

**Oak Ridge Associated Universities
Corporate Subcontract Terms & Conditions**

PART 1. APPLICABLE TO ALL TRANSACTIONS

1.1 DEFINITIONS

The following terms shall have the meanings below:

- (a) Company means Oak Ridge Associated Universities (ORAU).
- (b) Seller or subcontractor means the person or organization that has entered into this Agreement.
- (c) Agreement means Purchase Order, Contract, Blanket Agreement, or modifications thereof.
- (d) Buyer/Contract Specialist means Company's cognizant Procurement representative.
- (e) Item means "commercial item".

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. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of alternative disputes resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Oak Ridge, Tennessee. Cost shall be allocated by the mediator or arbitrator, except 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) Subject to (2) below, 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 either Anderson, Knox or Roane County, Tennessee, in the Circuit or Chancery Court, as appropriate.
- (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 the laws of the State of Tennessee.
- (c) There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this subcontract pending final resolution of any dispute arising under this subcontract between the parties hereto or between Seller and its sub-tier subcontracts.

1.3 ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) face of the Agreement, (2) special terms and conditions, (3) item description, and (4) general terms and conditions.

1.4 TITLE

All property rights and interests resulting from this Agreement shall pass directly from Seller to the Company.

1.5 ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement or delivering the items identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporates by reference or attachment. Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement that are different from or in addition to those mentioned in this document. Failure of Company to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement.

1.6 WARRANTY

Seller warrants that items delivered under this Agreement shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of this Agreement. The warranty shall begin upon acceptance and extend for a period of (1) the manufacturer's warranty period or six months, which ever is longer, if Seller is not the manufacturer and has not modified the item or (2) one year or the manufacturers warranty period, whichever is longer, if Seller is the manufacturer of the item or has modified it. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such items or services. Transportation of replacement items and return of non-conforming items and repeat performance of services shall be at Seller's expense. If repair or replacement of services is not timely, Company may elect to return the non-conforming items or repair or replace them or procure the services at Seller's expense.

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1.7 ASSIGNMENT

Seller shall not assign rights or obligations to third parties without the prior written consent of Company. However, Seller may assign rights to be paid for amounts due or to become due to a financing institution if Company is promptly furnished written notice and a signed copy of such assignment. Payments to an assignee shall be subject to set off or recoupment for any present or future claims of Company against Seller.

1.8 NEW MATERIALS

Unless otherwise specified in this Agreement, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. This does not exclude the use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

1.9 TRANSPORTATION

If transportation is specified "FOB Origin," no insurance cost shall be allowed unless authorized in writing.

1.10 RISK OF LOSS

Where Company is liable to Seller for loss of conforming items occurring after the risk of loss has passed to Company, Company shall pay Seller the lesser of (1) the agreed price of such items, or (2) Seller's cost of replacing such items. Such loss shall entitle Seller to an equitable extension in delivery schedule obligations.

1.11 INSPECTION

- (a) Company has the right to inspect and test all services and supplies called for by the Agreement, at all reasonable places, including Seller's location, and all reasonable times during the term of the Agreement. Such inspections and tests shall be conducted in a manner that will not unduly delay the work. Seller and subcontractors shall provide reasonable location and assistance if needed.
- (b) If any of the services or supplies are not compliant with the requirements of the Agreement, Company may require Seller to reperform the services or repair or replace the supplies for no additional fee. When the defects cannot be corrected by reperformance, repair, or replacement, Company may (1) require Seller to take necessary action to ensure future compliant performance and (2) reduce any fee payable under the Agreement to reflect the reduced value of the services or supplies.
- (c) If Seller fails to promptly correct the defects or take action necessary to ensure future compliant performance, Company may (1) reduce any fee payable by an equitable amount under the circumstances and/or (2) terminate for default.

1.12 PAYMENT

Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, required, or (2) delivery of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments may be made either by check or electronic funds transfer, at the option of Company. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

1.13 INTEREST

Except for educational and non-profit institutions, all amounts due to Company by Seller shall accrue interest from the date due until paid, unless paid within 30 days of the date due. The interest rate shall be the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563) 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.

