

**GENERAL TERMS AND CONDITIONS FOR FIXED-PRICE SUBCONTRACTS (non-commercial)**

UNDER

**U. S. DEPARTMENT OF ENERGY PRIME CONTRACT NO. DE-AC09-08SR22470**

**SAVANNAH RIVER NUCLEAR SOLUTIONS, LLC  
SAVANNAH RIVER SITE, AIKEN, SC 29808**

*\* Incorporated by reference to appropriate FAR (see <https://www.acquisition.gov/far/>) and DEAR  
(see <http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation>)*

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## **1.0 DEFINITIONS**

- A. “Company” or “the Company” means Savannah River Nuclear Solutions, LLC (SRNS), the Management and Operating Contractor for the U.S. DOE, Savannah River Site under Prime Contract DE-AC09-0SR22470.
- B. “Contracting Officer” shall mean Government official executing the Prime Contract No. DE-AC09-08SR22470 between the Company and DOE. The Contracting Officer is Government official who is authorized to execute, administer, and terminate the contract, and includes the authorized representatives thereof, when such individuals are acting within the limits of their authority as delegated by the Contracting Officer.
- C. “Covered Funds” means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.
- D. “DEAR” means Department of Energy Acquisition Regulation.
- E. “DOE” shall mean the United States Department of Energy or any duly authorized representative thereof, including any successor or predecessor agency thereof, including the Contracting Officer.
- F. “FAR” means Federal Acquisition Regulation.
- G. “Government” means the United States of America and includes the U.S. DOE, the National Nuclear Security Administration (NNSA), and/or any duly authorized representative thereof.
- H. “Head of the agency” or “Secretary” shall mean the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency.
- I. “Lower-Tier Subcontract” shall mean a purchase order, subcontract, agreement, price agreement, basic ordering agreement, task order, or modification thereof between a higher-tiered Subcontractor and a lower-tiered Subcontractor
- J. “Lower-Tier Subcontractor” shall mean a Subcontractor to furnish supplies or services for performance to a prime contractor or a Subcontractor
- K. “Parties” means the Company and Subcontractor, together; individually to be referred to as “Party”.
- L. “Procurement Representative” means the applicable Company individual(s) authorized to execute and/or administer Subcontracts for the Company.
- M. “Services” shall mean labor, direction of labor, production of technical information, consulting services or any other services furnished by Subcontractor under this Subcontract.
- N. “Subcontract” shall mean purchase order, order, subcontract, agreement, price agreement, basic ordering agreement, task order , or modification of any of the foregoing.
- O. “Subcontract Data” shall mean all information, data, and documentation to be provided by Subcontractor and its lower-tier Subcontractors of any tier under this Subcontract.
- P. “Subcontractor” shall also mean the person or organization entering Subcontract with the Company.
- Q. “Supplies” shall mean items, goods, equipment, components, parts, and materials to be provided by Subcontractor and its lower-tier subcontract of any tier pursuant to this Subcontract.
- R. “Work” means all the stated or implied activities to be performed by Subcontractor as required by the Subcontract, including the furnishing and supervision of all technical personnel and labor, and the supply of equipment, items, materials, and supplies necessary to perform this Subcontract.

## **2.0 ORDER OF PRECEDENCE**

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

- (1) Negotiated Terms and Conditions
- (2) Terms and Conditions
- (3) Clauses Incorporated by Reference
- (4) Statement of Work or other description of services or Supplies

## **3.0 INDEPENDENT CONTRACTOR**

Subcontractor shall act in performance of this Subcontract as an independent contractor and not as an agent for Company or the Government, maintaining complete control over its employees and all Lower-Tier Subcontractors. Nothing contained in this Subcontract, or any Lower-Tier Subcontract shall create any contractual relationship between any such Lower-Tier Subcontractor and the Government or Company. Subcontractor is solely responsible for the actions of itself and its Lower-Tier Subcontractors, Agents, and Employees.

## **4.0 ACCEPTANCE OF TERMS AND CONDITIONS**

- A. Subcontractor, by signing this Subcontract or delivering the items identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Subcontract incorporated by reference or attachment. Subcontractor shall be solely responsible for requesting instructions and interpretations and shall be solely liable for costs and expenses arising from Subcontractor's failure to do so. All rights and obligations shall survive final performance of this Subcontract.
- B. Subcontract sets forth the entire agreement between Company and Subcontractor concerning the subject matter of this Subcontract. To avoid any doubt, this Subcontract supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether oral or written, pertaining to the subject matter hereof, and it supersedes and takes precedence over any conflicting or supplemental terms and conditions included in any Subcontractor proposal, quote, acknowledgement, or invoice, all of which are hereby objected to and expressly rejected.
- C. If this subcontract requires on-site work, the subcontractor will be required to meet the "On-Site Requirements" listed on our website: SRS - SRNS General Provisions and Related Documents

## **5.0 SUBCONTRACTING**

- A. Subcontractors are required to be registered in the System for Award Management (SAM) and maintain an active Unique Entity Identifier (UEI). Subcontractors shall maintain registration in SAM during subcontract performance and through final payment of any subcontract, basic agreement, basic order agreement, or blanket purchasing agreement, in compliance with FAR 52.204-7 and FAR 42.12. In addition, a Subcontractor Information Form (SIF) must be completed and submitted with the subcontractor's solicitation response.
- B. The fees for Site required training classes will be absorbed by the Company and the subcontractor's attendance time will be compensated for the initial attendance. If a subcontract employee does not successfully pass the course, the subcontractor's attendance time for a second pass and beyond will not be reimbursed; however, the class fees will continue to be absorbed by the Company. The same scenario applies for substance abuse testing.
- C. Subcontractor shall not subcontract all or substantially all of the work without the prior written electronic approval of the Company. This provision shall not apply to purchases of standard commercial articles or raw materials on which Subcontractor shall perform further work.
- D. Subcontractor shall select Subcontractors on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Subcontract.

## **6.0 LOWER-TIER SUBCONTRACTORS**

The requirements of this Article shall be flowed down to all Lower-Tier Subcontractors.

When the use of a lower-tiered Subcontractor is determined to be necessary, the higher-tiered Subcontractor shall flow down those terms and conditions applicable for the activities within its defined scope of work, in accordance with referenced Codes/Standards/Material Specifications and any other requirements included within this Subcontract.

The higher-tiered Subcontractor shall flow down all commercial Terms and Conditions, including articles incorporated by reference, to all lower-tiered Subcontractors, which includes verification that the lower-tiered Subcontractor has been

appropriately qualified to perform the activities required to satisfy this procurement. The higher-tiered Subcontractor shall maintain objective evidence of the successful flow down of the referenced requirements and provide such evidence to the Company upon request. This flow down is also required at all levels if the lower-tiered Subcontractor to the higher-tiered Subcontractor deems it necessary to subcontract further its parts of this Contract.

#### **7.0 AUTHORIZED REPRESENTATIVES AND NOTICE**

Unless otherwise specified, all notices and communications in accordance with or related to this Subcontract shall be between authorized representatives designated in writing by the parties. Notices shall be in writing and may be served either personally on the authorized representative of the receiving Party, by email, facsimile, courier or express delivery, or certified mail to the facsimile number or address shown on the face of this Subcontract or such address as directed by notice.

#### **8.0 CHANGES**

The Company reserves the right to make changes within the general scope of this Subcontract by issuance of a unilateral change order, or by a bilateral modification to this Subcontract. Such changes may include, without limitation, changes in (1) the description of the items; (2) the quantities of items ordered; (3) the method of shipment or packaging, and (4) the time or place of delivery, inspection, and/or acceptance. The Subcontractor shall promptly comply with any such change made by the Company. If any change affects the cost of or the time required for performance, an equitable adjustment to the price and/or delivery requirements and other affected provisions of the Subcontract shall be made by the parties in a bilateral modification to this Subcontract. For any change, whether directed or constructive, Subcontractor must assert any request for equitable adjustment under this article in writing, together with such supporting information as The Company may require, electronically and within thirty days from the date of Subcontractor's first knowledge of the change, or Subcontractor's right to assert such request for equitable adjustment shall be waived.

#### **9.0 PRICING OF ADJUSTMENTS**

When costs are a factor in any determination of a Subcontract price adjustment pursuant to the "Changes" Article or any other provisions of this Subcontract, such costs shall be in accordance with the contract cost principles and procedures in FAR 31 as supplemented or modified by DEAR 931, in effect on the date of this Subcontract.

#### **10.0 PUBLICITY**

Subcontractor shall not publicly disclose information concerning any aspect of the materials or services relating to this Subcontract without the prior written electronic approval of the Procurement Representative unless specifically required by law.

- A. The interest of Company or DOE in this Subcontract may not be used in advertising or publicity without advance written approval of the Procurement Representative.
- B. The requirements of this Article, including paragraph (c), shall be flowed down to all Lower-Tier Subcontracts.

#### **11.0 ASSIGNMENT FOR THE BENEFIT OF DOE**

- A. Assignment by Company. This Subcontract may be unilaterally assigned by the Company to DOE or DOE's designee, with subsequent written electronic notice of such assignment to Subcontractor. Following such transfer and assignment, the Company shall have no further responsibilities hereunder.
- B. Assignment by Subcontractor. Unless permitted in paragraph C of this Article, Subcontractor shall not assign Subcontract, including any rights or obligations thereunder, wholly or in part, voluntarily, by operation of law, or otherwise without the prior written electronic consent of the Company. Any assignment of Subcontract in violation of the foregoing shall, at the unilateral option of Company, be void. Subcontractor shall submit the documentation prescribed in FAR Subpart 42.12 when requesting Company acceptance of Subcontractor's successor in interest or to recognize Subcontractor's change of name.
- C. Assignment of Rights to be Paid. Subcontractor may assign rights to be paid amounts due or to become due to a bank, trust company, or other financing institution, including a Federal lending agency, if the Procurement Representative is promptly furnished written notice and a signed copy of such assignment, provided that any assignment of monies shall be subject to (1) proper setoffs in favor of Company and (2) any deductions provided for in this Subcontract.
- D. Funding. Unless at the unilateral discretion of Company, Company shall make all payments under this

Subcontract from Government funds advanced and agreed to be advanced by DOE, and not from its own funds. In almost all circumstances, funds recovered by Company from Subcontractor are Government funds.

- E. Right to Recovery. If Company seeks recovery from Subcontractor, Subcontractor agrees it shall not plead, assert or raise in any manner a defense that Company has no right to recover (1) because Company, itself, rather than DOE, has suffered no damages on account of the cost-reimbursable nature of Company's Prime Contract with DOE, or (2) because DOE has accepted the project or task performed under this Subcontract.

## **12.0 APPROVALS**

The approval by the Company of designs, work drawings, specifications, reports, or any other data submitted by Subcontractor hereunder shall not affect or relieve Subcontractor from any responsibility to furnish said items in full conformance with the requirements of this Subcontract.

## **13.0 DISPUTES**

- A. Subcontractor and Company agree to make good-faith efforts to settle any dispute or Claim that arises under this Subcontract through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the Parties shall consider the use of Alternative Dispute Resolution (ADR). Whether mediation or binding arbitration is voluntarily agreed to or court ordered, the site of the proceedings shall be Aiken, South Carolina; the Parties shall share the cost of obtaining the mediator or arbiter, and each Party shall bear its discretionary costs.
- B. "Claim," as used in this Article, means a written demand or written assertion by one of the contracting Parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Subcontract terms, or other relief arising from or relating to this Subcontract, or its breach. However, a written demand or written assertion by Subcontractor seeking the payment of money is not a Claim until certified, if certification is required by paragraph (d) below. A request for payment (e.g., a voucher, invoice, or other routine request for payment, a termination settlement proposal, or a request for an adjustment or equitable adjustment) that is not in dispute when submitted is not a Claim. An initially undisputed request for payment may be converted to a Claim by Subcontractor by complying with the submission and applicable certification requirements in paragraphs (c) and (d) below.
- C. A Claim by Subcontractor shall be made in writing, cite this Article, and be submitted to the Procurement Representative with a request for a Final Decision.
- D. Subcontractor and any Lower-Tier Subcontractors whose portion of the Claim exceeds \$50,000 shall certify its portion of the Claim; provided however, if Subcontractor cannot certify the Lower-Tier Subcontractor's portion of Subcontractor's Claim, Subcontractor shall explain in writing why it cannot certify that portion.
- (1) Company shall not be liable for, and shall not pay, any Claim originated by Subcontractor if that Claim exceeds \$50,000 unless Subcontractor's Claim is accompanied by the below certification from Subcontractor.
  - (2) Company shall not be liable for, and shall not pay, any Claim of a Lower-Tier Subcontractor to Subcontractor if that Claim, without mark-ups by a higher-tier subcontractor or Subcontractor, exceeds \$50,000 unless that Claim is accompanied by the below certification from the Lower-Tier Subcontractor that originated the Claim.
  - (3) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar threshold requiring certification is met.

### **Certification**

I certify under penalty of law that: this Claim is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; the amount requested accurately reflects the contract adjustment for which the Subcontractor believes Company is liable; and that I am duly authorized to certify the claim on behalf of [[the Subcontractor or Lower-Tier Subcontractor, as appropriate]].

I further acknowledge that Company is a prime contractor to the U.S. Department of Energy, and this claim, if accepted by Company, will be paid for with Government funds and therefore be paid by the Government through a letter of credit arrangement with Company, and that a false or fraudulent claim may subject me and/or the Subcontractor to penalties, including, but not limited to, those under the False Claims Act, 31 U.S.C. 3729-3733.

E.

