING PROFESSIONAL OPINIONS

- (a) DOE Order 442.1B (available at <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.

1.42 INFORMATION TECHNOLOGY

- (a) Seller and all sub-tier subcontractors must comply with the Contractor Requirements Document (CRD) of DOE O 205.1D and have supply chain management and System Development Lifecycle (SDLC) processes meeting the requirements of DOE O 205.1D and NIST SP 800-161
 - (1) Applicability. This requirement applies only when identified by Buyer as applicable to the purchase order, including procurements of information technology (IT), operational technology (OT), software, cloud or other information services, or other products or services that: (i) collect, create, process, transmit, store, or disseminate DOE information or data on an information system or OT for or on behalf of DOE; (ii) connect to, interface with, or may affect the security of Buyer's or DOE's information systems or OT; or (iii) support safety, environmental, health, security, quality, or other mission-essential functions, as determined by Buyer.
 - (2) Cybersecurity supply-chain requirements. Seller shall comply with the applicable cybersecurity requirements identified by Buyer that are derived from the Contractor Requirements Document (CRD) of DOE O 205.1D, Department of Energy Cybersecurity Program. Seller shall maintain policies and processes, commensurate with the risk and nature of the products or services provided, that address cybersecurity supply-chain risk management, secure system/software development life cycle practices where applicable, and software bill of materials requirements where applicable, consistent with DOE O 205.1D and NIST SP 800-161.

- (3) Flowdown. Seller shall flow down these requirements to lower-tier subcontractors and suppliers to the extent necessary for Seller to meet the requirements of this purchase order and to the extent the lower-tier work, product, software, service, system, or component is within the scope of this provision.
- (b) 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).

1.43 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.

1.44 CRITIQUES, REVIEWS, AND CAUSAL ANALYSES

The Subcontractor shall cooperate with ORNL Critique and Causal Analysis programs in any event, incident, or undesirable condition arising from the performance of this subcontract. Such cooperation includes providing timely access to personnel, information, and documentation necessary to support ORNL's reviews, critiques, and causal analyses.

The Subcontractor shall comply with all applicable ORNL procedures related to event and issue reporting, critique activities, and causal analysis, and shall participate as required to support issues management, prevent recurrence, and ensure safe, compliant operations.

1.45 TAXES, TARIFFS, AND DUTIES (COMPANY – SEPT 2026)

- (a) Definitions. As used in this Section:
- (1) "After-Imposed Tax" means (i) any new or increased Federal, State, or local tax, tariff, duty, or similar charge (including excise taxes) imposed on the transactions or property covered by this Agreement, or (ii) any tax, tariff, duty, or similar charge previously exempted or excluded that becomes applicable to the transactions or property covered by this Agreement, in each case as a result of legislative, judicial, or administrative action or decision taking effect after the Contract Date, and that Seller is required to pay or bear.
 - (2) "After-Relieved Tax" means any reduction, elimination, refund, or recovery (including drawback) of any tax, tariff, duty, or similar charge otherwise applicable to the transactions or property covered by this Agreement that occurs as a result of legislative, judicial, or administrative action or decision taking effect after the Contract Date, to the extent such tax, tariff, duty, or similar charge was included in the Contract Price or otherwise paid or borne by Seller or Company in connection with performance of this Agreement.
 - (3) "Applicable Taxes" means all taxes, tariffs, duties, and similar charges in effect on the Contract Date that are imposed by any taxing authority on the transactions or property covered by this Agreement. The term does not include social security taxes or other employment taxes.
 - (4) "Contract Date" means the effective date of this Agreement or, in the case of an amendment, the effective date of such amendment.
- (b) Included Taxes. Except as otherwise expressly provided in this Agreement, the Contract Price includes all Applicable Taxes.

