

ORAU Corporate Terms & Conditions
(for use with Discretionary funds)



1. Definitions

The following terms shall have the meanings below:

- (a) Company means Oak Ridge Associated Universities, Inc. (ORAU).
- (b) Subcontractor means the person or organization that has entered into this Agreement.
- (c) Agreement means Purchase Order, Subcontract, Blanket Agreement, Modification, or Release thereof.
- (d) Contract Specialist means Company's cognizant Procurement Representative.
- (e) Item means "commercial item".

2. Order of Precedence

Any inconsistencies shall be resolved in accordance with the following descending order of precedence:

- (1) Articles or provisions of the Agreement (including alterations, special provisions therein and Corporate Terms and Conditions),
- (2) Other documents, exhibits, and attachments, and
- (3) Statement of Work, description of services and/or supplies or specifications.

3. Title

All property rights and interest resulting from this Agreement shall pass directly from Subcontractor to the Company.

4. Warranty

Except for research and development, and notwithstanding inspection and acceptance by ORAU under any provision of this Agreement, Subcontractor warrants that services performed and the supplies furnished under this Agreement shall be free from defects in workmanship, be in accordance with Subcontractor's affirmation, description, sample, or model and compliant with all requirements of this Agreement. The warranty for services shall begin upon acceptance and extend for 6 months. The warranty for supplies shall begin upon acceptance for a period of (1) the manufacturer's warranty period or 6 months, whichever is longer, if Subcontractor is not the manufacturer and has not modified the supply or (2) one year or the manufacturer's warranty period, whichever is longer, if Subcontractor is the manufacturer of the supply or has modified it. If any nonconformity with the item appears within that time, ORAU, in addition to any other rights and remedies provided by law, or under other provisions of this Agreement, may require Subcontractor, at no increase in price, to (1) re-perform the services and correct or replace the supplies or (2) reduce the Agreement price to reflect the reduced value of Subcontractor's performance. When supplies are returned, Subcontractor shall bear the transportation cost. If within 10 days of ORAU's written notice, Subcontractor fails to re-perform or correct or replace, as required, ORAU shall have the right by contract or otherwise to perform the services, replace or correct such supplies, and charge to Subcontractor the cost occasioned to ORAU thereby and/or terminate this Agreement for default. Any implied warranties of merchantability and fitness for a particular purpose are hereby disclaimed.

5. Assignment

Subcontractor shall not assign rights or obligations to third parties without the prior written consent from ORAU. However, Subcontractor may assign rights to be paid amounts due or to become due to a financing institution if ORAU is promptly furnished written notice and a signed copy of such assignment is provided.

6. Changes

(a) ORAU 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) method and manner of performance, and
- (3) the amount of work to be furnished.

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

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

7. Compliance with Laws

(a) Subcontractor shall comply with all applicable federal, state, and local laws and ordinances and all pertinent orders, DOE directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this Agreement. Subcontractor shall, without additional ORAU expense, be responsible for obtaining any necessary licenses and permits including without limitation, underground utility permit requirements. Subcontractor warrants that each chemical substance constituting in supplies furnished by 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.

(b) Subcontractor shall include this clause in all Agreements, at any tier, involving the performance of this Agreement.

8. Termination for Default

(a) Except for Agreements with educational and other non-profit institutions, per FAR 49.504(b), ORAU may terminate this Agreement for default, in whole or in part, if, after 10 days from ORAU's written notice, Subcontractor fails to comply with any of the terms of this Agreement, fails to make progress, so as to endanger performance of this Agreement, or fails to provide adequate assurance of future performance. In that event, ORAU shall not be liable for any services or supplies not accepted.

(b) If this Agreement is terminated for default, ORAU may require Subcontractor to deliver to ORAU any services, supplies, and materials, manufacturing materials, and manufacturing drawings that Subcontractor has specifically produced or acquired for the terminated portion of this Agreement. ORAU shall pay the agreed-upon price for services performed and accepted in addition to completed supplies delivered and accepted. ORAU and Subcontractor shall agree on the amount of payment for all other deliverables.

(c) Subcontractor shall not be liable to ORAU for delays in performance occasioned by causes beyond Subcontractor's reasonable control and without its fault or negligence. However, the delays of Subcontractor's suppliers at any tier must be proved to be beyond the control of both Subcontractor and its suppliers and without fault or negligence of either.

