

TC-00019 Construction Revision 2
Effective with Solicitations issued on or after 08/01/2024.

CONSTRUCTION SUBCONTRACT

EXHIBIT "A"

GENERAL PROVISIONS

UNDER

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

SAVANNAH RIVER NUCLEAR SOLUTIONS, LLC

SAVANNAH RIVER SITE

AIKEN, SC 29808

EXHIBIT "A"
CONSTRUCTION SUBCONTRACT TERMS AND CONDITIONS
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CONSTRUCTION SUBCONTRACT

EXHIBIT "A"

GP-1 ORDER OF PRECEDENCE

This Subcontract Agreement Form, all documents listed therein, and subsequently issued Change Notices and amendments ("Modification Agreements") are essential parts of this Subcontract and a requirement occurring in one is binding as though occurring in all. In resolving conflicts, discrepancies, errors, or omissions pursuant to the General Terms and Conditions title "SUBCONTRACT INTERPRETATION" the following order of precedence shall be used.

- (1) Compliance with all laws, ordinances, statutes, rules, and regulations as noted in GP-8
- (2) Subcontract Change Notices and Modification Agreement if any
- (3) Subcontract Agreement Form
- (4) Exhibit "G" – Site Support Alliance
- (5) Exhibit "C" - Quantities, Prices, and Data
- (6) Exhibit "B" - Special Provisions
- (7) Exhibit "A" - General Provisions
- (8) Exhibit "F" – Subcontractor Safety and Health Requirements
- (9) Exhibit "E" - Scope of Work & Technical Specifications
- (10) Exhibit "D" – Drawings

GP-2 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.

Subcontractor shall not utilize or propose individuals for Work previously terminated for cause from Company.

GP-3 AUTHORIZED REPRESENTATIVES

Before starting Work, Subcontractor shall designate in writing an authorized representative acceptable to Company to represent and act for Subcontractor and shall specify any and all limitations of such representative's authority. Such representative shall be present or be represented at the Jobsite at all times when Work is in progress, and shall be empowered to receive communications in accordance with this Subcontract on behalf of Subcontractor. During periods when the Work is suspended, arrangements shall be made for an authorized representative acceptable to Company for any emergency Work which may be required. All communications given to the authorized representative by Company in accordance with this Subcontract shall be binding upon Subcontractor. Company shall designate in writing one or more representatives to represent and act for Company and to receive communications from Subcontractor. Notification of changes of authorized representatives for either Company or Subcontractor shall be provided in advance, in writing, to the other party.

GP-4 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 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 subcontract.

GP-5 NOTICES

Any notices provided for hereunder shall be submitted in electronic PDF format and served personally on the authorized representative of the receiving party at the Jobsite and by electronic PDF format to the address of the party as shown on the face of the Subcontract Agreement Form or at such address as may have been changed by written electronic notice.

GP-6 SUBCONTRACT INTERPRETATION

All questions concerning interpretation or clarification of this Subcontract, including the discovery of conflicts, errors, or omissions, or the acceptable performance thereof by Subcontractor, shall be immediately submitted in writing to Company for resolution. All determinations, instructions and clarifications of Company shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. At all times Subcontractor shall proceed with the Work in accordance with the determinations, instructions, and clarifications of Company. Subcontractor shall be solely responsible for requesting instructions or interpretations and shall be solely liable for any costs and expenses arising from its failure to do so.

GP-7 STANDARDS AND CODES

Wherever references are made in this Subcontract to standards or codes in accordance with which the Work under this Subcontract is to be performed, the edition or revision of the standards or codes current on the effective date of this Subcontract shall apply unless otherwise expressly stated in the specifications and drawings. In case of conflict between any reference standards and codes and any Subcontract Document, the most stringent will govern.

GP-8 LAWS AND REGULATIONS

Subcontractor and its employees and lower-tier Subcontractors shall at all times comply with all applicable laws, ordinances, statutes, rules, or regulations, including new provisions of 10 CFR 851 relating to Health and Safety, in effect at the time work under this Subcontract is performed. Compliance shall be a material requirement of this Subcontract. Subcontractor agrees to indemnify and save harmless Company and the Government, its officers, employees, servants, and agents of either of them from and against any and all claims or expenses caused or occasioned directly or indirectly by its failure so to comply.

Subcontractor shall abide by the requirements of 41 CFR 60-741.5 (a). This regulation prohibits discrimination against qualified individuals based on disability and requires affirmative action by covered prime Subcontractor to employ and advance in employment qualified individuals with disabilities.

Subcontractor shall abide by the requirements of 41 CFR 60-300.5 (a). This regulation prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime Subcontractor to employ and advance in employment qualified protected veterans.

If during the term of this subcontract there are any changed or new laws, ordinances, or regulations not known or foreseeable at the time of signing this subcontract which affect the cost or time of performance of the subcontract, Subcontractor shall immediately notify in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Subcontract. Upon concurrence by Company as to the effect of such changes, an equitable adjustment in the compensation and time of performance will be made.

Subcontractor is liable to Company and the Government for all fines and penalties assessed by any governmental entity against Company and the Government as a result of Subcontractor's failure to perform its work under the subcontract in compliance with the requirements of the subcontract.

If any discrepancy or inconsistency should be discovered between the Subcontract and any law, ordinance, regulation, order, or decree, Subcontractor shall immediately report the same in writing to Company who will issue such further instructions as may be necessary.

