

GENERAL TERMS & CONDITIONS
Fixed Price (GTRI October 2007)

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, Basic Ordering Agreement, Work Release or Modification thereof.
- (e) Subcontract Administrator means Company's cognizant Contracts Division representative.

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). Arbitration shall be in accordance with the then current Rules of Conciliation and Arbitration of the International Chamber of Commerce. In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be New York City. 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.

(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 United States federal law.

(c) 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 sub-tier subcontractors.

3 ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Articles of the Subcontract or provisions of the Purchase Order (including alterations and special provisions therein), (2) Special Terms and Conditions attached thereto, (3) General Terms and Conditions, (4) Statement of Work or description of services and/or supplies.

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.

5 ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing this Agreement, delivering the supplies, or performing the requirements indicated herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporated 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.

6 ASSIGNMENT AND CONTRACTING

(a) Neither this Agreement nor any interest therein nor claim thereunder shall be assigned or transferred by Seller except as expressly authorized in writing by Company. Company may assign the whole or any part of this Agreement of the U. S. Government or its designee.

(b) Seller shall not issue lower-tier arrangements for any portion of the work hereunder without the prior written approval of Company. When requesting such approval, Seller shall furnish Company with the name of the proposed lower-tier organization, a description of the work proposed to be performed, and such other information as Company shall require.

7 PAYMENT

Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) submission of Seller's proper invoice, if required (unless such invoice is not approved), or (2) delivery of supplies/completion of work if invoice is not required. Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments 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.

8 COMPLIANCE WITH LAWS

- (a) Seller shall comply with all applicable governmental laws orders, regulation, or rulings of their government.
- (b) Seller shall include this clause in all subcontracts, at any tier, involving the performance of this Agreement.

9 TERMINATION FOR DEFAULT

(a) Company reserves the right to terminate this Agreement for default, in whole or in part, if Seller (1) fails to supply enough property 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, orders, regulations, rulings, or instructions of the Company; (4) fails to adhere to the time specified in this Agreement for performance of services or delivery of supplies; (5) fails to comply with any of the terms of this Agreement; or (6) fails to perform satisfactorily under this Agreement. In that event, Company shall not be liable for any services or supplies 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, and contract rights that Seller has specifically produced or acquired for the terminated portion of this Agreement. Company shall pay the agreed-upon price for services performed and accepted in addition to completed supplies delivered and accepted. Company and Seller shall agree on the amount of payment for all other deliverables.

(c) Except for defaults of sub-tier subcontractors, Seller shall not be in default because of failure to perform if the failure arises from causes beyond Seller's reasonable control and without its fault or negligence. Seller will not be deemed to be in default for failure to perform caused by the failure of a sub-tier subcontractor if the failure was beyond the control of both Seller and sub-tier subcontractor and without the fault or negligence of either; however, Seller will be in default if Company directed Seller to purchase these supplies or services from another source and Seller failed to comply. 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.

10 TERMINATION FOR CONVENIENCE

Company reserves the right to terminate this Agreement, or any part hereof, for the convenience of itself or the Government. In the event of such termination, the Subcontract Administrator shall deliver a notice specifying the extent and effective date. Seller shall immediately stop all work terminated and shall immediately cause any and all of its affected suppliers and subcontractors to cease work. Subject to the terms of this Agreement, Seller shall be paid a percentage of the price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that Seller can demonstrate to the satisfaction of Company using its standard record keeping system, have resulted from the termination. Seller shall within 6 months of the effective date of the termination submit a final settlement proposal to Company. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. In no event shall the agreed amount exceed the total price of the Agreement.

11 CHANGES

(a) Company may at any time, by written notice, make changes within the general scope of this Agreement in any one or more of the following: (1) description of the work to be performed; (2) time of performance; (3) place of performance; (4) method and manner of performance; (5) the amount of work to be furnished; (6) drawings, designs or specifications; and (7) time and place of delivery. 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 30 days from the date of receipt of Company's change notice, although Company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. Failure to agree to any adjustment shall be settled in accordance with Part 2.

(b) 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 a change, Seller shall not rely upon such instruction or direction without written confirmation from the Subcontract Administrator. Nothing in this clause, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the Agreement as changed.

12 SUSPENSION OF WORK

(a) The Company may, at any time, by written direction to Seller, require Seller to stop all or any part of the work called for by this Agreement for a period of 90 days after direction is delivered to Seller, and for any further period to which the parties may agree. The direction shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the direction, Seller shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the direction during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to Seller, or within any extension of that period to which the parties shall have agreed, Company shall either: (1) cancel the stop-work order; or (2) terminate the work covered by the Agreement as provided in the Termination clause of this Agreement.

