

**GENERAL TERMS AND
CONDITIONS FOR
COMMERCIAL PURCHASES**

UNDER

**U. S. DEPARTMENT OF ENERGY
PRIME CONTRACT NO. 89303321-CEM-000080**

**BATTELLE SAVANNAH RIVER ALLIANCE, LLC
SAVANNAH RIVER SITE
AIKEN, SC 29808**

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APPLICABLE TO ALL TRANSACTIONS

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GENERAL NOTE:

- A. Subcontractor is required to register and maintain an active DUNS number and a current registration in the System for Award Management (SAM), formerly known as Central Contractor Registration (CCR), in compliance with FAR 52.204-7 and Subpart 42.12 of the FAR. In addition, a Subcontractor/Supplier Information Form (SIF) must be completed and submitted with the Subcontractor's solicitation response.
- B. When Subcontractor shall perform any part of the Work on the premises of SRS or other premises owned and/or operated by the Government during the performance of this Subcontract, the Subcontractor shall demonstrate a culture of respect, including having a written policy on Respect in the Workplace that shall be made available upon request.

1. DEFINITIONS

The following terms shall have the meanings below:

- A. "BSRA" shall mean the Battelle Savannah River Alliance, LLC.
- B. "BSRA Procurement Representative" shall mean a person with the authority to execute, administer, and terminate the contract, and make related determinations and findings. The term includes certain authorized representatives of the BSRA Procurement Representative acting within the limits of their authority as delegated by the BSRA Procurement Representative.
- C. "Government" means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- D. "Item" includes "commercial item", "commercial component", and "service" as defined in FAR 2.101.
- E. "Subcontract" shall mean any ordering document, purchase order, or subcontract entered into by the Subcontractor calling for supplies and/or services required for performance, order or subcontract modification, or subcontract, including this Subcontract incorporating these General Provisions.
- F. "Subcontractor" means the person or organization that has entered into this Subcontract with BSRA. Subcontractor may also be referred to herein as "Seller", "Company" or "Licensee." The term Subcontractor also includes any supplier who supplies goods or services to BSRA in support of BSRA's Prime Contract.
- G. "Software" means the specified software and/or source code licensed by the Licensor to the Licensee under this Subcontract.
- H. "Work" shall mean supplies, services, and vendor data provided by Subcontractor and its subtier subcontractors of any tier and all work performed with respect thereto, pursuant to this Subcontract.

2. RESOLUTION OF DISPUTES

- A. Subcontractor shall not be entitled to and neither the Company nor the Government shall be liable to the Subcontractor or its subtier subcontractors for damages in tort (including negligence), or Contract, or otherwise, except as specifically provided in this Subcontract.

- B. The Subcontractor and the 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 Disputes Resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Aiken, South Carolina. The mediator or arbitrator shall equally allocate cost for mediating or arbitrating the dispute between the parties, except each party shall bear its discretionary costs. No award will provide for pre-decisional interest on any claimed amount. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows:
- (1) Any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States District Court for the District of South Carolina, Aiken Division.
 - (2) Provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in State Court in Aiken County, South Carolina.
- C. Irrespective of the place of performance or delivery, determination of any substantive issue of law, including, but not limited to interpretation and proper application of the clauses in the Federal Acquisition Regulation ("FAR") and/or agency supplemental clauses incorporated into this Subcontract, shall be construed and interpreted according to Federal common law of Government contracts, as enunciated and applied by Federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the Federal government. To the extent that the Federal common law of Government contracts is not dispositive or other clauses are in dispute, the parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of South Carolina.
- D. There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this Subcontract pending final resolution of any dispute arising under this Subcontract between the parties hereto or between the Subcontractor, and its subtier subcontractors.

3. ORDER OF PRECEDENCE

- A. Any inconsistencies shall be resolved in accordance with the following descending order of precedence:
- (1) The terms specified on the face of the purchase order, subcontract, or ordering document issued by the Company to the Seller;
 - (2) These General Provisions of this Subcontract;
 - (3) Special terms and conditions (as applicable);
 - (4) Item description;
 - (5) Any other documents not specified above and incorporated by reference into the Subcontract, such as drawings, specifications, standards, or codes.
- B. 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 referenced standards and codes and any other Subcontract Document, the latter shall govern.

- C. Subcontractor shall perform all Work pursuant to this Subcontract as an independent contractor. If any part of the Work is further subcontracted, Subcontractor is responsible for having that further subcontracted Work comply with the terms of this Subcontract. No act or order of BSRA shall be construed to be an exercise of supervision or control of performance hereunder. No provision of this Subcontract and no action taken by BSRA under this Subcontract shall be construed to make or constitute BSRA the employer or joint employer of any of the employees of Subcontractor or any subtier subcontractor.

4. ADMINISTRATION AND ASSIGNMENT

- A. The Company shall make payments under this Subcontract from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. This Subcontract may be assigned by the Company to DOE or its designee, and in case of such transfer and notice thereof to the Subcontractor, the Company shall have no further responsibilities hereunder. The Subcontractor shall not assign rights or obligations to third parties without the prior written consent of the Company. However, the Subcontractor may assign rights to be paid amounts due or to become due to a financing institution if the Company is promptly furnished written notice. Payments to Subcontractor or to an assignee shall be subject to set off or recoupment for any present or future claims of the Company against the Subcontractor.

5. ACCEPTANCE OF TERMS AND CONDITIONS

- A. Subcontractor, by signing this Subcontract or delivering the items or supplies or performing services identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Subcontract incorporates by reference or that is otherwise identified as an attachment to this Subcontract. The Company hereby expressly and specifically objects to any terms and conditions contained in any acknowledgment of this Subcontract that are different from or in addition to those mentioned in this document. Failure of the Company to enforce any of the provisions of this Subcontract shall not be construed as evidence to interpret the requirements of this Subcontract, nor a waiver of any requirement, nor of the right of the Company to enforce each and every provision. All rights and obligations shall survive final performance of this Subcontract.
- B. When the use of a subtier subcontractor is determined to be necessary, the Seller is responsible to flow down those technical and quality requirements determined to be applicable for the activities within its defined scope of work, in accordance with referenced FAR and agency supplemental clauses, codes, standards, material specifications and other requirements identified within the Subcontract.
- C. The Seller is furthermore responsible to flow down all applicable terms and conditions, including all clauses and articles incorporated by reference, to all subtier subcontractors, which includes verification that the subtier subcontractor has been appropriately qualified to perform the activities required to satisfy this procurement. The Seller must maintain objective evidence of the successful flow down of the referenced requirements and provide such evidence to BSRA upon request. This flow down is also required at all levels if the subtier subcontractor to the Seller deems it necessary to subcontract further its parts of this BSRA Subcontract.

- D. When NQA-1 is invoked as the governing quality standard, the Seller and its applicable subtier subcontractors shall be required to meet the Part 1 Requirements (Sections 100 through 900, as determined to be applicable) as part of the agreement. NQA-1 Part II will be invoked at the discretion of BSRA and will be detailed as part of the agreement, and if invoked, must be flowed down from the Seller to its applicable subtier subcontractors at all levels. If the Seller or its subtier subcontractors intends to upgrade materials by way of a Commercial Grade Dedication Process, BSRA must be notified of this intent and the proposed process must be verified and approved prior to dedicating any material.
- E. The BSRA Procurement Representative is to be notified in writing, within five working days of any changes within Seller's company as identified below:
- (1) Key quality personnel to include as a minimum:
 - a. Quality Assurance/Quality Control Manager
 - b. Assistant Quality Assurance/Quality Control Manager
 - c. Other critical Quality Assurance/Quality Control personnel
 - (2) Quality Assurance Program Revisions
 - (3) Seller ownership transfers, buyouts, change-of-control, and
 - (4) All identified Nonconformance or Corrective Action Reports associated with BSRA contracts including those issued concerning subtier subcontractors.

6. WARRANTY

- A. Subcontractor warrants that any supplies delivered under this Subcontract shall be free from defects in material and workmanship, of the most suitable grade of their respective kinds for the purpose, and be in accordance with Subcontractor's affirmation, description, sample, or model and compliant with all requirements of this Subcontract. The warranty shall extend until one (1) year after conforming supplies are first placed into service by BSRA or three (3) years after final payment, whichever first occurs.
- B. Subcontractor warrants that any services performed under this Subcontract shall reflect the industry standards of professional knowledge and judgment, shall be free from defects in workmanship, and shall be in compliance with all requirements of this Subcontract, until one (1) year from the completion of the Services, or three (3) years after final payment, whichever is sooner. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by BSRA, by promptly (i) re-performing the nonconforming Services or (ii) paying to BSRA a portion of the Subcontract price as is equitable under the circumstances.
- C. If any nonconformity with supplies appears within the time set forth in this Article, Subcontractor shall promptly repair or replace such supplies or re-perform services at Subcontractor's election. Transportation of replacement supplies and return of nonconforming supplies and repeat performance of services shall be at Subcontractor's expense. Company shall notify Subcontractor of such nonconformity within a reasonable time after discovery, and Subcontractor shall notify Company of whether it chooses to make repairs or replacements within three (3) working days after Company's notice of nonconformity. If repair or replacement or re-performance of services is not timely,

Company may elect to return the nonconforming supplies or repair or replace them or re-procure the services at Subcontractor's expense.

- D. Implied Warranties. The Subcontractor warrants and implies that the products, supplies, items, or services delivered hereunder are merchantable and fit for use for the particular purpose described in this Subcontract.
- E. Latent Defects. In the event the Subcontractor becomes aware of any latent defect(s) in any item(s) furnished under this Subcontract, the Subcontractor shall promptly notify the Company Procurement Representative. This notice shall provide at a minimum the following information:
- (1) full description of the item(s);
 - (2) manufacturer, model and/or part number;
 - (3) complete description of the latent defect;
 - (4) impact of the defect on the operation of the item(s);
 - (5) action(s) to be taken by BSRA relative to return, re-fit, repair, etc;
 - (6) date of purchase by BSRA; and,
 - (7) applicable BSRA subcontract number.
- F. In the case of software furnished under this Subcontract, Licensor of such software warrants for a period of one (1) year following the date of this Subcontract that the Software is free of defects and is fit for the purposes intended by BSRA and the Licensor shall provide BSRA with correction of errors found in the original software. Such corrections shall be provided at no cost to the Licensee. If Licensor is called upon by BSRA to undertake error exploration or correction, and such error is found to be caused by BSRA supplied data, modification of Software by BSRA, compiler or operating system characteristics, or any other cause not inherent in the original Software, Licensor may submit a proposal for adjustment in the order price for such services at the Licensor's standard rate then in effect.

7. NEW MATERIALS

- A. Unless otherwise specified in this Subcontract, all items delivered shall consist of new materials. New is defined as previously unused, which may include residual inventory or unused former Government surplus property.

8. SUSPECT/COUNTERFEIT PARTS

- A. Subcontractors/Suppliers shall supply products under this Subcontract that are not and do not contain suspect and/or counterfeit parts. A suspect item is an item in which there is an indication by visual inspection, testing, or other information that it may not conform to established government or industry accepted specifications or national consensus standards or whose documentation, appearance, performance, material, or other characteristics may have been misrepresented by the vendor, supplier, distributor, or manufacturer. A counterfeit item is any item that is a copy or substitute without legal right or authority to do so, or one whose material, performance, characteristics or identity does not appear to be authentic and is verified to be either counterfeit or fraudulent or have been

misrepresented. Such verification can be provided by an authorized vendor, supplier, distributor, or manufacturer. Failure by the Subcontractor to document material substitution or identify that an item has been refurbished or remanufactured is considered fraudulent and the item then becomes suspect/counterfeit.

- B. If it is determined that a suspect/counterfeit part has been supplied, BSRA will impound the items pending a decision on disposition. The Subcontractor may be required to replace such items with items acceptable to BSRA and shall be liable for all costs relating to the impoundment, removal, and replacement. BSRA may also notify the local Department of Energy Office of Inspector General and reserves the right to withhold payment for the items pending results of the investigation.

