

TERMS AND CONDITIONS FOR THE SALE OF GOVERNMENT PROPERTY  
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 clause (see <https://www.acquisition.gov/far/>) and DEAR (<http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation>)*

1. DEFINITIONS.....	3
2. INSPECTION .....	3
3. CONDITION AND LOCATION OF PROPERTY.....	3
4. CONSIDERATION OF BIDS.....	4
5. FORMS OF BID DEPOSITS AND PAYMENTS .....	4
6. BID PRICE DETERMINATION.....	4
7. CHANGES.....	4
8. PAYMENT .....	4
9. TITLE.....	4
10. DELIVERY, LOADING, AND REMOVAL OF PROPERTY.....	5
11. DEFAULT .....	5
12. SETOFF OF REFUNDS .....	6
13. INTEREST .....	6
14. ADJUSTMENT FOR VARIATION IN QUANTITY OR WEIGHT .....	6
15. WEIGHTING, SWITCHING, AND SPOTTING .....	6
16. RISK OF LOSS.....	6
17. LIMITATION ON LIABILITY.....	6
18. ORAL STATEMENTS AND MODIFICATIONS .....	6
19. COVENANT AGAINST CONTINGENT FEES.....	6
20. OFFICIALS NOT TO BENEFIT.....	7
21. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION .....	7
22. ASSIGNMENTS OF AGREEMENTS.....	7
23. CLAIMS LIABILITY .....	7
24. WITHDRAWAL OF PROPERTY AFTER AWARD.....	7
25. BIDDER’S WARRANTY OF CAPACITY.....	8
26. TIE-IN AND ALL-OR-NONE BIDS.....	8
27. STORAGE CHARGES/LATE REMOVAL CHARGES .....	8
28. GUARANTEED DESCRIPTIONS .....	8

<b>29. DEMURRAGE AND OTHER STANDBY COSTS .....</b>	<b>9</b>
<b>30. RADIOACTIVE MATERIAL .....</b>	<b>9</b>
<b>31. ACCEPTABLE FORMS OF BID DEPOSITS AND PAYMENTS .....</b>	<b>9</b>
<b>32. DISPOSAL.....</b>	<b>9</b>
<b>33. TERM.....</b>	<b>10</b>
<b>34. RIGHT TO TERMINATE.....</b>	<b>10</b>
<b>35. WARRANTY .....</b>	<b>10</b>
<b>36. LOADING AND TRANSPORTATION OF WASTE PRODUCTS.....</b>	<b>11</b>
<b>37. THE COMPANY’S RIGHTS OF INSPECTION .....</b>	<b>11</b>
<b>38. INDEPENDENT CONTRACTOR .....</b>	<b>11</b>
<b>39. SPECIAL SEALED BID.....</b>	<b>11</b>
<b>40. EXPORT CONTROL .....</b>	<b>12</b>
<b>41. PROLIFERATION SENSITIVE PROPERTY ACKNOWLEDGMENT .....</b>	<b>12</b>
<b>42. DISPUTES.....</b>	<b>12</b>
<b>43. FOREIGN NATIONALS.....</b>	<b>12</b>
<b>44. ES&amp;H REQUIREMENTS .....</b>	<b>13</b>
<b>45. NON-ES&amp;H REQUIREMENTS.....</b>	<b>13</b>
<b>46. SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE ....</b>	<b>13</b>

## **1. DEFINITIONS**

- A. "Bidder" and "Purchaser" shall also mean the person or organization entering into a Sales Agreement with the Company.
- B. "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.
- C. "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.
- 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. "Invitation For Bids" shall mean a solicitation issued by the Company for the Sale of Government Property.
- 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-tier Subcontractor
- J. "Lower-tier Subcontractor" shall mean a Subcontractor to furnish supplies or services for performance to a Purchaser or a Subcontractor
- K. "Parties" means the Company and Purchaser, together; individually to be referred to as "Party."
- L. "Procurement Representative" means the applicable Company individual(s) authorized to execute and/or administer Sales Agreement for the Company.
- M. "Purchaser" shall also mean the person or organization entering Sales Agreement with the Company.
- N. "Sales Agreement" shall mean agreement, task order authorization, release, or modification of any of the foregoing.
- O. "Services" shall mean labor, direction of labor, production of technical information, consulting services or any other services furnished by Subcontractor under this Subcontract.
- P. "STR/End User" shall mean Subcontract Technical Representative/End User.
- Q. "Supplies" shall mean items, goods, equipment, components, parts, and materials to be provided by Purchaser and its Lower-tier subcontractor of any tier pursuant to this Sales Agreement.
- R. "Work" means all the stated or implied activities to be performed by Purchaser as required by the Sales Agreement, including the furnishing and supervision of all technical personnel and labor, and the supply of equipment, items, materials, and supplies necessary to perform this Sales Agreement.

## **2. INSPECTION**

The Bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation for Bids.

Note: All personnel operating motor vehicles at SRS must have a valid driver's license, vehicle registration and proof of insurance (regardless of state of origin). Anyone not having these documents is subject to being denied access to SRS and, if in violation of a law, being cited for the violation.