Subcontractor - Staff Augmentation Services

(The Paragraph below applies to Staff Augmentation Services)

Subcontractors shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations, including provisions of 10 CFR 851. Compliance shall be a material requirement of this Agreement/Subcontract. Except as otherwise directed by Company, Subcontractor shall procure without additional expense to Company, all necessary permits, or licenses. DEAR Clause 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution (DEC 2000) is incorporated into the subcontract by reference. Compliance by Subcontractor to Company' Worker Safety and Health Program (WSHP) [as implemented by Integrated Safety Management System (ISMS)] shall satisfy the requirements of this DEAR clause and 10 CFR 851.

GP-9 PERMITS AND LICENSES

Except as otherwise specified, Subcontractor shall procure and pay for all permits, licenses, and inspections, other than inspections performed by Company and shall furnish any bonds, security, or deposits required by the Government, state, territory, municipality, or other political subdivisions to permit performance of the Work hereunder. This includes but is not necessarily limited to identifying if such permits and licenses are required, compiling the information and data required for applications to obtain permits and licenses, filing of necessary applications for such permits and licenses, and providing any additional information or data required.

Where permits and licenses are furnished by the Company or the Government, the Subcontractor shall provide all reasonable assistance requested, including the providing of any necessary information or data.

GP-10 TAXES

Subcontractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with the Work under this Subcontract and shall make any and all payroll deductions required by law and hereby indemnifies and holds harmless Company and the Government from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

GP-11 LABOR, PERSONNEL AND WORK RULES

Subcontractor shall employ only competent and skilled personnel to perform the Work and shall remove from the Job site any Subcontractor personnel determined to be unfit or to be acting in violation of any terms and conditions of this subcontract. **For information regarding Company work rules and disciplinary action applied to Company personnel in violation of work rules (with particular emphasis on Safety violations), Subcontractor may contact Company' designated Subcontract Labor Relations Representative.** Subcontractor is responsible for maintaining labor relations for harmony among workers and shall comply with and enforce Project and Jobsite procedures, regulations, work rules and work hours established by the Company and the Government.

Company, at its sole discretion, may deny access to the Jobsite to any individual by written electronic notice to Subcontractor. In the event an employee is excluded from the Jobsite, Subcontractor shall promptly replace such individual with another who is fully competent and skilled to perform the Work.

Subcontractor, to the extent permissible under applicable law, shall comply with the terms and conditions of all labor agreement(s), inclusive of the Site Support Alliance, which apply to the Work performed under this Subcontract.

Work assignments and the settlement of jurisdictional disputes shall conform with either the Rules, Regulations and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry, and any successor agreement thereto, or any other mutually established method of determining work assignments and settling jurisdictional disputes.

GP-12 COMMERCIAL ACTIVITIES

Neither Subcontractor nor its employees shall establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on the Jobsite or any other lands owned or controlled by Company or the Government.

GP-13 PUBLICITY AND ADVERTISING

Subcontractor shall not make any announcement, take any photographs, or release any information concerning this Subcontract, or the Project, or any part thereof to any member of the public, press, business entity, or any official body unless prior written electronic consent is obtained from Company. All requirements of this Article shall be flowed down to Lower-Tier Subcontracts at all levels.

GP-14 SITE CONDITIONS AND NATURAL RESOURCES

Subcontractor shall have the sole responsibility for satisfying itself concerning the nature and location of the Work and the general and local conditions, including but not limited to the following:

- (1) Transportation, access, disposal, handling, and storage of materials,
- (2) Availability and quality of labor, water, electric power, and road conditions,
- (3) Climatic conditions, tides, and seasons,
- (4) River hydrology and river stages,
- (5) Physical conditions at the Jobsite and the project area as a whole,
- (6) Topography and ground surface conditions, and
- (7) Equipment and facilities needed preliminary to and during the performance of the Work.

The failure of Subcontractor to acquaint itself with any applicable conditions will not relieve Subcontractor of the responsibility for properly estimating either the difficulties or the cost of successfully performing Subcontractor's obligations under this Subcontract.

Where Company or the Government has made investigations of subsurface conditions in areas where Work is to be performed under this Subcontract, such investigations are made by Company and the Government for the purpose of study and design. If the records of such investigations are included in the Subcontract Documents, the interpretation of such records shall be the sole responsibility of Subcontractor. Neither Company nor the Government assumes any responsibility whatsoever in respect to the sufficiency or accuracy of such investigations, the records thereof, or of the interpretations set forth and there is no warranty or guarantee, either express or implied, the conditions indicated by such investigations or records thereof are representative of those existing throughout such areas, or any part thereof, or unforeseen developments may not occur, or materials other than or in proportions different from those indicated may not be encountered.

GP-15 DIFFERING SITE CONDITIONS

Subcontractor shall promptly notify Company in writing before proceeding with any Work the Subcontractor believes constitutes a differing site condition with respect to:

- (1) Subsurface or latent physical conditions at the Jobsite differing materially from those indicated in this Subcontract, or
- (2) Previously unknown physical conditions at the Jobsite, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Subcontract.

Company will, as promptly as practicable, investigate such conditions and make a determination. If Company determines such conditions do materially so differ and cause an increase or decrease in Subcontractor's cost of or the time required for performance of the Work under the Subcontract, and adjustment will be made, and the Subcontract

modified in writing accordingly. No claim of Subcontractor under this clause will be allowed unless Subcontractor has given the required notice.

GP-16 TITLE TO MATERIALS FOUND

The title to water, soil, rock, gravel, sand, minerals, timber, and any other materials developed or obtained in the excavation or other operations of Subcontractor or any of its lower-tier Subcontractors and the right to use said materials or dispose of same hereby is expressly reserved by the Government. Neither Subcontractor, its lower-tier Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials nor shall they assert or make any claim thereto. Subcontractor, at the sole discretion of the Government, may be permitted, without charge, to use in the Work any such materials which meet the requirements of this Subcontract.

GP-17 SURVEY CONTROL POINTS AND LAYOUTS

Survey control points as shown on the drawings will be established by Company.