(d) The rights and remedies of ORAU in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

9. Termination for Convenience

ORAU reserves the right to terminate this Agreement, or any part hereof, for the convenience of itself. In the event of such termination, the Contract Specialist shall deliver a notice specifying the extent and effective date. Subcontractor shall immediately stop all work terminated and shall immediately cause any and all of its affected Subcontractors and Subcontractors to cease work. Subject to the terms of this Agreement, Subcontractor shall be paid a percentage of the price reflecting the percentage of the work performed before the notice of termination, plus reasonable charges that Subcontractor can demonstrate to the satisfaction of ORAU using its standard record keeping system, have resulted from the termination. Subcontractor shall within 6 months of the effective date of

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the termination submit a final settlement proposal to ORAU. Subcontractor 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.

10. Bankruptcy

If Subcontractor enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Contract Specialist within 5 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 ORAU Agreement number(s), of all ORAU Agreement(s) for which final payment has not been made.

11. Taxes

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

12. 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 ORAU. Any request for approval shall include identity of the specific media as well as other pertinent details of the requested release.

13. Interest

Except for educational and non-profit institutions, all amounts due to ORAU by Subcontractor shall accrue interest from the date due until paid at the interest rate established by the Secretary of the Treasury and as amended semiannually. Interest will begin to accrue on the first day after the due date and will be compounded monthly until settlement is received by ORAU.

14. Subcontractor Responsibilities

- (a) Subcontractor shall act in performance of this Agreement as an independent contractor and not as an agent for ORAU 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 ORAU. Subcontractor is solely responsible for the actions of itself and its lower-tier subcontractors, agents or employees.
- (b) Subcontractor shall be solely responsible for all liability and related expenses resulting from injury, death or damage to property which is in any way connected with the negligent performance of work under the Agreement. Subcontractor shall also be responsible for all materials and work until acceptance by ORAU. Subcontractor's responsibility shall apply to activities of Subcontractor, its agents, lower-tier subcontractors, or employees and such responsibility includes the obligation to indemnify, defend, and hold harmless ORAU. However, such liability and indemnity does not apply to injury, death, or damage to property to the extent it arises from the conduct of ORAU.
- (c) If Subcontractor is a State agency such as an Educational Institution, all liabilities and remedies shall be determined in accordance with the laws applicable to this Agreement.

15. Suspension of Work

- (a) The Contract Specialist, may, at any time, by written notice to Subcontractor, require Subcontractor to suspend, delay, or interrupt all or any portion of the work called for by this Agreement for a period of time the Contract Specialist determined appropriate. Upon receipt of the notice, Subcontractor shall immediately comply with its provisions and take all reasonable steps, as directed by the Contract Specialist to minimize

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the incurrence of costs 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 ORAU in the administration of this Agreement, or (2) by ORAU'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 Subcontractor, 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, Subcontractor shall be reimbursed, actual costs, reasonably incurred, without duplication, to the extent the cost results solely and directly from the unreasonable period of the suspension. Claim for such reimbursement shall be submitted within 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 Subcontractor for any reason other than ORAU order, Subcontractor shall give ORAU 24 hours advance notice of its intention to resume work. Should Subcontractor resume work without such notification, ORAU reserves the right to use the work areas as it sees fit for a period of 24 hours after Subcontractor's work is resumed. Delays caused by action of ORAU due to failure on the part of Subcontractor to comply with these provisions will not constitute a basis for any adjustment in the price or time for completion.

16. Fines, Penalties, and Permits

In the event that any actions that result in fines and /or penalties are taken by a local, state, or federal agency against ORAU for a regulatory and/or permit noncompliance that resulted from a failure of Subcontractor to perform in accordance with the Agreement or local, state, or federal law, Subcontractor shall reimburse ORAU 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 Subcontractor's and its lower-tier subcontractors' negligence and/or failure. ORAU may withhold such amounts from the future payment due to Subcontractor.

17. Gratuities

Subcontractor, 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 ORAU with the intent of obtaining a subcontract or other agreement or favorable treatment. This Agreement may be terminated if ORAU determines that the provisions of this clause were violated. ORAU may also exercise any other rights and remedies provided by law or under this Agreement.

18. Performance of Personnel

Upon request by ORAU, personnel who are not performing adequately must be removed and replaced with a person of equal or greater experience and qualifications within 15 days. ORAU in its sole discretion may reject replacement personnel.

19. Resolution of Disputes

(a) Subcontractor and ORAU 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. Costs shall be allocated by the mediator or arbitrator, except that there shall be no pre-decisional interest costs, and each party shall bear its own discretionary costs.

(b)

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(1) Where Subcontractor is a State agency, such as an Educational Institution, located in a state which by constitution or state waives sovereign immunity, the applicable constitutional provisions or statute shall dictate the appropriate forum and law governing substantive issues.