- (1) A Claim from Subcontractor shall be deemed denied if Procurement Representative does not issue a written Final Decision (i) by the date the Procurement Representative notified Subcontractor that the decision would be issued, or (ii) within 60 calendar days after receipt of the Claim if the Procurement Representative did not notify Subcontractor of a date by which the Final Decision would be issued. The Procurement Representative may, but is not required to, issue a written Final Decision after a Claim is deemed denied.
- (2) The Procurement Representative's Final Decision on any Subcontractor Claim shall be final and conclusive between the Parties with no right of judicial review, provided however, that the Final Decision shall not be final and binding against either Party, and shall be given no evidentiary weight by the trier of fact, if Subcontractor files suit within 90 calendar days of the written Final Decision in the appropriate court as provided for in paragraph (f) below.
- (3) Subcontractor shall have no right to file suit prior to the date of the written Final Decision or 60 calendar days from the Procurement Representative's receipt of the Claim, whichever occurs earlier.

F.

- (1) State Agency. Where Subcontractor is a State agency, such as an Educational Institution, the applicable constitutional provisions or statutes that govern sovereign immunity shall dictate the appropriate forum and law governing substantive issues.
- (2) Seller not a State Agency.
  - a. Any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States Court for the District of South Carolina, Aiken Division.
  - b. In the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in either Aiken, Barnwell, or Allendale County, South Carolina.
- (3) THE PARTIES AGREE TO TRIAL BY JUDGE ALONE AND HEREBY WAIVE ANY RIGHT TO DEMAND A TRIAL BY JURY.
- (4) If a court awards interest of any kind, interest shall be simple interest at the applicable rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563). If a court awards prejudgment interest, interest shall accrue from no earlier than the date a Claim is received by the Procurement Representative.

G. Subject to (f)(1), the resolution of all issues arising from or relating to this Subcontract shall be governed to the maximum extent practicable by the common law of federal contracts; provided, however, that (i) the "Christian Doctrine" shall not apply, meaning that Government procurement clauses (e.g., the FAR and the DEAR) or portions thereof not appearing in Subcontract shall not be read into this Subcontract, and (ii) where the language of any Article, provision or term herein differs from the language of a Government procurement clause, provision or term, the differing language of this Subcontract shall control. Where the common law of federal contracts does not apply, then subject to (f)(1), resolution shall be governed by the laws of the State of South Carolina, without regard to its Conflicts of Laws rules.

H. There shall be no interruption in the performance of the work, and Subcontractor shall proceed diligently with the performance of this Subcontract pending final resolution of any dispute arising under or related to this Subcontract between the Parties or between Subcontractor and its Lower-Tier Subcontractors.

I. The contractual remedies in this Article shall not be deemed to waive, postpone the running of, extend, or otherwise affect any statute of limitation applicable to any request for payment or Claim.

#### **14.0 TERMINATION AT COMPANY'S OPTION**

The Company shall have the right at any time, with or without cause, to terminate further performance of the work, by written notice to Subcontractor, specifying the date of termination. On the date of such termination stated in said notice, Subcontractor shall discontinue performance of the Work, and shall preserve Work in progress and completed work, pending the Company's instructions, and shall turn over such Work in accordance with the Company's instructions.

If Subcontractor has fully and completely performed all obligations under this Subcontract up to the date of termination, Subcontractor shall recover from the Company as complete and full settlement for such termination: (a) for Work to be

performed for a lump sum Contract Price under this Subcontract, the actual costs of all such Work satisfactorily executed to the date of termination, plus overhead and profit on such costs based on the percentage agreed to in the original schedule of values. (b) actual cost incurred by Subcontractor to return Subcontractor's field tools and equipment, if any, to its or its suppliers' premises and to turn over work in progress and completed Work in accordance with the Company's instructions; plus, (c) actual substantiated cost necessarily incurred in effecting the termination; less, (d) all amounts previously paid to Subcontractor for the work. This is more fully delineated in FAR 31.205-42, which is set forth in its entirety in Part 4.

All claims under any of the foregoing provisions of this Section shall be supported by Subcontractor's accounting records or other such documentation satisfactory in form and content to the Company and verified by the Company. In no event shall Subcontractor be entitled to any consequential damages, including but not limited to prospective profits, loss of future business, loss of production and impairment of credit, and any other such perspective damages because of the termination. All payments made pursuant to Termination at Company's option will be subject to audit. If the Company elects to audit Subcontractor's claims for termination for convenience costs, no payments will be made to Subcontractor, including any outstanding pre-termination costs, until the audit has been completed. The warranty obligations in this Subcontract will survive the termination.

#### **15.0 EXCUSABLE DELAYS**

- A. Subcontractor shall not be liable to Company if its nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. However, if Subcontractor's failure to perform is caused by the failure of its Lower-Tier Subcontractor to perform or make progress, and if the cause of such failure was beyond the reasonable control of both Subcontractor and the Lower-Tier Subcontractor(s) and without the fault or negligence of either, then Subcontractor shall not be deemed to be in default, unless the supplies or services were timely obtainable from other sources. Subcontractor shall notify the Procurement Representative in writing as soon as possible after any excusable delay period begins and ends.
- B. Company shall not be liable to Subcontractor if Company's nonperformance is caused by an occurrence beyond the reasonable control of Company and without its fault or negligence, such as acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Subcontractor's sole remedy shall be a schedule extension to this Subcontract if the facts support the extension requested by Subcontractor. The Procurement Representative shall notify Subcontractor in writing as soon as reasonably possible after an excusable delay period begins and ends.

#### **16.0 DELIVERY AND PAYMENT**

- A. Subcontractor shall work such hours, as may be necessary to meet the Subcontract delivery date(s), or any duly authorized extensions thereof, at no increase in the price of this Subcontract. Subcontractor shall issue electronically all invoices directly to Accounts Payable via the **SRNS-ACCTSPAY@srs.gov** email account. Subcontractor shall include banking information on each invoice submitted to facilitate proper Electronic Funds Transfer (EFT). The Subcontractor shall include on the invoice the Subcontractor name; invoice date; subcontract number; subcontractor invoice number, account number, and/or any other identifying number agreed to by subcontract; description (including, for example, subcontract line/subline number), unit price and quantity of goods and services rendered per specific line item and line item sub-total cost; subcontract name (where practicable), title and telephone number; other substantiating documentation or information required by the subcontract. If there are invoice discrepancies, the Company will reject the invoice and relay to the Subcontractor the deficiencies in their invoice within ten (10) days of receipt of the invoice. The invoice will not be acted upon. Receipt of a corrected invoice will re-initiate the aging of the invoice for payment purposes.
- B. Unless otherwise provided in this Subcontract, delivery shall not be made more than 15 days prior to the delivery dates specified herein and the Company may return earlier deliveries at Subcontractor's risk and expense. Subcontractor shall comply with the delivery schedule provided in this Subcontract.
- C. Unless otherwise specified in this Subcontract, a separate invoice shall be issued upon each delivery of Supplies or completion of Services and shall be payable by the Company upon receipt and acceptance of Supplies or completion of Services and receipt by the Company of a correct invoice. Credit and discount periods shall be computed from the date such invoice is payable to the date the Company's check is mailed or, for EFT, the specified payment date. Unless freight and other charges are itemized, the discount will be taken on the full amount of invoice.
- D. Payment Withheld - Subcontractor Data. If this Subcontract requires the submittal of Subcontractor Data, and if such Subcontractor Data, or any part thereof, is not delivered within the time specified by this Subcontract, or is deficient upon

delivery, the Company may, until such Subcontractor Data is delivered or deficiencies are corrected, without limiting any of its other rights or remedies, withhold payments not to exceed 20% of the Subcontract price to the Subcontractor.

- E. Notwithstanding anything herein, the Company shall be entitled at any and all times to set off against any amounts payable at any time by the Company hereunder any amount owing from Subcontractor to the Company under this Subcontract or other Subcontracts with Subcontractor.
- F. For items subject to inspection or testing as a condition of acceptance, Company may in its sole discretion pay invoices prior to acceptance subject to repayment if the items are not accepted. The payment for items, either wholly or in part, shall not be deemed or construed as acceptance.
- G. Overpayments. If Subcontractor becomes aware of a duplicate invoice payment or that the Company has otherwise overpaid on an invoice payment, the Subcontractor shall immediately notify the Company and request instructions for disposition of the overpayment.

#### **17.0 PROGRESS PAYMENTS**

If applied, this consists of additional paragraphs to Article 12.0 Delivery and Payment, above. In the event of an inconsistency between these additional paragraphs and Article 12.0 Delivery and Payment, paragraphs A-E, these additional paragraphs take precedence.

- A. The Company shall make progress payments monthly as the work proceeds or at more frequent intervals as determined by the Company, on estimates of work accomplished which meet the standards of quality established under the Subcontract, as approved by the Company. If requested by the Company, the Subcontractor shall furnish a breakdown of the total Subcontract price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Company may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Subcontractor at locations other than the site may also be taken into consideration if:
  - (1) Consideration is specifically authorized by this Subcontract; and
  - (2) The Subcontractor furnished satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Subcontract.
- B. All materials and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as:
  - (1) Relieving the Subcontractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
  - (2) Waiving the right to the Company to require the fulfillment of all the terms of the Subcontract.
- C. In making progress payments, the Company shall retain, until completion and acceptance of all work, ten (10) percent of the estimated value of work accomplished as of the date of the current application for payment. After the estimated value of Work accomplished exceeds fifty (50) percent of the Subcontract amount, and provided the Subcontractor is proceeding with the Work in the manner and time satisfactory to the Company, the Company may reduce the amount to be retained to five (5) percent of the estimated value of Work accomplished as of the date of the current application for payment, or to such lesser amount, including none, as may be decided upon by the Company.
- D. Notwithstanding any provision of this Subcontract, progress payments shall not exceed 80 percent on work accomplished on undefinitized Subcontract actions. A Subcontract action is any action resulting in a Subcontract, as defined as "Contract" in FAR 2.1, including Subcontract modifications for additional supplies or services, but not including Subcontract modifications that are within the scope and under the terms of the Subcontract, such as Subcontract modifications issued pursuant to the "Changes, Extras and Substitution" Article, or funding and other administrative changes.

#### **18.0 PERFORMANCE-BASED MILESTONE PAYMENTS**

- A. Amount of payments and limitations on payments.  
Subject to such other limitations and conditions as are specified in this Subcontract and this Article, the amount of payments and limitations on payments shall be specified in the Subcontract's description of the basis for payment.
- B. Subcontractor request for performance-based payment.  
The Subcontractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Company. Unless otherwise authorized by the Company, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized

and totaled. The Subcontractor's request shall contain the information and certification detailed in paragraphs (L) and (M) of this Article.

C. Approval and payment of requests

- (1) The Subcontractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Company Procurement Representative shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the Subcontract. The Company may, at any time, require the Subcontractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.
- (2) The approval by the Company of a request for performance-based payment does not constitute an acceptance by the Company and does not excuse the Subcontractor from performance of obligations under this Subcontract.

D. Liquidation of performance-based payments

- (1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole Subcontract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.
- (2) If at any time the amount of payments under this Subcontract exceeds any limitation in this Subcontract, the Subcontractor shall repay the Company the excess. Unless otherwise determined by the Company, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

E. Reduction or suspension of performance-based payments

The Company may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the Subcontract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

- (1) The Subcontractor failed to comply with any material requirement of this Subcontract (which includes paragraphs (H) and (I) of this clause).
- (2) Performance of this contract is endangered by the Subcontractor's—
  - (a) Failure to make progress; or
  - (b) Unsatisfactory financial condition.
- (3) The Subcontractor is delinquent in payment of any lower-tier Subcontractor or Subcontractor under this Subcontract in the ordinary course of business.

F. Title

- (1) Title to the property described in this paragraph (F) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this Subcontract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this Subcontract.
- (2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Subcontractor that are or should be allocable or properly chargeable to this Subcontract under sound and generally accepted accounting principles and practices:
  - (a) Parts, materials, inventories, and work in process;
  - (b) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this Subcontract;
  - (c) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (F)(2)(ii) of this clause; and
  - (d) Drawings and technical data, to the extent the Subcontractor or Subcontractors are required to deliver them to the Company by other Articles of this Subcontract.
- (3) Although title to property is in the Government under this Article, other applicable Articles of this Subcontract (e.g., the termination or special tooling Articles) shall determine the handling and disposition of the property.

- (4) The Subcontractor may sell any scrap resulting from production under this Subcontract, without requesting the Company's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Company.
- (5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Subcontractor must obtain the Company's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be determined not to be in compliance with the terms of the Subcontract and not payable (if the property is part of or needed for performance), and the Subcontractor shall refund the related performance-based payments in accordance with paragraph (D) of this clause.
- (6) When the Subcontractor completes all of the obligations under this Subcontract, including liquidation of all performance-based payments, title shall vest in the Subcontractor for all property (or the proceeds thereof) not—
  - (a) Delivered to, and accepted by, the Company under this Subcontract; or
  - (b) Incorporated in supplies delivered to, and accepted by, the Company under this Subcontract and to which title is vested in the Government under this Article.
- (7) The terms of this Subcontract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this Article.

G. Risk of loss

Before delivery to and acceptance by the Company, the Subcontractor shall bear the risk of loss for property, the title to which vests in the Government under this Article, except to the extent the Company expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be determined to be not in compliance with the terms of the Subcontract and not payable (if the property is part of or needed for performance), and the Subcontractor shall refund the related performance-based payments in accordance with paragraph (D) of this Article.

H. Records and controls

The Subcontractor shall maintain records and controls adequate for administration of this Article. The Subcontractor shall have no entitlement to performance-based payments during any time the Subcontractor's records or controls are determined by the Company to be inadequate for administration of this Article.