Subcontractor shall complete the layout of all Work and shall be responsible for all requirements necessary for the Work execution in accordance with the locations, lines and grades specified or shown on the drawings, subject to such modifications as Company may require as Work progresses.

If Subcontractor or any of its lower-tier Subcontractors or any of their representatives or employees move, destroy, or render inaccurate any survey control point, such control point shall be replaced by Company at Subcontractor's expense. No separate payment will be made for survey Work performed by Subcontractor.

GP-18 SUBCONTRACTOR'S WORK AREA

All Subcontractor Work areas on the Jobsite will be assigned by Company. Subcontractor shall confine its operations to the areas so assigned. Should Subcontractor find it necessary or advantageous to use any additional off-site area for any purpose whatsoever, Subcontractor shall, at its expense, provide and make its own arrangements for the use of such additional off-site areas.

GP-19 CLEANING UP

Subcontractor, at all times, shall keep its Work areas in a neat, clean, and safe condition.

Upon completion of any portion of the Work, Subcontractor shall promptly remove from the Work area all its equipment, construction plant, temporary structures, and surplus materials not to be used at or near the same location during later stages of the Work.

Upon completion of the Work and prior to final payment, Subcontractor shall at its expense satisfactorily dispose of all rubbish, remove all plant, buildings, equipment, and materials belonging to Subcontractor; and return to Company's warehouse or Jobsite storage area all salvageable Company or the Government supplied materials. Subcontractor shall leave the premises in a neat, clean, and safe condition.

In event of Subcontractor's/SUPPLIER'S failure to comply with the foregoing, Company will accomplish same at Subcontractor's/SUPPLIER'S expense.

GP-20 COOPERATION WITH OTHERS

Company the Government, other Contractors and other Subcontractors may be working at the Jobsite during the performance of this Subcontract and Subcontractor's, work or use of certain facilities may be interfered with as a result of such concurrent activities. Company reserves the right to require Subcontractor to schedule the order of performance of the Work in such a manner as will minimize interference with Work of any of the parties involved. Subcontractor shall fully cooperate with other Subcontractors and with Company or the Government. Subcontractor shall not commit any act interfering with the performance of work by any other Subcontractor or by Company or the Government.

Should Subcontractor incur any additional costs or sustain any damages through any act or omission of another Subcontractor, Subcontractor shall have no claim or cause of action against Company or the Government for such additional costs or damages and hereby waives any such claim. The phrase "act or omission" as used herein includes but is not limited to delays, interferences, hindrances, or disruptions on the part of another Subcontractor.

GP-21 RESPONSIBILITY FOR WORK, SECURITY AND PROPERTY

- A. Work in Progress, Materials and Equipment. Subcontractor shall be responsible for and shall bear any and all risk of loss of or damage to Work in progress, all materials and equipment until final acceptance of the Work under this Subcontract.
- B. Delivery, Unloading and Storage. Subcontractor's responsibility for materials and plant equipment required for the performance of this Subcontract shall include:
- (1) Receiving and unloading,
 - (2) Storing in a secure place and in a manner subject to Company' review. Outside storage of materials and equipment subject to degradation by the elements shall be in weather tight enclosures provided by Subcontractor,
 - (3) Delivering from storage to construction site all materials and plant equipment as required, and
 - (4) Maintaining complete and accurate records for Company' inspection of all materials and plant equipment received, stored, and issued for use in the performance of the Subcontract.
- C. Security. Subcontractor shall at all times conduct all operations under this Subcontract in a manner to avoid the risk of loss, theft, or damage by vandalism, sabotage, or any other means to any Work, materials, equipment, or other property at the Jobsite. Subcontractor shall continuously inspect all Work, materials, and equipment to discover and determine any conditions which might involve such risks and shall be solely responsible for discovery, determination, and correction of any such conditions
Subcontractor shall comply with Company' security requirements for the Jobsite. Subcontractor shall cooperate with Company on all security matters and shall promptly comply with any project security arrangements established by Company or the Government. Such compliance with these security requirements shall not relieve Subcontractor of its responsibility for maintaining proper security for the above noted items, nor shall it be construed as limiting in any manner Subcontractor's obligation with respect to all applicable laws and regulations and to undertake reasonable action to establish and maintain secure conditions at the Jobsite.
- D. Property. Subcontractor shall plan and conduct its operations so as not to:
- (1) Enter upon lands in their natural state unless authorized by Company,
 - (2) Damage, close, or obstruct any utility installation, highway, road, or other property until permits therefore have been obtained,
 - (3) Disrupt or otherwise interfere with the operation of any pipeline, telephone, electric transmission line, ditch, or structure unless otherwise specifically authorized by this Subcontract, or
 - (4) Damage or destroy cultivated and planted areas, and vegetation such as trees, plants, shrubs, and grass on or adjacent to the premises which, as determined by Company, do not interfere with the performance of this Subcontract. This includes damage arising from performance of Work through operations of equipment or stockpiling of materials.

Subcontractor shall not be entitled to any extension of time or compensation on account of Subcontractor's failure to protect all materials, equipment, and environment as described herein. All costs in connection with any repairs or restoration necessary or required by reason of unauthorized obstruction, damage, or use shall be borne by Subcontractor.

- E. When Subcontractor/Supplier shall perform any part of the Work on the premises, or remotely/virtually, of SRS or other premises owned and/or operated by the Government during the performance of this Order, the Subcontractor/Supplier shall demonstrate a culture of respect, including having a written policy on Respect in the Workplace; and shall be made available upon request.