9. **TITLE AND RISK OF LOSS**

- A. Unless otherwise provided in the Subcontract, title to the items purchased under this Subcontract shall pass directly to the Government upon, and the risk of loss or damage to the items shall remain with the Subcontractor until and shall pass to the Company upon:
- (1) If F.O.B. Shipping: Point completion of delivery to the carrier and any loading by the Subcontractor.
 - (2) If F.O.B. Destination: Completion of delivery or commencement of unloading by the Company at the delivery point.
- B. However; (1) if the purchase order provides for formal acceptance of any items by the Company, then title to such items shall pass directly to the Government upon such formal acceptance; and (2) the title and risk of loss or damage to items that are nonconforming shall remain with the Subcontractor until acceptance of the items by the Company as conforming.

10. **PAYMENT**

- A. Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Subcontractor's proper invoice, if required, or (2) delivery of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Subcontractor indicates. Credit and discount periods shall be computed from the date such invoice is so payable to the date BSRA's check is mailed or, for Electronic Funds Transfer ("EFT"), the specified payment date. Notwithstanding anything herein, BSRA shall be entitled at any and all times to set off against any amounts payable at any time by BSRA hereunder any amount owing from Subcontractor to BSRA under this Subcontract or other orders with Subcontractor. If there are invoice discrepancies, BSRA will relay to the Subcontractor the deficiencies in their invoice within ten (10) days of receipt of the invoice. The invoice will not be acted upon. Receipt of a corrected invoice will re-initiate the aging of the invoice for payment purposes.
- B. Overpayments.
- (1) If Subcontractor becomes aware of a duplicate invoice payment or that BSRA has otherwise overpaid on an invoice payment, the Subcontractor shall immediately notify BSRA and request instructions for disposition of the overpayment.

11. **PAYMENT BY ELECTRONIC FUNDS TRANSFER**

- A. Methods of Payment:

- (1) All payments by BSRA under this Subcontract shall be made by EFT except as provided in Paragraph A.2 of this provision. As used in this provision, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
- (2) In the event BSRA 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 BSRA to extend payment due dates until such time as BSRA makes payment by EFT.

B. Mandatory Submission of Subcontractor's EFT Information.

- (1) Subcontractor is required to provide BSRA with the information required to make payment by EFT. Subcontractor shall provide this information directly to the office designated in this Subcontract, on forms provided by BSRA, no later than fifteen (15) days after award. If not otherwise specified in this Subcontract, the payment office is the designated office for receipt of Subcontractor's EFT information. In the event that the EFT information changes, Subcontractor shall be responsible for providing the updated information to the designated office.

C. Mechanisms for EFT Payment.

- (1) BSRA may make payment by EFT through either the Automated Clearing House ("ACH") network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System.

D. Suspension of Payment.

- (1) BSRA is not required to make any payment under this Subcontract until after receipt, by the designated office, of the correct EFT payment information from Subcontractor. Until receipt of the correct EFT information, any invoice or subcontract-financing request shall be determined not to be a proper invoice for the purpose of payment under this Subcontract.
- (2) If the EFT information changes after submission of correct EFT information, BSRA shall begin using the changed EFT information no later than 30 days after its receipt by the designated office. However, Subcontractor may request that no further payments be made until the updated EFT information is implemented by the payment office.

E. Payment Information.

- (1) On the day payment on Subcontractor's invoice is due, BSRA will issue instructions to its bank to transfer payment to Subcontractor and will also send a notification to Subcontractor explaining the details to support the payment. Subcontractor shall issue electronically all invoices directly to Accounts Payable via the BSRA-ACCTSPAY@srs.gov email account. Subcontractor shall include banking information on each invoice submitted to facilitate proper EFT. The Subcontractor shall include on the invoice the Subcontractor name; invoice date; subcontract/purchase order number; vendor invoice number, account number,

and/or any other identifying number agreed to by subcontract; description (including, for example, subcontract line/subline number), unit price and quantity of goods and services rendered per specific line item and line item sub-total cost; subcontract name (where practicable), title and telephone number; other substantiating documentation or information required by the subcontract.

F. Liability for Uncompleted or Erroneous Transfers.

- (1) If an uncompleted or erroneous transfer occurs because BSRA used the Subcontractor's EFT information incorrectly, BSRA remains responsible for --
 - a. Making a correct payment; and
 - b. Recovering any erroneously directed funds.
- (2) If an uncompleted or erroneous transfer occurs because Subcontractor's EFT information was incorrect, or was revised within 30 days of BSRA release of the EFT payment transaction instructions to the bank, and;
 - a. If the funds are no longer under the control of the payment office, BSRA is determined to have made payment and the Subcontractor is responsible for recovery of any erroneously directed funds; or
 - b. If the funds remain under the control of the payment office, BSRA shall not make payment and the provisions of paragraph D shall apply.

12. SOUTH CAROLINA TAX REQUIREMENTS FOR NONRESIDENTS

- A. Non-resident Subcontractors/Suppliers conducting a business or performing personal services of a temporary nature within South Carolina are required to register with the South Carolina Department of Revenue in accordance with Title 12 of the Code of Laws of South Carolina, sections 12-8-540 & 12-8-550. Proof of registration must be submitted to ASG@srs.gov and the BSRA Procurement Representative prior to award.

13. COMPLIANCE WITH LAWS

- A. Subcontractor shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations, including new provisions of 10 CFR 851 relating to Health and Safety. Compliance shall be a material requirement of this Subcontract.
- B. This Subcontractor shall abide by the requirements of 41 CFR 60-741.5 (a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime Subcontractors/Suppliers to employ and advance in employment qualified individuals with disabilities.
- C. This 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 Subcontractors/Suppliers to employ and advance in employment qualified protected veterans.
- D. Subcontractor – Staff Augmentation Services (Paragraphs D – J applies to Staff Augmentation Services).

- E. Subcontractors/Suppliers 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 Subcontract. Except as otherwise directed by BSRA, Subcontractor shall procure without additional expense to BSRA, 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 this Subcontract by reference. Compliance by Subcontractor to BSRA's 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.
- F. The Subcontractor employees shall take all reasonable precautions in the performance of work under this Subcontract to protect the environment, safety and health of themselves, site employees and members of the public. BSRA procedures provide authority to call a time-out/stop work when unsafe conditions are observed and/or employee actions are likely to cause injury to them, other personnel, or cause damage to SRNL property or the environment. Subcontractor shall ensure that its employees are aware of this authority and understand they have the same authority as BSRA employees to call a timeout/ stop work while working at SRNL. BSRA purchasing representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this article and corrective action to be taken.
- G. Upon assignment, BSRA will be responsible to provide Staff Augmentation employees with a medical evaluation. In addition, BSRA will be responsible for an exit medical evaluation, when required, on employees with known occupational illnesses or injuries and/or documented or presumed exposure and when required by OSHA regulations. All diagnostic /monitoring exams and return to work (after an absence of 24 work hours) exams are to be provided through the Subcontractor.
- H. Medical results will be provided to the staff augmentation employees.
- I. The on-site Medical Surveillance program will be provided by BSRA Medical or a 3rd party designee based on the work scope hazards. The Subcontractor's corporate occupational medicine program must be in compliance with all other 10 CFR 851 requirements.
- J. Site Reporting Requirements. The Subcontractor (staff augmentation) personnel shall immediately notify the Subcontractor Technical Representative ("STR")/End User or the BSRA Procurement Representative of any event or condition that may require reporting to DOE. Further, the Subcontractor shall cooperate with any BSRA or DOE critique, analysis, or investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 and can include, but not limited to:
- (1) Operational emergencies,
 - (2) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,
 - (3) Any on-the-job injury where a Subcontractor employee is taken offsite for something other than observation. The notification requirement applies to any person who goes offsite for prompt medical treatment of any type. The mode of transportation (ambulance, personal vehicle, etc.) is not pertinent – any offsite transfers must be reported immediately,

- (4) Any violation of Lockout/Tagout controls where there are no credible barriers left between the worker, and the energy source regardless of whether or not there was an injury,
 - (5) Fires/explosions,
 - (6) Hazardous energy control failures,
 - (7) Operations shutdown directed by management for safety reasons,
 - (8) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.,
 - (9) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,
 - (10) Loss damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),
 - (11) Spread of radioactive contamination or loss of control of radioactive materials,
 - (12) Personnel radioactive contaminations or exposures, and
 - (13) Violations of procedures.
- K. Immediate notification is required of such events to ensure BSRA meets its commitment for thirty (30) minute notification to appropriate DOE authorities. The Subcontractor employee shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor's employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

14. TERMINATION FOR CONVENIENCE

- A. The Company may, in its sole discretion, terminate the Subcontract or any part hereof for its sole convenience, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Subcontractor a written notice of termination. Upon receipt of a notice of termination, the Subcontractor shall, unless the notice requires otherwise, discontinue all performance on the date and to the extent specified in the notice, and shall otherwise minimize costs to the Company. Payment for items already completed or in the process of completion, shall be adjusted between the Subcontractor and the Company in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the items, or any anticipated profits thereon. Such payment for items already completed or in the process of completion shall be the total compensation due to the Subcontractor for termination at will by the Company. If this is an order for Software, BSRA shall pay to Licensor any fees due under the terms of this Subcontract licensed up to the date of termination but shall have no further liability.

15. TERMINATION FOR CAUSE

- A. The Company may terminate this Subcontract for cause, in whole or in part, in the event of any default by Subcontractor, or if the Subcontractor fails to comply with any of the terms

of this Subcontract or fails to provide adequate assurance of future performance. In that event, the Company shall not be liable for any amount for items or work not accepted.

- B. If this Subcontract is terminated for cause, the Company may require Subcontractor to deliver to the Company any supplies and materials, manufacturing materials, and manufacturing drawings that Subcontractor has specifically produced or acquired for the terminated portion of this Subcontract. The Company shall pay the agreed-upon price for completed items delivered and accepted. The Company and Subcontractor shall agree on the amount of payment for all other deliverables.
- C. Subcontractor shall not be liable to Company for delays in performance occasioned by unforeseeable events or causes beyond Subcontractor's reasonable control and without its fault or negligence, including but not limited to acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of Subcontractor's subtier subcontractors at any tier. However, the delays of Subcontractor's subtier subcontractors at any tier must be proved to be unforeseeable, beyond the control of both Subcontractor and its subtier subcontractors and without fault or negligence of either.
- D. If this Subcontract is for Software, as defined herein, either party may, by written electronic notice, terminate this Subcontract, in whole or in part without liability therefore if such other party fails to perform in accordance with any provision hereof; provided, however, that in the event of a termination under this paragraph D, the terminating party shall first have given the other party a written electronic notice specifying the failure complained of and thirty (30) days to cure such failure. In the event of termination of the Subcontract in whole or in part, BSRA will destroy or return to Licensor all affected Software and documentation and all copies thereof.
- E. The rights and remedies of the Company in this clause are in addition to any other rights and remedies provided by law or under this Subcontract.

16. BANKRUPTCY

- A. In addition to the rights set forth in the "Termination" clauses incorporated into this Subcontract, the Company may terminate this Subcontract for default, in whole or in part, by written notice to Subcontractor if either Subcontractor becomes insolvent or makes a general assignment for the benefit of creditors, or a petition under any bankruptcy act or similar statute is filed by or against Subcontractor and not vacated within ten (10) days after it is filed. If the Subcontractor enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the BSRA Procurement Representative responsible for administering this Subcontract within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the BSRA subcontract/order numbers for which final payment has not been made.

17. TAXES

- A. Subcontractor shall not collect an increment for South Carolina sales or use tax from the Company for the items provided under this Subcontract beyond such taxes paid by the Subcontractor to its subtier subcontractors. The Subcontract price includes all applicable federal, state, and local taxes and duties

18. CHANGES

- A. 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 to be delivered or services to be performed; (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 BSRA may require, electronically and within thirty (30) 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. Failure to agree to any equitable adjustment shall constitute a dispute within the meaning of the "Resolution of Disputes" clause of this Subcontract. However, nothing in this clause shall excuse Subcontractor from proceeding with performing the Subcontract as changed.

19. SUSPENSION

- A. The Company may, for any reason, direct the Subcontractor to suspend performance of any part of or all of the performance of this Subcontract for an indefinite period of time. If any such suspension significantly delays the progress of or causes the Subcontractor additional direct expenses in the performance of the Subcontract, not due to the fault or negligence of the Subcontractor, the compensation to the Subcontractor shall be adjusted by a modification to this Subcontract on the basis of the additional direct expenses, exclusive of profit, incurred by the Subcontractor to perform the Subcontract and the time of performance of the Subcontract shall be extended by the actual duration of the suspension. Any claim by the Subcontractor for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to the Subcontractor to resume the performance of the Subcontract.