- (c) **Price Increase for After-Imposed Taxes.** The Contract Price shall be increased by the amount of any After-Imposed Tax that Seller is required to pay or bear, provided that Seller certifies in writing that the After-Imposed Tax was not included in the Contract Price, whether as a contingency or otherwise, and provides documentation reasonably sufficient to establish the applicability and amount of the After-Imposed Tax. No adjustment shall be made to the extent Seller obtains or, through the exercise of reasonable diligence, could obtain an exemption, credit, refund, or other recovery with respect to the After-Imposed Tax.
- (d) **Price Decrease for After-Relieved Taxes.** The Contract Price shall be decreased by the amount of any After-Relieved Tax, including any refund, credit, recovery, or drawback of any tax, tariff, duty, or similar charge, to the extent attributable to any tax, tariff, duty, or similar charge included in the Contract Price or otherwise paid or borne by Seller or Company in connection with performance of this Agreement.
- (e) **Seller Responsibility for Exemptions, Credits, Refunds, and Drawbacks.** Seller shall take reasonable steps to obtain any exemption, credit, refund, or drawback available under applicable law with respect to taxes, tariffs, duties, or similar charges applicable to the transactions or property covered by this Agreement. The Contract Price shall be reduced to the extent Seller fails to obtain an available exemption, credit, refund, or drawback due to Seller's negligence, noncompliance with applicable law, or failure to follow reasonable instructions of Company. Upon Company's request, Seller shall reasonably cooperate with Company in obtaining any available exemption, credit, refund, or drawback. Any refund, credit, or drawback relating to taxes included in the Contract Price or otherwise paid or borne by Company shall be promptly paid to Company or credited against amounts otherwise due under this Agreement.
- (f) **Threshold.** No adjustment shall be made under this Section unless the amount of the adjustment exceeds \$250.
- (g) **Notice and Documentation.** Seller shall promptly notify Company of any event that may reasonably result in an adjustment to the Contract Price under this Section and shall provide reasonable supporting documentation. Any request for a price adjustment shall identify the particular tax, tariff, duty, or similar charge giving rise to the adjustment and shall include documentation reasonably sufficient to establish that:
 - (1) the tax, tariff, duty, or similar charge applies to the transactions or property covered by this Agreement;
 - (2) Seller is required to pay or bear the amount claimed;
 - (3) the amount claimed was not included in the original Contract Price, whether as a contingency or otherwise; and
 - (4) the amount of the requested adjustment.
 The parties shall cooperate in good faith to determine and implement any appropriate adjustment.
- (h) **Tax Exemption Support.** Where a reasonable basis exists, Company shall provide Seller with documentation reasonably necessary to support any available tax exemption. Seller shall promptly notify Company if any taxing authority refuses to accept such documentation or otherwise disputes the applicability of an exemption and shall reasonably cooperate with Company in responding to such refusal or dispute.

PART 2. APPLICABLE WHEN SELLER PERSONNEL WORK ON DOE SITE

2.1 INCORPORATION BY REFERENCE

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

Foreign Nationals (Company – Sept 2026)
 Hazardous Materials Reporting (Company – April 2025)
 Required Training (Company – July 2006)

2.2a FACILITIES ACCESS AND BADGES

- (a) This clause applies if the performance of this Agreement requires that the Seller, its agents, employees, or lower-tier subcontractor employees have physical access to Oak Ridge National Laboratory (ORNL) facilities; however, this clause does not contain requirements for employees and agents of Seller and any lower-tier subcontractors obtaining a security clearance. The Seller understands and agrees that the Company has a prescribed process with which the Seller, its agents, employees, and lower-tier subcontractor employees must comply in order to receive a badge that allows such physical access. The Seller further understands that it must propose employees and agents of Seller and any lower-tier subcontractors whose background offers the best prospect of obtaining a badge approval for access. The denial or revocation of a badge may occur considering the following criteria, which are not all inclusive and may vary depending on access requirements and circumstances:
 - (1) is, or is suspected of being, a terrorist;
 - (2) is the subject of an outstanding warrant;
 - (3) has deliberately omitted, concealed, or falsified relevant and material facts from any Questionnaire for National Security Positions (SF-86), Questionnaire for Non-Sensitive Positions (SF-85), or similar form;
 - (4) has presented false or forged identity source documents;
 - (5) has been barred from Federal employment;
 - (6) is currently awaiting a hearing or trial or has been convicted of a crime;
 - (7) is awaiting or serving a form of pre-prosecution probation, suspended or deferred sentencing, probation or parole in conjunction with an arrest or criminal charges against the individual for a crime that is punishable by imprisonment of six (6) months or longer; or
 - (8) positive drug test for the presence of illegal substances.
- (b) The Seller shall assure:

