

GENERAL TERMS & CONDITIONS Individuals (IND January 2012)

1.1 CONSIDERATION

Company shall pay Seller the specified rate (price) for such time as Seller actually performs services hereunder at the request of the Company, not to exceed dates or time (e.g., hours, days, weeks, or months) set forth in the subcontract period of performance. A day shall be considered to mean a period consisting of eight hours, or more, all told, in any one calendar day. For each two-hour period or fraction of such portion, one quarter of said rate of compensation shall be payable. Nothing contained in this paragraph shall be construed to authorize payment of more than the specified daily rate for any one calendar day. Except as otherwise provided herein, no portion of the daily rate will be payable (i) for time spent in travel for the Seller's convenience during an assignment or (ii) if travel begins after 6 p.m. one day and ends before 8 a.m. the next day (local time zone) and no work was actually performed under the Agreement during these hours.

1.2 PAYMENT

(a) Company will pay Seller monthly, upon receipt of a proper invoice in an approved form (unless such invoice is not approved), the consideration stipulated herein, less deductions, if any. Seller shall certify (1) that the claim for payment is just and true in all respects, and (2) that no inventions or discoveries, not previously reported, have been made or conceived during or in connection with the rendering of the services unless such inventions or discoveries are specifically reported in accordance with the "Patent Rights" provisions of this Agreement.

(b) Invoices shall be submitted using Company's "Individual Independent Subcontractor's Invoice" form. This form is available under the title *Special Articles and Forms* at <http://www.ornl.gov/adm/contracts/documents.shtml>.

(c) Applicable IRS forms must accompany Seller's initial invoice submission. For U.S. citizens and resident aliens, IRS Form W-9, Request for Taxpayer Identification Number and Certification, is required. Non-resident aliens must submit the applicable form in the IRS W-8 Series (either W-8BEN, W-8ECI, W-8EXP, or W-8IMY), and if applicable, IRS Form 8233, Exemption from Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual. IRS forms are available at <http://www.irs.ustreas.gov/formspubs/index.html>.

(d) Company may withhold payment hereunder until requirements of this clause are fulfilled.

1.3 TRAVEL REIMBURSEMENT

If travel is authorized and Seller is to be reimbursed for such expenses, Agreement will specify a ceiling amount in dollars for such reimbursement. Seller will be reimbursed for travel expenses in accordance with the Travel Reimbursement Policy, which is incorporated by reference, up to the amount allowed by the policy or the ceiling amount, whichever is less.

1.4 TERMINATION

Either party hereto may terminate this Agreement at any time by giving not less than thirty days prior written notice to the other. Such termination shall only affect the term of this Agreement and shall otherwise be without prejudice to the rights of the parties hereunder.

1.5 INDEPENDENT CONTRACTOR

Neither this Agreement nor Seller's performance hereunder shall constitute or create an employee/employer relationship. Seller shall not be eligible for any benefits applicable to active employees of Company. Seller shall act solely as an independent contractor, not as an employee or agent of Company. Seller's authority is limited to providing personal services and Seller shall have no authority, without express written consent of Company, to incur any obligation or liability, or make any commitments on behalf of Company.

1.6 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 Subcontract Administrator. Company clauses incorporated by reference are available under the title *Special Articles and Forms or Exhibits* at <http://www.ornl.gov/adm/contracts/documents.shtml>. 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 <http://acquisition.gov/far/index.html> 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:

- Exhibit 1C, Patent Rights – Retention By The Seller (Short Form) (Company – Mar 2001)
- Exhibit 9, Technical Data (Company – July 2010)
- Individual Conflicts of Interest (Company – July 2006)
- Travel Reimbursement Policy (Company – July 2006)
- FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (Sept 2006)
- FAR 52.203-7 Anti-Kickback Procedures (July 1995)
- FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Sept 2007)
- FAR 52.224-1 Privacy Act Notification (Apr 1984)
- FAR 52.224-2 Privacy Act (Apr 1984)
- FAR 52.247-63 Preference for U.S.-Flag Air Carriers (June 2003)