## **3. CONDITION AND LOCATION OF PROPERTY**

Unless otherwise specifically provided in the Invitation for Bids, all property listed therein is offered for sale "as is" and "where is". The description of the property is based on the best information available to the Company. However, unless otherwise specifically provided in the Invitation for Bids, the Company makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property, or its fitness for any use or purpose and except as provided in Articles No. 14 and 15 of this Sales Agreement or other special conditions of the Invitation for Bids. No request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

#### **4. CONSIDERATION OF BIDS**

- A. Only written bids signed by a person authorized to commit the company tendered in person or by mail will be considered.
- B. The Bidder agrees their bid will not be withdrawn within the period of time specified for the Company's acceptance following the opening of bids (90 calendar days if no period is specified by the Company or by the Bidder, but not less than 10 calendar days in any case). During such period, the bid will remain firm and irrevocable. The Company reserves the right to reject any or all bids, including bids under which a Bidder could take unfair advantage of the Company or other Bidders, to waive any technical defects in bids, and unless otherwise specified by the Company or by the Bidder, to accept any one item or group of items in the bid, as may be in the best interest of the Company. Unless otherwise provided in the Invitation for Bids, bids may be submitted on any or all items. However, unless the Invitation for Bids otherwise states, a bid covering a specified unit must cover that specific unit and the total quantity of units designated.

#### **5. FORMS OF BID DEPOSITS AND PAYMENTS**

Unless otherwise provided in the Invitation for Bids, bid deposits (when required by the Invitation for Bids) and payments shall be in U.S. currency or any form of credit instrument other than promissory note, made payable on demand in U.S. currency, provided uncertified personal or business checks must be first party instruments. Bids submitted after the effective date specified in the written notification referred to and are not accompanied by the proper bid deposit (other than an uncertified personal or business check) will be summarily rejected.

#### **6. BID PRICE DETERMINATION**

- A. When bids are solicited on a unit price basis, Bidders will insert their unit prices and total prices in the space provided for each item.
- B. In the event the Bidder inserts a total price on the item but fails to insert a unit price, the Company will determine the unit priced by dividing the total price by the quantity of the items set out in the Invitation for Bids. The unit price so determined shall be used for the purpose of bid evaluation, award, and all phases of the Sales Agreement administration.

#### **7. CHANGES**

The Company reserves the right to make changes within the general scope of this Sales Agreement by issuance of a unilateral change order, or by a bilateral modification to this Sales Agreement. 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 Purchaser 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 Sales Agreement shall be made by the parties in a bilateral modification to this Sales Agreement. For any change, whether directed or constructive, Purchaser 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 Purchaser's first knowledge of the change, or Purchaser's right to assert such request for equitable adjustment shall be waived.

#### **8. PAYMENT**

The Purchaser agrees to pay for property awarded in accordance with the prices represented in their bid, subject to any adjustments made pursuant to other provisions of this Sales Agreement. Payment of the full purchase price, after applying the total bid deposit, if any, must be made within 30 days prior to receipt of material. If an adjustment is made requiring additional payment, such payment must be made immediately upon receiving notice of such adjustment. In the absence of any debts owed to the selling agency, where the total sum becoming due to the Company from the Purchaser on award of the Sales Agreement and the Invitation for Bids is less than the total amount deposited with the bid, the difference will be promptly refunded. Deposits accompanying bids which are not accepted will be properly refunded to the respective Bidder. No refund demands will be made for any amount less than one dollar (\$1).

#### **9. TITLE**

Title to the property sold hereunder shall vest in the Purchaser as, and when, removal is affected, excepting only (A) and (B) below:

- A. Upon written notice to the Purchaser while the property remains in the possession of the Purchaser, the Company may reclaim title to the property sold hereunder if the Company determines:
  - 1) the property does contain, or may contain, classified U.S. Government data (in any form), and/or technology sensitive to the national interest, or

2) the property is "Proliferation Sensitive Property", as defined in Article 42 of these terms and conditions. The Company and the Government are not liable to Purchaser for any costs associated with the inadvertent inclusion of such property in the sale. If payment has been made for any such property, the payment shall be refunded to the Purchaser. Any reshipment costs involved will be the responsibility of the Company. Once notified by the Company of its intent to reclaim the property, the Purchaser agrees to take all reasonable measures to safeguard the aforesaid property until reclaimed by the Company.

- B. Unless otherwise provided in the Invitation for Bids, all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing by a state motor vehicle regulatory agency, a certificate of release will be furnished by the Company for each vehicle and piece of equipment.