- (1) In initiating the process for gaining physical access, (i) compliance with procedures established by the Company in providing employee(s) and agent(s) of Seller and any lower-tier subcontractors with any forms directed by the Company, (ii) that the employee(s) and agent(s) of Seller and any lower-tier subcontractors properly complete any forms, and (iii) that the employee(s) and agent(s) of Seller and any lower-tier subcontractors submit the forms to the person designated by the Company.
- (2) In completing the process for gaining physical access, that employee(s) and agent(s) of Seller and any lower-tier subcontractors (i) cooperate with Company officials responsible for granting access to ORNL facilities and (ii) provide additional information requested by those Company officials.
- (c) The Seller understands and agrees that the Company or DOE may unilaterally deny or revoke a facility access or badge to an employee or agent of Seller or lower-tier subcontractor and that the denial or revocation remains effective for that employee or agent of Seller or lower-tier subcontractor unless the Company or DOE subsequently determines that access may be granted or restored. Upon notice from the Company or DOE that an employee's application for a badge is or will be denied or revoked, the Seller shall promptly identify and submit the forms referred to in subparagraph (b)(1) of this clause for the substitute employee or agent. The denial or revocation of a badge to access ORNL to individual employees or agents of Seller or any lower-tier subcontractor by the Company or DOE shall not be cause for extension of the period of performance of this Agreement or any Seller claim against the Company or DOE.
- (d) The Seller shall return to the Company the badge(s) or other credential(s) provided by the Company pursuant to this clause, granting physical access to ORNL facilities by employees and agents of Seller and any lower-tier subcontractors, upon (1) the termination of this Agreement; (2) the expiration of this Agreement; (3) the termination of employment on this Agreement by an individual employee or agent of Seller or any lower-tier subcontractor; or (4) demand by the Company or DOE for return of the badge.
- (e) The Seller shall include this clause, including this paragraph (e), in any subcontract, awarded in the performance of this Agreement, in which an employee(s) or agent of the subcontractor will require physical access to ORNL facilities.

2.2b RETURN OF BADGES AND PROXIMITY CARDS

- (a) Badges and proximity cards issued to Seller and its lower-tier subcontractor employees remain the property of the U.S. Government and must be returned to the Company at the earliest of any of the following, unless otherwise determined by the Company:
 - (1) When no longer needed for Agreement performance.
 - (2) Upon completion of the Seller or lower-tier subcontractor employee's employment.
 - (3) Upon completion or termination of this Agreement.
 Failure to do so may result in the loss of future work with the Company and may delay final payment.
- (b) Failure by employees of the Seller and its lower-tier subcontractors to return badges will result in a charge of \$100 per badge. The charge shall be deducted from payments otherwise due the Seller or may be billed to Seller. Refund of charges, previously collected for badges subsequently found, may not be made after the date of final payment to the Seller.
- (c) The \$100 charge will not be assessed against badges that are lost or stolen during performance of the Agreement if replacement badges are issued to allow Seller or lower-tier subcontractor employees to return to work.