DEAR 952.235-71 Research Misconduct (July 2005)
DEAR 952.247-70 Foreign Travel (Aug 2009)
DOE Order 551.1C Foreign Travel
General Terms & Conditions - Commercial Items (CI August 2011) (except Part 2 – Applicable When Items Include Services)

1.7 GRATUITIES

Seller, its agent or anyone acting on its behalf, shall not offer any gratuity (e.g., entertainment, gift, or cash) or special treatment to any employee of Company with the intent of obtaining a subcontract or other agreement or favorable treatment. This Agreement may be terminated if the Company determines that the provisions of this clause were violated. The Company may also exercise any other rights and remedies provided by law or under this Agreement.

1.8 LOBBYING RESTRICTION

In the performance of this Agreement, Seller shall not attempt, by activity or publication, to influence Congressional action or promote public support or opposition on any legislation or appropriation matters pending before Congress.

1.9 CONFERENCE MANAGEMENT

(a) If performance involves attendance at a conference, which is defined as a meeting, seminar, retreat, symposium, or similar event that involves official travel, the Seller must obtain written approval of the Company, through the Technical Project Officer (TPO) or the Subcontract Administrator, prior to attending the conference.

(b) If performance involves work related to coordinating, planning, or sponsoring a conference, this Agreement incorporates by reference the Conference Management Special Provision (Company – August 2011). The Seller must obtain written approval from the TPO and/or ORNL Conference Office Manager prior to performing any work related to supporting or managing a conference.

1.10 REPRESENTATIONS AND CERTIFICATIONS

This clause contains representations and certifications that are material representations of fact upon which Company will rely in subcontracting with Seller. By submitting an offer or quotation, written or oral, or accepting any Agreement, Seller certifies to the representations and certifications as set forth below. Seller shall provide Company immediate written notice if, at any time, he/she learns that his/her representations or certifications were erroneous when submitted or have become erroneous by reason of changed circumstances.

Responsibility

(a) Seller certifies that, in accordance with FAR 52.209-5, to the best of his/her knowledge and belief:

(1) Seller is not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) Seller has not, within a three-year period preceding award of this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(3) Seller is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this provision;

(4) Seller has not, within a three-year period preceding award of this Agreement, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied; and

(5) Seller has not, within a three-year period preceding award of this Agreement, had one or more contracts terminated for default by any Federal agency.

(b) Federal taxes are considered delinquent if both of the following criteria apply:

(1) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(2) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in a case where enforced collection is precluded.

Anti-Kickback

Seller certifies that it has not provided, attempted to provide, offered to provide, solicited, accepted, or attempted to accept any kickback; and has not included, directly or indirectly, the amount of any kickback in the price. "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided, directly or indirectly, to any Government prime contractor (e.g., the Company), prime contractor employee, subcontractor at any tier, or employee of a subcontractor at any tier, for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Government prime contract or in connection with a subcontract at any tier relating to a Government prime contract.

Payments to Influence Certain Federal Transactions

Seller certifies that, in accordance with the definitions and prohibitions contained in FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, to the best of his or her knowledge and belief no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of this subcontract.

2.0 CHANGES

Only the Subcontract Administrator 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 Subcontract Administrator.

2.1 SELLER'S RESPONSIBILITIES

(a) Seller shall act in performance of this Agreement as an independent contractor and not as an agent for Company or the Government in performing this Agreement, maintaining complete control over its employees and all lower-tier subcontractors. Nothing contained in this Agreement or any lower-tier subcontract shall create any contractual relationship between any such lower-tier subcontractor and the Government or Company. Seller is solely responsible for the actions of itself and its lower-tier subcontractors, agents, or employees.

(b) Seller shall be responsible for injury, death, damage to or loss of property and related costs resulting from its performance of work under this Agreement or its violation of Part 1.12a Compliance with Laws of the General Terms and Conditions – Commercial Items. 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 the 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.