1.14 COMPLIANCE WITH LAWS

Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, 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 including without limitation, underground utility permit requirements. Seller warrants that each chemical substance constituting or contained in items furnished by this Agreement is on the list of substances published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act as amended. With each

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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 CFR 1910.1200.

1.15 SUSPENSION OF WORK

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

1.16a TERMINATION FOR DEFAULT

- (a) Company may terminate this Agreement for default, in whole or in part, if Seller fails to comply with any of the terms of this Agreement, or fails to provide adequate assurance of future performance. In that event, Company shall not be liable for any amount for items not accepted.
- (b) If this Agreement is terminated for default, Company may require Seller to deliver to Company any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Agreement. Company shall pay the agreed-upon price for completed items delivered and accepted. Company and Seller shall agree on the amount of payment for all other deliverables.
- (c) Seller shall not be liable to Company for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence, including but not limited to acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of Seller's suppliers at any tier. However, the delays of Seller's suppliers at any tier must be proved to be beyond the control of both Seller and its suppliers and without fault or negligence of either.
- (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.

1.16b TERMINATION FOR CONVENIENCE

Company reserves the right to terminate this Agreement, or any part hereof, for the convenience of itself or the Government. In the event of such termination, Seller shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work. Subject to the terms of this Agreement, Seller shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Company using its standard record keeping system, have resulted from the termination. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

1.17 SELLER'S RESPONSIBILITIES

- (a) Seller shall act in performance of this Agreement as an independent contractor and not as an agent for the Company 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 Company. Seller is solely responsible for the actions of itself and its lower-tier subcontractors, agents or employees.
- (b) Seller shall be solely responsible for all criminal fines and penalties assessed against Seller.
- (c) Cost and expenses incurred by Company that are determined to be unallowable that result from the acts or omissions of Seller or its subcontractors may be recovered by Company from Seller.
- (d) Seller shall provide and maintain workers' compensation insurance as required by applicable statutes.
- (e) Seller shall provide Employer's liability, comprehensive general liability, automobile, and contractual liability insurance properly safeguarding Seller and Company against liability for injuries to persons, including injuries resulting in death and damage to or destruction of property, in no less than \$500,000 for injuries to one person and \$1,000,000 for injuries to two or more persons in any one accident; and \$500,000 for damage to or destruction of property in any one accident. Seller may, with approval of the Contract Specialist, maintain self-insurance for insurance

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requirements herein. If Seller is a State agency, such as an Educational Institution, and is not insured because of constitutional or statutory prohibition, the state laws governing liabilities and remedies in these areas shall apply.

(f) Before commencing work under this Agreement, Seller shall provide written certification that the required insurance has been obtained or, if appropriate, Seller maintains an adequate self-insurance program. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting Company's interest shall not be effective until 30 days after the insurer gives written notice to Company.

1.18 BANKRUPTCY

If Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Buyer/Contract Specialist within five 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 numbers all company agreements for which final payment has not been made.

1.19 TAXES

By reason of Tax Exemption No. 100141955, Seller should not include in the price any state and local taxes incurred in the state of Tennessee except those which were paid by Seller to third parties in acquiring the items which are the subject matter of this Agreement. The price does include all applicable Federal taxes.

1.20 ENVIRONMENT, SAFETY AND HEALTH PROTECTION

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

(b) If Seller is performing any of the work onsite which is defined as at ORAU or any other Company owned or leased facility, Seller shall comply with Part 3 of these terms and conditions below.

1.21 EMPLOYEE CONCERNS PROGRAM

(a) ORAU has established an Employee Concerns Program (ECP), modeled after the Department of Energy's ECP. The ECP provides a means for employees to raise good-faith concerns that a policy or practice of the Company or its 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) Per the ECP, subcontractor employees may raise concerns about actions of the Company or its employees directly with the Company.

(c) The Seller must notify its employees that:

(1) The Company has an ECP;

(2) Employees are encouraged to first seek resolution with first-line supervisors or through existing complaint or dispute resolution systems, but that they have the right to report concerns through the ECP;

(3) If a concern is not resolved by supervisors, or if the employee elects not to raise the concern with supervisory personnel, the concern may be reported to the Company by calling (865) 576-3054; and

(4) The Company will not tolerate reprisals against or intimidation of employees who have reported concerns.