I. Reports and Company access

The Subcontractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Company for the administration of this Article and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Subcontractor shall give the Company reasonable opportunity to examine and verify the Subcontractor's records and to examine and verify the Subcontractor's performance of this Subcontract for administration of this Article.

J. Special terms regarding default

If this Subcontract is terminated under the Default Article,

- (1) the Subcontractor shall, on demand, repay to the Company the amount of unliquidated performance-based payments, and
- (2) title shall vest in the Subcontractor, on full liquidation of all performance-based payments, for all property for which the Company elects not to require delivery under the Default Article of this Subcontract. The Company shall be liable for no payment except as provided by the Default Article.

K. Reservation of rights

- (1) No payment or vesting of title under this clause shall—
  - (a) Excuse the Subcontractor from performance of obligations under this Subcontract; or
  - (b) Constitute a waiver of any of the rights or remedies of the parties under the Subcontract.
- (2) The Company's rights and remedies under this Article—
  - (a) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this Subcontract; and
  - (b) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this Article or the exercise of any other right, power, or privilege of the Company.

L. Content of Subcontractor's request for performance-based payment.

The Subcontractor's request for performance-based payment shall contain the following:

- (1) The name and address of the Subcontractor;
- (2) The date of the request for performance-based payment;
- (3) The Subcontract number and/or other identifier of the Subcontract under which the request is made;
- (4) Such information and documentation as required by the Subcontract's description of the basis for payment; and
- (5) A certification by a Subcontractor official authorized to bind the Subcontractor, as specified in paragraph (M) of this clause.

**M. Content of Subcontractor's certification**

As required in paragraph (L) (5) of this Article, the Subcontractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that—

- (1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Subcontractor, in accordance with the Subcontract and the instructions of the Company;
- (2) (Except as reported in writing on \_\_\_\_\_), all payments to lower-tier Subcontractors under this Subcontract have been paid, or will be paid, currently, when due in the ordinary course of business;
- (3) There are no encumbrances (except as reported in writing on \_\_\_\_\_) against the property acquired or produced for, and allocated or properly chargeable to, the Subcontract which would affect or impair the Government's title;
- (4) There has been no materially adverse change in the financial condition of the Subcontractor since the submission by the Subcontractor to the Company of the most recent written electronic information dated; \_\_\_\_\_ and
- (5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the Subcontract, and the amount of all payments under the Subcontract will not exceed any limitation in the Subcontract.

**19.0 PAYMENT BY ELECTRONIC FUNDS TRANSFER**

**A. Methods of Payment.**

- (1) All payments by the Company under this Subcontract shall be made by EFT except as provided in paragraph A.2 of this Article. As used in this Article, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
- (2) In the event the Company is unable to release one or more payments by EFT, Subcontractor agrees to either:
  - (a) Accept payment by check or some other mutually agreeable method of payment; or
  - (b) Request the Company to extend payment due dates until such time as the Company makes payment by EFT.

**20.0 PAYMENT**

- A. Unless otherwise provided, terms of payment shall be Net-30 days from the latter of (1) receipt of Subcontractor proper invoice for services, if required, or (2) delivery and acceptance of products. Any offered discount shall be taken if payment is made within the discount period that the Subcontractor's invoice indicates. If there are invoice discrepancies, the Company will reject the invoice and relay to the Subcontractor the deficiencies in their invoice within ten (10) business days of receipt of the invoice. Receipt of a corrected invoice will re-initiate the aging of the invoice for payment purposes.
- B. 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.
- C. For items subject to inspection or testing as a condition of acceptance, Company may in its sole discretion pay invoices prior to acceptance subject to repayment if the items are not accepted. The payment for items, either wholly or in part, shall not be deemed or construed as acceptance.

**21.0 PASSAGE OF TITLE AND LIENS**

- A. Title to the Supplies shall be passed to the Government at the place of delivery to the Company. If purchased F.O.B. shipping point, delivery to the carrier shall be considered to be delivery to the Company.

- B. Subcontractor agrees to furnish the work free and clear of all liens, claims, and encumbrances. In the event that a lien of any nature shall at any time be filed against the work or Subcontractor or a Subcontractor's facility by any person, firm, or corporation which has supplied equipment, material, services or data, Subcontractor agrees promptly, on demand of the Company and at Subcontractor's expense, to take any and all action necessary to cause any such lien to be released or discharged there from. Subcontractor agrees to save the Company harmless from all liens, claims, or demands in connection with the work.
- C. Except as otherwise provided in this Subcontract,
  - (1) Subcontractor shall be responsible for the loss or destruction of, or damage to, the Supplies until delivered at the designated delivery point, regardless of the point of inspection.
  - (2) After delivery to the Company at the designated point and prior to acceptance or rejection by the Company, Subcontractor shall be responsible for the loss or destruction of or damage to the Supplies unless such loss, destruction, or damage results from negligence of the officers, agents, or employees of the Company or the Government acting within the scope of their employment; and
  - (3) Subcontractor shall bear all risks as to the rejected Supplies after rejection.

## **22.0 INSPECTION/ACCEPTANCE**

Unless otherwise specified in this Subcontract, Subcontractor shall be responsible for all quality assurance measures necessary to ensure that only items and services conforming to the requirements of this Subcontract are tendered to Company for acceptance. This shall include such testing, in process inspections and other verification measures as are customary in the industry to ensure that parts, components, and materials furnished by suppliers of Subcontractor and incorporated into end items furnished to Company are not counterfeit or of suspect quality.

Notwithstanding Subcontractor's responsibility for all quality assurance measures as described in paragraph (a) above, Company has the right to conduct process inspections if this Subcontract is for services. If conducted, such inspections shall be performed in a manner that will not unduly delay the work, and Subcontractor shall provide all reasonable facilities and assistance for the safe and convenient performance of such inspections without additional charges.

Company reserves the right to inspect and test all items and services that have been tendered for acceptance. Company has the right to reject nonconforming items and services with or without disposition instructions from Subcontractor; the right to require their correction, replacement, reperformance; the right to accept nonconforming items or services and reduce the Subcontract amount to reflect the reduced value of the nonconformance(s); or the right to terminate this Subcontract. Company exercises its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the conditions of the item or services, unless the change is due to the defect in the item or service.

Company shall not be obligated to inspect the items or services, and neither the inspection nor the lack of inspection by Company shall relieve Subcontractor of its responsibility for providing the items or services in accordance with the terms of the Subcontract. The inspection or use of or payment for item under the Subcontract, either wholly or in part, shall not be construed as acceptance.

## **23.0 SUSPECT/COUNTERFEIT PARTS**

- A. Subcontractor warrants all items provided to Company are genuine and meet the requirements of 18 U.S.C. 2320 Trafficking in counterfeit goods or services, as more fully described the Statement of Work or item description. The Subcontractor's warranty also extends to labels and or trademark logos affixed or designed to be affixed to items supplied or delivered to Company. In addition, falsification of information or documentation may constitute criminal conduct; Company may reject or retain such information at no cost, and identify, segregate, and report such information to Government officials.
- B. The Subcontractor shall compensate Company, its agent and third parties, specifically including Government, for any financial loss, injury, or property damage resulting directly or indirectly materials that are suspect or counterfeit, materials that have been provided under false pretenses and material or items that are altered, deteriorated or the use of which results in failure of other components.
- C. Types of materials, parts and components known to have been misrepresented, include, but are not limited to, fasteners, hoisting rigging, and lifting equipment, cranes, valves, pipe fittings, electrical components, and structural items.

#### **24.0 DEFECT IDENTIFICATION AND REPORTING**

In the event the Subcontractor becomes aware of any latent defect(s) in any item(s) furnished under this Subcontract, the Subcontractor shall promptly notify the Company Procurement Representative. This notice shall provide at a minimum the following information:

- Name and address of the person making the notification,
- Nature of the defect and any substantial safety hazard that could result, if known
- full description of the item(s),
- manufacturer, model and/or part number,
- complete description of the latent defect,
- impact of the defect on the operation of the item(s),
- action(s) to be taken by the Company relative to return, re-fit, repair, etc.,
- date of purchase by the Company, and
- applicable company agreement Subcontract number.
- Actions that have been taken or are being planned to correct the defective item(s) or service(s), including designation of the organization responsible for implementing the corrective actions and schedule for completion.
- Additional pertinent information

In the event the report submitted is only preliminary, a written follow-up report shall be made each forty-eight (48) hours thereafter until a final written report can be made. The final written report shall be submitted to Company as soon as possible, in light of the defect's magnitude, but in no event shall it be provided later than thirty (30) days following discovery of the defect. The final written report should be comprehensive in terms of addressing the defect(s) and any remedial actions required to overcome the fact that the defective item(s) and/or service(s) were provided.

The responsibility for identifying and reporting a defective item or service shall extend to all levels and individuals of the Subcontractor. The Subcontractor shall include this Article in all Lower-Tier Subcontracts entered into under this Subcontract.

#### **25.0 WARRANTY**

- A. Subcontractor warrants that the Supplies shall be free from defects in material and workmanship, of the most suitable grade of their respective kinds for the purpose and comply with all requirements set forth in this Subcontract, until one year after first placed into service by the Company, or three years after acceptance, whichever first occurs. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by the Company, by promptly: (i) repairing or replacing the nonconforming Supplies specified (and correcting any plans, specifications, or drawings affected); (ii) furnishing the Company any materials, parts, and instructions necessary to correct or have corrected the nonconformity, or (iii) paying to the Company a portion of the Subcontract price as is equitable under the circumstances.
- B. Subcontractor warrants that the Services shall reflect the industry standards of professional knowledge and judgment, shall be free from defects in workmanship, and shall be in compliance with all requirements of this Subcontract, until one (1) year from the completion of the Services. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by the Company, by promptly (i) re-performing the nonconforming Services or (ii) paying to the Company a portion of the Subcontract price as is equitable under the circumstances.
- C. If Subcontractor fails to perform its obligations promptly under this Article, the Company may perform, or have performed such obligations and Subcontractor shall pay the Company all charges occasioned thereby.
- D. The warranty with respect to corrected Supplies or Services shall be subject to the same terms as the warranty provided for in paragraphs A and B of this Article. The warranty for other than corrected or replaced Supplies or Services shall continue until the expiration of such period and a period equal to the time elapsed between the discovery of the nonconformity and its correction.

- E. Unless installation is an element of the Work, Subcontractor shall not be obligated under this Article for the costs of removal or reinstallation of any Supplies furnished or items Serviced hereunder from the location of their installation, or for the costs of removal or reinstallation of structural parts or items not furnished by Subcontractor hereunder. Subcontractor shall in any event bear all packing, packaging, and shipping costs from the place of delivery to the Subcontractor's plant and return to the place of delivery and shall bear all risk of loss or damage for the items upon which Services have been performed or Supplies while in transit.
- F. Unless decontamination is an element of the Work, in the event that Subcontractor's costs in correcting any nonconformity under this Article are increased solely because the Supplies furnished or items Serviced hereunder must be decontaminated to the level specified in the definition of "radiation area" in 10 CFR 20.202, this Subcontract price shall be equitably adjusted to reflect such additional costs after prompt written electronic notification thereof by Subcontractor to the Company.
- G. The provision of this Article shall apply notwithstanding inspection, acceptance, or any other provision of this Subcontract, and shall not limit any other of the Company's rights and remedies.
- H. Latent Defects. In the event the Subcontractor becomes aware of any latent defect(s) in any item(s) furnished under this Subcontract, the Subcontractor shall promptly notify the Company Procurement Representative. This notice shall provide at a minimum the following information:
  - (1) full description of the item(s);
  - (2) manufacturer, model and/or part number;
  - (3) complete description of the latent defect
  - (4) impact of the defect on the operation of the item(s);
  - (5) action(s) to be taken by the Company relative to return, re-fit, repair, etc.;
  - (6) date of purchase by the Company; and,
  - (7) applicable Company Subcontract number.

## **26.0 SUBCONTRACTOR'S INSPECTION REQUIREMENTS**

Subcontractor is responsible for performing, or having performed, all inspections and tests necessary to substantiate that the Supplies or Services furnished under this Subcontract conform to Subcontract requirements, including any applicable technical requirements for specified manufacturers' parts. This Article takes precedence over any the Company inspection and testing required in the specifications, except for specialized inspections or tests specified to be performed solely by the Company.

## **27.0 INSPECTION OF SUPPLIES AND SERVICES**

- A. Definitions
  - (1) "Services" as used in this Article includes services performed, workmanship, and material furnished or utilized in the performance of services.
  - (2) "Supplies" as used in this Article, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- B. Subcontractor shall provide and maintain an inspection system acceptable to the Company covering Services and/or Supplies and shall tender to the Company for acceptance only Supplies that have been inspected in accordance with the inspection system and have been found by Subcontractor to be in conformity with Subcontract requirements. As part of the system, Subcontractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Company and the Government during Subcontract performance and for as long afterwards as this Subcontract requires. The Company and the Government may perform reviews and evaluations necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the work. The right of review, whether exercised or not, does not relieve Subcontractor of its obligations under this Subcontract.
- C. The Company and the Government has the right to inspect and test all Supplies and Services called for by this Subcontract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Company and the Government shall perform inspections and tests in a manner that will not unduly delay the work. The Company and the Government assume no contractual obligation to perform any inspection and test for the benefit of Subcontractor, unless specifically set forth elsewhere in this Subcontract.

