IN-BOUND LICENSING OF COMPUTER SOFTWARE, DOCUMENTATION, AND OTHER CONTENT

A. Application

This Special Article (Article) refers to, is made part of, and/or applies to UT-Battelle, LLC's licensing of all pre-existing Computer Software and Documentation, as defined below, or any other pre-existing content licensed by UT-Battelle, LLC (UT-Battelle) under its Prime Contract No. DE-AC05-00OR22725 to manage and operate the Oak Ridge National Laboratory (ORNL). In the event any Computer Software, Documentation or other content is first developed under this agreement, such newly developed software will be governed by the relevant provisions of FAR 52.227-14, which is hereby incorporated by reference. For purposes of clarity, UT-Battelle and the Seller are the licensee and owner/licensor, respectively, of the pre-existing Computer Software, Documentation or any other content licensed hereunder. Seller hereby represents and warrants that it is either the owner of the Computer Software, Documentation or other content licensed hereunder, or otherwise has all appropriate rights to license or sub-license such works to ORNL.

B. Definitions

For purposes of this Article, capitalized terms are defined as follows:

1. Computer Software: means (1) computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and (2) recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled. The specific Computer Software licensed hereunder is described in the Ordered Items Scope of Work/Statement of Work, or elsewhere in this Purchase Order or Subcontract (hereinafter referred to collectively as "Purchase Order").

2. Documentation: means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the Computer Software or provide instructions for using the Computer Software, or any other content licensed hereunder.

3. Commercial Computer Software: means Computer Software which qualifies as a commercial product or commercial service under Federal Acquisition Regulations, Subpart 12.

4. Software related Services: means services related to ORNL's use and enjoyment of the Computer Software, or other content licensed hereunder, such as but not limited to: software maintenance, technical support, service level agreements, training, or similar services. Any Software related Services provided hereunder are specifically identified in the Ordered Items Scope of Work Article/Statement of Work, or elsewhere in this Purchase Order.

C. Commercial Computer Software

1. General: Consistent with FAR 12.212, UT-Battelle acquires Commercial Computer Software and related Documentation under licenses customarily provided to the general public by the owner/licensee, but only to the extent that such licenses are consistent with Federal law, otherwise satisfy ORNL and the Government's needs, and comply with the terms of UT-Battelle's contract to manage and operate ORNL, Contract No. DE-AC05-00OR22725.

2. Seller's License Agreement: UT-Battelle and the Government shall acquire only those license rights to the Commercial Computer Software, Documentation, or other content pursuant to Seller's standard commercial software license agreement (Seller's License Agreement) or, in the event Seller has a license agreement applicable to U.S. Government licensees (Seller's Government License Agreement), such Seller's U.S. Government License Agreement shall apply and govern. If the Seller's License Agreement is utilized, such's license is subject to the terms of this Article, and is hereby incorporated by reference to this Purchase Order. For purposes of clarity, any references generally to this 'Agreement' or the 'Purchase Order' will not be specifically referring to the 'Seller's License Agreement;' if a reference is intended to address the 'Seller's License Agreement,' the reference must specifically refer to the 'Seller's License Agreement.' The Seller's License Agreement shall be narrowly interpreted to govern only the licensing terms describing the Government's and UT-Battelle's use and enjoyment of the Seller's Commercial Computer Software, Documentation, Software related Services, or other licensed content as described therein, or the Statement of Work; it does not govern any other aspect of the relationship of the Parties for other products and services that are or may be provided by the Seller to ORNL hereunder.

3. FAR 52.227-19, Commercial Computer Software License: The Parties acknowledge and agree that FAR 52.227-19, Commercial Computer Software License, is incorporated herein by reference and that to the extent the licensing provisions of Seller's License Agreement is inconsistent with FAR 52.227-19 for the licensing of Commercial Computer Software, FAR 52.227-19 shall govern to provide minimum rights to UT-Battelle and the Government.

4. Inconsistent with Federal Law and UT-Battelle's Contract with DOE: NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE SELLER'S LICENSE AGREEMENT, IF ANY TERM OR CONDITION IN SELLER'S LICENSE AGREEMENT IS INCONSISTENT WITH FEDERAL LAW OR UT-BATTELLE'S PRIME CONTRACT, SUCH PROVISION IS EXPRESSLY REJECTED BY ORNL AND IS NOT MADE A PART OF THIS PURCHASE ORDER. THE FOLLOWING IS A NON-EXCLUSIVE LIST OF COMMON TERMS AND CONDITIONS FOUND IN COMMERCIAL SOFTWARE LICENSE AGREEMENTS WHICH ARE HEREBY EXPRESSLY REJECTED BY UT-BATTELLE: (A) LICENSEE INDEMNITY OBLIGATIONS; (B) ATTORNEYS' FEES PROVISIONS; (C) AUTOMATIC RENEWAL; (D) PAYMENT OF LATE

FEES; AND (E) INJUNCTIVE/EQUITABLE RELIEF DUE TO A BREACH OF LICENSE OR DISCLOSURE OF SELLER CONFIDENTIAL INFORMATION.

5. New, Additional & Conflicting Terms in the Seller's License Agreement: Notwithstanding anything to the contrary contained in this Purchase Order, to the extent that the Seller's License Agreement contains any new, additional, or conflicting terms than those found elsewhere in this Purchase Order (including, without limitation, the General Provisions), the provisions of this Purchase Order shall control and the new, additional, and conflicting terms in the Seller's License Agreement are expressly rejected and are not made a part of this Purchase Order.

D. Software-related Services

To the extent that ORNL is acquiring any Software-related Services hereunder, such services must be identified in the Statement of Work or elsewhere in this Purchase Order, including any separate fees associated with such services.