20. SUBCONTRACTOR'S LIABILITY FOR FINES AND PENALTIES

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

21. UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

- A. In the performance of this order, the Subcontractor is responsible for complying with the following requirements and for flowing down all requirements to its subtier subcontractors.
- B. The Subcontractor ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE O 471.1B). Subcontractor may provide access to material or data containing Unclassified Controlled Nuclear Information (UCNI) utilized in the performance of this Subcontract only to employees who are citizens of the United States.

- C. The Subcontractor ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE O 471.1B. Any material or data containing UCNI, which is stored on computer systems, must be protected, and the protective measures and/or policies must be specified in a Computer Protection Plan approved by the BSRA Computer Security organization. Adherence to the Plan is required during the performance of this Subcontract.
- D. Material or data containing UCNI shall be disposed of in a manner as described DOE O 471.1B. At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than 1/4-inch wide strips. Documents containing UCNI may also be disposed of in the same manner that is authorized for Subcontractor disposition of other classified material or data. If the above disposal methods are not available to the Supplier, the Subcontractor may return the UCNI matter to the STR/End User for disposition, with the prior approval of the STR/End User.
- E. The Subcontractor shall report to the BSRA Security Office or the BSRA Purchasing Representative any incidents involving the unauthorized disclosure of UCNI.
- F. If performance of work under this Subcontract results in the generation of unclassified documents that contain UCNI, the Subcontractor shall have a sufficient number of trained UCNI review personnel to ensure the prompt and proper review of generated material or data to provide for the identification, marking, and proper handling of material or data determined to contain UCNI. The Subcontractors/Suppliers Reviewing Officials ("Reviewing Official") shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI, in accordance with the instructions contained in DOE M 471.1-1, Chapter I Part C.
- G. If the Subcontractor has a formally designated Classification Officer, the Classification Officer-
- (1) Serves as a Reviewing Official for information under his/her cognizance;
 - (2) Trains and designates other Reviewing Officials in his/her organization, subordinate organizations, and subtier subcontractors and maintains a current list of all Reviewing Officials; and
 - (3) May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.
- H. If the Subcontractor has no formally designated Classification Officer, the Subcontractor submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions contained in DOE M 471.1-1, Chapter I, and Part B. C.

22. 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 Subcontractor shall obtain the approval of BSRA, in writing, prior to any visit to a DOE or BSRA facility by any Foreign National or Dual Citizen in connection with work being performed under this Subcontract, in accordance with the requirements of DOE Order 142.3, Unclassified Foreign Visits and Assignments Program. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontract service work, including delivery of materials, or for courtesy purposes. The term "visit" also includes officially sponsored attendance at a DOE or BSRA event off-site from the DOE/BSRA facility, but does not include off-site events and activities open to the general public. Subcontractors should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the BSRA Purchasing Representative at least four (4) to six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited. Forms can be obtained from the BSRA Purchasing Representative.
- B. In addition, the Subcontractor shall obtain the approval of the BSRA Purchasing Representative, in writing, prior to the employment of, or participation by, any Foreign National or Dual Citizen in the performance of work under this Subcontract or any subtier subcontract at off-site locations. Such approvals will be processed in accordance with the requirements of DOE Order 142.3.
- C. In the performance of off-site work, Foreign Nationals only incidentally involved with a BSRA subcontract, and who have no knowledge that their activities are associated with BSRA subcontract work, are exempt from the above.
- D. If the statement of work is accompanied by an approved Exception from Foreign National Information Requirements form, this Subcontract does not require the Subcontractor to provide foreign national information that would otherwise be required by DOE Order 142.3a.
- E. In the performance of work, Country of Risk foreign nationals/dual citizens may be restricted from accessing technology, information, or certain areas.

(The following Article applies if employees of Subcontractor will require physical access to DOE-owned or leased facilities)

23. ACCESS TO DOE-OWNED OR LEASED FACILITIES

- A. The performance of this Subcontract requires that employees of the Subcontractor have physical access to DOE-owned or leased facilities. The Subcontractor understands and agrees that DOE has a prescribed process with which the Subcontractor and its employees must comply in order to receive a security badge that allows such physical access. The Subcontractor shall propose employees whose background offers the best prospect of obtaining a security badge approval for access. This clause does not control requirements for an employee obtaining a security clearance.
- B. The Subcontractor shall assure:
 - (1) Compliance with procedures established by DOE and BSRA in providing its employees with any forms directed by DOE or BSRA;
 - (2) Employees properly complete any forms;

- (3) Employees submit the forms to the person designated by the BSRA Procurement Representative;
 - (4) Employees cooperate with DOE and BSRA officials responsible for granting access to DOE-owned or leased facilities; and
 - (5) Employees provide additional information requested by those DOE/BSRA officials.
- C. The Subcontractor understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE or BSRA that an employee's application for a security badge is or will be denied, the Subcontractor shall promptly identify and submit the appropriate forms for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Subcontract or any Subcontractor claim against DOE or BSRA.
- D. The Subcontractor shall return to the BSRA Procurement Representative, or designee, the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE-owned or leased facilities by the Supplier's employee(s) upon:
- (1) Termination of this Subcontract;
 - (2) Expiration of this Subcontract;
 - (3) Termination of employment on this Subcontract by an individual employee; or
 - (4) Demand by DOE/BSRA for return of the badge
- E. The Subcontractor shall include this clause, including this paragraph E. in any subtier subcontract, awarded in the performance of this Subcontract, in which an employee(s) of the subtier subcontractor will require physical access to DOE-owned or leased facilities.

24. WORKPLACE SUBSTANCE ABUSE PROGRAMS

A. Fitness for Duty

- (1) Subcontractor and its subtier subcontractors are required to comply with this Workplace Substance Abuse Program article, which addresses the Subcontractor portion of BSRA "Workplace Substance Abuse Program Plan." The Subcontractor shall advise employees and subtier subcontractors that it is the policy of BSRA to prohibit the use, possession, sale and distribution of alcohol, drugs or other controlled substance within the limits of the Savannah River Site (SRS), and/or any SRS off-site facilities, and to prohibit the presence of individuals who have such substances in the body for non-medical reasons. In order to ensure that BSRA work sites are free of illegal drugs and alcohol, all personnel and Subcontractor employees shall be tested in accordance with the requirements of DEAR 970.5223-4 and 10 CFR 707, "Workplace Substance Abuse Program at DOE Sites". Testing includes initial "Pre-Access" testing and "Random" testing for the presence of illegal drugs and alcohol. Any Subcontractor employee who is found in violation of the policy may be removed or barred from the site.

- (2) The Subcontractor agrees to advise its employees and subtier subcontractors of the above policy prior to assignment to the Site and to maintain documentation that such advice has been given.

B. Substance Testing

- (1) BSRA will collect oral swab specimens or urine specimens when Subcontractor employees are processed for badging. The specimen collection will be performed at SRS or one of the third-party collection facilities contracted by BSRA to perform collections. BSRA will send these specimens to a certified laboratory for testing and verification. The testing process may take up to five (5) days to obtain results. In the event of "positive" findings, the Subcontractor will be notified and shall arrange for an "Exit Conference". The Subcontractor then agrees to promptly remove such individual from the Savannah River Site (SRS) and return the badge to the BSRA Badge Office.
- (2) A Breath Alcohol Test will be given during the initial badging process and the results will be available immediately. The Breath Alcohol Test will be performed at SRS or one of the third-party testing facilities contracted by BSRA to perform Breath Alcohol Tests. In the event of "positive" findings, the Subcontractor will be notified and shall arrange for an "Exit Conference". The Subcontractor then agrees to promptly remove such individual from the Savannah River Site (SRS) and return the badge to the BSRA Badge Office.
- (3) The Subcontractor agrees to advise its employees and subtier subcontractors that it is the policy of BSRA that: (1) the manufacture, dispensation or sale, offer for sale, purchase, use, transfer, or possession of alcohol and illegal drugs on SRS or US Department of Energy (Owner) premises is prohibited; (2) employees, while on the SRS premises, are prohibited from being under the influence of alcohol ("Under the Influence" means the employee is affected by alcohol in any detectable manner) or impaired by drugs; (3) entry onto the SRS premises constitutes consent to an inspection of the employee and his or her vehicle as well as their personal effects while entering, on, or leaving premises; (4) any employee who is found in violation of this policy or who refuses to permit an inspection may be removed or barred from the SRS premises at the discretion of BSRA. As used herein, "SRS premises" means the property, leased or otherwise, including owned project site locations in which BSRA business is being conducted, and owned or rented vehicles and/or equipment is being operated.

The Subcontractor agrees to secure the written consent of employees to release results of substance abuse tests (breath alcohol and urine) to the designated BSRA representative.

- (4) The Subcontractor agrees to comply with and secure the compliance of its employees and subtier subcontractors of random, occurrence and/or for cause substance abuse testing. In the event of "positive" findings, the Subcontractor will be notified and shall arrange for an "Exit Conference". The Subcontractor then agrees to promptly remove such individual from the Savannah River Site (SRS) and return the badge to the BSRA Badge Office. Any positive finding will result in denial of site access for 12 months for the Subcontractor employee. In the event of a refusal, the Subcontractor's employee may be terminated for cause and the individual will be refused access to the site.

C. Occurrence testing additionally requires the following:

- (1) If an injury /illness is the result of an occupational incident that requires recordable medical treatment, as defined by OSHA, then drug and alcohol testing is required. In addition, if an occupational incident involves damage to government vehicle or property or Subcontractor equipment then drug and alcohol testing is required. BSRA will require the Subcontractor to have their employees drug and alcohol tested on the day of the injury, illness or incident.
- (2) Subcontractor's employees who are required to obtain a security clearance may be required to successfully pass an additional alcohol and drug screening as required in the Security Requirements article of this order.

D. Suitability for Employment

- (1) Subcontractor employees, including subtier subcontractors, who are to be badged to permit SRS access, must successfully complete the Suitability for Employment process. As part of this process, the Subcontractor agrees to advise its employees and subtier subcontractors that they will be required to complete certain forms, which authorize background investigations. These forms shall be submitted during the badging process.
- (2) Subcontractor employees will be issued a photo badge and allowed site access on the first reporting day. In the event a Subcontractor employee subsequently fails to successfully complete the background investigation, the Subcontractor agrees to remove promptly such individual from the site and to return the badge to the BSRA Badging Office.
- (3) Subcontractor agrees to advise its employees of the above requirement prior to assignment to the SRS and to maintain documentation that such advice has been given.

25. BADGING REQUIREMENTS

A. Photo Badge

- (1) Subcontractor employees may be issued a site access photo badge for a period not to exceed one year. To obtain a Photo Badge, Subcontractor employees and any subtier subcontractor employees must be processed through BSRA's Subcontract Badging Procedure and are subject to investigation by Governmental authorities. All badges must be returned or accounted for prior to final payment. All Subcontractor/ Supplier employees must be at least 18 years old. The Subcontractor shall ensure that any/all SRS-issued site security badges are returned to the Badge Office (703-46A) within ten (10) calendar days after badge expiration date (or subcontract/subcontractor employee termination date, whichever occurs first). Failure to do so may result in withholding of invoice payments until such time that the badge(s) is returned.
- (2) Subcontractor employees and any subtier subcontractor employees shall complete Subcontractor Employee Data Sheet and Fingerprint Cards. If a long term badge is required (period greater than six (6) months) the employee will also be required to complete Standard Form (SF) 85, "Questionnaire for Non-Sensitive Positions", and form Optional Form 306, "Declaration for Federal Employment". These forms are required for the Governments use in conducting background investigations per Homeland Security Presidential Directive HSPD-12. Copies of these forms are available on the BSRA Internet Home Page at http://www.srs.gov/general/busiops/PMMD/BSRA_general_provisions.htm.