GP-22 SUBCONTRACTOR'S PLANT, EQUIPMENT AND FACILITIES

Subcontractor shall provide and use for the Work hereunder only such construction plant and equipment as are capable of producing the quality and quantity of Work and materials required by this Subcontract and within the time or times specified in the Subcontract Schedule.

Before proceeding with the Work hereunder, Subcontractor shall furnish Company with information and drawings relative to such equipment, plant and facilities as Company may request. Upon written electronic Order of Company, Subcontractor shall discontinue operation of unsatisfactory plant, equipment, or facilities and shall either modify the unsatisfactory items or remove such items from the Jobsite.

Subcontractor shall, at the time any equipment is moved onto the Jobsite, present to Company an itemized list of all equipment, including but not limited to cranes, welding machines, pumps, and compressors. Said list must include description and quantity, and serial number where applicable. Prior to removal of any or all equipment, Subcontractor shall clear such removal through Company.

Any Subcontractor or rental equipment involved in an on-site accident shall not be removed from the site until all information required for the accident investigation is obtained and approval for release is received from Company.

GP-23 ILLUMINATION

When any Work is performed at night or where daylight is obscured, Subcontractor shall, at its expense, provide artificial light sufficient to permit Work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods, the access to the place of Work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a safe manner and meet all applicable codes and standards.

GP-24 USE OF COMPANY'S CONSTRUCTION EQUIPMENT OR FACILITIES

Where Subcontractor requests Company and Company agrees to make available to Subcontractor certain equipment or facilities belonging to Company for the performance of Subcontractor Work under the Subcontract, the following shall apply:

- (1) Equipment or facilities will be charged to Subcontractor at agreed rental rates,
- (2) Company will furnish a copy of the equipment maintenance and inspection record, and these records shall be maintained by Subcontractor during the rental period,
- (3) Subcontractor shall assure itself of the condition of such equipment and assume all risks and responsibilities during its use. Subcontractor shall release, defend, indemnify, and hold Company harmless against any damages or claims arising from use of the equipment,
- (4) Company and Subcontractor shall jointly inspect such equipment before its use and upon its return. The cost of all necessary repairs or replacement for damage other than normal wear shall be Subcontractor's expense, and
- (5) If such equipment is furnished with an operator, the services of such operator will be performed under the complete direction and control of Subcontractor and such operator shall be considered Subcontractor's employee for all purposes other than the payment of wages, Workers' Compensation Insurance or other benefits whether paid directly or indirectly by Company or the Government.

GP-25 INSPECTION EXCEPTION FOR THORIATED TUNGSTEN ELECTRODES

The site has determined thoriated tungsten electrodes will no longer be used in the manual gas tungsten arc welding (GTAW) process at SRS. This applies to the manual GTAW process only. For automatic GTAW the use of thoriated tungsten is allowed due to the dedicated grinding area and control of the process.

GP-26 TESTING

Unless otherwise provided in the Subcontract, testing of materials or Work shall be performed by Subcontractor at its expense and in accordance with Subcontract requirements. Should tests in addition to those required by this Subcontract be desired by Company, Subcontractor will be advised in ample time to permit such testing. Such additional tests will be at Company' expense.

Subcontractor shall furnish samples as requested and shall provide reasonable assistance and cooperation necessary to permit tests to be performed on materials or Work in place including reasonable stoppage of Work during testing.

If, before acceptance of the entire Work, Company decides to examine already completed work by removing it or tearing it out, Subcontractor, on request, shall promptly furnish all necessary facilities, labor, and materials. If the Work is found to be defective or non-conforming in any material respect due to the fault of Subcontractor or its lower-tier Subcontractors, Subcontractor shall defray the expense of the examination and of satisfactory reconstruction. However, if the Work is found to meet subcontract requirements, Company shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time.

GP-27 EXPEDITING

The material and equipment furnished, and Work performed under this Subcontract shall be subject to expediting by Company, or its representatives who shall be allowed full and free access to the shops, factories, and other places of business of Subcontractor and its lower-tier Subcontractors for expediting purposes. As required by Company, Subcontractor shall provide detailed schedules and progress reports for use in expediting and shall cooperate with Company in expediting activities.

GP-28 PROGRESS

Subcontractor shall give Company full information in advance as to its plans for performing each part of the Work. If at any time, Subcontractor's actual progress is inadequate to meet the requirements of this Subcontract, Company may notify Subcontractor who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by Company, Subcontractor does not improve performance to meet the currently approved Subcontract Schedule, Company may require an increase in Subcontractor's labor force, the number of shifts, overtime operations, additional days of Work per week and an increase in the amount of construction plant, all without additional cost to Company. Neither such notice nor Company's failure to issue such notice shall relieve Subcontractor of its obligation to achieve the quality of Work and rate of progress required by this Subcontract.

Failure of Subcontractor to comply with Company's instructions may be grounds for determination by Company Subcontractor is not prosecuting the Work with such diligence as will assure completion within the times specified. Upon such determination, Company may terminate, in accordance with the applicable terms and conditions of this Subcontract, Subcontractor's right to proceed with the performance of the Subcontract.

GP-29 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.

GP-30 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.

GP-31 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) 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.

Certification

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

I further acknowledge the 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 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.

- 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.
- 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 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, 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, (i) the “Christian Doctrine” shall not apply, meaning the 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 or term herein differs from the language of a Government procurement clause 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.

GP-32 USE OF COMPLETED PORTIONS OF WORK

Whenever, as determined by Company, any portion of the Work performed by Subcontractor is suitable for use, Company or the Government may occupy and use such portion. Use shall not constitute acceptance, relieve Subcontractor of its responsibilities, or act as a waiver by Company or any of the terms of the Subcontract.