- D. If the Company or the Government performs an inspection or test on the premises, or remotely/virtually, of Subcontractor, Subcontractor shall furnish, and shall require Subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in this Subcontract, the Company shall bear the expense of the Company and Government inspections or tests made at other than the Subcontractor's premises; provided, that in case of rejection, the Company and the Government shall not be liable for any reduction in the value of inspection or test samples.
- E.
- (1) When Supplies or Services are not ready at the time specified by Subcontractor for inspection or test, the Company may charge to Subcontractor the additional cost to the Company related to the inspection or test.
  - (2) The Company may also charge Subcontractor for any additional cost of inspection or test when prior rejection makes re-inspection or retest necessary.
- F. The Company has the right either to reject or to require correction of nonconforming Supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Subcontract requirements. The Company may reject nonconforming Supplies with or without disposition instructions.
- G. Subcontractor shall remove Supplies rejected or required to be corrected. However, the Company may require correction in place, promptly after notice, by and at the expense of Subcontractor. Subcontractor shall not tender for acceptance corrected or rejected Supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- H. If any of the Services do not conform to Subcontract requirements, the Company may require Subcontractor to perform the Services again in conformity with Subcontract requirements, at no increase in Subcontract amount. When the defects in Services cannot be corrected by re-performance, the Company may
- (1) Require Subcontractor to take necessary action to ensure that future performance conforms to Subcontract requirements and
  - (2) Reduce the Subcontract price to reflect the reduced value of the Services performed.
- I. If Subcontractor fails to remove, replace, or correct rejected Supplies promptly, that are required to be removed or to be replaced or corrected, or to re-perform nonconforming Services promptly in conformance with Subcontract requirements or to take the necessary action to ensure future performance of Services in conformity with Subcontract requirements, the Company may
- (1) By Subcontract or otherwise, remove, replace, or correct the Supplies and perform the Services and charge the cost to Subcontractor;
  - (2) Terminate this Subcontract for default; or
  - (3) Require delivery and make an equitable price reduction.
- J.
- (1) If this Subcontract provides for the performance of quality assurance at source, whether performed on the Subcontractor's premises or remote/virtually, and if requested by the Company, the Subcontractor shall furnish advance notification of the time
    - (a) When Subcontractor inspection or tests will be performed in accordance with the terms and conditions of this Subcontract and
    - (b) When the Supplies will be ready for the Company inspection.
  - (2) The Company request shall specify the period and method of the advance notification and the Company representative to whom it shall be furnished. Requests shall not require more than two workdays of advance notification if the Company representative is in residence in the Subcontractor's plant, nor more than seven workdays in other instances.
- K. The Company shall accept or reject Supplies as promptly as practicable after delivery, unless otherwise provided in this Subcontract. The Company's failure to inspect and accept or reject the Supplies shall not relieve Subcontractor from responsibility, nor impose liability on the Company, for nonconforming Supplies.
- L. Inspections and tests by the Company and the Government do not relieve Subcontractor of responsibility for defects or other failures to meet Subcontract requirements. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in this Subcontract.

- M. If acceptance is not conclusive for any reason, the Company, in addition to any other rights and remedies provided by law, or under other provisions of this Subcontract, shall have the right to require the Subcontractor
- (1) At no increase in Subcontract price, to correct or replace the defective or nonconforming Supplies at the original point of delivery or at Subcontractor's plant, at the Company's election, and in accordance with a reasonable delivery schedule as may be agreed upon between Subcontractor and the Company; provided that the Company may require a reduction in Subcontract price if Subcontractor fails to meet such delivery schedule, or
  - (2) Within a reasonable time after receipt by Subcontractor of notice of defects or nonconformance, to repay such portion of this Subcontract as is equitable under the circumstances if the Company elects not to require correction or replacement. When Supplies are returned to Subcontractor, Subcontractor shall bear the transportation cost from the original point of delivery to Subcontractor's plant and return to the original point when that point is not the Subcontractor's plant. If Subcontractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of ten days (or such longer period as the Company may authorize electronically) after receipt of notice from the Company specifying such failure, the Company shall have the right by contract or other-wise to replace or correct such Supplies and charge to Subcontractor the cost occasioned thereby.

## **28.0 GOVERNMENT PROPERTY**

If the total acquisition cost of all Government property furnished under this Subcontract is \$100,000 or less, Paragraph E of this Article is deleted, and the following is substituted in lieu thereof:

The Subcontractor shall be responsible and accountable for all Government property provided under this Subcontract. The Subcontractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Company inspection at all reasonable times. The Subcontractor shall provide an annual inventory listing identifying all Government Property associated with this Subcontract. The inventory shall include the following information for each property item: ID number, description, manufacturer, model number, serial number, acquisition date, acquisition value, condition, location, and primary user.

### **A. Government Property**

- (1) The Company shall deliver to the Subcontractor, for use in connection with and under the terms of this Subcontract, the Government property described elsewhere in the Subcontract or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government property").
- (2) The delivery or performance dates for this Subcontract are based upon the expectation that Government property suitable for use (except for property furnished "as-is") will be delivered to the Subcontractor at the times stated in the Subcontract or if not so stated, in sufficient time to enable the Subcontractor to meet the Subcontract delivery or performance dates.
- (3) If Government property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify the Company Procurement Representative detailing the facts and, as directed by the Company Procurement Representative and at the Company's expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written electronic request of the Subcontractor, the Company Procurement Representative shall make an equitable adjustment as provided in paragraph H of this Article.
- (4) If Government property is not delivered to the Subcontractor by the required time, the Company Procurement Representative shall, upon the Subcontractor's timely written electronic request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph H of this Article.
- (5) Government Furnished Equipment may be provided to the Subcontractor in support of Subcontractor-based oversight activities performed remotely/virtually in the event the Subcontractor does not have adequate Information Communication Technologies to support said activities. If GFM is provided to the Subcontractor for this purpose, the Subcontractor will adhere to the terms and conditions governing the use and protection of said Government property.

### **B. Changes in Government Property**

- (1) The Company Procurement Representative may, by written electronic notice,
  - (a) Decrease the Government property provided or to be provided under this Subcontract, or
  - (b) Substitute other Government property for the property to be provided by the Company, or to be acquired by the Subcontractor for the Government, under this Subcontract. The Subcontractor shall promptly take such action as the Company Procurement Representative may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the Subcontractor's written electronic request, the Company Procurement Representative shall make an equitable adjustment to the Subcontract in accordance with paragraph H of this Article, if the Company has agreed in

the Subcontract to make the property available for performing this Subcontract and there is any -

- (a) Decrease or substitution in this property pursuant to subparagraph B (1) above; or
- (b) Withdrawal of authority to use this property, if provided under any contract or lease.

C. Title in Government Property

- (1) The Government shall retain title to all Government property.
- (2) All Government property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this Article. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property as being attached to any real property.
- (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Subcontractor for the Company under this Subcontract shall pass to and vest in the Government when its use in performing this Subcontract commences or when the Company has paid for it, whichever is earlier, whether or not title previously vested in the Government.
- (4) If this Subcontract contains a provision directing the Subcontractor to purchase material for which the Company will reimburse the Subcontractor as a direct item of cost under this Subcontract -
  - (a) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
  - (b) Title to all other material shall pass to and vest in the Government upon -
    - (i) Issuance of the material for use in Subcontract performance;
    - (ii) Commencement of processing of the material or its use in Subcontract performance; or
    - (iii) Reimbursement of the cost of the material by the Company, whichever occurs first.

D. Use of Government Property

The Government property shall be used only for performing this Subcontract, unless otherwise provided in this Subcontract or approved by the Company Procurement Representative.

E. Property Administration

- (1) The Subcontractor shall be responsible and accountable for all Government property provided under this Subcontract and shall comply with DOE Property Management Regulations 41 CFR 109, as in effect on the date of this Subcontract.
- (2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of FAR 45.5 and DEAR 945.5. The Subcontractor shall provide an annual inventory as required in Federal Property Regulation 41 CFR 101 and DOE Property Management Regulation 41 CFR 109.
- (3) If damage occurs to Government property, the risk of which has been assumed by the Company or the Government under this Subcontract, the Company shall replace the items or the Subcontractor shall make such repairs as the Company directs. However, if the Subcontractor cannot affect such repairs within the time required, Subcontractor shall dispose of the property as directed by the Company Procurement Representative. When any property for which the Company is responsible is replaced or repaired, the Company Procurement Representative shall make an equitable adjustment in accordance with paragraph H of this Article.
- (4) The Subcontractor understands that the Subcontract price does not include any amount for repairs or replacement for which the Company is responsible. Repair or replacement of property for which the Subcontractor is responsible shall be accomplished by the Subcontractor at its own expense.

F. Access

The Company and the Government and all their designees have access at all reasonable times to the premises by physical and/or remote/virtual means as determined by the Company in which any Government property is located for the purpose of inspecting the Government property.

G. Risk of loss

Unless otherwise provided in this Subcontract, the Subcontractor assumes the risk of and shall be responsible for, any loss or destruction of, or damage to Government property upon its delivery to the Subcontractor or upon passage of title to the Government under paragraph C of this Article. However, the Subcontractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this Subcontract.

H. Equitable Adjustment

When this Article specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes Article. When appropriate, the Company Procurement Representative may initiate an equitable adjustment in favor of the Company. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. The Company and the Government shall not be liable to suit for breach of contract for

- (1) Any delay in delivery of Government property;
- (2) Delivery of Government property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government property; or
- (4) Failure to repair or replace Government property for which the Company or the Government is responsible.

I. Final Accounting and Disposition of Government Property

Upon completing this Subcontract, or at such earlier dates as may be fixed by the Company Procurement Representative, the Subcontractor shall submit, in a form acceptable to the Company Procurement Representative, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this Subcontract or delivered to the Company. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Company Procurement Representative. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid to the Company as the Company Procurement Representative directs.

J. Abandonment and Restoration of Subcontractor's Premises

Unless otherwise provided herein, the Company -

- (1) May abandon any Government property in place, at which time all obligations of the Company and the Government regarding such abandoned property shall cease; and
- (2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Subcontract completion). However, if the Government property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph H of this Article may properly include restoration or rehabilitation costs.

K. Communications

All communications under this Article shall be submitted in writing electronically.

L. Overseas Subcontracts

If this Subcontract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government property" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government property," respectively.

**29.0 PUBLIC RELEASE OF INFORMATION**

Information, data, photographs, sketches, advertising, announcements, denial, or confirmation of same, or items of a similar nature, relating to this Subcontract, which Subcontractor desires to release or publish, shall be submitted to the Company for approval eight weeks prior to the desired release date. As part of the approval request, Subcontractor shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases by Subcontractors must have the prior approval of the Company. Subcontractor shall include all provisions of this Article including this sentence in all Subcontracts under this Subcontract. The Company's approval shall not be unreasonably withheld.

**30.0 TAXES**

To the extent possible, Subcontractor will use its best efforts to obtain services, materials and supplies furnished under this Subcontract that are tax exempt by sharing the exemption certificate. Subcontractor shall determine at the time of providing bids for this Subcontract and all subsequent modifications to this Subcontract if it is able to procure services, materials and supplies that are tax exempt. If the exemption certificate is not accepted, then the Subcontract price shall include all applicable Federal, State, and local taxes and duties.

**31.0 COMPLIANCE WITH LAWS**

- A. Subcontractor shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations unless relief has been granted in writing by the appropriate regulatory agency. Except as otherwise directed by the Company, Subcontractor shall procure, without additional expense to the Company, all necessary permits and/or licenses.
- B. The requirements of this Article, including paragraph (b), shall be flowed down to all Lower-Tier Subcontractors

### **32.0 RIGHTS TO PROPOSAL DATA (TECHNICAL)**

Except for the technical data contained on those pages of Subcontractor's proposal which are specifically identified in the Subcontract with specific reference to this Article and asserted by Subcontractor as being proprietary data, it is agreed that, as a condition of the award of this Subcontract and notwithstanding the provisions of any notice appearing on the proposal or elsewhere, the Company and the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this Subcontract is based.

### **33.0 THE COMPANY POLICY ON OPPORTUNITY**

All Subcontractors are notified that it is the policy of the Company to provide equal employment opportunity and to adhere to federal, state and local laws pertaining thereto. Appropriate action will be taken on the part of all Company Subcontractors to ensure adherence to such laws.

### **34.0 DEFAULT**

A.

- (1) The Company may, subject to paragraphs C and D below, by written electronic notice of default to Subcontractor, terminate this Subcontract in whole or in part if Subcontractor fails to:
  - i. Deliver the Supplies or to perform the Services within the time specified in this Subcontract or any extension;
  - ii. Make progress, so as to endanger performance of this Subcontract (but see subparagraph A (2) below); or
  - iii. Perform any of the other provisions of this Subcontract (but see subparagraph A (2) below).
- (2) The Company's right to terminate this Subcontract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if Subcontractor does not cure such failure within 10 days (or more if authorized in writing electronically by the Company) after receipt of the notice from the Company specifying the failure.

B. If the Company terminates this Subcontract in whole or in part, it may acquire, under the terms and in the manner the Company considers appropriate, supplies or services similar to those terminated, and Subcontractor will be liable to the Company for any excess costs for those supplies or services. However, Subcontractor shall continue the work not terminated.

C. Except for defaults of Subcontractor's at any tier, Subcontractor shall not be liable for any excess costs if the failure to perform this Subcontract arises from causes beyond the control and without the fault or negligence of Subcontractor. Examples of such causes include

- (1) Acts of God or of the public enemy,
- (2) Acts of the Government in either its sovereign or contractual capacity,
- (3) Fires,
- (4) Floods,
- (5) Epidemics,
- (6) Quarantine restrictions
- (7) Strikes,
- (8) Freight embargoes, and
- (9) Unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of Subcontractor.

D. If the failure to perform is caused by the default of a Subcontractor at any tier, and if the cause of the default is beyond the control of both Subcontractor and the Subcontractor and without the fault or negligence of either, Subcontractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Subcontractor to meet the required delivery schedule.