PART 3. APPLICABLE WHEN WORK INVOLVES ACCESS TO CLASSIFIED INFORMATION, SPECIAL NUCLEAR MATERIAL OR AUTHORIZED UNRESTRICTED ACCESS TO AREAS CONTAINING THESE

3.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15. The following clauses are incorporated by reference:
 Civil Penalties for Classified Information Security Violations (Company – Sept 2008)
 Exhibit 7 - Filing of Patent Applications - Classified Subject Matter (Company – Oct 2025)

3.2 PERSONNEL SECURITY CLEARANCES

- (a) The Seller shall not permit any individual to have access to any classified information or special nuclear material unless the individual possesses a current access authorization from DOE for the particular level and category of classified information or particular category of special nuclear material to which access is required.
- (b) The Seller and its employees or agents agree to comply with background checks including the submission of information and forms required by DOE Order 472.2, Personnel Security. The process requires submission of fingerprints, a urine analysis testing for the presence of illegal substances, and a background check conducted by the Company, outside entities, or DOE. That check may include, without limitation, the following:
 - (1) credit check;
 - (2) verification of a high school degree or diploma or a degree or diploma granted by an institution of higher learning within the past five (5) years;
 - (3) contacts with listed references;
 - (4) contacts with listed employers for the past three (3) years (excluding employment of less than sixty (60) working days duration, part-time employment, and craft/union employment); and

- (5) local law enforcement checks as allowed by state or local law, statute, or regulation and when the individual has resided in the State of Tennessee.
- (c) Individuals that have a positive urine analysis for the presence of illegal substances will not be granted a security clearance.
- (d) Individuals with a security clearance will be subject to random drug testing.
- (e) The Seller shall include this clause in any subcontract in which an employee of the subcontractor will require a security clearance.
- (f) "Classified information" means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as National Security Information.
- (g) "Special Nuclear Material" means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2701 [section 51 as amended, of the Atomic Energy Act of 1954], has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

PART 4. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD

4.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 1.15. The following clauses are incorporated by reference:
 Utilization of Small Business Concerns (Company – July 21, 2015)
 DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2000)(Deviation)(AL 2021-04)

PART 5. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$500,000

5.1 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)

5.2 PERFORMANCE EVALUATION PROGRAM

- (a) Company has established a performance evaluation program to (1) assist Seller in improving performance and (2) aid in the source selection process relative to future work. The program applies to this Agreement.
- (b) Ratings are used by Company to recognize outstanding performance, as well as to identify areas of deficient performance in order that corrective actions can be taken to foster continuous improvement. Key areas to be evaluated and their order of importance are: (1) Safety and Health; (2) Field Operations and Execution; (3) Quality; (4) Project Commissioning, Closeout, and Post-Project Support; (5) Environmental; (6) Project Control; (7) Contract Administration; (8) Health Physics; (9) Security; and (10) Diversity. The Evaluation Report will be prepared jointly by the Procurement Officer and the Technical Project Officer and will include input from other project team members.
- (c) At completion of this Agreement, every 12 months during the term of the Agreement or underlying task order, or at shorter intervals at Company's sole discretion, Company's Procurement Officer will provide a Performance Evaluation Report to the Seller's senior management regarding the Seller's performance. Seller shall be notified of performance determined to be Marginal or Unsatisfactory in any key process area. Seller is expected to take immediate action to correct any identified deficiency. If Seller disagrees with the rating, Seller shall have thirty (30) calendar days from the date of the notice to respond with factual information relating to its performance. Any disputed rating shall be reviewed and a final determination made by the Company's Director of Contracts, exclusively. All disputes concerning the evaluation of Seller's performance are not subject to review by any agency, board, or judicial entity.

PART 6. APPLICABLE TO ALL AGREEMENTS IN EXCESS OF \$2.5M

6.1 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 (June 2020)

PART 7. APPLICABLE ONLY TO CERTAIN AGREEMENTS

7.1 EMPLOYMENT ELIGIBILITY VERIFICATION

If this Agreement exceeds \$3,500, this Agreement incorporates by reference FAR 52.222-54 Employment Eligibility Verification (Jan 2025). This clause is not applicable to services purchased with a commercially available off-the-shelf (COTS) item or a COTS item with minor modifications performed and normally provided for the item by the COTS provider.

7.2 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.