Subcontractor shall not be liable for normal wear and tear or for repair of damage caused by any misuse during such occupancy or use by Company or the Government. If such use increases the cost or time of performance of remaining portions of the Work, Subcontractor shall be entitled to an equitable adjustment in its compensation or schedule under this Subcontract.

If, as a result of Subcontractor’s failure to comply with the terms and conditions of this Subcontract, such use proves to be unsatisfactory to Company or the Government, Company or the Government shall have the right to continue such use until such portion of the Work can, without injury to Company or the Government, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or as necessary for such portion of the Work to comply with the Subcontract; provided the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve (12) months unless otherwise mutually agreed in writing between the parties.

Subcontractor shall not use any permanently installed equipment unless such use is approved in writing by Company. When such use is approved, Subcontractor shall at Subcontractor’s expense properly use and maintain and, upon completion of such use, recondition such equipment as required to meet specifications.

If Company or the Government furnishes an operator for such equipment, all services performed shall be under the complete direction and control of Subcontractor, and such operator shall be considered Subcontractor’s employee for all purposes other than payment of such operator's wages, Worker's Compensation Insurance or other benefits paid directly or indirectly by Company or the Government.

GP-33 EXAMINATION OF SUBCONTRACTOR'S RECORDS AND ACCOUNTS

Cost or Pricing Data

If, pursuant to law, Subcontractor has been required to submit cost or pricing data in connection with this Subcontract or any modification to this Subcontract, Company, the Government or representatives of the Government who are employees of the Government shall have the right to examine and audit all of Subcontractor's books, records, documents, and other data regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, application software, database management software, utilities, etc.) including computations and projections related to proposing, negotiating, pricing, or performing the Subcontract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projects used.

Reports

If Subcontractor is required to furnish cost, funding, or performance reports, Company, the government, or representatives of the Government who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating

- (1) The effectiveness of Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and
- (2) The data reported.

Availability

Subcontractor shall make available at its office at all reasonable times the materials described in the paragraphs above, for examination, audit, or reproduction, until three (3) years after final payment under this Subcontract or for any longer period required by statute or by other clauses of this subcontract. In addition –

- (1) If this Subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and
- (2) Records relating to appeals under the Disputes article or to litigation or the settlement of the Company and Government claims arising under or relating to this Subcontract shall be made available until such appeals, litigation, or claims are disposed of.

Inspections

DOE shall have the right to inspect the work and activities of Subcontractor under this Subcontract at such time and in such manner as it shall deem appropriate.

Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, Subcontractor may transfer computer data in machine-readable form from one reliable computer medium to another. Subcontractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. Subcontractor's choice of form or type of materials described in paragraphs (A), (B), and (C) of this article affects neither Subcontractor's obligations nor Company' or the Government's rights under this clause.

Comptroller General.

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

Subcontractor shall insert a clause containing all the terms of this article, including this paragraph (G), in all subcontracts over \$100,000 under this Subcontract, altering the clause only as necessary to identify properly the contracting parties.

GP-34 WARRANTY

Subcontractor warrants to Company and the Government the equipment and materials furnished under this Subcontract shall be new, of clear title and of the most suitable grade of their respective kinds for their intended uses, unless otherwise specified. All workmanship shall be first class and performed in accordance with sound construction practices acceptable to Company. All equipment, materials and workmanship shall also conform to the requirements of this Subcontract.

Subcontractor warrants all equipment and material it furnishes, and all work it performs against defects in design, equipment, materials, or workmanship either for a period from Work commencement to a date twelve (12) months after Mechanical Completion of the project as a whole by Company or the Government or the standard commercial warranty period, whichever is more advantageous to the Company. Any warranties for manufactured or fabricated equipment surviving the twelve month warranty period of the project shall remain in effect and be accessible to Company or the Government.

If at any time during the warranty period, Company or the Government discovers any defect in the design, equipment, materials, or workmanship immediate notice shall be given to the other parties. Subcontractor, within a reasonable time, shall propose corrective actions to cure such defects to meet the requirements of this Subcontract.

Company, at its sole discretion, may direct Subcontractor in writing and Subcontractor agrees to:

- (1) Rework, repair, or remove and replace defective equipment and materials or perform again the defective workmanship to acceptable quality at a time and in a manner acceptable to Company;
- (2) Cooperate with others assigned by Company to correct such defects and pay to Company all actual costs reasonably incurred by Company in performing or in having performed corrective actions; or
- (3) Propose and negotiate in good faith an equitable reduction in the Subcontract price in lieu of corrective action.

All costs incidental to corrective actions including demolition for access, removal, disassembly, transportation, reinstallation, reconstruction, retesting and re-inspection as may be necessary to correct to the defect and to demonstrate the previously defective work conforms to the requirements of this Subcontract shall be borne by Subcontractor.

Subcontractor further warrants any and all corrective actions it performs against defects in design, equipment, materials, and workmanship for an additional period of twelve (12) months following acceptance by Company of the corrected Work or standard commercial warranty on product meeting standard warranty.

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.

GP-35 BACKCHARGES

If, under the terms and conditions of this Subcontract, Subcontractor is notified by Company to correct defective or nonconforming Work, and Subcontractor states or by its actions indicates it is unable or unwilling to proceed with corrective action in a reasonable time, Company may, upon written electronic notice, proceed to accomplish the redesign, repair, rework, or replacement of nonconforming Work by the most expeditious means available and back-charge Subcontractor for the costs incurred. Furthermore, if Company agrees to or is required to perform Work for Subcontractor, such as cleanup, off-loading, or completion of incomplete Work, Company may, upon written electronic notice, perform such Work by the most expeditious means available and back-charge Subcontractor for the costs incurred.