- (3) Subcontractor will observe the following badging procedure for processing their employees through security orientation:
- a. A minimum of two (2) working days prior to the start of the badging and orientation process, Subcontractor shall transmit the following information to the Subcontract Technical Representative (STR) (or the End User if an STR is not appointed for this Subcontract):
 - Subcontract Number;
 - Subcontractor Employee Name;
 - Subcontractor Employee Address;
 - Subcontractor Employee Social Security Number;
 - Subcontractor Employee Date of Birth;
 - Subcontractor Employee's Phone Number;
 - b. Subcontractor employees shall report to SRS Building 703-46A at SRS Road 1, approximately two miles east of SC Highway 125 in Jackson, SC.
 - c. Each Subcontractor employee must successfully pass General Employee Training (GET) prior to undergoing the Photo Badging procedure. See Article of document BSRA-MS-2008-00018 titled "General Employee Training and Annual Refresher Training for Subcontract Employees". GET is available on-line and should be scheduled through the STR or End-user well in advance of the desired date in order to assure placement. GET and the exam are to be completed by the employee who is being badged and without the use or help from others, study materials, or notes.
 - d. The orientation and badging process will take approximately four (4) hours.
- (4) The maximum duration that Supplier/Subcontractor employees will be issued a site access badge is one (1) year. Supplier/Subcontractor employees requiring a new badge will report to the Badge Office and repeat the badging process.
- (5) If this Subcontract is to be performed in security areas, all personnel will be required to sign in and out at security gates and are subject to a search of their person and belongings at entrances to or exit from the area.

B. Temporary Badge (typically for visitors and short term personnel).

- (1) Temporary badges are valid for a maximum of 10 calendar days per person in a calendar year. To avoid unnecessary expiration, these badges should be returned to the badge office immediately upon completion of need.
- (2) Two working days prior to the need date, Subcontractor shall transmit the following information to the STR/End User:
 - Subcontract Number
 - Subcontractor Employee name
 - Subcontractor Employee address
 - Subcontractor Employee Social Security Number
 - Subcontractor Employee Date of Birth

- Subcontractor's Phone Number
- (3) The Assigned Competent Person ("ACP") (Subcontractor or BSRA employee) shall perform task analysis of scope to be performed and identify any applicable contractual task specific checklist(s) from the Subcontractors/Suppliers accepted Worker Protection Plan or BSRA's Focused Observation Database if a WPP is not required by the terms of this order.
 - (4) ACP shall provide advance copy of any task specific safety checklist(s) to personnel seeking temporary badges.
 - (5) Badge Office provides initial security briefing, issues registration card and obtains acknowledgement signature, issues "maroon" Visitors Badge for duration requested by STR/End User.
 - (6) ACP reviews any applicable checklist(s) and performs focused observations as directed by the STR/End User.
 - (7) Upon completion of scope, return badge to Badge Office upon exiting SRS.

C. Identity Verification.

- (1) In order to receive a photo or temporary badge for entry to SRS, Subcontractor employees, except delivery personnel (see subparagraph (2) below), will be required to present two specific forms of identification from the "List of Acceptable Documents" (Department of Homeland Security Form I9, copy available on the BSRA Internet Home Page. At least one of the documents selected from the list must be a valid State or Federal government-issued picture ID.
- (2) Vendor Delivery Personnel. Unbadged personnel seeking a temporary badge for material/equipment deliveries will be required to present one form of picture identification that will verify their identity, such as a valid state driver's license that includes a photograph. Delivery personnel shall enter the site at the Aiken Barricade located approximately one (1) mile south of SC Highway 278 and will be escorted at all times to the delivery location and back to the entrance barricade by Centerra Group, LLC assigned escorts, or by Assigned Competent Persons (BSRA or Subcontractor).
- (3) If the Subcontractor or any subtier subcontractor should independently suspend or remove an employee from work at the Savannah River Site (SRS) for unsafe acts or behavior, the Subcontractor shall immediately notify the STR/End User, return the employee's badge to the STR/End User, and provide the STR/End User with written electronic notification of the employee's name and reason(s) for such suspension or removal.

26. SOFTWARE LICENSE

- A. Licensor hereby grants to BSRA a nonexclusive, transferable license to use the Software subject to the following terms, conditions, and restrictions:
- (1) The license granted under this Subcontract authorizes BSRA to unlimited use of the Software in any machine-readable form on the single central processing unit (hereinafter referred to as "CPU"), or multiple central processing units controlled

by a single operating system (together referred to as "CPU") designated by type, serial number, and location as follows:

Type_____

Serial No. _____

Location_____

- (2) If the CPU designated in paragraph 1.1 becomes inoperative due to malfunction, preventive maintenance, or engineering changes, Software may be temporarily transferred to a backup CPU until the designated CPU is restored to operative status.
- (3) The BSRA acknowledges that Licensor considers Software to contain proprietary data and as such BSRA agrees that, during the term of this Subcontract and for a period of one year following termination of this Subcontract, to treat Software with the same degree of caution, care, and confidentiality as it treats its own proprietary information and in accordance with the provisions of this Subcontract, except that such obligations shall not extend to any information or technical data relating to Software which is now available to the general public or which later becomes available to the general public by acts not attributable to BSRA and its employees. All such proprietary data shall be so identified and marked by Licensor at the time it is conveyed to BSRA. Except as may be required for Licensee's own archival purposes, BSRA shall not knowingly make or allow others to make copies or reproductions of the Software in any form without written electronic consent of Licensor.
- (4) Use of Software shall be limited to work under Licensee's Contract (**#89303321-CEM-000080**) with the Department of Energy (DOE), and any transfers are limited to DOE or successor contractors.

27. INCORPORATION BY REFERENCE

- A. Incorporation of Special Contract Requirements (Section H), FAR, DEAR Clauses, and DOE Orders and Directives
 - (1) The Special Contract Requirements (Section H) of the BSRA Prime Government Contract **89303321-CEM-000080** ("Prime Government Contract"), Federal Acquisition Regulations (FAR) and Department of Energy Acquisition Regulation Supplement (DEAR) clauses referenced below are incorporated herein, with the same force and effect as if they were given full text, and are applicable, including any notes following the clause citation, to this Subcontract.
 - (2) The full text of any FAR or DEAR clause may be accessed electronically at the following addresses, respectively:
 - <https://www.acquisition.gov/?q=browsefar>
 - <http://energy.gov/management/downloads/searchable-electronicdepartment-energy-acquisition-regulation>.
 - The full text of any Section H clause can be requested from the Procurement Representative.

- (3) If the date or substance of any of the clauses listed in the Subcontract between Seller and BSRA or the date or substance of any clauses listed below is different than date or substance of the clause actually incorporated in the BSRA's Prime Contract No. 89303321-CEM-000080 referenced herein, the date or substance of the clause incorporated by said Prime Government Contract shall apply instead. The Contracts Disputes Act shall have no application to this Subcontract. Any reference to a "Disputes" clause shall mean the "Resolution of Disputes" clause of this Subcontract. Subcontractor shall flow down to its subtier subcontractors and suppliers all applicable Section H, FAR, or DEAR clauses and any other requirements of this Subcontract and applicable law so as to enable and ensure that BSRA and Subcontractor comply with all applicable requirements of BSRA's Prime Contract.
- (4) All clauses that are not applicable to performance of this Subcontract are self-deleting. For certain clauses, BSRA has provided language describing the circumstances in which the Section H, FAR, or DEAR clauses apply to this Subcontract. This parenthetical language may not encompass all situations where the Section H, FAR, or DEAR clauses apply and Subcontractor is responsible for confirming whether the Section H, FAR, or DEAR Clauses are applicable to this Subcontract.
- (5) It is intended by the Parties that these Section H, FAR, or DEAR clauses shall apply to Subcontractor in such manner as is necessary to reflect the position of Subcontractor as a subcontractor to BSRA, and to ensure Subcontractor's obligations to BSRA and to the Government, and to enable BSRA to meet its contractual obligations to the Federal Government.

B. GOVERNMENT SUBCONTRACT

- (1) This Subcontract is entered into by the parties in support of a U.S. government contract.
- (2) Where necessary to derive the proper meaning under any applicable FAR and DFARS clauses, the terms as used in the FAR and DEAR clauses referenced below, as applicable, have the following meaning:
 - a. "Commercial item" means a commercial item as defined in FAR 2.101.
 - b. "Contract" means this Subcontract.
 - c. "Contracting Officer" means the BSRA's Procurement Representative.
 - d. "Contractor" and "Offeror" means the Seller, which is the party identified on the face of the Subcontract with whom BSRA is contracting, acting as the immediate subcontractor to BSRA.
 - e. "FAR" means the Federal Acquisition Regulation, used as Chapter 1 of Title 48, Code of Federal Regulations.
 - f. "Incumbent" or "previous contractor" means Savannah River Nuclear Solutions, LLC or SNRS, the company that performed as the contractor under the predecessor DOE M&O prime contract.

- g. "Laboratory" or "Savannah River National Laboratory" or "SRNL" means the subject contract performance site composed of Government-owned and leased buildings and research facilities.
 - h. "Prime Contract" means the M&O contract between the U.S. government and Battelle Savannah River Alliance, LLC Contract No. 89303321-CEM-000080.
 - i. "Subcontract" means any contract placed by the Contractor or subtier subcontractors under this Subcontract.
- (3) As an exception to the foregoing, the terms "Government" and "Contracting Officer" do not change in the following circumstances:
- a. when a right, act, authorization or obligation can be granted or performed only by the Government or a Government Contracting Officer or his/her duly authorized representative;
 - b. in the phrases "Government Property," "Government-Furnished Property," "Government Furnished Material," and "Government-Owned Property;"
 - c. in the Patent Rights clauses incorporated therein, if any;
 - d. when title to property is to be transferred directly to the Government;
 - e. when access to proprietary financial information or other proprietary data is required, except as otherwise provided in this Subcontract; and
 - f. where specifically modified in this Subcontract.
- (4) Substitute the following party names in all FAR and DEAR clauses, as applicable:
- a. "BSRA" for "agency," "government," "Department of Energy," "DOE," "Department," or "United States;" [or similar term];
 - b. "BSRA Subcontracting Representative" for "Contracting Officer," "Administrative Contracting Officer," and "ACO;" and
 - c. "Supplier" or "Subcontractor" for "Contractor" or "offeror."
- (5) Any communication/notification required under a FAR or DEAR clause from/to the Contractor to/from the Contracting Officer shall be made through BSRA, unless otherwise indicated.

C. AMENDMENTS REQUIRED BY PRIME CONTRACT

- (1) The Parties hereby agree to amend this Article 27 to include any additional or revised FAR/DEAR Clauses incorporated in BSRA's Prime Contract that are applicable to the performance of this Subcontract. Subcontractor agrees that, upon the request of BSRA, it will negotiate in good faith with BSRA relative to amendments to this Subcontract to incorporate additional provisions herein or to change provisions hereof, as BSRA may reasonably deem necessary in order to comply with the provisions of the BSRA Prime Contract or with the provisions of amendments to the BSRA Prime Contract. If any such amendment to this BSRA

causes an increase or decrease in the cost of, or the time required for, performance of any part of the Services under this Subcontract, an equitable adjustment shall be made pursuant to the "Changes" clause of this Subcontract.

D. SECTION H SPECIAL CONTRACT REQUIREMENTS OF BSRA PRIME GOVERNMENT CONTRACT

(1) CLAUSES INCORPORATED BY REFERENCE

a. The following Section H clauses apply to this Subcontract:

- H.08 DOE-H-7009 ADDITIONAL DEFINITIONS (SEP 2017) (full text below)

DOE-H-7009 ADDITIONAL DEFINITIONS (SEP 2017)

(a) "Contractor" means "the Offeror" as specified in Block 15A of Standard Form 33, Section A entitled "Solicitation, Offer and Award" of the contract.

(b) The term "DOE" means the Department of Energy, "NNSA" means the National Nuclear Security Administration.

(c) The term "DOE Directive" means DOE Policies, Orders, Notices, Manuals, Regulations, Technical Standards and related documents, and Guides, including for purposes of this contract those portions of DOE's Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the Contracting Officer for the purpose of addressing short-term or urgent DOE concerns relating to health, safety, or the environment.

(d) "Head of Agency" means: (i) The Secretary; (ii) Deputy Secretary; (iii) Under Secretaries of the Department of Energy; and (iv) the Chairman, Federal Energy Regulatory Commission.