(d) Upon request, the Seller must assist the Company in resolution of employee concerns.

(e) The Seller shall include this clause in subcontracts hereunder.

1.22 PRIVACY ACT

(a) The Contractor agrees to--

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish any function when the contract specifically identifies--

(i) The systems of records; and

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(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c) (1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

1.23 BADGES AND PROXIMITY CARDS

The Seller's employees or subcontractors may require the use of ORAU badges and proximity cards issued by the Company in order to perform work under this subcontract. ORAU badges and proximity cards must be returned to the Company upon completion of this subcontract. Failure to do so could result in the loss of future work with the Company.

1.24 PUBLIC RELEASE OF INFORMATION

Except as provided in the Statement of Work, work description, statutory requirement, or other provisions of this Agreement, no public release of information, including, without limitation, data, photographs, sketches, and advertising, announcements, denials or confirmations related to the work under this Agreement shall be made without the prior written approval of Company. Any request for approval shall include identity of the specific media as well as other pertinent details of the requested release.

1.25 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 4.1

The following documents are incorporated by reference:

ORAU Policy GP-810 Quality Assurance, Attachment 1
Counterfeit/Suspect Materials

PART 2. APPLICABLE WHEN ITEMS INCLUDE SERVICES

2.1 APPLICATION OF UNIFORM COMMERCIAL CODE

For the purposes of items that include services, the Uniform Commercial Code Article 2, Parts 1, 3, 5, 6, and 7 as adopted by the State of Tennessee shall apply to this Agreement.

2.2 CHANGES

(a) Company may at any time, by written notice, make changes within the general scope of this Agreement in any one or more of the following: (1) description of the services to be performed; (2) place of performance; and (3) the amount of services to be furnished. If any such change causes a difference in the cost of, 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 modification to this Agreement signed by both parties. Any

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claim for adjustment by Seller must be made within 30 days from the date of receipt of Company's change notice, although Company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment.

- (b) Only the Buyer/Contract Specialist is authorized on behalf of Company to issue changes whether formal or informal. If Seller considers that any direction or instruction by Company personnel constitutes such a change, Seller shall not rely upon such instruction or direction without written confirmation from the Buyer/Contract Specialist. Nothing in this clause, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the agreement as changed.

PART 3. APPLICABLE WHEN SELLER PERSONNEL WORK ON COMPANY SITE

3.1 INCORPORATION BY REFERENCE

For information on clauses incorporated by reference, see Part 4.1

The following documents are incorporated by reference:

ORAU Visitor and Subcontractor Handbook: When work is to be performed by subcontractor personnel on Company's site, the environmental, safety, health and security rules, regulations, policy and procedures contained in the ORAU Visitor and Subcontractor Handbook shall be followed.

ORAU Policy HR-1010 Drug/Alcohol Free Workplace, Subcontractor Requirements
Insurance – Work on Government Installation (Company 4-99)

PART 4. APPLICABLE WHEN WORK INVOLVES ACCESS TO CLASSIFIED INFORMATION, SPECIAL NUCLEAR MATERIAL OR AUTHORIZED UNRESTRICTED ACCESS TO AREAS CONTAINING THESE

4.1 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 Buyer/Contract Specialist. DOE ORO and Company clauses incorporated by reference are available from Company's Procurement Internet Home Page: <http://www.ora.gov/procurement/business.htm>. The FAR and DEAR may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C." or from the following Government web sites, FAR: <http://www.arnet.gov/far/> and DEAR: <http://professionals.pr.doe.gov/ma5/MA-5Web.nsf/Procurement/Acquisition+Regulation?OpenDocument>

The following clauses are incorporated by reference:

FAR 52.227-10 Filing of Patent Applications-Classified Subject Matter (APR 1984)

DEAR 952.204-2 Security (MAY 2002)

DEAR 952.204-70 Classification/Declassification (SEP 1997)

DEAR 952.204-73 Facility Clearance (MAY 2002)

ORO H5 Safeguards and Security Awareness Program (MAY 1997) (Note: Updated NOV 1998)