The cost of back-charge Work shall include:

- (1) Incurred labor costs including all payroll additives,
- (2) Incurred net delivered material costs,
- (3) Incurred lower-tier Subcontractor's costs directly related to performing the corrective actions,
- (4) Equipment and tool rentals at prevailing rates in the Jobsite area, and
- (5) A factor of sixty percent (60%) applied to the total of Items (a) through (d) for Company' overhead, supervision, and administrative costs.

The back-charge notice will request Subcontractor's approval for Company to proceed with the required Work. However, failure of Subcontractor to grant such approval shall not impair Company' right to proceed with Work under this or any other terms and conditions of this Subcontract.

Company shall separately invoice or deduct from payments otherwise due to Subcontractor the costs as provided herein. Company' right to back charge is in addition to any and all other rights and remedies provided in this Subcontract or by law. The performance of back charge Work by Company shall not relieve Subcontractor of any of its responsibilities under this Subcontract including but not limited to express or implied warranties, specified standards for quality, contractual liabilities and indemnification, and the Subcontract Schedule.

GP-36 INDEMNITY

Subcontractor hereby releases and shall indemnify, defend and hold harmless Company, the Government, and their subsidiaries and affiliates and the officers, agents, employees, successors and assigns an authorized representatives of all the foregoing from and against any and all suits, actions, legal, or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs, expenses, and losses of whatsoever kind or nature in connection with or incidental to the performance of this subcontract, whether arising before or after completion of the Work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence whether active or passive of Subcontractor, its lower-tier Subcontractors, or of anyone acting under its direction or control or on its behalf.

The foregoing shall include, but is not limited to, indemnity for:

- 1. Events which are directly or indirectly caused by or incident to the radioactive, toxic and/or hazardous properties of any substance and/or

2. Events which arise out of any state or federal statute relating to radioactive, toxic and/or hazardous properties, such as the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or Resource Conservation and Recovery Act (RCRA), and shall apply to any clean-up or response costs occasioned by the transport, treatment, storage or disposal by Subcontractor or any third party of radioactive, toxic and/or hazardous properties.
3. Property damage and injury to or death of any person, including employees of Company the Government, or Subcontractor.
4. The breach by Subcontractor of any representation, warranty, covenant, or performance obligation of this subcontract.
5. This Subcontract is subject to the Buy American Act – Supplies and Trade Agreements clauses as stated in the Article titled “Clauses Incorporated by Reference” and “FAR Clause applicable as prescribed on PF-312 in Solicitation.” 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.
6. 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.

Subcontractor’s aforesaid release, indemnity and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless. Nothing in the foregoing shall be construed to require Subcontractor to indemnify and save harmless Company or the Government from any liability out of or resulting from the liabilities for which indemnification is provided under DEAR 952.250-70.

Subcontractor specifically waives any immunity provided against this indemnify by any industrial insurance or workers' compensation statute.

GP-37 PATENT AND INTELLECTUAL PROPERTY INDEMNITY

Subcontractor hereby indemnifies and shall defend and hold harmless Company the Government and their representatives from and against any and all claims, actions, losses, damages and expenses, including attorney's fees, arising from any claim, whether rightful or otherwise, in any concept, product, design, equipment, materials, process, copyrighted materials, or confidential information, or any part thereof, furnished by Subcontractor under this Subcontract constitutes and infringement of any patent or copyrighted material or a theft of trade secrets. If use of any part of such concept, product, design, equipment, material, process, copyrighted material or confidential information is limited or prohibited, Subcontractor shall, at its sole expense, procure the necessary licenses to use the infringing or a modified by non-infringing concept, product, design, equipment, material, process, copyrighted material or confidential information or, with Company or the Government’s prior written electronic approval, replace it with substantially equal but non-infringing concepts, products, designs, equipment, materials, processes, copyrighted material, or confidential information; provided, however,

- (1) That any such substituted or modified concepts, products, designs, equipment, material, processes, copyrighted material, or confidential information shall meet all the requirements and be subject to all the terms and conditions of this Subcontract; and
- (2) That such replacement or modification shall not modify or relieve Subcontractor of its obligations under this Subcontract.

The foregoing obligation shall not apply to any concept, product, design, equipment, material, process, copyrighted material, or confidential information the detailed design of which (excluding rating and/or performance specifications) has been furnished in writing by Company or the Government to Subcontractor.

GP-38 ASSIGNMENTS FOR THE BENEFIT OF DOE

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.

Assignment by Subcontractor. Unless permitted in Assignment of Rights to be Paid 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.

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 any assignment of monies shall be subject to (1) proper setoffs in favor of Company and (2) any deductions provided for in this Subcontract.

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.

Right to Recovery. If Company seeks recovery from Subcontractor, Subcontractor agrees it shall not plead, assert or raise in any manner a defense the 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.

GP-39 SUSPENSION

Company, by written electronic notice to Subcontractor, may suspend at any time the performance of all or any portion of the Work to be performed under the Subcontract. Upon receipt of such notice, Subcontractor shall, unless the notice requires otherwise:

- (1) Immediately discontinue Work on the date and to the extent specified in the notice,
- (2) Place no further Orders or Subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice,
- (3) Promptly make every reasonable effort to obtain suspension upon terms satisfactory to Company of all Orders, subcontracts, and rental agreements to the extent they relate to performance of suspended Work,
- (4) continue to protect and maintain the Work including those portions on which Work has been suspended, and
- (5) Take any other reasonable steps to minimize costs associated with such suspensions.

As full compensation for such suspension, Subcontractor will be reimbursed for the following costs, excluding profit, reasonably incurred, without duplication of any item, to the extent such costs directly result from such Work suspension:

- (a) A standby charge to be paid to Subcontractor during the period of Work suspension, which standby charge shall be sufficient to compensate Subcontractor for keeping, to the extent required in the suspension notice, its organization and equipment committed to the Work on a standby basis,
- (b) All reasonable costs associated with mobilization and demobilization of Subcontractor's plant, forces, and equipment, and
- (c) An equitable amount to reimburse Subcontractor for the cost of maintaining and protecting the portion of the Work upon which performance has been suspended.