(e) "Head of Contracting Activity" - As Designated by EM

(f) "Laboratory" means the Savannah River National Laboratory (SRNL) composed of Government-owned and leased buildings and facilities together with the necessary utilities, now existing or hereafter to be acquired, constructed and equipped. The SRNL main technical area covers approximately 39 acres. This area includes a total of three (3) Nuclear Hazard Category II and III facilities that have over 200,000 sq. ft. of radiologically controlled laboratory and process space, with 155 laboratories and 326 offices. Total footprint of SRNL buildings, facilities, and other structures is approximately 829,800 sq. ft. with an additional 58,850 sq. ft. of leased facility space (i.e., Aiken County Savannah River Research Campus, Aiken County Technology Laboratory, Hydrogen Technology & Energy Materials Research Labs), and, when complete, the approximately 65,000 sq. ft. Advanced Manufacturing Collaborative facility.

(g) The term "non-profit organization" means:

(1) a university or other institution of higher education,

(2) an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 as amended and exempt from taxation under section 501(a) and the Internal Revenue Code,

(3) any nonprofit scientific or educational organization qualified as a nonprofit by the laws of the State of its organization or incorporation, or

(4) a combination of qualifying entities organized for a nonprofit purpose (e.g., partnership, joint venture or limited liability company) each member of which meets the requirements of (1), (2), or (3) above.

(h) The term “Senior Procurement Executive” means for:

- (1) Department of Energy – Director, Office of Acquisition and Project Management; and
 - (2) National Nuclear Security Administration – Associate Administrator for Acquisition and Project Management.
- H.14 DOE-H-7016 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS (SEP 2017)
 - H.15 DOE-H-7017 APPLICATION OF DOE CONTRACTOR REQUIREMENTS DOCUMENTS (SEP 2017) (in full text below)

DOE-H-7017 APPLICATION OF DOE CONTRACTOR REQUIREMENTS DOCUMENTS (SEP 2017)

(a) Performance. The Contractor will perform the work of this contract in accordance with each of the Contractor Requirements Documents (CRDs) appended to this contract as Section J, Attachment J-5 List of Applicable Laws and Regulations (List A)/DOE Directives (List B), until such time as the Contracting Officer approves the substitution of an alternative procedure, standard, system of oversight, or assessment mechanism resulting from the process described below.

(b) Laws and Regulations Excepted. The process described in this clause shall not affect the application of otherwise applicable laws and regulations of the United States, including regulations of the Department of Energy.

(c) Deviation Processes in Existing Orders. This clause does not preclude the use of deviation processes provided for in existing DOE directives.

(d) Proposal of Alternative. The Laboratory Director may, at any time during performance of this contract, propose an alternative procedure, standard, system of oversight, or assessment mechanism to the requirements in a listed CRD by submitting to the Contracting Officer a signed proposal describing the nature and scope of the alternative procedure, standard, system of oversight, or assessment mechanism (alternative), the anticipated benefits, including any cost benefits, to be realized by the Contractor in performance under the contract, and a schedule for implementation of the alternate. In addition, the Contractor shall include an assurance signed by the Laboratory Director that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Upon request, the Contractor shall promptly provide the Contracting Officer any additional information that will aid in evaluating the Contractor’s proposal.

(e) Action of the Contracting Officer. The Contracting Officer shall within 60 days:

- (1) deny application of the proposed alternative;
- (2) approve the proposed alternative, with conditions or revisions;
- (3) approve the proposed alternative; or
- (4) provide a date by which a decision will be made (not to exceed an additional 60 days).

(f) Implementation and Evaluation of Performance. Upon approval in accordance with (e)(2) or (e)(3) above, the Contractor shall implement the alternative. In the case of a conditional approval under (e)(2) above, the Contractor shall provide the Contracting Officer with an assurance statement, signed by the Laboratory Director, that the revised alternative is an adequate and efficient means to meet the objectives underlying the CRD. Additionally, the statement shall describe any changes to the schedule for implementation. The

Contractor shall then implement the revised alternative. DOE will evaluate performance of the approved alternative from the date scheduled by the Contractor for implementation.

(g) Application of Additional or Modified CRDs. During performance of the contract, the Contracting Officer may notify the Contractor that he or she intends to unilaterally add CRDs not then listed in Section J, Attachment J-5 entitled "List of Applicable Laws and Regulations (List A)/DOE Directives (List B)" or modifications to listed CRDs. Upon receipt of that notice, the Contractor, within 30 calendar days, may, in accordance with paragraph (d) of this clause, propose an alternative procedure, standard, system of oversight, or assessment mechanism. The resolution of such a proposal shall be in accordance with the process set out in paragraphs (e) and (f) of this clause. If an alternative proposal is not submitted by the Contractor within the 30 calendar day period, or, if made, is denied by the Contracting Officer under paragraph (e), the Contracting Officer may unilaterally add the CRD or modification to Section J, Attachment J- 5 entitled "DOE Directives/List B". The Contractor and the Contractor Officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, resulting from the addition of the CRD or modification.

(h) Deficiency and Remedial Action. If, during performance of this contract, the Contracting Officer determines that an alternative procedure, standard, system of oversight, or assessment mechanism adopted through the operation of this clause is not satisfactory, the Contracting Officer may, in his or her sole discretion, determine that corrective action is necessary and require the Contractor to prepare a corrective action plan for the Contracting Officer's approval. If the Contracting Officer is not satisfied with the corrective action taken, the Contracting Officer may direct corrective action to remedy the deficiency, including, if appropriate, the reinstatement of the CRD.

- H.16 DOE-H-7018 EXTERNAL REGULATION (SEP 2017)
- H.25 DOE-H-2080 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (APR 2018)
- H.26 DOE-H-7025 LABOR RELATIONS (SEP 2017) (REVISED)
- H.29 DOE-H-7028 LOBBYING RESTRICTION (SEP 2017)
- H.30 DOE-H-7029 INTELLECTUAL AND SCIENTIFIC FREEDOM (SEP 2017)
- H.45 DOE-H-2021 WORK STOPPAGE AND SHUTDOWN AUTHORIZATION (OCT 2014) (REVISED)
- H.50 DOE-H-2045 CONTRACTOR COMMUNITY COMMITMENT (OCT 2014) (in full text below)

DOE-H-2045 CONTRACTOR COMMUNITY COMMITMENT (OCT 2014)

(a) The Contractor, in fulfilling its commitments pursuant to the clause at DEAR 970.5226-3, Community Commitment, shall submit to DOE an annual plan for community commitment activities and report on program progress semi-annually.

(b) The Contractor's annual plan for community commitment activities will identify those meaningful actions and activities that it intends to implement within the surrounding counties and local municipalities. The Contractor may engage in any community actions or activities it determines meets the objectives of DOE's community commitment policy. Actions and activities in the areas listed below are representative of the areas in which the Contractor may choose to perform. However, the list is not all inclusive and is not intended to preclude the Contractor from initiating and performing other constructive community activities nor involvement in charitable endeavors it deems worthwhile.

(1) Regional educational outreach programs. The objectives of these programs include teacher enhancement, student support, curriculum enhancement, educational technology, public understanding, and providing the services of contractor employees to schools, colleges, and universities. Regional educational outreach programs could involve providing contractor employees the opportunity to improve their employment skills and opportunities by an educational assistance allowance, provision for outside training programs either during or outside regular work hours, or executive training programs for nonexecutive employees. This could also involve participating in activities that foster relationships with regional educational institutions and other institutions of higher learning or encouraging students to pursue science, engineering, and technology careers.

(2) Regional purchasing programs. The Contractor may conduct business alliances with regional vendors. These alliances may include training and mentoring programs to enable regional vendors to compete effectively for subcontracts and purchase orders and/or assistance with the development of business systems (accounting, budget, payroll, property, etc.) to enable regional vendors to meet the audit and reporting requirements of the Contractor and DOE. These alliances may also serve to encourage the formation of regional trade associations which will better enable regional businesses to satisfy the Contractor's needs.

The Contractor may coordinate and cooperate with the Chambers of Commerce, Small Business Development Centers, and like organizations, and make prospective regional vendors aware of any assistance that may be available from these entities. DOE encourages the use of regional vendors in fulfilling contract requirements.

(3) Community support. The Contractor may directly sponsor specific local community activities or sponsor individual employees to work with a specific local community activity. The Contractor may provide support and assistance to community service organizations. The Contractor may support strategic partnerships with professional and scientific organizations to enhance recruitment into all levels of its organization.

(c) The Contractor may use fee dollars to pay for its community commitment actions as it deems appropriate. All costs to be incurred by the Contractor for community commitment actions and activities are unallowable and non-reimbursable under the contract.

(d) The Contractor shall encourage its subcontractors, at all tiers, to participate in these activities.

- H.53 DOE-H-2053 WORKER SAFETY AND HEALTH PROGRAM IN ACCORDANCE WITH 10 CFR 851 (OCT 2014)
- H.56 DOE-H-2064 USE OF INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND THIRD PARTY SERVICES – ALTERNATE II (OCT 2014)
- H.57 DOE-H-2066 SAFEGUARDS AND SECURITY PROGRAM – ALTERNATE 1 (OCT 2014)
- H.62 DOE-H-2047 FEDERAL HOLIDAYS AND OTHER CLOSURES (OCT 2014) (REVISED) (applicable to subcontracts where on-site work may be required and where site closure may impact or prevent subcontract work)
- H.67 DOE-H-2062 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL - ALTERNATE I (OCT 2014) (applicable to all subcontracts that contain FAR 52.204-9)
- H.68 DOE-H-2063 CONFIDENTIALITY OF INFORMATION (OCT 2014)

- H.69 DOE-H-2069 PAYMENTS FOR DOMESTIC EXTENDED PERSONNEL ASSIGNMENTS (OCT 2014) (REVISED)
 - **b. The following Section H clauses apply to this Subcontract, if the value of this Subcontract exceeds the simplified acquisition threshold (as defined in FAR 2.101):**
- H.48 DOE-H-2035 ORGANIZATIONAL CONFLICT OF INTEREST MANAGEMENT PLAN (OCT 2014) (REVISED)
 - **c. The following Section H clauses apply to this Subcontract, if the value of this Subcontract exceeds \$15,000:**
- H.10 DOE-H-7011 CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (SEP 2017)
 - **d. The following Section H clauses apply to this Subcontract, if the value of this Subcontract exceeds \$2,000,000:**
- H.65 N/A FACILITIES CAPITAL COST OF MONEY
- If during the performance of the contract the Contractor wishes to claim facilities capital cost of money as an allowable cost, the Contractor shall submit, for approval of the Procurement Representative, a proposal for each specific project, including Form CASB-CMF which shows the calculation of the proposed amount (see FAR 31.205-10).
 - **e. The following Section H clauses apply to this Subcontract as indicated:**
- H.07 DOE-H-7008 PRIVACY ACT RECORDS (SEP 2017) (applicable to services subcontracts and subcontracts requiring "Systems of Records" for individuals)
- H.11 DOE-H-7013 SOURCE AND SPECIAL NUCLEAR MATERIAL (SEP 2017) (applicable to subcontracts involving the control of and accounting for source and special nuclear material)
- H.27 DOE-H-7026 ADDITIONAL LABOR REQUIREMENTS (SEP 2017) (Revised) (applicable to construction contracts)
- H.32 DOE-H-7031 INFORMATION TECHNOLOGY ACQUISITIONS (SEP 2017) (applicable to information technology acquisitions)
- H.49 DOE-H-2044 SAFETY DATA SHEET AVAILABILITY (OCT 2014) (REVISED) (applicable to subcontracts if the subcontract will require the delivery of hazardous materials as defined in FAR 23.301)
- H.55 DOE-H-2059 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS (OCT 2014) (applicable to subcontracts involving work that may result in discovery or require protection of antiquities)
- H.59 DOE-H-2072 USE OF GOVERNMENT VEHICLES BY CONTRACTOR EMPLOYEES (OCT 2014) (applicable to subcontracts where Government-owned and/or leased vehicles are contemplated to be provided for use by subcontractor employees)

- H.73 N/A REAL PROPERTY ASSET MANAGEMENT (applicable to all subcontracts related to real property asset planning, real estate maintenance, disposition planning, long-term stewardship and value engineering)

f. The Following Section H Clauses In Full Text Apply To The Subcontract:

- H.51 DOE-H-2048 PUBLIC AFFAIRS – CONTRACTOR RELEASES OF INFORMATION (OCT 2014)

DOE-H-2048 PUBLIC AFFAIRS – CONTRACTOR RELEASES OF INFORMATION (OCT 2014)

In implementation of the clause at DEAR 952.204-75, Public Affairs, all communications or releases of information to the public, the media, or Members of Congress prepared by the Subcontractor related to work performed under the subcontract shall be reviewed and approved by BSRA prior to issuance. Therefore, the Subcontractor shall, at least seven calendar days prior to the planned issue date, submit a draft copy to the BSRA Procurement Representative of any planned communications or releases of information to the public, the media, or Members of Congress related to work performed under this subcontract. The BSRA Procurement Representative will obtain necessary reviews and clearances and provide the Subcontractor with the results of such reviews prior to the planned issue date.