#### **10. DELIVERY, LOADING, AND REMOVAL OF PROPERTY**

- A. Unless otherwise provided in the Sales Agreement, the Purchaser shall be entitled to obtain the property upon full payment with delivery being made only from the exact place where the property is located within the installation. The Purchaser must make all arrangements necessary for packing, removal, and transportation of property. The Company will not act as liaison in any fashion between the Purchaser and their carrier, nor will the Company recommend a specific common carrier. Loading will only be performed as set forth in the Sales Agreement. Unless otherwise provided in the Sales Agreement, loading will not be performed on Saturdays, Sundays, Company holidays, or any day the installation where the property is located is closed. Where it is provided the Company will load, the Company will make the initial placement of the property on conveyance(s) furnished by the Purchaser and the initial placement on the Purchaser's conveyance shall be as determined by the Company. Unless otherwise provided in the Sales Agreement, the Company will not block, chock, brace, lash, band, or in any other manner secure the cargo on such conveyance(s) furnished by the Purchaser.
- B. Where it is provided in the Sales Agreement the Company does not load or the Purchaser will load, the Purchaser will make all the arrangements and perform all work necessary to effect removal of the property. The Purchaser will make all arrangements and perform all work necessary to effect removal of the property. The Purchaser shall remove the property at their expense within the period of time allowed in the Sales Agreement. If the Company determines the failure to remove the property within the period of time originally allowed arose out of causes beyond the control and without the fault or negligence of the Purchaser, such determination shall be in writing, and a reasonable extension of time for removal shall be allowed. Such causes may include but are not restricted to acts of God or of public enemy, acts of the Company in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather. If the Purchaser is permitted to remove the property after the expiration of the time originally allowed for removal or any additional time allowed by the Company pursuant to this clause, the Company, without limiting any other right which it may have, may require the Purchaser to pay a reasonable storage charge. The Purchaser shall reimburse the Company for any damage to Government property caused during the removal operations by the Purchaser or his authorized representative.
- C. Items purchased under the Sales Agreement will be released only to the Purchaser or his authorized representative. The authorization from the Purchaser to the custodian of the property will be at the property location before any delivery or release will be made. When property is described as boxed, packed, crated, skidded, or in containers, the Company does not warrant the property, as packaged, is suitable for shipment.
- D. Segregation culling or selection of property for the purpose of effecting partial or increment removals will not be permitted except as specifically authorized and prescribed by the Company.

#### **11. DEFAULT**

If, after the award, the Purchaser breaches the Sales Agreement by failure to make payment within the time allowed by the Sales Agreement as required by Article No. 7 of this Sales Agreement, or by failure to remove the property as required by Article No. 9 of this Sales Agreement, the Company may send the Purchaser a 15-day written notice of default (calculated from date of mailing), and upon Purchaser's failure to cure such default within the period (or such further period as the Company may allow), the Purchaser shall lose all right, title and interest they might otherwise have acquired in and to such property as to which a default has occurred. The Purchaser agrees in the event he fails to pay for the property or remove the same within the prescribed period(s) of time, the Company, at its election and upon notice of a default shall be entitled to retain (or collect) as liquidated damages a sum equal to the greater of (a) 20% of the purchase price of the defaulted item(s) or, (b) \$25 or, (c) the purchase price of such item(s) if the purchase price is less than \$25. The amount to be charged if the minimum charge provided for in "b" above is applicable, shall be determined by the total purchase price reflected in the award documents. The maximum sum which may be recovered by the Company as damages for failure of the Purchaser to pay for and remove the property shall be the formula amount. When the Company exercises this election, it shall specifically notify the Purchaser, either in its original notice of default (or in separate subsequent written notice), where upon the expiration of the period prescribed for curing the default, the formula amount will be retained (or collected) by the Company as liquidated

damages. However, if the property was sold on a "per lot" basis and the Purchaser removes a portion of the lot but fails to remove the balance, no portion of the purchase price will be refunded. If the Purchaser otherwise fails in the performance of his obligations, the Company may exercise such rights and may pursue such remedies as are provided by law or under this Sales Agreement.

**12. SETOFF OF REFUNDS**

The Purchaser agrees the selling agency may use all or a portion of any bid deposit or refund due to satisfy, in whole or in part, any debts arising out of prior transactions with the selling agency.

**13. INTEREST**

Notwithstanding any other provision of this Sales Agreement, unless paid within 30 calendar days from the date of first written demand, all amounts that become payable by the Purchaser to the Company under this Sales Agreement shall bear interest at the rate of 10% per annum from the date of first written demand until paid. Irrespective of the amount of the indebtedness, a minimum interest charge of five dollars (\$5) shall be due to the Company on any amount exceeding \$100 not paid within thirty (30) calendar days from the date of first written demand. Interest on debts of \$100 or less will not be collected if such debts are liquidated without resort to litigation.

**14. ADJUSTMENT FOR VARIATION IN QUANTITY OR WEIGHT**

Except for term Sales Agreements, when property is sold by a unit other than "weight", the Company reserves the right to vary the quantity tendered or delivered to the Purchaser by 50%. When the property is sold by "weight", the Company reserves the right to vary the quantity tendered or delivered to the Purchaser by 50%. The purchase price will be adjusted upwards or downwards in accordance with the unit price and on the basis of the quantity or weight actually delivered. Unless otherwise specifically provided in the Sales Agreement, no adjustment for such variation will be made when property is sold on a "price for the lot" basis.

**15. WEIGHTING, SWITCHING, AND SPOTTING**

Where weighting is necessary to determine the exact purchase price, the Purchaser shall arrange for and pay all expense of weighing the property (unless the Company scales are available on the premises). All switching and spotting charges shall be paid by the Purchaser unless performed with Government-owned or Government-operated locomotives on Government property. When removal is by truck, weighing shall be under the supervision of the Company and at its option on: (a) Government scales, (b) certified scales, or (c) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales, or other means acceptable to the railroad for freight purposes.