E. If this Subcontract is terminated for default, the Company may require Subcontractor to transfer title to the Government and deliver to the Company, as directed by the Company, any (1) completed Supplies, and (2) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively

referred to as "manufacturing materials" in this Article) that Subcontractor has specifically produced or acquired for the terminated portion of this Subcontract. Upon direction of the Company, Subcontractor shall also protect and preserve property in its possession in which the Company or the Government has an interest.

- F. The Company shall pay the Subcontract price for completed Supplies delivered and accepted. Subcontractor and the Company shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes Article. The Company may withhold from these amounts any sum it determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.
- G. If, after termination, it is determined that Subcontractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Company.
- H. The rights and remedies of the Company in this Article are in addition to any other rights and remedies provided by law or under this Subcontract.

### **35.0 PATENTS AND COPYRIGHTS**

- A. Subcontractor shall, at its own expense, defend any suit or proceeding brought against the Company and/or its Subcontractors, mediate and immediate, so far as based on any allegation that any goods, material, equipment, device, item, method, or Article (hereinafter referred to as "Product") or any part thereof furnished hereunder constitutes an infringement of any claim of any patent or violation of any copyright.
- B. In case the product or any part thereof furnished hereunder is held, in any suit or proceeding so defended to constitute infringement and its use is enjoined, Subcontractor shall, at its option and its own expense, in a timely manner either (i) procure for the Company and its Subcontractors, mediate and immediate, the right to continue using product or part thereof, or (ii) replace it with a substantially equivalent non-infringing product, or (iii) modify it so it becomes non-infringing but is substantially functionally equivalent.

### **36.0 JOINT INTELLECTUAL PROPERTY RIGHTS**

- A. "Joint Intellectual Property Rights" shall mean any work under the Subcontract, which:
  - (1) Results from the involvement of at least one employee/participant from each of the Company and the Subcontractor; and
  - (2) The subject matter of which is capable of protection under domestic or foreign law, including but not limited to, patents, copyrights, trademarks, or mask works.
- B. As to Joint Intellectual Property Rights, in which the Company has a joint ownership interest, the Subcontractor agrees to negotiate in good faith with the Company a Memorandum of Agreement to resolve issues of participation in protection and commercialization.

### **37.0 COMPLIANCE WITH EMPLOYEE CONCERNS**

- A. Subcontractors shall ensure Subcontractor's employees are aware of the DOE-SRS and the Company Employee Concerns Programs (ECP) and how to use the program by performing the following:
  - (1) Ensure employees are provided with information on the DOE-SRS and the Company ECP during initial orientation and annual training.
  - (2) Ensure that posters identifying the DOE-SRS and the Company ECP telephone "hotline" numbers are displayed in conspicuous locations throughout the worksite. The Company will provide posters, as necessary.
  - (3) Inform Subcontractor employees of the availability of the DOE-SRS ECP in case of dissatisfaction or lack of confidence with other reporting systems.
  - (4) Ensure managers and supervisors are aware of the prohibition of any reprisal against employees who have or are believed to have raised or reported concerns.
- B. Subcontractors must immediately notify the STR/End User or the Procurement Representative of any employee concern involving:
  - (1) A condition which constitutes an imminent threat to the health and safety of site personnel or to the general public.
  - (2) Circumstances which would cause adverse public reaction or receive local media attention.
  - (3) Allegations of reprisal.

- C. Subcontractors shall investigate any employee concern referred by the STR/End User and inform the STR/End User of investigation results within 7 days of receipt of concern. Inform the STR/End User in writing electronically if an extension to this 7-day timeframe is required, along with status of investigation to date and actions pending to closure. The investigation shall be conducted to the satisfaction of the Company Procurement Representative.

### **38.0 OZONE DEPLETING SUBSTANCE**

Without limiting any of the other Articles herein, Subcontractor warrants that all of the supplies furnished under this Subcontract have been completely and accurately labeled pursuant to the requirements of 40 CFR Part 82, "Protection of Stratospheric Ozone" or those supplies do not require such labeling.

### **39.0 REPORTING OF ROYALTIES**

If any royalty payments are directly involved in this Subcontract or are reflected in the Subcontract price, Subcontractor agrees to report in writing electronically to the Company during the performance of this Subcontract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this Subcontract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of DOE or the Company of any individual payments or royalties shall not preclude the Government or the Company at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payment is made. The provision of this Article shall be included in all Subcontracts that are expected to exceed \$25,000.

### **40.0 SUBCONTRACTOR'S LIABILITY FOR FINES AND PENALTIES**

- A. Subcontractor is liable to the Company for fines and penalties assessed by any governmental entity against the Company or DOE as a result of Subcontractor's failure to perform its work under the Subcontract in compliance with the requirements of the Subcontract.
- B. Subcontractor shall indemnify, defend and hold harmless the Company and DOE from and against any and all claims, demands, actions, causes of action, suits, damages, expenses, including attorney's fees, and liabilities whatsoever resulting from or arising in any manner on account of the assessment of said fines and penalties against the Company or DOE.

### **41.0 INDEMNIFICATION AND LIABILITY**

- A. Subcontractor shall indemnify, defend and hold the Company and its customer harmless from and against any and all damages, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of or relating to any claims, causes of action, lawsuits or other proceedings, regardless of legal theory, that result, in whole or in part, from Subcontractors, or any of their lower-tier Subcontractors, employees, agents or representatives: (i) intentional misconduct, negligence, or fraud, (ii) breach of any representation, warranty or covenant made herein, (iii) products or services including, without limitation, any claims that such products or services infringe any United States patent, copyright, trademark, trade secret or any other proprietary right of any third party, (iv) unauthorized disclosure of information, by any of its directors, officers, employees, agents, Subcontractors, lower-tiered Subcontractors or permitted assigns.
- B. This Subcontract is subject to the Buy American Act – Supplies and Trade Agreements clauses as stated in the Article titled "Clauses Incorporated by Reference." Subcontractor is solely responsible for compliance with such clause and agrees to indemnify and hold harmless Company from any and all direct, indirect or consequential expenses or other damages relating to or arising out of the failure of Subcontractor or its Lower-Tier Subcontractors to comply with said clauses.
- C. Subcontractor shall indemnify, defend and hold harmless Company and Government and their respective officers, employees and agents against liability, including all damages and costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this Subcontract, provided Subcontractor is reasonably notified of such claims and proceedings by Company and/or Government.
- D. Subcontractor is liable to the Company for all fines and penalties assessed by any governmental entity against the Company or DOE as a result of Subcontractor's failure to perform its Work under this Subcontract in compliance with the requirements of this Subcontract.

### **42.0 FOREIGN NATIONAL**

The term "Foreign National" is defined to be a person who was born outside the jurisdiction of the United States, is a citizen of a foreign government and has not been naturalized under U.S. law. As used in this Article, the term "Dual Citizen" is defined as an individual who is a citizen of more than one country.

In addition, the Subcontractor shall obtain the approval of the Company Procurement Representative, in writing, electronically, prior to the employment of, or participation by, any Foreign National or Dual Citizen in the performance of work under this Subcontract or any lower-tier Subcontract at off-site locations.

#### **43.0 WORK ON SRS, GOVERNMENT OR OTHER PREMISES**

- A. As to the Work to be done or performed by Subcontractor on premises owned or controlled by SRS, the Government, or the premises of other SRS Subcontractors, Subcontractor assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury including death, or damage to property, sustained in connection with or to have arisen out of the negligent acts or omissions of Subcontractor or its Subcontractors, agents, or employees. Subcontractor shall indemnify and hold harmless the Government and the Company from and against any and all claims, demands, actions, causes of action including those brought by an employee of the Subcontractor or a State Industrial Insurance Subcontractor under a Workers/Workmen's Compensation Act or statute, suits, damages, expenses including attorney fees and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property attributable directly or indirectly to the negligent acts or omissions of Subcontractor or its Subcontractors, agents, or employees arising out of, or in any way connected with the performance of this Subcontract, whether or not caused in any way by some act or omission, negligence or otherwise, of the Company or the Government; provided however, that the Subcontractor's duty to indemnify shall not arise if such injury, death, destruction or loss is caused by the negligence of the Company or the Government. Nothing in the foregoing shall be construed to require Subcontractor to indemnify and save harmless the Government and the Company from any liability arising out of or resulting from a nuclear incident. To the extent necessary to execute the foregoing indemnification and as permitted by law, Subcontractor specifically waives any and all immunity provided by any industrial insurance or Workers/Workmen's Compensation Act or statute.
- B. When Subcontractor shall perform any part of the work on the premises of SRS or the Government during the performance of this Subcontract, the Subcontractor shall have in force and effect, policies of insurance conforming to the terms set forth in Paragraph C of this Article.
- C. Subcontractor agrees to comply with and require its Subcontractors to comply with all applicable laws, rules, and regulations with respect to state industrial insurance or Workers/Workmen's Compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal and state income taxes. Subcontractor further agrees to indemnify the Company and the Government against, and to save and hold harmless the Company and the Government from, any and all liability and expense with respect to claims against the Company or the Government which may result from the failure or alleged failure of Subcontractor or of any of its Subcontractors to comply therewith.
- D. When Subcontractor shall perform any part of the Work on the premises of SRS or other premises owned and/or operated by the Government during the performance of this Subcontract, the Subcontractor shall demonstrate a culture of respect, including having a written policy on Respect in the Workplace; and shall be made available upon request.

#### **44.0 BANKRUPTCY**

If the Subcontractor enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Company Procurement Representative responsible for administering this Subcontract within five (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 of the Company Subcontract numbers for which final payment has not been made.

#### **45.0 ES&H REQUIREMENTS**

DOE O 442 Differing Professional Opinions for Technical Issues Involving Environmental, Safety, and Health Technical Concerns (10/4/2016 Chg. 1)

DOE O 221.1B Reporting Fraud, Waste, and Abuse to the Office of Inspector General (9/27/2016) (applies to subcontracts with a value of \$5.5 million or more and with a period of performance of 120 days or longer)

#### **46.0 NON-ES&H REQUIREMENTS**

DOE O 221.2A Cooperation with the Office of Inspector General (2/25/2008)

DOE O 486.1A Foreign Government Sponsored or Affiliated Activities (9/4/2020) (applies to Research & Development or Demonstration subcontracts, at any tier, to the extent necessary to ensure the subcontractor's or lower-tier subcontractors' compliance with the requirements, where the subcontractor's or lower-tier subcontractors' work within the scope of the Subcontract is performed on or at a DOE/National Nuclear Security Administration (NNSA) site/facility, including DOE/NNSA/contractor leased space)

**47.0 GENERAL CONDITIONS OF EQUIPMENT RENTAL**

**A. Rental Payments**

Upon the submission of proper invoices or vouchers, the Company shall pay, as full compensation for use of the Equipment, rent at rates set forth in the Subcontract to which these General Conditions are attached. Payments will be made at the end of each month or at the end of the rental, whichever occurs first, for rental accrued during the previous rental period.

**B. Rental Rates**

- (1) The actual length of the rental period will establish the Base Rental rate (for example, if the Lessor's proposal included a daily, weekly, and monthly rate, and the actual rental period was three days - the daily rate would apply; if the actual rental period was ten days - the weekly rate would apply; and if the actual rental period was 40 days - the monthly rate would apply). The Base Rental Period shall be as in column 1 below. For portions of a rental period beyond one or more full Base Periods, rental shall be calculated by the fractional period multiplied by the Base Rental rate. The Fractional Periods are specified in Column 2 below. Base Rental rates contemplate the following maximum use: Day - 8 hrs. (or as stipulated at time of rental); Week - 40 hrs.; and Month - 176 hrs. For each hour that the Equipment is in use in excess of the applicable contemplated operation, there shall be paid as rental a sum equal to the Base Rental rate multiplied by the overtime rate in Column 3 below.
- (2) Should the total rental calculated on the applicable Base Rental rate, exclusive of overtime, exceed the proposed rate for the next longer rental term the lesser rental shall be paid.

	Column 1	Column 2	Column 3
Rental Term	Base Rent Period	Fractional Period	Overtime Rate
Monthly	1 cal mth	.0455xmnthy = rt/day	.0057x mnthy = rt/hr
Wkly	7 cons days	.20 x wkly = rt/day	.025 x wkly = rt/hr
Daily	24 cons hrs	.125 x dly = rt/hr	.125 x dly = rt/hr
Hourly	1 oper hr	1 hour	1 hour

**C. Condition of Equipment**

- (1) When delivered to job site, the Equipment shall be in condition to render efficient, economical, and continuous service and its condition shall comply fully with all applicable Federal and State statutes and any regulations issued there under. Each item of Equipment shall be inspected, tested, and inventoried by Lessor and the Company at job site upon arrival and immediately prior to return shipment. A joint electronically written report shall be made, and copies filed with each of the parties. Lessor shall accept the Company's report in the event the Lessor fails to participate in such inspections. Such inspections and reports shall fix and determine the rights and obligations of the parties with reference to the condition of the Equipment.
- (2) If the Company determines that any equipment furnished does not comply with this Subcontract, the Company shall promptly inform the Lessor in writing. If the Lessor fails to replace the equipment or correct the defects as required by the Company, the Company may
  - (a) By contract or otherwise, correct the defect or arrange for the lease of similar equipment and shall charge or set off against the Lessor any excess costs occasioned thereby, or
  - (b) Terminate the Subcontract under the Default Article of this Subcontract.
- (3) The Company shall make repairs or, at its option, shall reimburse Lessor for repairs due to damage caused by exceeding manufacturer's rated capacities. All other repairs attributable to equipment failure shall be Lessor's responsibility. Should Equipment become inoperative because of necessary repairs which are the Lessor's responsibility, rental period will discontinue upon the Company's notification to the Lessor of such conditions, and rental period will resume only when Equipment is placed in a condition as required under this Section 3. The Company will notify Lessor prior to making repairs for the account of the Lessor. Unless otherwise specified in the Subcontract, the Company will furnish all fuel and lubricants and all operators and mechanics for necessary operation, use, and servicing of the Equipment.
- (4) Equipment, when returned to Lessor, shall be in as good condition as when delivered at job site, usual and ordinary wear and tear accepted.