(b) If a stop-work order issued under this clause is canceled or the period of the direction or any extension thereof expires, Seller shall resume work. Company shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if: (1) the stop-work order results in an increase in

the time required for, or in Seller's cost properly allocable to, the performance of any part of this Agreement; and (2) Seller asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if Company decides the facts justify the action, Company may receive and act upon the claim submitted at any time before final payment under this Agreement.

(c) If a stop-work order is not canceled and the work covered by the Agreement is terminated for convenience, Company shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the Agreement is terminated for default, Company shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

13 PROPERTY

(a) For property acquired by the Seller, title to all personal property acquired under this Agreement shall immediately pass upon acquisition to Seller. At no time shall Company have title, risk of loss or liability for any property acquired with funds provided under this Agreement.

(b) For Company furnished property, title, risk of loss or liability for all U.S. Government property furnished to Seller under this Agreement shall pass to Seller upon receipt of the property by Seller.

14 SELLER'S RESPONSIBILITIES

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

(b) Seller shall be responsible for all liability and related expenses resulting from (1) injury, death, damage to, or loss of property or (2) violation of Part 8, 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 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) Seller shall be solely responsible for all criminal fines and penalties assessed against Seller.

(d) 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 a reduction in the corresponding amounts in Seller's price.

15 INSPECTION

The materials, supplies or services furnished shall be exactly as specified in this Agreement, shall be free from all defects in Seller's workmanship and materials, and except as otherwise provided in this Agreement, shall be subject to inspection and test by the Company at all times and places. If, prior to final acceptance, any materials, supplies, or services are found to be defective or not as specified, the Company may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such items within a time deemed reasonable to the Company, the Company may terminate the Agreement, in whole or in part, for default. Seller shall bear all risks as to rejected materials, supplies, and services, and, in addition to any cost for which Seller may become liable to the Company under other provisions of this Agreement, shall reimburse Company for all transportation costs, other related costs incurred, or payments to Seller in accordance with the terms of this Agreement for unaccepted materials, supplies, and services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Any test programs and procedures required by this Agreement are in addition to, and do not limit, Company's rights provided in this clause.

16 AUDIT AND RECORDS – NEGOTIATION

THIS CLAUSE APPLIES TO WORK RELEASES EXCEEDING \$25,000 IN VALUE

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price re-determinable contract, or any combination of these, the Seller shall maintain and the Company, or an authorized representative of the Company shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Agreement. This right of examination shall include inspection at all reasonable times of the Seller's plants, or parts of them, engaged in performing the Agreement.

(c) Cost or pricing data. If the Seller has been required to submit cost or pricing data in connection with any pricing action relating to this Agreement, the Company or an authorized representative of the Company, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Seller's records, including computations and projections, related to -- (1) The proposal for the Agreement, subcontract, or modification; (2) The discussions conducted on the proposal(s), including those related to negotiating; (3) Pricing of the Agreement, subcontract, or modification; or (4) Performance of the Agreement, subcontract or modification.

(d) Comptroller General. (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Seller's directly pertinent records involving transactions related to this Agreement or a subcontract hereunder. (2) This paragraph may not be construed to require the Seller or subcontractor to create or maintain any record that the Seller or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Seller is required to furnish cost, funding, or performance reports, the Company or an authorized representative of the Company shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating. (1) The effectiveness of the Seller's policies and procedures to produce data compatible with the objectives of these reports; and (2) The data reported.

(f) Availability. The Seller shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this Agreement or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this Agreement. In addition: (1) If this Agreement is completely or partially terminated, the Seller shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and (2) The Seller shall make available records relating to appeals under the Resolution of Disputes clause or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.

(g) The Seller shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this Agreement that exceed the simplified acquisition threshold, and (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-re-determinable type or any combination of these; (2) For which cost or pricing data are required; or (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

(h) The clause may be altered only as necessary to identify properly the contracting parties.

17 ANTI-KICKBACK PROCEDURES

THIS CLAUSE APPLIES IF THIS AGREEMENT EXCEEDS \$100,000.

(a) The Anti-Kickback Act of 1986, (41 U.S.C. 51-58) (the Act), prohibits any person or organization from: (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the U.S. Government or in the contract price charged by a subcontractor to a prime contractor or higher-tier subcontractor.

(b)(1) When Seller has reasonable grounds to believe that a violation described in paragraph (a). of this clause may have occurred, Seller shall promptly report, in writing, the possible violation. Such reports shall be made to the Subcontract Administrator. (2) Seller shall cooperate fully with any federal agency investigating a possible violation. (3) Company may: (A) Offset the amount of the kickback against any monies owed by Company under this Agreement; and/or (B) Withhold sums owed Seller under this Agreement in the amount of the kickback.

(c) "Kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a contract relating to a prime contract.

(d) Seller agrees to incorporate the substance of this clause, including this subparagraph (d)., in all lower-tier arrangements under this Agreement which exceed \$100,000.