**16. RISK OF LOSS**

Unless otherwise provided in the Sales Agreement, the Company will be responsible for the care and protection of the property subsequent to it being available for inspection and prior to its removal. Any loss, damage, or destruction occurring during such period will be adjusted by the Company to the extent it was not caused directly or indirectly by the Purchaser, its agents, or employees. With respect to loss only, in the event the property is offered for sale by the "lot", no adjustment will be authorized under this provision unless the Company is notified of the loss prior to removal from the installation of any portion of the lot with respect to which the loss is claimed.

**17. LIMITATION ON LIABILITY**

Except for reasonable packing, loading, and transportation costs when a return of property at Company cost is authorized, the measure of the Company/Government liability in any case where liability of the Purchaser has been established shall not exceed the refunded value of such portion of the purchase price as the Company may have received.

**18. ORAL STATEMENTS AND MODIFICATIONS**

Any oral statement or representation by any representative of the Company, changing or supplementing the Invitation for Bids or Sales Agreement or any condition thereof, is unauthorized and shall confer no right upon the Bidder or Purchaser.

**19. COVENANT AGAINST CONTINGENT FEES**

Purchaser warrants no person or agency has been employed or retained to solicit or secure this Sales Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Purchaser for the purpose of doing business. For breach of this warranty, the Company shall have the right to annul this Sales Agreement without liability or, at its option, to recover from the

Purchaser the amount of such commission, percentage, brokerage, or contingent fee, in addition to the consideration herein set forth.

**20. OFFICIALS NOT TO BENEFIT**

No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Sales Agreement or to any benefit that may arise therefrom unless it is made with a corporation for its general benefit.

**21. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION**

- A. By submission of this bid or proposal, the Bidder certifies, and in the case of a joint bid or proposal each party thereto certifies as to its own organization, in connection with this sale:
- 1) the prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices, with any other Bidder or with any competitor.
  - 2) unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other Bidder or offeror or to any competitor; and
  - 3) no attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.
- B. Each person signing this bid or proposal certifies:
- 1) they are the person in the Bidder's organization responsible within the organization for the decision as to the prices being bid or offered therein and they have not participated, and will not participate, in any action contrary to A(1) through A(3), above; or
  - 2) they are not the person in the Bidder's organization responsible within the organization for the decision as to the prices being bid or offered herein but they have been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to A(1) through A(3), above, and
  - 3) as their agent does hereby so certify; and they have not participated, and will not participate, in any action contrary to A (1) through A (3), above.
- C. This certification is not applicable to a foreign Bidder submitting a bid for a Sales Agreement which requires performance or delivery outside the United States, its possessions, and Puerto Rico.
- D. A bid will not be considered for award where A (1), A (3), or B, above, has been deleted or modified. Where A(2), above, has been deleted or modified, the bid will not be considered for award unless the Bidder furnishes with the bid or proposal a signed statement which sets forth in detail the circumstances disclosure and the head of the selling agency, or designee, determines such disclosure was not made for the purpose of restricting competition.

**22. ASSIGNMENTS OF AGREEMENTS**

Any Sales Agreement awarded under the Invitation for Bids is subject to the provisions of 41 U.S.C. 15 which generally precludes assignment of such Sales Agreement.

**23. CLAIMS LIABILITY**

The Purchaser agrees to save the Company and the Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Purchaser, its agents, servants or employees, while in, upon or about the sale or the property site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save the Company and the Government harmless from and on account of damages of any kind which the Company and the Government may suffer as the result of the acts of the Purchaser, its agents, servants, or employees while in or about the said sites.

**24. WITHDRAWAL OF PROPERTY AFTER AWARD**

The Company reserves the right to withdraw for its use of any or all the property covered by this Sales Agreement if a bona fide requirement for the property develops or exists prior to actual removal of the property from Company control. In the event of a withdrawal under this condition, the Company shall be liable only for the refund of the Sales Agreement price of the withdrawn property or such portion of the Sales Agreement price as it may have received.

**25. BIDDER'S WARRANTY OF CAPACITY**

The Bidder warrants they are not:

- A. under 18 years of age.
- B. an employee of an agency of the Federal Government (either as a civilian or as a member of the Armed Forces of the United States, including the United States Coast Guard, on active duty) prohibited by the regulations of the agency from purchasing property sold hereunder.
- C. an agent or immediate member of the household of the employee in B, above. For breach of this warranty, the Company shall have the right to annul this Sales Agreement without liability.

**26. TIE-IN AND ALL-OR-NONE BIDS**

Except as otherwise specifically provided in the Invitation for Bids, qualified, tie-in, all or none, or combination bids will not be accepted and will be rejected as non-responsive. This includes bids conditioned upon the acceptance or non-acceptance of bids on other items, except as otherwise specifically provided in the Invitation for Bids.