D. Rental Period

- (1) The period for which rental is payable for an item of Equipment shall begin on the date Equipment is delivered to the job site, except that if the Company gives a definite required delivery date to the Lessor prior to shipment, the Rental Period shall not start until such date. However, rent shall accrue only for the period that the equipment is in the possession of the Company. The Rental Period shall end when the equipment is delivered for shipment to the point of origin or such other return point as may be designated by Lessor, such delivery to be evidenced by a Bill of Lading or other similar evidence covering shipment. If Lessor fails to notify the Company of destination prior to time Equipment is ready for return shipment, no rental time shall accrue until such notification is given to the Company and Equipment is loaded for Shipment.
- (2) If Equipment is not in required condition, as determined by the Company, when it arrives at the job site, the Rental Period shall not begin until it shall, at the expense of Lessor, have been placed in proper condition.
- (3) If the inspection report made immediately prior to return shipment establishes that the Equipment is not in condition required of the Company under the fourth paragraph of Section C of these conditions, the Company shall do all things necessary to place it in such condition and the Rental Period shall not terminate prior to placing the Equipment in such condition.
- (4) Unless otherwise stated in the Subcontract, the Company makes no representation or guarantee as to the length of the Rental Period or the amount of rental, which will accrue, for any Equipment, it being the intent that the Equipment may be rented for as long as the Company requires. The rental of any Equipment which does not perform to the Company's satisfaction may be terminated upon notice by the Company to Lessor.

E. Transportation Costs

If stated in the Subcontract, transportation will be paid by the Company F.O.B. original point of shipment and return transportation F.O.B. to original point of shipment or equivalent mileage. Transportation of Equipment shall be accomplished by the most economical means and there shall be paid the actual cost of such transportation. No transportation charges will be paid by the Company for any Equipment which the Company determines is not in the condition required by Section C.

F. Loading, Unloading & Transport of Self-Propelled Medium or Heavy Construction Equipment

Lessor shall ensure that any activity involving the loading, unloading, and transport of self-propelled medium or heavy construction equipment on the SRS (i.e. upon delivery and pickup by the Lessor) is performed in a manner that provides for the safety of all personnel involved in the process. Prior to performing any such activities, the Lessor shall read and complete the Company "Self-Propelled Equipment Loading, Unloading and Transport Safety Review Checklist", and provide a copy to the Company Portable Equipment Commodity Management Center (PECMC) representative on delivery of the equipment to SRS and also before equipment is loaded for return to the Lessor. A Copy of the checklist can be found on the SRS Home Page or can be provided by the Company Procurement Representative on request.

G. Liability Provisions

By acceptance of the Subcontract to which these Conditions apply, Lessor agrees that

- (1) Lessor assumes and hereby relieves the Company of any and all liability for any loss or damage to the Equipment rented to the Company occurring during the period from the date of shipment to the Company to the date of return to Lessor as the result of any cause other than the sole fault or negligence of the Company;
- (2) The Company's liability under this provision shall be limited to the fair market value of the Equipment taking into consideration its age and condition immediately prior to said loss or damage.

H. Recapture Provisions

Optional and in effect only if stated in the terms and conditions of the Subcontract.

- a. If this provision is applicable,
  - i. a recapture valuation mutually agreeable to the Company and Lessor shall be established and stated in the Subcontract
  - ii. Lessor certifies that there are no encumbrances of any nature, legal or equitable, held by any person against the Equipment rented hereunder, unless so stated in the Subcontract.
- b. At any time during or at the end of the rental period of the Equipment, the Company may purchase the Equipment by paying to Lessor the difference between such valuation and total rental paid, plus a charge to cover interest at a rate specified in this Subcontract for the unpaid balance of the equipment valuation for each month or fraction thereof that such Equipment has been under rental to the Company. Title to such Equipment shall then vest in the Company and Lessor shall deliver to the Company such instruments of title as the Company may require, free of any and all liens and encumbrances.

I. Equipment Operated and Maintained

The following provisions shall be applicable if Equipment is rented on the basis of operation and maintenance by the Lessor:

- (1) All rental rates stipulated in this Subcontract include all charges for operation and maintenance of the Equipment by Lessor.
- (2) Lessor has qualified or will promptly qualify and will make all payments under the terms of the unemployment compensation laws of the state in which the Equipment will be operated. In addition, Lessor will, at Lessor's expense, carry insurance in minimum limits as specified in the Article titled "Work on the Company, Government or other Premises", included in these General Provisions.
- (3) Lessor shall obtain the Company's prior approval before employing any Subcontractors. Each Subcontractor must also carry insurance as specified in subparagraph (2), supra. Lessor shall carry Contractor's Protective Public Liability, Bodily Injury, and Protective Property Damage insurance of the same minimum limits.
- (4) Lessor shall be responsible for all persons engaged to operate or maintain the Equipment or to perform any other work Lessor is obligated to perform under this Subcontract. None of said persons shall constitute employees of the Company.
- (5) In the operation of the Equipment, Lessor shall comply with all Federal, State, and local regulations and with all safety regulations in effect on the SRS. In addition, Lessor shall
  - (a) Comply with recognized safety practices for the type of work being performed including the furnishing of necessary safety equipment
  - (b) Conduct and protect operations in such a manner as to avoid exposing others to injury.
- (6) Lessor shall ensure that all equipment operators have appropriate qualifications and experience for operating the specified equipment, to include any applicable State, Federal or local licenses or certifications.

J. Notices

Any notice to be given hereunder shall be mailed to the party to be notified, at the address set forth in the Subcontract, by registered mail, and shall be considered to be given when so mailed.

**48.0 REPORTING FRAUD, WASTE AND ABUSE TO THE OFFICE INSPECTOR GENERAL**

DOE 221.1B Reporting Fraud, Waste and Abuse (9/27/2016)

**49.0 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)**

- A. Subcontractors shall ensure access to Unclassified Controlled Nuclear Information (UCNI) is provided to only those individuals authorized for routing or special access (see DOE Order 471.1B). Subcontractor may provide access to material or data containing UCNI utilized in the performance of Subcontractor only to Subcontractor employees who are citizens of the United States and possess a need-to-know UCNI to perform official duties or other Government authorized activities.
- B. Subcontractor shall ensure matters identified as UCNI is protected in accordance with the instructions contained in DOE Order 471.1B. Any material or data containing UCNI, which is stored on computer systems, must be protected, and the protective measures and/or policies must be specified in a Computer Protection Plan approved by the Company Computer Security organization. Adherence to the Plan is required during the performance of Subcontract.
  - (1) Subcontractor shall implement all recommended requirements contained in NIST SP 800-171. If the Subcontractor is not NIST SP 800-171 compliant prior to Subcontract award, Subcontractor shall provide an NIST SP 800-171 Implementation Plan, complete with milestones, to ensure full compliance is achieved within 180 days.
- C. Material or data containing UCNI shall be disposed of in a manner as described DOE Order 471.1B. At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than ¼-inch-wide and 2-inch-long strips. Documents containing UCNI may also be disposed of in the same manner that is authorized for Subcontractor disposition of other classified material or data. If the above disposal methods are not available to the Subcontractor, the Subcontractor may return the UCNI matter to the STR for disposition, with the prior approval of the STR.
- D. Subcontractor shall report to the Company Security Office and Procurement Representative any incidents involving the unauthorized disclosure of UCNI.
- E. If work under Subcontract results in the generation of unclassified documents that contain UCNI, Subcontractor shall have enough trained UCNI review personnel to ensure the prompt and proper review of generated material or data to

provide for the identification, marking, and proper handling of material or data determined to contain UCNI. Subcontractor Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI, in accordance with the instructions contained in DOE Manual 471.1-1, Chapter I Part C.

- F. If Subcontractor has a formally designated Classification Officer, the Classification Officer: (1) Serves as a Reviewing Official for information under their cognizance; (2) Trains and designates other Reviewing Officials in their organization, subordinate organizations, and lower-tier Subcontractors and maintains a current list of all Reviewing Officials; and (3) may overrule UCNI determinations made by Reviewing Officials under their cognizance.
- G. If Subcontractor has no formally designated Classification Officer, Subcontractor shall submit a request for the designation of Reviewing Officials to the local GOVERNMENT Classification Officer in accordance with the instructions contained in DOE Manual 471.1-1, Chapter I, and Part B. C.

#### **50.0 COUNTERINTELLIGENCE**

- A. The Subcontractor shall take all reasonable precautions in the work under this Subcontract to protect the Company/DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 475-1, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- B. The Subcontractor shall comply with requirements established by the DOE-SR Counterintelligence Officer. The DOE-SR Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of Subcontractor employees traveling to foreign countries or interacting with foreign nationals. The Subcontractor shall be responsible for requesting defensive Counterintelligence briefings and debriefings of Subcontractor employees who have traveled to foreign countries or interacted with foreign nationals. The Subcontractor shall coordinate Counterintelligence Awareness training activities with the Company Procurement Representative. The Subcontractor shall immediately report targeting, suspicious activity and other Counterintelligence concerns to the Company Procurement Representative; and helps other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

#### **51.0 LIMITATION OF FUNDS**

This is applicable only if this Subcontract is partially funded.

- A. Of the total price of this Subcontract, the sum of \$\_\_\_\_\_ is presently available for payment and allotted to this Subcontract. It is anticipated that additional funds will be allocated to the Subcontract in accordance with the following schedule until the total price of the Subcontract is funded:
- B. The Subcontractor agrees to perform or have performed work on this Subcontract up to the point at which, if this Subcontract is terminated pursuant to the Termination For Convenience of the Company Article of this Subcontract, the total amount payable by the Company (including amounts payable for Subcontracts and settlement costs) pursuant to the Termination For Convenience of the Company Article would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount at the time allotted to the Subcontract. The Subcontractor is not obligated to continue performance of the work beyond that point. The Company is not obligated in any event to pay or reimburse the Subcontractor more than the amount from time to time allotted to the Subcontract, anything to the contrary in the Termination for Convenience of the Company Article notwithstanding.
- C.
  - (1) It is contemplated that funds presently allotted to this Subcontract will cover the work to be performed until\_.
  - (2) If funds allotted are considered by the Subcontractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Subcontractor shall notify the Company in writing when within the next 60 days the work will reach a point at which, if the Subcontract is terminated pursuant to the Termination For Convenience of the Company Article of the Subcontract, the total amount payable by the Company (including amounts payable for Subcontracts and settlement costs) pursuant to the Termination For Convenience of the Company Article will approximate 75 percent of the total amount then allotted to the Subcontract.
  - (3)
    - (a) The notice shall state the estimated date when the point referred to in subparagraph C 2 of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it.
    - (b) The Subcontractor shall, sixty days in advance of the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it, advise the Company in writing as to the estimated amount of additional funds

required for the timely performance of the Subcontract for a further period as may be specified in the Subcontract or otherwise agreed to by the parties.

- (4) If, after the notification referred to in section C 3 (b) of this clause, additional funds are not allotted by the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it, the Company shall, upon the Subcontractor's electronic request, terminate this Subcontract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of the Company Article.
- D. When additional funds are allotted from time to time for continued performance of the work under this Subcontract, the parties shall agree on the applicable period of Subcontract performance to be covered by these funds. The provisions of paragraphs B and C of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the Subcontract shall be modified accordingly.
- E. If, solely by reason of the Company's failure to allot additional funds in amounts sufficient for the timely performance of this Subcontract, the Subcontractor incurs additional costs or is delayed in the performance of the work under this Subcontract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the work to be performed.
- F. The Company may at any time before termination, and, with the consent of the Subcontractor, after notice of termination, allot additional funds for this Subcontract.
- G. The provisions of this clause with respect to termination shall in no way be determined to limit the rights of the Company under the default Article of this Subcontract. This clause shall become inoperative upon the allotment of funds for the total price of the work under this Subcontract except for rights and obligations then existing under this clause.
- H. Nothing in this clause shall affect the right of the Company to terminate this Subcontract pursuant to the Termination for Convenience of the Company Article of the Subcontract.

#### **52.0 VARIATION IN ESTIMATED QUANTITY**

If invoked in this Subcontract, applies to services only.

If the quantity of a unit-priced item in this Subcontract is an estimated quantity and the actual quantity of the unit-priced item varies more than fifteen percent above or below the estimated quantity, an equitable adjustment in the Subcontract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115% or below 85% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Subcontractor may request, in writing, an extension of time, to be received by the Company within 10 days from the beginning of the delay, or within such further period as may be granted by the Company before the date of final settlement of the Subcontract. Upon the receipt of a written electronic request for an extension, the Company shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Company, is justified.

#### **53.0 RIGHT OF FIRST REFUSAL OF EMPLOYMENT**

The scope of work described herein as currently being performed by the Company employees and award of a Subcontract may displace these workers. Consistent with section 3161 of the National Defense Authorization Act (PL 102-484), if the Seller needs to hire additional employees beyond those already part of its existing work force as of the date of this solicitation in order to satisfy the performance requirements set forth by the scope of work in this solicitation, the Seller must first consider the employment of qualified displaced DOE contractor employees who meet the 3161 Job Attachment Test prior to using other avenues to fill that employment need. At the time of award of the Subcontract, the Procurement Representative shall make available to the Seller a list of displaced employees with sufficient information to allow for contact. This requirement shall be included in the resultant Subcontract and be in effect from the date of award of the Subcontract.