Upon receipt of notice to resume suspended Work, Subcontractor shall immediately resume performance under this Subcontract to the extent required in the notice.

If the Subcontractor intends to assert a claim for equitable adjustment under this clause, within ten (10) calendar days after receipt of notice to resume Work, it must submit to Company a written electronic statement setting forth the schedule impact and monetary extent of such claim in sufficient detail to permit thorough analysis. No adjustment shall be made for any suspension to the extent performance would have been suspended, delayed, or interrupted by any Subcontractor non-compliance with the requirements of this Subcontract.

GP-40 TERMINATION FOR DEFAULT

The Company may terminate this Subcontract, in whole or in part, if Subcontractor: (1) fails to supply enough properly skilled workers or proper materials or equipment so as to endanger performance of this Subcontract; (2) fails to make payment to sub-tier subcontractors for materials or labor in accordance with the respective Subcontracts between the Subcontractor and the sub-tier subcontractors; (3) disregards applicable laws, ordinances, rules, regulations, directives, or orders, or instructions of the Company; (4) fails to adhere to the time specified in this Subcontract for performance of services or delivery of supplies or services.; or (5) otherwise fails to comply with any material terms of this Subcontract. The Company's right to terminate this Subcontract may be exercised if the Subcontractor does not cure such failure within ten (10) days after receipt of notice from the Company specifying the failure.

The Company may take possession and use any materials, tools, equipment, and the construction facilities and premises and finish the work by whatever method The Company deems expedient at Subcontractor's expense which includes any increased cost incurred exceeding the Subcontract price.

Subcontractor will not be deemed to be in default for failure to perform caused by the failure of a sub-tier subcontractor if the failure was beyond the control of both Subcontractor and sub-tier subcontractor and without the fault or negligence of either.

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.

GP-41 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' field tools and equipment, if any, to its or its Lower-tier subcontractors' 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.

GP-42 FINAL INSPECTION AND ACCEPTANCE

When Subcontractor considers the Work, or any Company-identified independent portion of the Work, under this Subcontract to be complete and ready for acceptance, Subcontractor shall notify Company in writing. Company, with Subcontractor's cooperation, will conduct such reviews, inspections and tests as may be reasonably required to satisfy the Work, or identified portion of the Work, conforms to all requirements of the Subcontract. If all or any part of the Work covered by Subcontractor's notice does not conform to Subcontractor requirements, Company shall notify Subcontractor of such nonconformance, and Subcontractor shall take corrective action and then have the nonconforming work re-inspected until all Subcontract requirements are satisfied.

Company shall issue a Notice of Provisional Acceptance for individual portions which have been satisfactorily inspected subject only to Company' Final Acceptance of the Work as a whole.

Company's written electronic Notice of Final Acceptance of the Work under this Subcontract shall be final and conclusive except with regard to latent defects, fraud, or such gross mistakes as amount to fraud, or with regard to Company's, and the Government's right under the General Terms and Conditions titled "WARRANTY".

GP-43 NON-WAIVER

Failure by Company to insist upon strict performance of any terms or conditions of this Subcontract, or failure or delay to exercise any rights or remedies provided herein or by law, or failure to properly notify Subcontractor in the event of breach, or the acceptance of or payment for any goods or services hereunder, or the review or failure to review designs shall not release Subcontractor from any of the warranties or obligations of this Subcontract and shall not be construed as a waiver of any right of Company or the Government to insist upon strict performance hereof or any of its rights or remedies as to any prior or subsequent default hereunder nor shall any termination of Work under this Subcontract by Company operate as a waiver of any of the terms hereof.

GP-44 SURVIVAL

The rights and obligations of the parties which by their nature survive termination or completion of this Subcontract, including but not limited to those set forth in the General Terms and Conditions titled "WARRANTY" and "INDEMNITY", shall remain in full force and effect.

GP-45 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.

GP-46 SUPERINTENDENCE BY THE SUBCONTRACTOR

At all times during performance of this Subcontract and until the Work is completed and accepted, Subcontractor shall directly superintend the Work or assign and have on the Worksite a competent superintendent who is satisfactory to Company and has authority to act for the Subcontractor. Prior to commencing any work at the Worksite, Subcontractor shall inform Company, in writing, of the identity of the supervising representative by name. Subcontractor shall not reassign or remove such supervising representative without first notifying Company of the proposed reassignment or removal, and the name of his/her replacement.

GP-47 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 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

GP-48 COMPLIANCE WITH EMPLOYEE CONCERNS

- A. Subcontractors shall ensure Subcontractor employees are aware of the DOE-SRS and 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 Company ECPs during initial orientation and annual training.
 - (2) Ensure posters identifying the DOE-SRS and Company ECP telephone "hotline" numbers are displayed in conspicuous locations throughout the worksite. 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 or Subcontract Specialist 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 and inform the STR of investigation results within 7 days of receipt of concern. Inform the STR in writing 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 Company's Purchasing Representative.

GP-49 FOREIGN NATIONALS

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.

GP-50 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

This is a rated Order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System Regulation. (15 CFR 700) Should any applicable DPAS regulations pertaining to acceptance and rejection of rated Orders (see 15 CFR 700.13), preferential scheduling (see 15 CFR 700.14), extension of priority ratings (see 15 CFR 700.15) changes or cancellations of priority ratings and rated Orders (see 15 CFR 700.16) use of rated Orders (see 15 CFR 700.17), and limitations on placing rated Orders (see 15 CFR 700.18) conflict with this Agreement, then the DPAS will control. 15 CFR 700.17 provides an exemption for all Orders less than \$75,000, or one half of the Federal Acquisition Regulation (FAR) Simplified Acquisition Threshold, (see FAR 2.101) whichever amount is larger, provided delivery can be obtained in a timely fashion without the use of the priority rating.