**27. STORAGE CHARGES/LATE REMOVAL CHARGES**

In accordance with Article 10 "Delivery, Loading and removal of Property" of this Sales Agreement, if the Purchaser is permitted to remove the property after the expiration of the period prescribed herein for the removal or after the expiration of such additional time as the Company may have granted, the Company will require the Purchaser to pay for storage/liquidated damages for such late removal. Unless otherwise specifically provided for elsewhere in the Sales Agreement, storage charges/liquidated damages for property stored indoors will be completed and assessed at the rate of six cents (\$.06) per hundred pounds or fraction thereof, or .132 per hundred kilogram or fraction thereof per line item for each day or fraction thereof (including day of removal) for quantities or weights of property which have not been timely removed. Storage rates or liquidated damages for outdoor storage will be fifty percent (50%) of indoor rates. Provided, however, with respect to term sales, the Company will require the Purchaser to pay storage charges or liquidated damages at the rate of 1/10th of 1% (.001) of the estimated total price for each day the Purchaser is late in removing the property. In the event the Sales Agreement term exceeds one year, the total Sales Agreement price for the purpose of computing storage charges/liquidated damages under this clause shall be limited to the estimated Sales Agreement price for a one-year period. Five dollars (\$5) will be the minimum charge at each holding activity cited in the Sales Agreement. Unless removal is required on such days, storage charges/liquidated damages will not be assessed for Saturdays, Sundays, Company holidays, or any day the installation at which the property is located is closed. The estimated weights when given in item descriptions will be used in computing storage charges/liquidated damages. In the event the property is sold by weight, adjustment for storage charges/liquidated damages will be made in accordance with the actual weight delivered. In all instances where storage charges/ liquidated damages are assessed, payment must be made by the Purchaser prior to the removal of the property unless otherwise authorized by the Company. In no event will storage charges/liquidated damages exceed 20% of the Sales Agreement price of the delayed property, except in those instances where 20% of the Sales Agreement price is less than the minimum storage charge/liquidated damages in which case the minimum charge will be assessed.

**28. GUARANTEED DESCRIPTIONS**

Notwithstanding any other provisions contained in the Sales Agreement to the contrary, and subject to the limitations and conditions set out in subparagraphs a and b below, the Company guarantees to the original Purchaser of the property the property delivered or offered for delivery under any Sales Agreement resulting from an Invitation for Bids will be as described in the Invitation for Bids.

- A. If a misdescription is determined to exist prior to removal of the property from Company control, the sole and exclusive remedy available to the Purchaser will be a refund of the purchase price of the property to which such misdescription exists, or such portion thereof as the Company may have received.
- B. If a misdescription is determined to exist after removal of the property from Company control, then the Company will make an adjustment in the purchase price paid for the property commensurate with the market value of the property actually received, provided, however:
  - 1) No adjustment will be made for shortages of property offered for sale by the "lot", and
  - 2) No adjustment will be made unless the Purchaser notifies the Company in writing within 30 calendar days from date of removal of the property, that the property is misdescribed. The Purchaser will hold the property sufficiently intact to permit identification by the Company, provided the Company does not warrant or guarantee any of the following:
    - i. The item description contains all specific characteristics or performance data pertaining to the item described.

- ii. The stated condition of the property, the total cost of the property, the estimated total weight, the estimated shipping dimensions, suggested uses of the property and the property's fitness for any use or purpose.
  - iii. Estimates of the "weight" of the property offered for sale by the "unit" or by the "lot"
  - iv. Estimates of the number of units of property offered for sale by "weight".
  - v. In the event the Company uses a manufacturer's part, reference number, or a Federal Stock Number in addition to detailed descriptive data in the item description, the descriptive data applicable to such part, reference number, or Federal Stock Number is not guaranteed if it is inconsistent with the detailed descriptive data applicable to the item description.
  - vi. To the extent property is described solely by noun nomenclature, manufacturer's part, reference number, or Federal Stock Number, the descriptive data applicable to the Federal Stock Number is not guaranteed if it is inconsistent with the descriptive data applicable to the manufacturer's part or reference number.
  - vii. In no event will the term "or interchangeable" following a manufacturer's part or reference number be construed to guarantee the property described consists of the part reference number in whole or in part. Only functional interchangeability with the part or reference number is guaranteed.
- C. Notwithstanding any of the exceptions stated in subparagraphs B(2)(i) through (vii) above, the Company will accept return of any property determined to have been misdescribed, to a location specified by the Company at the Purchaser's expense, and refund to the Purchaser the purchase price or such portion the Company may have received, provided timely notice of the misdescription has been furnished to the Company in accordance with the requirements of subparagraph B(2) above.
- D. The foregoing guarantee is in lieu of all other guarantees, express or implied, and all other obligations on the part of the Company to deliver or offer for delivery property as described in the Sales Agreement and shall not entitle the Purchaser to any payment of loss of profits or any other money damages, special, direct, indirect, or consequential; nor shall any recovery or refund of any kind against the Company under this provision be greater than the purchase price of the specific material found to have been misdescribed.

**29. DEMURRAGE AND OTHER STANDBY COSTS**

Where it is provided in the Sales Agreement the Company will load, it is agreed and understood the Company shall not be liable of any costs, direct or indirect, which may be incurred by a Purchaser as result of the Company's failure to load property in a timely manner. The sole and exclusive remedy for such a failure shall be an appropriate extension of the approval period.