E. FEDERAL ACQUISITION REGULATION (FAR) FLOWDOWNS

(1) CLAUSES INCORPORATED BY REFERENCE

a. The following FAR clauses apply to this Subcontract:

- FAR 52.202-1 DEFINITIONS (NOV 2013)
- FAR 52.203-3 GRATUITIES (APR 1984)
- FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)
- FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)
- FAR 52.203-19 PROHIBITION ON REQUIRING CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS OR STATEMENTS (JAN 2017)
- FAR 52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)
- FAR 52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (JUL 2016)
- FAR 52.204-19 "INCORPORATION BY REFERENCE OF REPRESENTATIONS AND CERTIFICATIONS (DEC 2014)"
- FAR 52.204-23 PROHIBITION ON CONTRACTING FOR HARDWARE, SOFTWARE, AND SERVICES DEVELOPED OR PROVIDED BY KASPERSKY LAB AND OTHER COVERED ENTITIES (AUG 2019)

- FAR 52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2019)
- FAR 52.209-10 PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS (NOV 2015)
- FAR 52.211-5 MATERIAL REQUIREMENTS (AUG 2000)
- FAR 52.211-15 "DEFENSE PRIORITY AND ALLOCATION REQUIREMENT (APR 2008)
- FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)
- FAR 52.219-28 POST AWARD SMALL BUSINESS PROGRAM RE-REPRESENTATION (JUL 2013)
- FAR 52.222-21 PROHIBITION OF SEGREGATED FACILITIES (APR 2015)
- FAR 52.222-26 EQUAL OPPORTUNITY (SEP 2016)
- FAR 52.222-50 COMBATING TRAFFICKING IN PERSONS (JAN 2019) (Sub-section (h) of this clause only applies if the contract is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and has an estimated value that exceeds \$550,000.)
- FAR 52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)
- FAR 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
- FAR 52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (This clause applies to contracts in which SUPPLIER is a small business concern.)
- FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (JAN 2019)
- FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998) (in full text below)

FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<https://www.acquisition.gov/?q=browsefar>

<http://energy.gov/management/downloads/searchable-electronicdepartment-energy-acquisition-regulation>

- FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)
- FAR 52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

b. The following FAR clauses apply to this Subcontract, if the value of this Subcontract exceeds the micro-purchase threshold (as defined in FAR 2.101):

- FAR 52.222-3 CONVICT LABOR (JUN 2003) (This clause applies to contracts above the micro-purchase threshold, when the contract will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands; unless [1] the contract will be subject to 41 U.S.C. chapter 65, Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000, which contains a separate prohibition against the employment of convict labor; [b] the supplies or services are to be purchased from Federal Prison Industries, Inc.; or [c] the acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.)
- FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)

c. The following FAR clauses apply to this Subcontract, if the value of this Subcontract exceeds the simplified acquisition threshold (as defined in FAR 2.101):

- FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006)
- FAR 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014)
- FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)
- FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015) (This clause does not apply to contracts that are [1] only for work that will be performed outside the United States; [2] for a period of performance of less than 120 days; or [3] only for—(a) Commercially available off-the-shelf (“COTS”) items; (b) items that would be COTS items, but for minor modifications [as defined at paragraph (3)(ii) of the definition of “commercial item” at 2.101]; (c) items that would be COTS items if they were not bulk cargo; or (d) Commercial services that are part of the purchase of a COTS item [or an item that would be a COTS item, but for minor modifications], performed by the COTS provider, and are normally provided for that COTS item.)

d. The following FAR clauses apply to this Subcontract, if the value of this Subcontract exceeds \$10,000:

- FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 2015) (Applies to construction, alterations, or repair work performed in the U.S.)
- FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

e. The following FAR clauses apply to this Subcontract, if the value of this Subcontract exceeds \$15,000:

- FAR 52.225-8 DUTY-FREE ENTRY (OCT 2010)

f. The following FAR clauses apply to this Subcontract, if the value of this Subcontract exceeds \$25,000:

- FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014) (in full text below)

FAR 52.222-36 EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUL 2014)

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60.741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

g. The following FAR clauses apply to this Subcontract, if the value of this Subcontract exceeds \$30,000:

- FAR 52.204-10 REPORTING EXECUTIVE COMPENSATION AND FIRST TIER SUBCONTRACT AWARDS (OCT 2018) (This clause applies if this subcontract is a first-tier subcontract award that exceeds \$30,000)

h. The following FAR clauses apply to this Subcontract, if the value of this Subcontract exceeds \$35,000:

- FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT 2015)

i. The following FAR clauses apply to this Subcontract, if the value of this Subcontract exceeds \$150,000:

- FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015) (This clause applies unless the work is performed outside the United States by employees recruited outside the United States, or waived by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor or the head of the agency the prime contract supports.) (in full text below)

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)

(a) Definitions. As used in this clause—

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at FAR 22.1301.

(b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified

protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of \$150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

- FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016) (This clause applies to contracts containing the provision at FAR 52.222-35.)
- FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

j. The following FAR clauses apply if the value of the Subcontract exceeds \$750,000:

- FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (AUG 2018) (DEVIATION) (Not applicable if Supplier is a small business concern) (in full text below)

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (AUG 2018) (DEVIATION)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual subcontracting plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the

offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

"Master subcontracting plan" means a subcontracting plan that contains all the required elements of an individual subcontracting plan, except goals, and may be incorporated into individual subcontracting plans, provided the master subcontracting plan has been approved.

"Reduced payment" means a payment that is for less than the amount agreed upon in a sub contract in accordance with its terms and conditions, for supplies and services for which the Government has paid the prime contractor.

"Subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

"Total contract dollars" means the final anticipated dollar value, including the dollar value of all options.

"Untimely payment" means a payment to a subcontractor that is more than 90 days past due under the terms and conditions of a subcontract for supplies and services for which the Government has paid the prime contractor.

(c)

(1) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the Offeror is submitting an individual subcontracting plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The subcontracting plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(2)

(i) The Contractor may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) The Contractor may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

(A) The subcontractor is registered in SAM; and

(B) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(iii) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(iv) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor's size or socioeconomic status.

(d) The Offeror's subcontracting plan shall include the following:

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

In accordance with 43 U.S.C. 1626:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe; and

(ii) Where one or more subcontractors are in the subcontract tier between the prime Contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate Contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual subcontracting plan; or the Offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

- (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
- (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
- (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
- (vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to-

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, SAM, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with-

- (i) Small business concerns (including ANC and Indian tribes);
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns (including ANC and Indian tribes); and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the Offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$700,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the Offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the Offeror with the subcontracting plan;

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its unique entity identifier, and the e-mail address of the Offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique entity identifier, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$250,000, indicating-

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact-

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through-

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(12) Assurances that the Offeror will make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal.

Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if–

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern's pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

(13) Assurances that the Contractor will provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (d)(12) of this clause. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

(14) Assurances that the Contractor will not prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

(15) Assurances that the offeror will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242-5).

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern in accordance with 52.219-8(d)(2).

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, prior to award of the subcontract the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror and if the successful subcontract offeror is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(7) Assign each subcontract the NAICS code and corresponding size standard that best describes the principal purpose of the subcontract.

(f) A master subcontracting plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided-

(1) The master subcontracting plan has been approved;

(2) The Offeror ensures that the master subcontracting plan is updated as necessary and provides copies of the approved master subcontracting plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master subcontracting plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one subcontracting plan. When a contract modification exceeds the subcontracting plan threshold in 19.702(a), or an option is exercised, the goals of the existing subcontracting plan shall be amended to reflect any new subcontracting opportunities. When the goals in a subcontracting plan are amended, these goal changes do not apply retroactively.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders- Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns;" or (2) an approved plan required by this clause, shall be a material breach of the contract and may be considered in any past performance evaluation of the Contractor.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included in these reports. Subcontract awards by affiliates shall be treated as subcontract awards by the Contractor. Subcontract award data reported by the Contractor and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontracting plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period. When the Contracting Officer rejects an ISR, the Contractor shall submit a corrected report within 30 days of receiving the notice of ISR rejection.

(ii)

(A) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(B) If a subcontracting plan has been added to the contract pursuant to 19.702(a)(3) or 19.301-2(e), the Contractor's achievements must be reported in the ISR on a cumulative basis from the date of incorporation of the subcontracting plan into the contract.

(iii) When a subcontracting plan includes indirect costs in the goals, these costs must be included in this report.

(iv) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with an executive agency, regardless of the dollar value of the sub contracts. This report also includes indirect costs on a prorated basis when the indirect costs are excluded from the subcontracting goals.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If the Contractor or a subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$700,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime contractors.

(D) The report shall be submitted annually by October 30 for the twelve month period ending September 30. When a Contracting Officer rejects an SSR, the Contractor shall submit a revised report within 30 days of receiving the notice of SSR rejection.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan-

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year and all indirect costs.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

k. The following FAR clauses apply to this Subcontract as indicated:

- FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015) (This clause applies if the contract is expected to exceed \$6 million and the performance period is 120 days or more. Disclosures made under this clause shall be made directly to the Government entities identified in the clause.)
- FAR 52.203-16 PREVENTING PERSONAL CONFLICTS OF INTEREST (DEC 2011) (This clause applies to contracts that include a requirement for services by contractor employees that involve performance of acquisition functions closely associated with inherently governmental functions for, or on behalf of, a Federal agency or department.)
- FAR 52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011) CONTRACTOR PERSONNEL - ALTERNATE I (OCT 2014) (This clause applies when subcontractor's employees may require routine physical access

to a Federally controlled facility and/or routine access to Federally controlled information system.)

- FAR 52.204-14 "SERVICE CONTRACT REPORTING REQUIREMENTS (OCT 2016) ((This clause applies to contracts for services that meet or exceed the thresholds at FAR 4.1703, except for indefinite-delivery contracts.)
- FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016) (This clause applies to contracts in which SUPPLIER may have federal contract information residing in or transiting through its information system.) (in full text below)

FAR 52.204-21 BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (JUN 2016)

(a) Definitions. As used in this clause –

“Covered contractor information system” means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

“Federal contract information” means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public websites) or simple transactional information, such as necessary to process payments.

“Information” means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

“Safeguarding” means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

- (i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
- (ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
- (iii) Verify and control/limit connections to and use of external information systems.
- (iv) Control information posted or processed on publicly accessible information systems.
- (v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement sub-networks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) Other requirements. This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

- FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS - OVERTIME COMPENSATION (MAY 2018) (This clause applies to contracts that may require or involve the employment of laborers or mechanics.)
- FAR 52.222-41 SERVICE CONTRACT LABOR STANDARDS (AUG 2018) (Applies if the subcontract is subject to the Service Contract Labor Standards statute)
- FAR 52.222-55 MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015) (This clause applies to contracts that are subject to the Service Contract Labor Standards statute, or the Wage Rate Requirements [Construction] statute, and are to be performed in whole or in part in the United States.)
- FAR 52.222-62 PAID SICK LEAVE UNDER EXECUTIVE ORDER 13706 (JAN 2017) (This clause applies to contracts that are subject to the Service Contract Labor Standards

statute, or the Wage Rate Requirements [Construction] statute, and are to be performed in whole or in part in the United States.)