#### **54.0 COPYRIGHTS FOR THE COMPANY DIRECTED TECHNICAL PERFORMANCE**

Subcontractor shall cause its employee(s) to assign to the Company all rights under the copyright in all works of authorship prepared at the direction of the Company during the term of this Subcontract. Subcontractor shall include terms in its arrangements with its employee(s) to require such assignments to the Company. To the extent that such works of authorship are considered to be works made for hire for Subcontractor, Subcontractor agrees to assign and does hereby assign all of its rights under the copyrights in such works to the Company or the U. S. Government.

#### **55.0 EXPORT CONTROL**

Subcontractor agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the International Traffic in Arms Regulation (ITAR) and the Export Administration Regulations

(EAR) and including the requirement for obtaining any export license or Subcontract, if applicable. Subcontractor agrees that it will not transfer any export-controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Subcontractor or Lower-Tier Subcontractors, without the authority of an export license, Subcontract, or applicable exemption or exception.

Subcontractor will immediately notify Company if Subcontractor is, or becomes, listed in any Denied Parties List or if Subcontractor's export privileges are otherwise denied, suspended, or revoked in whole or in part by Government. Should Subcontractor's Work include any salvage pursuant to which there may be export controlled items, data or services, Subcontractor shall submit an Export End User Certification; such certification will be provided to Subcontractor on request to Procurement Representative.

**56.0 PACKAGING AND SHIPPING INSTRUCTIONS – IDENTIFICATION REQUIREMENTS**

The following requirements apply to all Company Subcontracts. Read and implement these instructions before shipment. Failure to do so may result in payment delays or return of material.

- A. Items should be packaged in sturdy containers to prevent damage during shipment, and to withstand multiple handling.
- B. Seller shall limit the amount of packaging materials needed for reasonable protection of items during shipment. Seller shall utilize environmentally favorable (i.e., biodegradable, recyclable, etc.) materials whenever and wherever practical.
- C. Items which can be palletized, should be shipped on sturdy 4' x 4' wooden pallets which are not broken or missing boards and must be of appropriate strength and construction for the material it bears. Pallets must include at least 3 wooden 2" x 4" support runners. Material must not be stacked over 48" high. Palletized material on broken or weak pallets may be rejected.
- D. Seller must clearly show the subcontract and line item number(s) on the outside of every box. Failure to list the purchase order number and all necessary information on the outside of the package or container may result in the material being returned to the seller. Radiological and nuclear subcontract numbers will begin with "RAD" and "NUC" respectively all shipments to the Company that have a Subcontract number that contains a "RAD" or "NUC" prefix must be shipped segregated from non-RAD/NUC materials. At no time should they be shipped palletized with non-RAD/NUC items. If the Subcontract is for radiological or nuclear material, confirm with the Procurement Representative an understanding of the above requirements before shipment.
- E. A packing list identifying each item in the box must be accessible on the outside of packages.
- F. The Packing list must describe quantities and material exactly as they are described on the Subcontract. (i.e., do not describe the material using a part number when the Subcontract describes the material by description.) The part number on the packing list must match the part number on the Subcontract and the material in the box. Also, list the same number of units on the packing slip as listed on the Subcontract.
- G. Seller must not over ship. Overages will be returned at Seller's expense.
- H. Seller must package and group together materials with the same Subcontract number. Packing lists must not include multiple Subcontract numbers for material shipped.

**57.0 RECEIVING INSTRUCTIONS**

- A. Unless stated differently in the Subcontract, the Company Receiving address is:

U.S Department of Energy (DOE)  
c/o SRNS, LLC  
Building 731-1N  
Att. Receiving Operations PO# \_\_\_\_\_  
Aiken, SC 29808

- B. Normal receiving hours for the Company delivery warehouse (Building 731-1N) are Monday through Thursday, 9AM-3PM, SRS local time. Delivery vehicles attempting to deliver the Company procured material or equipment outside of the normal receiving hours will be delayed or turned away unless prior arrangements have been made. No Friday deliveries will be accepted at the 731-1N receiving location.

- C. Safety and production related materials may require receipt inspection as specified in the Subcontract prior to receipt and acceptance. Failure to pass receipt inspection may result in material being returned to Seller.
- D. Documentation submittals as specified in the Subcontract must be submitted in PDF format to QA-Electronic-Documents@srs.gov.

**58.0 TRACEABILITY AND SHELF LIFE**

Certain items may require certifications necessary to satisfy traceability requirements as stated in the Subcontract. Failure to supply the required certifications may result in material being returned to the Seller. If shelf life is a performance criterion for any specific item, the Seller must provide documentation of compliance with the shelf life requirement in the Order and ship with the items.

**59.0 SECURITY & ACCESS REQUIREMENTS**

- A. All delivery personnel must be United States Citizens to gain access to the Savannah River Site SRS. Delays and/or costs associated with the use of non U.S. citizen drivers will be borne by the Seller.
- B. All delivery vehicles shall access SRS at the Aiken Barricade located on South Carolina State Highway 19, located approximately one mile south of SC Highway 278. Sellers are cautioned that delivery vehicles must be at the Aiken Barricade for site access during the receiving hours stated in Article 2.B above, unless prior arrangements have been made. Allowance must be made for badging of unbadged drivers as set forth in Article 4. C below.
- C. Unbadged delivery personnel. Unbadged drivers shall report to the Company Badging Office located in Building 703-46A at SRS Road 1, approximately two miles east of SC Highway 125 in Jackson, SC to obtain a temporary badge (Ref. General Provisions/Terms and Conditions Article titled “Badging Requirements”). Following are the events and point of entry (POE) process that will occur for access onto the SRS:
  - (1) Bill of Lading (including Subcontract number) shall be validated by the Company Representative at the Badging Office.
  - (2) the Company Representative provides “Visitor/Subcontractor Safety Briefing”
  - (3) the Company issues temporary badges (OSR 142).
  - (4) After obtaining temporary badge (OSR 142) driver can proceed to the Aiken Barricade for site access.
  - (5) Centerra Group, LLC (Centerra) perimeter guard performs security inspection. Delivery personnel must have access to all compartments of the delivery vehicle and allow security personnel to search the vehicle. Delivery personnel must maintain a valid driver’s license, current registration, and proof of insurance at all times while on site at SRS and must be able to produce the aforementioned documentation upon request by Centerra.
  - (6) Centerra calls for Area Escort (the Company Assigned Competent Person (ACP)) or provides escort to the delivery location.
  - (7) ACP briefs driver on any applicable focused observation checklist(s) and obtains signature.
  - (8) After delivery is completed, the assigned escort will escort Seller back to Aiken Barricade
- D. Photo Badged delivery personnel. Following are the events that will occur if delivery personnel have a current SRS photo badge.
  - (1) Delivery vehicles can go directly to the Aiken Barricade for site access.
  - (2) Centerra perimeter guard performs security inspection. Delivery personnel must have access to all compartments of the delivery vehicle and allow security personnel to search the vehicle. Delivery personnel must maintain a valid driver’s license, current registration, and proof of insurance at all times while on site at SRS and must be able to produce the aforementioned documentation upon request by Centerra.

- (3) After clearance by Centerra, driver can proceed directly to delivery location. If escort is required, Centerra calls for Area Escort (the Company Assigned Competent Person (ACP)) or provides escort to the delivery location.
- (4) The Subcontractor shall ensure that any/all SRS-issued site security badges are returned to the Badge Office (703-46A) within 10 calendar days after badge expiration date (or subcontract/subcontractor employee termination date, whichever occurs first). Failure to do so may result in withholding of invoice payments until such time that the badge(s) is returned.

#### **60.0 SPECIAL INSTRUCTIONS THAT APPLY TO DELIVERY OF SELF-PROPELLED MEDIUM OR HEAVY CONSTRUCTION EQUIPMENT**

Prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy construction equipment on the Savannah River Site, the Seller shall read and complete the “Self-Propelled Equipment Loading, Unloading and Transport Safety Review Checklist”, and provide a copy of the completed checklist to the Portable Equipment Commodity Management Center (PECMC) Representative on delivery of the equipment to SRS. A copy of the checklist can be found on the Company Internet Home Page at

[http://www.srs.gov/general/busiops/PMMD/SRNS\\_general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm), or a copy can be provided by the **Procurement Representative** on request.

#### **61.0 DELIVERY OF BULK MATERIALS (SAFETY REQUIREMENTS)**

A. Sellers making material deliveries using their own vehicles/trucks to areas on site other than Central Receiving (731-1N), that involve the performance of manual work by the Seller’s delivery personnel, shall submit to the Company’s Procurement Representative their latest revision of the Seller’s WPP – Worker’s Protection Plan and a Certificate of Insurance which also includes an Endorsement Page. At a minimum the Seller shall address in their WPP or on their Letterhead the following safety elements listed below. The Safety documents submitted by the Seller shall be reviewed and accepted by the Company’s Health and Safety Programs before deliveries can be made to SRS. In addition, the Certificate of Insurance and the Endorsement page shall be on file before deliveries can be made to SRS.

##### Safety Elements

- (1) Acknowledgement that all drivers have been informed of the safety requirements to include expectations and controls to ensure compliance when working at the Company.
- (2) Unloading Procedures that address specific precautions and personal protective equipment to include eye, foot, head, hand, face, and hearing protection.
- (3) Fitness for Duty that addresses driver’s health, substance abuse and the ability to perform assigned tasks free of impairments.
- (4) Fall protection, prevention and precautions while climbing/working from a ladder or on elevated surfaces.
- (5) Proper lifting techniques that address how to lift safely to avoid injuries.
- (6) Heat stress that address signs/symptoms and prevention.
- (7) Incident/injury protocol that address reporting to the Company Subcontract Technical Representative (STR)/End User, preserving the scene, follow-up, and medical treatment when appropriate and participating in the investigation when requested.
- (8) Authority for driver/employees to call a “Time O–t - Stop Work” when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property.
- (9) Hazardous communications to include Safety Data Sheets (SDS) on each chemical, methods and training used to inform employees of the hazards and the precautionary methods.
- (10) Motor vehicle/related equipment (i.e., forklift) safety to include vehicle maintenance, before use inspections, safe operation and the use of safety devices such as mirrors, flagman and signals.

- (11) Focused Observation Safety Checklists - Identify, complete, sign and submit Focus Observation Checklist(s) applicable to the Work that will be performed during the unloading operations. Focused Observation Checklists are available for review by downloading from the Company Internet Homepage at [http://www.srs.gov/general/busiops/PMMD/SRNS\\_general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm)
- (12) Statement of Injuries/Incidents - Include a summary of all injuries/incidents involving similar delivery tasks over the last three years to include brief description and corrective action plan to prevent reoccurrence.
- (13) Point of Contact - Include a name of a point of contact (POC) - An individual that will be responsible for addressing injuries/incidents or safety issues that may arise.

B. Third Party Carrier: Third party carrier is defined as a vehicle not owned by the Seller and is subcontracted by the Seller to another entity for the delivery of the Seller's product. If the Seller intends to utilize a third party carrier for the delivery of their material to SRS, to a location other than 731-1N and the delivery has been determined to be manual by SRS safety, the Seller shall:

- (1) Confirm in writing flow down of the Seller's safety requirements and SRS requirements as defined in Article 8A of this document to the third party carrier. The Seller will also confirm in writing that the third party carrier meets or exceeds the safety performance of the Department of Transportation/Federal Motor Carrier Safety Association (DOT/FMCSA). The seller shall confirm in writing that the seller is satisfied with the third party carrier safety performance. The Seller may use the following template to provide the required information:

(a) Template Example: Seller Company letter to the Company Procurement Representative:

- (i) We (Seller) understand that driver safety, employee safety and the use of safe equipment remains top priority at the Savannah River Site (SRS). As such, any carrier(s) that the Seller uses must share the same management values.
- (ii) We confirm that flow down of safety requirements identified in Article 9A of the Packaging, Shipping, and Receiving Instructions have been communicated and implemented by the selected carrier. A review of (third party carrier's name) safety performance indicates \_\_\_\_ (has or has not had a serious/non-compliance/incident cited by the DOT/FMCSA in the past three years based on the local or regional performance. As a result of this review, we are satisfied with (third party's name) safety performance.

(b) Some examples of serious/non-compliance are:

- (i) Fatalities
- (ii) Crashes – where driver and/or company are cited
- (iii) Faulty equipment such as leaks or poor vehicle maintenance.

- (2) Attach a copy of the third party carrier's unloading plan/procedure that identifies the hazards, precautions and required personal protective equipment. This document shall be reviewed and accepted by SRS's Health and Safety Program's representative before delivery can be authorized. Once this document has been accepted, the Company' Procurement Representative shall submit to the STR/End User; and have the responsibility to have informed the third-party carrier(s) of the associated hazards involving the materials that the carrier is delivering to SRS. The driver of the third-party carrier shall instruct the STR/End User of any potential hazards to site personnel near or in close proximity involving their Loading/unloading activities before work begins and the driver shall ensure appropriate controls and safeguards (within the driver's control) will be implemented to reduce the potential for injury.

## **62.0 SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE**

- A. "Contract" means this Subcontract (except in instances when it is not applicable or appropriate) and includes changes and modifications to this Subcontract.

- B. “Contractor” means the party to whom this Subcontract is awarded (except in instances when it is not applicable or appropriate).
- C. “Government” means the Company (except in instances when it is not applicable or appropriate).
- D. “Contracting Officer” means the Procurement Representative of the Company.
- E. “Lower-tier Subcontractor” means any party entering into an agreement with the Subcontractor or any lower-tier Subcontractor for the furnishing of supplies or services required for performance of this Subcontract.