**30. RADIOACTIVE MATERIAL**

Purchasers are warned some property purchased hereunder such as, but not limited to, switches, circuit breakers, knobs, controls, pointers, instrument dials, markers, etc., may be capable of emitting ionized radiation in varying degrees. Various electron tubes may also be capable of emitting ionized radiation in varying degrees. The Company assumes no liability for damages to the property of the Purchaser or for personal injuries, disabilities or death to the Purchaser or the Purchaser's employees or to any other person arising from or incident to the purchase of this material nor its use or disposition. The Purchaser shall hold the Company harmless from any or all such demands, suits, actions, or claims of whatsoever nature arising from or out of the purchase of this material. As a safety precaution, the Purchaser should also warn the future possessor or user of this property it might be capable of emitting ionized radiation.

**31. ACCEPTABLE FORMS OF BID DEPOSITS AND PAYMENTS**

- A. Unless otherwise provided in the Invitation for Bids, bid deposits (when required by Invitation for Bids) and payments shall be in U.S. currency or cashier's check, certified check, bank draft, postal money order, travelers check, or telegraphic money order made payable in U.S. dollars to the Treasurer of the United States.
- B. A check which is certified for payment for a limited period of time must be valid for at least 20 days after the date specified for the bid opening, if the check is submitted as a bid deposit, and for at least 20 days after the date the check is received by the Company if the check is offered as payment on account. Bank draft (i.e., checks drawn by one bank on another) need not be certified.

**32. DISPOSAL**

- A. Purchaser shall recycle, reclaim, reuse, or dispose of material as defined in the Work at the particular facility or facilities, referred to in the Sales Agreement. Seller shall utilize those general storage, treatment recycling, reclamation, reuse, and disposal methods specified in the Sales Agreement. The Company shall be solely responsible for determining the specific times and techniques for storage, processing, treatment recycling, reclamation, reuse, and disposal of the material. However, such processing, treatment recycling, reclamation, reuse, and disposal shall occur within a reasonable time, not to exceed the time specified, if any, in the Sales Agreement.

- B. Purchaser shall not use, distribute, or sell any of the material as defined in the Work or any component or residue thereof, specified in the Sales Agreement.
- C. If the Sales Agreement specifies the Purchaser may use, distribute or sell any of the material as defined in the Work or components or residue thereof, Seller agrees to indemnify and save harmless the Government and the Company, their present and future officers or directors (or officials), employees and agents, from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits and costs and expenses incidental thereto (including, cost of defense, settlement and reasonable attorney's fees) which any or all of them may hereafter suffer, incur, be responsible for or pay out as a result of bodily injuries (including death) to any person, damage (including loss of use) to any property (public or private) contamination of or adverse effects on the environment, or any violation or alleged violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency caused by or arising out of the use, distribution or sale of the material as defined in the Scope Of Work.

**33. TERM**

This Sales Agreement shall commence on the date written, or signed and accepted if after date written, and shall continue in full force and effect for a period of one (1) year.

**34. RIGHT TO TERMINATE**

The Company may terminate this Sales Agreement with respect to performance remaining, if, at any time after execution of the Sales Agreement, the facility specified in the Sales Agreement to obtain, or maintain as valid, any license permit or approval required to allow lawful acceptance and storage, treatment, processing recycling, reclamation, reuse, or disposal of the material as defined in the Scope of Work.

**35. WARRANTY**

A. Purchaser warrants and represents to the Company that:

- 1) Purchaser understands the currently known hazards and risks which are presented to human beings, property and the environment in the handling, transportation, storage, treatment, processing, recycling, reclamation, reuse, and disposal of the materials defined in the Work described by the Company in the Sales Agreement.
- 2) Purchaser is engaged in the business of transportation, storage, recycling, reclamation, reuse, and disposal of the materials defined in the Work, and has developed the requisite expertise for the handling, transportation, storage, treatment, processing, recycling, reclamation, and reuse and disposal of such; and,
- 3) Purchaser will handle, transport, store, treat, process recycling, reclamation, recycle, reuse, and dispose of the materials defined in the Work in a safe and workmanlike manner and in full compliance with all valid and applicable statutes, ordinances, orders, rules, and regulations of the federal, state, and local governments in whose jurisdictions such activities are performed under this Sales Agreement; and,
- 4) Any and all vehicles or vessels, of the materials defined in the Work containers and personnel to be provided by Purchaser in the performance of this Sales Agreement have obtained or will obtain prior to performance all permits, licenses, certificates, or approvals required to comply with valid and applicable statutes, ordinances, orders, rules, and regulations of the federal, state, and local governments; and,
- 5) The Purchaser's facility (or facilities) described in any Sales Agreement has been issued, as of the date of execution of the Sales Agreement, all permits, licenses, certificates or approvals, required by valid and applicable statutes, ordinances, orders, rules and regulations of the federal, state and local governments in which such facility is located, necessary to allow such facility to accept and store, treat, process, recycle, reclaim, reuse and dispose of the material as defined in the Work as described by the Company in the Invitation For Bids. In addition, if required by federal, state, or local law, regulation or ordinance, Purchaser has filed with the appropriate governmental agency a notification of hazardous waste activity and/or an application to operate a hazardous waste storage, treatment or disposal facility and the storage, treatment or disposal facility described in any Sales Agreement has achieved "interim status" as defined by federal and applicable state laws and regulations. Purchaser shall provide the Company with reasonable advance notice if any such permit, license, certificate, or approval is to expire and not be renewed during the term of the Sales Agreement or becomes the subject of judicial or administrative action seeking revocation or suspension. Such notice shall also be provided if Purchaser determines not to seek any necessary permit, license, certificate, or approval which becomes required after execution of the Sales Agreement.