18 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(a) U.S. law prohibits a recipient (i.e., the contractor and all subcontractors) of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay 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 in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Act also requires Seller to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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 in connection with a Federal contract, grant, loan, or cooperative agreement.

(c) Seller shall require the submittal of a certification, and if required, disclosure form by any person who requests or receives any subcontract or agreement exceeding ONE HUNDRED THOUSAND DOLLARS (\$100,000) under the Federal contract.

(d) Seller agrees not to make any payment prohibited by this clause.

19 RESTRICTION ON CONTRACTOR SALES TO THE GOVERNMENT

THIS CLAUSE APPLIES IF THIS AGREEMENT EXCEEDS \$100,000.

(a) Except as provided in paragraph (b) below, Seller shall not enter into any agreement with any actual or prospective lower-tier subcontractors, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the U. S. Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor under this Agreement or under any follow-on Agreements.

(b) The prohibition in paragraph (a) above does not preclude Seller from asserting rights that are otherwise

authorized by law or regulation.

(c) Seller agrees to incorporate the substance of this clause, including this paragraph (c), in all lower-tier arrangements under this Agreement exceeding \$100,000.

20 PREFERENCE FOR U. S.-FLAG AIR CARRIERS

(a) As used in this clause—

(1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

(2) "United States" means the 50 States, the District of Columbia, and outlying areas.

(3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air-carrier if a U.S.-flag air carrier is available to provide such services.

(c) If available, the Seller, in performing work under this Agreement, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

(d) In the event that the Seller selects a carrier other than a U. S.-flag air carrier for international air transportation, the Seller shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U. S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U. S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [State reasons]:

(End of Statement)

(e) The Seller shall include the substance of this clause, including this paragraph (e) in each subcontract or purchase order under this Agreement that may involve international air transportation.

21 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the U. S. Department of the Treasury, the Seller shall not acquire, for use in the performance of this Agreement, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

22 PRINTING

(a) To the extent that duplicating or printing services may be required in the performance of this Agreement, the Seller shall provide or secure such services in accordance with the U.S. Government Printing and Binding Regulations, Title 44 of the U.S. Code, and Department of Energy Directives relative thereto.

(b) The term "printing" includes the following processes: composition, plate-making, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this Agreement involving the-duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

23 KEY PERSONNEL

Seller shall furnish a list of project personnel to Company for approval and Seller agrees to assign such employees or persons to the performance of the work under this Agreement and shall not reassign or remove any of them without the consent of Company. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the Agreement, Seller shall, with the approval of Company, replace such employee with an employee of substantially equal abilities and qualifications.

24 SUBCONTRACT MANAGEMENT

(a) All correspondence shall be directed and/or copied to the attention of Company's or Seller's Technical Project Officer for this Agreement, and the Subcontract Administrator.

(b) No request, notice, authorization, direction or order received by Seller and issued pursuant to this Agreement, by reference or otherwise shall be binding, upon either Company or Seller, or serve as a basis for change in the Agreement price or any other provision of this Agreement, unless issued or confirmed in writing by the Subcontract Administrator. Seller

shall immediately notify, in writing, Subcontract Administrator whenever a change request has been received from someone other than the Subcontract Administrator which would affect any terms and conditions of this Agreement.

25 TAXES

All financial transactions related and applicable to this Agreement between the Company and the Seller or its suppliers or subcontractors are exempt from taxation to the Company by the Seller, including any value-added tax.

26 LATE DELIVERABLES

For each and any Work Release funded under this Agreement, Seller understands that the Work Release deliverable due dates negotiated shall be considered to be firm. The Company must approve extensions of individual deliverable due dates. Failure on the part of the Seller to meet negotiated deliverable due dates may result in the cancellation of Work Releases issued under this Agreement. The Seller shall comply with this Agreement relative to deliverable due dates. Should the Seller determine that a particular deliverable due date cannot be met, the Seller shall immediately notify Company's Subcontract Administrator and the Company's Technical Administrator. This notification shall include the reason why the deliverable due date cannot be met and the proposed new deliverable due date.

27 ACCESS

Consistent with other provisions of the scope of work and terms and conditions of any Work Release issued under this Agreement, the Seller is responsible to ensure full compliance with work scope, criteria, specifications, performance requirements, functional requirements, standards, etc. The Government and Company shall be given physical access to the facilities and original documents controlled by Seller concerning work performed under any Work Release under this Agreement. The Company shall be informed of all applicable laws and security policies that apply to these facilities and documents and the Company agrees to comply with said laws and policies that concern physical access to facilities and inspection of original documents. If there is a conflict between the terms of this Agreement and said laws and policies, the Company and Seller agree to negotiate in good faith to reach an alternative means of assurance other than physical inspection or original document review. Failure to reach an agreement on an alternate mean of assurance may result in termination of this Agreement or any Work Release.