**63.0 FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE**

This Subcontract incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. These clauses apply as if they were incorporated in their entirety.

Clauses incorporated regardless of Subcontract Price:

- FAR 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Mar 2009)
- FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower rights
- FAR 52.204-9 Personal Identity Verification of Contractor Personnel (NOV 2006)
- FAR 52.204-11 American Recovery and Reinvestment Act— Reporting Requirements (Mar 2009)
- FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (JUN 2016)
- FAR 52.208-8 Required Sources for Helium and Helium Usage Data (APR 2002)
- FAR 52.209-4 First Article Approval – Testing (SEP 1989)
- FAR 52.211-15 Defense Priority and Allocation Requirements
- FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders— Commercial Items (Mar 2009)
- FAR 52.214-26 Audit and Records— Sealed Bidding (Alt I) (Mar 2009)
- FAR 52.215-2 Audit and Records—Negotiation (Alt I) (Mar 2009)
- FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (OCT 1997)
- FAR 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modifications (OCT 1997)
- FAR 52.215-15 Pension Adjustments and Asset Reversions (OCT 2004)
- FAR 52.215-18 Reversion or Adjustment of Plans for Post Retirement Benefits (PRB) Other Than Pensions (JUL 2005)
- FAR 52.222-1 Notice of Labor Disputes (FEB 1997)
- FAR 52.222-3 Convict Labor (JUN 2003)
- FAR 52.222-26 Equal Opportunity (APR 2002)
- FAR 52.222-41 Service Contract Act of 1965 as Amended (NOV 2007)
- FAR 52.222-42 Statement of Equivalent Rates for Federal Hires (MAY 1989)
- FAR 52.222-43 Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multiple year and option contracts) (NOV 2006)
- FAR 52.222-44 Fair Labor Standards Act and Service Contract Act – Price Adjustment (FEB 2002)
- FAR 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts
- FAR 52.223-15 Energy Efficiency in Energy-Consuming Products
- FAR 52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products
- FAR 52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts
- FAR 52.223-19 Compliance with Environmental Management Systems
- FAR 52.224-1 Privacy Act (APR 1984)
- FAR 52.224-2 Privacy Act (APR 1984)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (MAR 2005)
- FAR 52.225-21 Required Use of American Iron, Steel, and Manufactured Goods-Buy American Act— Construction Materials (Mar 2009)
- FAR 52.225-22 Notice of Required use of American Iron, Steel, and Other Manufactured Goods—Buy American Act— Construction Materials (Mar 2009)
- FAR 52.225-23 Required Use of American Iron, Steel, and Other Manufactured Goods-Buy American Act— Construction Materials under Trade Agreement (Mar 2009)

FAR 52.225-24	Notice of Required use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials under Trade Agreement (Mar 2009)
FAR 52.227-10	Filing of Patent Applications - Classified Subject Matter (APR 1984)
FAR 52.227-14	Rights in Data - General (JUN 1987) (as modified pursuant to DEAR 927.409(a)(1))
FAR 52.227-14	Rights in Data – Alternate II (JUN 1987) (as modified pursuant to DEAR 927.409(a)(1))
FAR 52.227-14	Rights in Data – Alternate III (JUN 1987) (as modified pursuant to DEAR 927.409(a)(1))
FAR 52.227-16	Additional Data Requirements (JUN 1987)
FAR 52.232-17	Interest (JUN 1996) (with the addition of a paragraph (d) to read as follows: “(d) No interest is payable to the Subcontractor for any claim or voucher the Subcontractor may submit for payment except as specifically imposed by a Court on any judgment obtained by the Subcontractor or as otherwise provided herein.”)
FAR 52.236-2	Differing Site Conditions (APR 1984)
FAR 52.242-14	Suspension of Work (APR 1984)
FAR 52.242-15	Stop Work Order (AUG 1989)
FAR 52.244-6	Subcontracts for Commercial Items (FEB 2006)
FAR 52.245-19	Government Property Furnished “as is” (APR 1984)
FAR 52.247-63	Preference for U.S.-flag Air Carriers (JUN 2003)
DEAR 952.203-70	Whistleblower Protection for Contractor Employees (DEC 2000)
DEAR 952.204-2	Security Requirements (JUN 2009)
DEAR 952.204-70	Classification/Declassification (SEP 1997)
DEAR 952.204-71	Sensitive Foreign Nations Controls (MAR 2011)
DEAR 952.209-72	Organizational Conflicts of Interest (Alt I) (JUN 1997)
DEAR 952.217-70	Acquisition of Real Property (APR 1984)
DEAR 952.227-11	Patent Rights – Retention by the Contractor (Short Form) (FEB 1995)
DEAR 952.227-13	Patent Rights – Acquisition by the Government (SEP 1997)
DEAR 952.247-70	Foreign Travel (DEC 2000)
DEAR 952.250-70	Nuclear Hazards Indemnity Agreement (OCT 2005)
DEAR 970.5204-3	Access to and Ownership of Records (OCT 2014)
DEAR 970.5208-1	Printing (DEC 2000)
DEAR 970.5223-1	Integration of environment, safety, and health into work planning and execution
DEAR 970-5227-1	Rights in Data – Facilities
DEAR 970.5223-1	Integration of Environment, Safety and Health Into Work Planning and Execution
DEAR 970.5232-3	Accounts, Records and Inspections (DEC 2000) Deviation Acquisition Letter 2005-04, 11/02/2004 (Paragraphs (a) through (h) only)
<u>Clauses incorporated if the price of this Subcontract exceeds \$2,500:</u>	
FAR 52.222-54	Employment Eligibility Verification
FAR 52.225-1	Buy American Act – Supplies (JUNE 2003)
<u>Clauses incorporated if the price of this Subcontract exceeds \$10,000:</u>	
FAR 52.222-21	Prohibition of Segregated Facilities (FEB 1999)
FAR 52.222-36	Affirmative Action for Workers with Disabilities (JUN 1998)
FAR 52.227-2	Patent Indemnity (APR 1984) (If this Article is applicable, Article 29.0 Patents and Copyright is deleted)
<u>Clauses incorporated if the price of this Subcontract exceeds \$25,000:</u>	
FAR 52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JAN 2005)
FAR 52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans (DEC 2001)
FAR 52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and other Eligible Veterans (DEC 2001)
<u>Clauses incorporated if the price of this Subcontract exceeds \$100,000:</u>	
FAR 52.203-6	Restrictions on Contractor Sales to the Government (JUL 1995)
FAR 52.203-7	Anti-kickback Procedures (JUL 1995)

FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (SEP 2005)
FAR 52.215-2	Audit and Records Negotiation (Alt I) (Mar 2009)
FAR 52.215-14	Integrity of Unit Prices (OCT 1997)
FAR 52.219-8	Utilization of Small Business Concerns (MAY 2004)
FAR 52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation (JUL 2005)
FAR 52.223-14	Toxic Chemical Release Reporting (AUG 2003)
FAR 52.227-1	Authorization and Consent (JUL 1995)
FAR 52.247-64	Preference for Privately-Owned U.S.-Flag Commercial Vessels (FEB 2006)
DEAR 952.223-78	Sustainable Acquisition Program (Oct 2010)
DEAR 970.5223-6	Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management (Oct 2010)
DEAR 970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

Clauses incorporated if the price of this Subcontract exceeds \$500,000:

FAR 52.219-9	Small Business Subcontracting Plan (JUL 2005)
FAR 52.219-9	Small Business Subcontracting Plan Alt III (JAN 2017)
FAR 52.219-9	Small Business Subcontracting Plan Alt IV (JAN 2019) (DEVIATION 2-19-O0005) (JAN 2019)
DEAR 952.226.74	Displaced Employee Hiring Preference (JUN 1997)
DEAR 970.5226.2	Workforce Restructuring under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (DEC 2000)

**64.0 FAR AND DEAR CLAUSES INCORPORATED IN FULL TEXT**

**FAR 52.223-3 Hazardous Material Identification and Material Safety Data (Alt I) (JUL 1995) (JAN 1997)**

- A. Subcontractor agrees to submit a Safety Data Sheet (for all hazardous materials/chemicals to the Company Procurement Representative or STR/End User for approval before chemicals are brought onto SRS. This obligation applies to all materials delivered under this Subcontract which will involve exposure to hazardous materials/chemicals or items containing these materials/chemicals.
- B. All chemical containers shall be clearly labeled per OSHA standards. Chemicals not in the original container shall also be properly labeled with the product name and hazard markings per the Safety Data Sheet on file. Immediate use containers such as painter's pail, etc., are exempt from labeling requirements.
- C. Neither the requirements of this Article nor any act or failure to act by the Company or the Government shall relieve Subcontractor of any responsibility or liability for the safety of the Company, Government, Subcontractor, or Subcontractor personnel or property.
- D. Subcontractor shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the acquisition of licenses and permits) in connection with hazardous materials/chemicals.
- E. The Government's and the Company's rights in data furnished under this Subcontract with respect to hazardous materials/chemicals are as follows:
  - (1) To use, duplicate, and disclose any data to which this Article is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials/chemicals; (ii) obtain medical treatment for those affected by the material/chemical; and (iii) have others use, duplicate, and disclose the data for the Company and the Government for these purposes.
  - (2) To use, duplicate, and disclose data furnished under this Article, in accordance with subparagraph E (1) above, in precedence over any other Article of this Subcontract providing for rights in data.
  - (3) That the Company and the Government are not precluded from using similar or identical data acquired from other sources.
  - (4) That the data shall not be duplicated, disclosed, or released outside of the Company or the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this Article applies: "This is furnished under United States Government Contract No. DE-AC09-08SR22470 and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of SRNS. This legend shall be marked on any reproduction of this data."
  - (5) That Subcontractor shall not place the legend or any other restrictive legend on any data which
    - (a) Subcontractor previously delivered to the Company or the Government without limitations or

(b) Should otherwise be delivered without limitations.

F. Subcontractor shall insert this Article, including this paragraph F, with appropriate changes in the designation of the parties, in Subcontracts at any tier (including Purchase designations under this Subcontract involving hazardous materials/chemicals).

**FAR 52.225-8 Duty Free Entry (FEB 2000)**

Applicable to Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

- A. *Definition.* “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.
- B. Except as otherwise approved by the Company, the Subcontractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.
- C. Except as provided in paragraph (D) of this clause or elsewhere in this subcontract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:
- (1) The Subcontractor shall notify the Procurement Representative (PR) in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the Company under this contract, either as end products or for incorporation into end products. The Subcontractor shall furnish the notice to the PR at least 30 calendar days before the importation. The notice shall identify the:
    - (a) Foreign supplies;
    - (b) Estimated amount of duty; and
    - (c) Country of origin.
  - (2) The PR will determine whether any of these supplies should be accorded duty-free entry and will notify the Subcontractor within 10 calendar days after receipt of the Subcontractor’s notification.
  - (3) Except as otherwise approved by the PR, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.
- D. The Subcontractor is not required to provide the notification under paragraph (C) of this clause for purchases of foreign supplies if:
- (1) The supplies are identical in nature to items purchased by the Subcontractor or any lower-tier Subcontractor in connection with its commercial business; and
  - (2) Segregation of these supplies to ensure use only on the Company subcontracts containing duty-free entry provisions is not economical or feasible.
- E. The Subcontractor shall claim duty-free entry only for supplies to be delivered to the Company under this subcontract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the PR, diverted to nongovernmental use.
- F. The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Company and Subcontractor in obtaining duty-free entry for these supplies.
- G. Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the Company in care of the Subcontractor and shall include the:
- (1) Delivery address of the Subcontractor (or prime contracting agency, if appropriate);
  - (2) The Company Subcontract number and the Company Prime Contract number;
  - (3) Identification of carrier;
  - (4) Notation “UNITED STATES GOVERNMENT, \_\_\_\_\_ [DOE or NNSA] \_\_\_\_\_, Duty-free entry to be claimed pursuant to Item No(s) \_\_\_\_\_ [from Tariff Schedules] \_\_\_\_\_, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify the Company for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.”;

- (5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
  - (6) Estimated value in United States dollars.
- H. The Subcontractor shall instruct the foreign Subcontractor to:
- (1) Consign the shipment as specified in paragraph (G) of this clause;
  - (2) Mark all packages with the words “UNITED STATES GOVERNMENT” and Savannah River Nuclear Solutions, LLC; and
  - (3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.
- I. The Subcontractor shall provide written notice to the cognizant contract administration office immediately after notification by the PR that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Subcontract, upon award by the Subcontractor to the overseas Subcontractor. The notice shall identify the:
- (1) Foreign supplies;
  - (2) Country of origin;
  - (3) The Company Subcontract number and the Company Prime Contract Number; and
  - (4) Scheduled delivery date(s).
- J. The Subcontractor shall include and flow down the substance of this clause to their lower-tier subcontractors.

#### **H-7 CONFIDENTIALITY OF INFORMATION**

A. To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the CO in writing. The foregoing obligations, however, shall not apply to:

- (1) Information which, at the time of receipt by the Contractor, is in public domain;
- (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
- (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies; or
- (4) Information which the Contractor can demonstrate was received by it from a third party that did not require the Contractor to hold it in confidence.

B. The Contractor shall obtain the written agreement, in a form satisfactory to the CO, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge, or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the Contract.

C. The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this Contract, and to supply a copy of such agreement to the CO.

D. The Contractor agrees that upon request by DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

E. This clause shall flow down to all subcontracts.

F. Technical data is addressed in Section I, DEAR 970.5227-2 – Rights in Data- Technology Transfer (DEC 2000) (DEVIATION).