B. If, during the term of this Sales Agreement, Purchaser determines not to renew any existing permit, license, certificate, or approval or not to seek any necessary permit, license, certificate, or approval which becomes required after execution of the Sales Agreement, the Company shall retain all rights and remedies it may have at law or equity.

### **36. LOADING AND TRANSPORTATION OF WASTE PRODUCTS**

If the Sales Agreement specifies the Purchaser is to provide loading, including but not limited transportation services, Purchaser shall load and/or transport materials as defined in the Work to the facility specified. Purchaser shall be responsible for cleanup and disposal of any materials as defined in the Work spilled during such loading or transportation and shall fully indemnify and hold harmless the Government and the Company.

### **37. THE COMPANY'S RIGHTS OF INSPECTION**

The Company shall have the right, but not the obligation, to inspect and obtain copies of all written licenses, permits or approvals, issued by any governmental entity or agency to Purchaser or its Lower-tier Subcontractors which are applicable to the performance of this Sales Agreement; to inspect transportation vehicles or vessels, containers or facilities provided by the Purchaser; and to inspect the handling, loading, transportation, storage, recycling, reclamation, reuse, resale or disposal operations conducted by Purchaser in the performance of this Sales Agreement. Such inspections or lack of inspections shall not relieve the Purchaser of its responsibility or liability under this Sales Agreement.

### **38. INDEPENDENT CONTRACTOR**

The Purchaser is and shall act in performance of this Sales Agreement 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 Sales Agreement, or any Lower-tier Subcontract shall create any contractual relationship between any such Lower-tier Subcontractor and the Government or Company. Purchaser is solely responsible for the actions of itself and its Lower-tier Subcontractors, Agents, and Employees.

### **39. SPECIAL SEALED BID**

#### **A. Bid Deposits**

All bids must be accompanied by a bid deposit which must be in the possession of the Company by the time set for bid opening. Bid deposits shall be in the form prescribed in Article No. 5 of this Sales Agreement. Unless otherwise provided in the Invitation for Bids, a bid deposit of 20% of the estimated total Sales Agreement price is required on sales not exceeding one year; sales exceeding one-year's duration will require a bid deposit computed at 20% of the total price estimated for one year's removal of property. Deposit Bond-Annual, sale of Government Personal Property (Standard Form 151) is not acceptable as a bid deposit. In accordance with Article No. 8 of this Sales Agreement titled "Payment", the 20% bid deposit submitted by the Purchaser will be retained by the Company and applied against the last delivery effected under the Sales Agreement. At the option of the successful Bidder, a Performance Bond may be substituted by the successful Bidder for bid deposit at any time after notification of award of the Sales Agreement. Any bid which is not timely supported by a proper bid deposit may be rejected as non-responsive in the same manner as late bids. The bid deposit or performance bond shall be held by the Company for the entire term (3 years) of this Sales Agreement and if a bid deposit is used it will be applied against the last delivery affected under this Sales Agreement in the third year.

#### **B. Modification or Withdrawal of Bids**

Bids may be modified or withdrawn by written notice and a bid also may be withdrawn in person by the Bidder or their authorized representative, provided identity is made known and the Bidder signs a receipt for the bid. Any bid modification which increases the amount of a bid already submitted or which submits bids on items not previously bid on must provide for an increased bid deposit.

#### **C. Consideration of Late Bids, Modifications, or Withdrawals**

Bids and modifications or withdrawals thereof must be in the possession of the Company by the time set for bid opening. Any bid, modification, or withdrawal received after the time set for bid opening will not be considered unless received by the Company prior to award, was mailed and in fact delivered to the address specified in the Invitation for Bids in sufficient time to have been received by the Company by the time and date set forth in the Invitation for the bid opening, and, except for delay attributable to personnel of the sales office or their designees, would have been received on time. In no event will hand-carried bids or withdrawals be considered if delivered to the Company after the exact time and date set for bid opening. However, a modification which makes the terms of the otherwise successful bid more favorable to the Company will be considered at any time it is received prior to award and may be accepted.

#### **D. Termination**

Unless otherwise provided in the Invitation for Bids, this Sales Agreement may be terminated by the Company without cost to the Company upon 30 days written notice to the Purchaser, to be calculated from the date the notice is mailed.

#### **E. Award of Sales Agreement**

The Sales Agreement will be awarded to the responsible Bidder whose bid conforming to the Invitation for Bids will be most advantageous to the Company, price and other factors considered. A written award mailed (or otherwise furnished) to the

successful Bidder within the time for acceptance provided in the Invitation for Bids shall be determined to have resulted in a binding Sales Agreement without any further action by either party.