This rating must be passed on to lower-tier Subcontractors in all cases to ensure delivery of the items required. The Subcontract is rated DO-E1 for Construction or DO-E2 for Operations. Reference FAR 52.211-15.

GP-51 EXPORT CONTROL

The Parties agree to adhere to all applicable U.S. export laws and regulations. Each party acknowledges it is responsible for its own compliance with all U. S. export control laws and regulations.

GP-52 ES&H REQUIREMENTS

DOE O 442.2 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)

GP-53 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)

GP-54 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.

GP-55 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 52.203-6 Restrictions on Subcontractor Sales to the Government (MAR 2005)
- 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 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (NOV 2021)
- FAR 52.222-3 Convict Labor (JUN 2003)
- FAR 52.222-30 Construction Wage Reate Requirements-Price Adjustment (None or Separately Specified Method)
- FAR 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts. (DEC 2007)
- FAR 52.223-15 Energy Efficiency in Energy-Consuming Products (DEC 2007).
- FAR 52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products. (DEC 2007)
- FAR 52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts. (MAY 2008)
- FAR 52.223-19 Compliance with Environmental Management Systems. (MAY 2008)
- FAR 52.224-1 Privacy Act Notification (APR 1984)
- FAR 52.224-2 Privacy Act (APR 1984)
- FAR 52.225-13 Restrictions on Certain Foreign Purchases (FEB 2021)
- FAR 52.227-4 Patent Indemnity – Construction Contracts (APR 1994)
- FAR 52.227-23 Rights to Proposal Data (Technical) (JUN 1987)
- FAR 52.242-15 Stop Work Order (Aug 1989) (ALTERNATE I) (APR 1984)
- FAR 52.236-5 Material and Workmanship (APR 1984)
- DEAR 952.203-70 Whistleblower Protection for Contractor Employees DEC 2000)
- DEAR 952.204-2 Security Requirements (June 2009)
- DEAR 952.209-72 Organizational Conflicts of Interest (Alt I) (JUN 1997)
- DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (OCT 2005)
- DEAR 970.5204-3 Access to and Ownership of Records (OCT 2014)
- DEAR 970.5223-1 Integration of Environmental, Safety, and Health into Work Planning and Execution (DEC 2000)

FAR Clause applicable as prescribed on PF-312 in Solicitation

- 52.225-9 Buy American – Construction Materials (NOV 2021)
- 52.225-11 Buy American – Construction Materials Under Trade Agreements (NOV 2021)

Clauses Applying to Subcontracts over \$2,000.

- FAR 52.222-5 Davis-Bacon Act - Secondary Site of Work (JUL 2005)
- FAR 52.222-6 Construction Wage Rate Requirements (AUG 2018)
- FAR 52.222-7 Withholding of Funds (MAY 2014)
- FAR 52.222-8 Payrolls and Basic Records (JUL 2021)

- FAR 52.222-9 Apprentices and Trainees (JUL 2005)
- FAR 52.222-10 Compliance with Copeland (FEB 1988)
- FAR 52.222-11 Subcontracts (Labor Standards) (MAY 2014)
- FAR 52.222-12 Contract- Termination (MAY 2014)
- FAR 52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations (MAY 2014)
- FAR 52.222-14 Disputes Concerning Labor Standards (FEB 1988)
- FAR 52.222-15 Certification of Eligibility (MAY 2014)

Clauses Applying to Subcontracts over \$2,500.

- FAR 52-222-1 Notice to the Government of Labor Disputes (FEB 1997)

Clauses Applying to Subcontracts over \$2,500 and \$3,000 (respectively).

- FAR 52.222-54 Employment Eligibility Verification (Jan 2009)

Clauses Applying to Subcontracts over \$10,000.

- FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)
- FAR 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction (FEB 1999)
- FAR 52.222-26 Equal Opportunity (APR 2002)
- FAR 52.222-27 Affirmative Action Compliance Requirements for Construction (APR 2015)
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)

Clauses Applying to Subcontracts over \$25,000.

- 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)

Clauses Applying to Subcontracts over \$100,000.

- FAR 52.203-6 Restrictions on Subcontractor 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 52.219-8 Utilization of Small Business Concerns (MAY 2004)
- FAR 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 2005)
- FAR 52.222-39 Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004)
- 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 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002)

Clauses Applying to Subcontracts over \$500,000.

- FAR 52.230-2 Cost Accounting Standards (APR 1998)

- FAR 52.230-6 Administration of Cost Accounting Standards (APR 2005)
- 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)

Clauses applying if Cost or Pricing Data are required in Pricing the Subcontract or in Pricing a Modification under the Subcontract.

- FAR 52.215-10 Price Reduction for Defective Pricing Data (OCT 1997)
- FAR 52.215-11 Price Reduction for Defective 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)

Clauses Applying to Subcontracts over \$1,500,000.

- FAR 52.219-9 Small Business Subcontracting Plan (JUL 2005) Alternate II (Oct 2021)
- FAR 52.219-9 Small Business Subcontracting Plan Alt III (JAN 2019)
- FAR 52.219-9 Small Business Subcontracting Plan Alt IV (JAN 2019) DEVIATION 2019-O0005)

GP-56 FAR AND DEAR CLAUSES INCORPORATED IN FULL TEXT

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 the work under this Contract requires 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 they 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.

A. The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the terms and conditions 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 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).