(2) In all other cases, 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. 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.

(c) The parties agree that, subject to (b) (1), 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 except for Federal Acquisition Regulation (FAR), Department of Energy Acquisition Regulation (DEAR), DOE Orders, DOE Regulations, DOE Systems of Record, DOE ORO Rules & Regulations, and any applicable U.S. Code section clauses which shall be determined in accordance with federal law. Article 2 of the Uniform Commercial Code as adopted by the state law governing substantive issues shall apply to services performed under this Agreement.

(d) There shall be no interruption in the performance of the work, and Subcontractor 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 Subcontractor and its lower-tier subcontractor(s).

20. Force Majeure

In the event of force majeure events, such as an act of God or other similar cause beyond Subcontractor's reasonable control, including without limitation work stoppage, fire, riot, accident, explosion, flood, storm, acts of Government, acts of third parties or failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment ("*Force Majeure Events*"), neither party will be responsible for any failure to perform due to a Force Majeure Event.

21. 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.

22. Identification of Employees

Subcontractor agrees to comply with FAR 52.222-54 and to flow down this clause in all Subcontract(s) issued under this Agreement.

23. 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 ORAU 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 ORAU or its employees directly with ORAU.

(c) The Subcontractor must notify its employees that:

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- (1) ORAU 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 ORAU by calling: (865) 576-3054; and
- (4) ORAU will not tolerate reprisals against or intimidation of a who have reported concerns.

(d) Upon request, Subcontractor must assist ORAU in resolution of employee concerns.

(e) Subcontractor shall include this clause in subcontracts hereunder.

24. Prevention and Control of Suspect and Counterfeit Items

Subcontractor shall certify that all parts supplied or used in accordance with this Agreement are new and meet approved design specifications and requirements. Should any occurrence of S/CI be found, Subcontractor is required to replace at no cost to ORAU any S/CI.

25. Electronic Product Environmental Assessment Tool (EPEAT) Requirements

All desktops, laptops, computer monitors, imaging equipment (including copiers, digital duplicators, facsimile machines, multifunction devices, printers, mailing machines and scanners), and televisions purchased under this Agreement are required to have achieved Bronze registration or higher in the EPEAT system in the device's country of origin. EPEAT is a procurement tool designed to help large volume purchasers evaluate, compare, and select electronic products based upon their environmental attributes as specified in the appropriate Standard issued from the consensus-based IEEE Standards Association (IEEE-SA). EPEAT for Personal Computer Products is based upon IEEE Standard 1680.1. EPEAT for Imaging Equipment is based upon IEEE Standard 1680.2 EPEAT for Televisions is based upon IEEE Standard 1680.3 Subcontractor shall prefer products that have achieved EPEAT Silver or EPEAT Gold registration. The EPEAT registration criteria and a database of all registered products are provided at <http://www.epeat.net>.

26. Conflict of Interest

Subcontractor shall comply with the ORAU Subcontractor Conflict of Interest terms as stated below:

- (a) Subcontractor certifies that no individual working under this Agreement is aware of any matter which might limit ability to participate in this Agreement, in an objective and unbiased manner, or which might place an individual in a position of conflict (real, apparent, or potential) between his/her responsibilities as a Subcontractor or Subcontractor employee(s) and other interests.
- (b) Subcontractor, including any individual(s) who may be working under this Agreement, further certifies that no other business(es) or personal relationships and no bias exist toward any individual employed by ORAU that will prevent them from performing the tasks in this Agreement.
- (c) In making this certification, Subcontractor, has considered all financial interests, and employment arrangements (past, present, and/or under consideration) and, to the extent known by Subcontractor, all the financial interests and employment arrangements of any spouse and/or other members of Subcontractor's family.

If, after the date of this Agreement, Subcontractor (including any spouse and/or other members of Subcontractor's family) has financial interests, or with which Subcontractor has (or had) a personal or business relationship with any person employed by ORAU, Subcontractor shall notify the Contract Specialist of this conflict of interest.

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27. Entire Agreement

This document contains the entire Agreement between the parties and supersedes any previous understanding, commitments, or Agreements, oral or written, with respect to the subject matter hereof. It shall not be varied, except by an instrument in writing of subsequent date, duly executed by authorized representative of each party. If any of the provisions of this Agreement are found unenforceable, such finding will not relieve the parties from full compliance with all other parts which shall not be affected thereby. The validity, construction, scope, and performance of this Agreement shall be governed by the laws of the State of Tennessee.