#### **40. EXPORT CONTROL**

- A. U. S. Government property purchased or acquired under this order may or may not be authorized for export from the U.S. to a foreign country. If export is allowed, the Purchaser is solely responsible for obtaining all required clearances or approvals. The Purchaser is also required to pass on this information and any other DOE-provided export control guidance if the property is resold (including domestic re-transfers) or otherwise disposed.
- B. The use, disposition, export and re-export of the property is subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 USC 2751 et seq.); the Export Administration Act of 1979 (560 USC Append 2401 et seq.); DOE Regulations (10 CFR Part 810); International Traffic in Arms Regulations (22 CFR 120 et seq.); Export Administration Regulations (15 CFR 730 et seq.); Foreign Assets Control Regulations (31 CFR 500 et seq.); and the Espionage Act (37 USC 791 et seq.) which among other things, prohibit:
  - 1) The making of false statements and concealment of any material information regarding the use or disposition, export, or re-export of the property, and
  - 2) Any use of disposition, export or re-export of the property which is not authorized in accordance with the provisions of this Sales Agreement.

#### **41. PROLIFERATION SENSITIVE PROPERTY ACKNOWLEDGMENT**

In the event proliferation of sensitive property, as identified on the U. S. Munitions List (22 CFR 121) or the International Atomic Energy Agency Information Circular (INFCIRC) 254 Part 1 (the Trigger List), is inadvertently included in this sale, the Purchaser agrees the part of the sale involving the sensitive property is void, and, if such property has been received by the Purchaser, the Purchaser will return the property to DOE-Savannah River Operations. (See Article No. 9 of this Sales Agreement regarding title to property). Once notified by the Company of its intent to reclaim the sensitive property, the Purchaser agrees to take all reasonable measures to safeguard the property until its return to the Company.

#### **42. DISPUTES**

- A. Purchaser shall not be entitled to damages in tort (including negligence), or contract, or otherwise, except as specifically provided in this Sales Agreement. Further, the Company and the Government shall not be liable to the Purchaser or its Lower-tier Subcontractors, for damages in tort (including negligence), or contract, or otherwise, except as specifically provided in this Sales Agreement.
- B. The Parties shall attempt to settle any claim or controversy arising from this Sales Agreement through consultation and negotiations in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator chosen by the Parties within thirty (30) days after written notice by one party demanding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, and the Parties will share the costs of the mediation equally. Any dispute which cannot be resolved between the Parties through negotiation or mediation shall be resolved by litigation in a court of competent jurisdiction located in the State of South Carolina. Determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government; if there is no applicable Federal Government contract law, the law of the State of South Carolina shall apply in the determination of such issues.
- C. During the tendency of a dispute, the Purchaser shall proceed diligently with performance of all terms of this Sales Agreement. The Purchaser's consent to proceed shall not restrict or otherwise affect the Purchaser's right to contest any claim.

#### **43. FOREIGN NATIONALS**

As used in this Article, 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.

- A. The Purchaser shall obtain the approval of the Company, in writing, prior to any visit to a DOE or Company facility by any Foreign National or Dual Citizen in connection with work being performed under this Sales Agreement. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontracted service work, including delivery of materials, or for courtesy purposes. The term "access" also includes officially sponsored attendance at a DOE or Company event off-site from the DOE/Company facility but does not include off-site events and activities open to the general public. Purchaser s should be aware the required forms and documents

necessary for approval of visits by Foreign Nationals should be submitted to the Company Procurement Representative at least four (4) to six (6) weeks prior to the visit. Forms can be obtained from the Company Procurement Representative.

- B. In addition, the Purchaser shall obtain the approval of the Company's Procurement Representative, in writing prior to the employment of, or participation by, any Foreign National or Dual Citizen in the performance of Work under this Sales Agreement or any Lower-tier Subcontract at off-site locations.
- C. In the performance of off-site Work, Foreign Nationals only incidentally involved with a Company Sales Agreement, and who have no knowledge their activities are associated with Company subcontracted work, are exempt from the above.
- D. If the Work is accompanied by an approved Exception from Foreign National Information Requirements form, this Sales Agreement does not require the Purchaser to provide foreign national information that would otherwise be required.
- E. In the performance of Work, Country of Risk Foreign Nationals/Dual Citizens may be restricted from accessing technology, information, or certain areas.

#### 44. **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)

#### 45. **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)

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

- A. "Contract" means this Sales Agreement (except in instances when it is not applicable or appropriate) and includes change orders and modifications to the Sales Agreement.
- B. "Contractor" means Purchaser, the party to whom this Sales Agreement is awarded (except in instances when it is not applicable or appropriate).
- C. "Government" means 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 Purchaser or any Lower-tier Subcontractor for the furnishing of supplies or services required for performance of this Sales Agreement.

This Sales Agreement incorporates the clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, the Company will make their full text available.

##### FAR Clauses

52.204-21	Basic Safeguarding of Covered Contractor Information Systems (JUN 2016)
52.222-21	Prohibition of Segregated Facilities (FEB 1999)
52.222-26	Equal Opportunity (APR 2002)
52.242-15	Stop Work (AUG 1989)

##### DEAR Clauses

952.204-2	Security Requirements (JUN 2009)
952.204-71	Sensitive Foreign Nations Controls (MAR 2011)
970.5204-3	Access to and Ownership of Records (OCT 2014)