- FAR 52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013) (applies if the subcontract is for services or construction)
- FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (ALTERNATE I) (JULY 1995) (This clause applies to contracts that will require the delivery of hazardous materials, as defined in FAR 23.301.) (in full text below)

FAR 52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (ALTERNATE I) (JUL 1995)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material <i>(If none, insert "None")</i>	Identification No.
None	

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsive and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to --

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

Alternate I (Jul 1995)

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

- FAR 52.223-5 POLLUTION PREVENTION AND RIGHT-TO- KNOW INFORMATION (MAY 2011) (ALTERNATE I) (MAY 2011) (This clause applies to all contracts that provide for performance, in whole or in part, on a Federal facility.)
- FAR 52.223-7 NOTICE OF RADIOACTIVE MATERIALS (JAN 1997) (All subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.)
- FAR 52.223-11 OZONE-DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (JUN 2016) (This clause applies to contracts for refrigeration equipment; air conditioning equipment; clean agent fire suppression systems/equipment; bulk refrigerants and fire suppressants; solvents, dusters, freezing compounds, mold release agents, and any other miscellaneous chemical specialty that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons; corrosion prevention compounds, foam sealants, aerosol mold release agents, and any other preservative or sealing compound that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons; fluorocarbon

lubricants; and any other manufactured end products that may contain or be manufactured with ozone-depleting substances.)

- FAR 52.223-12 MAINTENANCE, SERVICE, REPAIR, OR DISPOSAL OF REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (JUN 2016) (applies to all subcontracts that include the maintenance, service, repair, or disposal of—(i) Refrigeration equipment, such as refrigerators, chillers, or freezers; or (ii) Air conditioners, including air conditioning systems in motor vehicles.)
- FAR 52.223-13 ACQUISITION OF EPEAT® - REGISTERED IMAGING EQUIPMENT (JUN 2014) (Applies to subcontracts when imaging equipment will be—(i) Delivered; (ii) Acquired by the contractor for use in performing services at a Federally controlled facility; or (iii) Furnished by the contractor for use by the Government.)
- FAR 52.223-14 ACQUISITION OF EPEAT® -REGISTERED TELEVISIONS (JUN 2014) (applies to subcontracts when televisions will be—(i) Delivered; (ii) Acquired by the contractor for use in performing services at a Federally controlled facility; or (iii) Furnished by the contractor for use by the Government.)
- FAR 52.223-15 ENERGY EFFICIENCY IN ENERGY – CONSUMING PRODUCTS (DEC 2007) (applies to subcontracts when energy-consuming products listed in the ENERGY STAR® Program or FEMP will be—(i) Delivered; (ii) Acquired by the contractor for use in performing services at a Federally-controlled facility; (iii) Furnished by the contractor for use by the Government; or (iv) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)
- FAR 52.223-16 ACQUISITION OF EPEAT(R)-REGISTERED PERSONAL COMPUTER PRODUCTS (OCT 2015) (applies when personal computers will be—(i) Delivered; (ii) Acquired by the contractor for use in performing services at a Federally controlled facility; or (iii) Furnished by the contractor for use by the Government.)
- FAR 52.223-17 AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (AUG 2018) (applies when the subcontract performance involves use of EPA-designated items)
- FAR 52.223-20 AEROSOLS (JUN 2016) (applies to subcontracts involving (i) products that may contain high global warming potential hydrofluorocarbons as a propellant, or as a solvent; or (ii) that involve maintenance or repair of electronic or mechanical devices.)
- FAR 52.223-21 FOAMS (JUN 2016) (applies to subcontracts involving (i) Products that may contain high global warming potential hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons as a foam blowing agent, such as building foam insulation or appliance foam insulation; or (ii) Construction of buildings or facilities)
- FAR 52.224-1 PRIVACY ACT NOTIFICATION (APR 1984) (This clause applies to contracts for the design, development, or operation of a system of records on individuals is required to accomplish an agency function.)
- FAR 52.224-2 PRIVACY ACT (APR 1984) (This clause applies to contracts for the design, development, or operation of a system of records on individuals is required to accomplish an agency function.)
- FAR 52.224-3 PRIVACY TRAINING (JAN 2017) (This clause applies to contracts under which SUPPLIER employees will [1] have access to a system of records; [2] Create, collect,

use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or [3] Design, develop, maintain, or operate a system of records.)

- FAR 52.225-1 BUY AMERICAN – SUPPLIES (MAY 2014) (Applicable if the subcontract indicates the Buy American Act applies).
- FAR 52.227-10 FILING OF PATENT APPLICATIONS – CLASSIFIED SUBJECT MATTER (DEC 2007) (This clause applies to contracts that cover or are likely to cover classified subject matter.)
- FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984) (This clause applies to contracts for services to be performed on Government installations, unless a construction contract is contemplated.)
- FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991) (This clause applies when: [1] the services under the contract are considered vital to the Government and must be continued without interruption; [2] upon contract expiration, a successor, either the Government or another contractor, may continue them; and [3] the Government anticipates difficulties during the transition from one contractor to another or to the Government.)
- FAR 52.245-1 GOVERNMENT PROPERTY (JAN 2017) (This clause applies to all cost-reimbursement and time-and-material type contracts; fixed-price contracts when the Government will provide Government property; and contracts or modifications awarded under FAR Part 12 procedures where Government property that exceeds the simplified acquisition threshold, as defined in FAR 2.101, is furnished or where the contractor is directed to acquire property for use under the contract that is titled in the Government.)
- FAR 52.246-26 REPORTING NONCONFORMING ITEMS (DEC 2019) (applicable in subcontracts that are for—(i) Items subject to higher-level quality standards in accordance with the clause at FAR 52.246–11, Higher–Level Contract Quality Requirement; (ii) Items determined by the prime contractor to be critical items for which use of the clause is appropriate)
- FAR 52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS (JUN 2003) (This clause applies whenever it is possible that U.S. Government-financed international air transportation of personnel [and their personal effects] or property will occur in the performance of the contract. This clause does not apply to contracts awarded using the simplified acquisition procedures in Part 13 or contracts for commercial items.)
- FAR 52.247-64 PREFERENCE FOR PRIVATELY-OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006) (This clause applies to contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.)
- FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991) (applicable to subcontracts where the use, service, and maintenance of fleet management system vehicles is implicated to ensure compliance with 41 CFR 101-39 and 41 CFR 101-38.301-1).

F. DEPARTMENT OF ENERGY ACQUISITION REGULATIONS SUPPLEMENT (DEAR)
FLOWDOWNS

- (1) CLAUSES INCORPORATED BY REFERENCE

a. The following DEAR clauses apply to this Subcontract:

- DEAR 952.202-1 DEFINITIONS (FEB 2011)
- DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)
- DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)
- DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2010)
- DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)
- DEAR 970.5225-1 COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)
- DEAR 970.5226-1 DIVERSITY PLAN (DEC 2000)
- DEAR 970.5226-3 COMMUNITY COMMITMENT (DEC 2000)
- DEAR 970.5227-6 PATENT INDEMNITY – SUBCONTRACTS (DEC 2000) (in full text below with modification for party identifiers)

Patent Indemnity—Subcontracts (DEC 2000)

Subcontractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) for any contract work subcontracted in accordance with FAR 48 CFR 52.227–3.

- DEAR 970.5227-8 REFUND OF ROYALTIES (AUG 2002)
- DEAR 970.5229-1 STATE AND LOCAL TAXES (DEC 2000)

b. The following DEAR clauses apply to this Subcontract if it is a first-tier subcontract and if the value of this Subcontract exceeds the simplified acquisition threshold (as defined in FAR 2.101):

- DEAR 952.223-78 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010) (applicable to subcontracts that support operation of the DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services.)
- DEAR 970.5223-7 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010) (ALTERNATE I Applies to construction work and to subcontracts that support operation of the DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services.)

c. The following DEAR clauses apply to this Subcontract, if the value of this Subcontract exceeds the simplified acquisition threshold (as defined in FAR 2.101):

- DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALTERNATE I (AUG 2009) (applies when subcontract performance will involve advisory and assistance services, as defined in FAR 2.101.) (in full text below)

DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009) ALTERNATE I (AUG 2009)

(a) Purpose. The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of contractor's work product.

(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of six (6) months after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not—

(A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) Disclosure after award.

(1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

(f) Subcontracts.

(1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR part 13 and involving the performance of advisory and assistance services as that term is defined at 48 CFR 2.101. The terms "contract," "Contractor," and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure

required by 48 CFR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

- DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002) (DEVIATION) (in full text below)

DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002) (DEVIATION)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.

(c)

(1) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts expected to exceed the simplified acquisition threshold at any tier for supplies or services, including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services.

(2) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities expected to exceed the simplified acquisition threshold.

(3) Omissions of an authorization and consent clause from any subcontract, including those valued less than the simplified acquisition threshold does not affect this authorization and consent.

- DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000) (DEVIATION) (in full text below)

DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000) (DEVIATION)

(a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed the simplified acquisition threshold.

d. The following DEAR clauses apply to this Subcontract as indicated:

- DEAR 952.204-2 SECURITY (AUG 2016) (applicable to all subcontracts that will require subcontractor employees to possess access authorizations)
- DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997) (applicable to all subcontracts that require or may require access to classified information.)
- DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011) (applicable to all subcontracts that may involve making unclassified information about nuclear technology available to sensitive foreign nations.)
- DEAR 952.204-77 COMPUTER SECURITY (AUG 2006) (applicable to all subcontracts that may provide access to computers owned, leased or operated on behalf of the DOE.)
- DEAR 952.211-71 PRIORITIES AND ALLOCATIONS (ATOMIC ENERGY) (APR 2008) (applies if the subcontract is rated under DPAS)
- DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (MAR 2011) (applicable when any subcontract under which an interest in real property will be acquired and costs will be reimbursed by the government.)
- DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984) (Applies to subcontracts if occupational radiation exposure records will be generated in the performance of work under the subcontract to ensure records can be maintained in accordance with regulations by applicable by this clause.)
- DEAR 952.235-71 RESEARCH MISCONDUCT (JUL 2005) (Applicable to all subcontracts that involve research)
- DEAR 952.247-70 FOREIGN TRAVEL (JUN 2010) (Applicable to all subcontracts that may involve foreign travel)
- DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (AUG 2016) (applies when subcontract performance may involve the risk of public liability as defined in Atomic Energy Act that (i) arises out of or in connection with the activities under the contract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.)
- DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) (DEVIATION) (applies to all subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 952.223–72, or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.). (in full text below)

DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014) (DEVIATION)

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 Code of Federal Regulations (CFR), Chapter XII, --Subchapter B, "Records Management." The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 "Privacy Act."

(b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health related records and similar files), and non-employee patient medical/health-related records, except those records described by the contract as being operated and maintained by the Contractor in Privacy Act system of records.

(2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

(3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause of this contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Contract completion or termination. Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the

Government or its designee, the contractor shall retain future rights to access and copy such records as needed.

(d) Inspection, copying, and audit of records. All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.

(f) Records maintenance and retention. Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 Code of Federal Regulations (CFR) Chapter XII, -- Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

(g) Subcontracts.

(1) The contractor shall include the requirements of this clause in all subcontracts that contain the Radiation Protection and Nuclear Criticality clause at 952.223-72, or whenever an on-site subcontract scope of work (i) could result in potential exposure to: A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851. In determining its flow-down responsibilities, the Contractor shall include the requirements of this clause in all on-site subcontracts where the scope of work is performed in: (A) Radiological Areas and/or Radioactive Materials Areas (as defined at 10 CFR 835.2); (B) areas where beryllium concentrations exceed or can reasonably be expected to exceed action levels specified in 10 CFR 850; (C) an Asbestos Regulated area (as defined at 29 CFR 1926.1101 or 29 CFR 1910.1001); or (D) a workplace where hazard prevention and abatement processes are implemented in compliance with 10 CFR 851.21 to specifically control potential exposure to toxic chemicals or substances or other hazardous materials that can cause long term health impacts.

(2) The Contractor may elect to take on the obligations of the provisions of this clause in lieu of the subcontractor and maintain records that would otherwise be maintained by the subcontractor.

- DEAR 970.5208-1 PRINTING (DEC 2000) (Applies to all subcontracts that require printing)
- DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS - MANAGEMENT AND OPERATING CONTRACTS (DEC 2000) (applies in all subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.)

- DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000) (applies to all subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility and such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause.) (see Special Terms and Conditions for Commercial Purchases when this applies).
- DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010) (Applies to all subcontracts subject to the provisions of 10 CFR part 707)
- DEAR 970-5227-1, RIGHTS IN DATA - FACILITIES (use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy)
- DEAR 970.5227-2 RIGHTS IN DATA - TECHNOLOGY TRANSFER (DEC 2000) (DEVIATION) (Applies all subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of FAR Part 27.) (in full text below)

DEAR 970.5227-2 RIGHTS IN DATA – TECHNOLOGY TRANSFER (DEC 2000) (DEVIATION)

(a) Definitions.

Assistant General Counsel for Technology Transfer and Intellectual Property is the senior intellectual property counsel for the Department of Energy, as distinguished from the NNSA Patent Counsel, and, where used in this clause, indicates that the authority for the activity(ies) being described belongs to DOE.

Computer databases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer databases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term “data” does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.

Department of Energy (DOE), as used in this clause, includes the National Nuclear Security Administration (NNSA), unless otherwise identified or indicated.

Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government’s rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of paragraph (h) of this clause.

Open source software, as used in this clause, means computer software that is distributed under a license in which the user is granted the right to use, copy, modify, prepare derivative works and distribute, in source code or other format, the software, in original or modified form and derivative works thereof, without having to make royalty payments.

Patent Counsel means the DOE or NNSA Patent Counsel assisting the contracting activity.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (i) of this clause.

Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer database.

Unlimited rights, as used in this clause, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have:

(i) Ownership of all technical data and computer software first produced in the performance of this Contract;

(ii) Unlimited rights in technical data and computer software first produced or specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, and except for data subject to the withholding provisions for protected Cooperative Research and Development Agreement (CRADA) information in accordance with Technology Transfer actions under this Contract, or other data specifically protected by statute for a period of time or, where approved by Patent Counsel, appropriate instances of the DOE Strategic Partnership Projects (SPP) Program;

(iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;

(iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (h) of this clause ("Rights in Limited Rights Data") or paragraph (i) of this clause ("Rights in Restricted Computer Software"). When delivering all contractor produced computer software to the DOE Office of Scientific and Technical Information (OSTI), the Contractor shall submit a complete package as prescribed in paragraph (e)(3) of this clause; and

(v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

(i) The right to withhold limited rights data and restricted computer software unless otherwise provided in provisions of this clause;

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data; and

(iii) The right to assert copyright subsisting in scientific and technical works, and works produced by Contractor under DEAR 952.204-75, as provided in paragraph (d) of this clause, and the right to request permission to assert copyright subsisting in works other than scientific and technical works as provided in paragraph (e) of this clause.

(3) The Contractor agrees that for limited rights data or restricted computer software or other technical business or financial data in the form of recorded information which it receives from, or is given access to by DOE or a third party, including a DOE contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(4) In the performance of DOE contracted obligations, the Contractor is required to manage scientific and technical information (STI) produced under the contract as a direct and integral part of the work and ensure its broad availability to all customer segments by making STI available to DOE's central STI coordinating office (OSTI) per DOE O 241.1B or its successor version.

(c) Copyright (General).

(1) The Contractor agrees not to mark, register, or otherwise assert copyright in any data in a published or unpublished work, other than as set forth in paragraphs (d), (e) or (f) of this clause.

(2) Except for material to which the Contractor has obtained the right to assert copyright in accordance with either paragraph paragraphs (d), (e) or (f) of this clause, the Contractor agrees not to include in the data delivered under this Contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (d) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the data prior to its delivery.

(3) If the Contractor has not been granted permission to assert copyright in data or computer software first produced under the contract where such permission is necessary and if the Government desires to obtain copyright in such data or computer software, the Contracting Officer may direct the Contractor to establish claim to copyright in such data or computer software and to assign such copyright to the Government or its designated assignee.

(d) Copyrighted works (scientific and technical works).

(1) The Contractor shall have the right to assert, without prior approval of the contracting officer, copyright subsisting in scientific and technical works composed under this contract or based on or containing data first produced by the Contractor in the performance of this Contract, and published in academic, technical or professional journals, symposia, proceedings, contributions to chapters of book compilations or similar means of dissemination to make broadly available to the public or scientific community for the purpose of scientific research, knowledge and education. Such scientific and technical works may be recorded or fixed in any medium including but not limited to print, online, web, audio, video or other medium, and released or disseminated through any communication or distribution channel including but not limited to articles, reports, books, non-architectural drawings, repositories, videos, websites, workshops, or social media.

When assertion of copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) on the data when such data are delivered to the Government as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) For each scientific or technical work first produced or composed under this Contract and submitted for publication or similar means of dissemination, the contractor shall provide notice to the publisher of the Government's license in the copyright that is substantially similar to or otherwise references one of the notices below:

A suitable notice (long version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright follows;

Notice: This work was produced by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. The United States Government retains and the publisher, by accepting the work for publication, acknowledges that the United States Government retains a non-exclusive, paid-up, irrevocable, world-wide license to publish or reproduce the submitted manuscript version of this work, or allow others to do so, for United States Government purposes. The Department of Energy will provide public access to these results of federally sponsored research in accordance with the DOE Public Access Plan (<http://energy.gov/downloads/doe-public-access-plan>).

(End of Notice)

A suitable notice (short version) reflecting the Government's non-exclusive, paid-up, irrevocable, world-wide license in the copyright follows:

Notice: This work was produced by [insert the name of the Contractor] under Contract No. [insert the contract number] with the U.S. Department of Energy. Publisher acknowledges the U.S. Government license to provide public access under the DOE Public Access Plan (<http://energy.gov/downloads/doe-public-access-plan>).

(End of Notice)

(3) The title to the copyright of the original of unclassified graduate theses and the original of related unclassified scientific papers shall vest in the author thereof, subject to the right of DOE to retain duplicates of such documents and to use such documents for any purpose whatsoever without any claim on the part of the author or the contractor for additional compensation.

(e) Copyrighted works (other than scientific and technical works and data produced under a CRADA). The Contractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Contractor in performance of this Contract, when the Contractor needs to control

distribution to advance the goals of the technology transfer mission and where the Contractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

(1) Contractor Request to Assert Copyright.

(i) Except for scientific and technical works under (d) above and data produced under a CRADA, the Contractor shall submit in writing to Patent Counsel its request to assert copyright in data first produced in the performance of this Contract pursuant to this clause. The right of the Contractor to copyright data first produced under a CRADA is as described in the individual CRADA. Each request by the Contractor must include:

(A) The identity of the data (including any computer software) for which the Contractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes,

(B) The funding program under which it was funded,

(C) Whether, to the best knowledge of the Contractor, the data is subject to an international treaty or agreement,

(D) Whether the data is subject to export control,

(E) A statement that the Contractor plans to commercialize the data in compliance with the clause of this contract entitled, "Technology Transfer Mission," within five (5) years after obtaining permission to assert copyright or, on a case-by-case basis, a specified longer period where the Contractor can demonstrate that the ability to commercialize effectively is dependent upon such longer period, and

(F) For data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization and is consistent with DOE's dissemination responsibilities.

(ii) For data that is developed using other funding sources in addition to DOE funding, the permission to assert copyright in accordance with this clause must also be obtained by the Contractor from all other funding sources prior to the Contractor's request to Patent Counsel. The request shall include the Contractor's certification or other documentation acceptable to Patent Counsel demonstrating such permission has been obtained.

(iii) Permission for the Contractor to assert copyright in excepted categories of data as determined exclusively by DOE will be expressly withheld. Such excepted categories include data whose release (A) would be detrimental to national security, i.e., classified by statute or executive order or controlled under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear-related national security purposes, (B) would not enhance the appropriate transfer or dissemination and commercialization of such data, (C) would have a negative impact on U.S. industrial competitiveness; (D) would prevent DOE from meeting its obligations under treaties and international agreements, or (E) would be detrimental to one or more of DOE's programs.

(iv) The Contractor will obtain the advanced written permission of the Patent Counsel to assert copyright where data are determined to be in the following excepted categories: (a) under export control restrictions, (b) developed with Naval Reactors' funding, and (c) subject to disposition of data rights under treaties and international agreements. Additional excepted categories may be added by the Assistant General Counsel for Technology Transfer and Intellectual Property. Where data are determined to be under export control restriction, the Contractor may obtain permission to assert copyright subject to the provisions of this clause for purposes of limited commercialization

in a manner that complies with export control statutes and applicable regulations. In addition, notwithstanding any other provision of this Contract, all data developed with Naval Reactors' funding and those data that are classified fall within excepted categories. The rights of the Contractor in data are subject to the disposition of data rights in the treaties and international agreements identified at DOE's Office of International Affairs (International Commitments—IEC) (<http://energy.gov/ia/iec-documents>).

(2) Patent Counsel Review and Response to Contractor's Request. The Patent Counsel shall use its best efforts to respond in writing within 60 days of receipt of a complete request by the Contractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Contractor to assert copyright or advise the Contractor that DOE needs additional time to respond, and the reasons therefor. If Patent Counsel grants permission for the Contractor to assert copyright in computer software, the permission automatically extends to subsequent minor versions (e.g., minor revisions, patches and bug fixes) having the same funding source, same name and substantially same functionality as the original computer software, and may be extended to subsequent major versions representing significant modifications of the program with the approval of Patent Counsel.

(3) Permission for Contractor to Assert Copyright.

(i) For computer software, the Contractor shall furnish, or make available, to OSTI in accordance with OSTI guidelines at the time permission to assert copyright is given under paragraph (e)(2) of this clause:

(A) announcement information/metadata contained in the Software Announcement Notice 241,

(B) the source code and executable file for each software program, and

(C) documentation, if any, which may consist of a user manual, sample test cases, or similar information, needed by a technically competent user to understand and use the software (whether included on the software media itself or provided in a separate file or in paper format)

(ii) The Contractor acknowledges that the DOE designated software distribution and control point may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

(iii) Unless otherwise directed by the Patent Counsel, for data other than computer software to which the Contractor has received permission to assert copyright under paragraph (e)(2) of this clause above, the Contractor shall within sixty (60) days of obtaining such permission furnish, or make available, to OSTI in accordance with OSTI guidelines, a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Contractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

(iv) Once the Contractor is given permission to assert copyright in data, the Contractor may begin to commercialize the copyrighted data by making copyrighted data available for licensing to third parties and by offering other types of distribution to third parties. During the period in which commercialization activities pertaining to the copyrighted data are continuing, or for a specified period of time prescribed by Patent Counsel in paragraph (e)(2) above, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works and perform publicly and display publicly, by or on behalf of the Government. For all previously approved and current copyrighted data that the Contractor is actively commercializing, the Contractor may continue to commercialize in accordance with this paragraph.

(v) When the Contractor abandons commercialization activities pertaining to the copyrighted data or at the end of the specified periods as prescribed by Patent Counsel in paragraph (e)(2) above, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(vi) If at any time the Contractor abandons commercialization activities for copyrighted data, it shall notify OSTI and Patent Counsel, and upon request assign the copyright to the Government, so that the Government can distribute the data to the public. When the Contractor abandons commercialization activities, the Contractor will provide to OSTI the latest version of the copyrighted data (for example, source code, object code, minimal support documentation, drawings or updated manuals). In addition, the Contractor will provide annually to Patent Counsel, if requested, a list of all copyrighted data that the Contractor has abandoned commercial licensing activity during that year.

(vii) Whenever the Contractor asserts copyright in data pursuant to this paragraph (e), the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (e)(3)(iv) and (v) of this clause. Such action shall be taken when the data are delivered to the Government, licensed or deposited for registration as a published work in the U.S. Copyright Office, or when submitted for publication. The acknowledgment of Government sponsorship and license rights shall be substantially similar to the following:

Notice: These data were produced by (insert name of Contractor) under Contract No. _____ with the Department of Energy. During the period of commercialization or such other time period specified by DOE, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government. Subsequent to that period, the Government is granted for itself and others acting on its behalf a nonexclusive, paid-up, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. The specific term of the license can be identified by inquiry made to Contractor or DOE. NEITHER THE UNITED STATES NOR THE UNITED STATES DEPARTMENT OF ENERGY, NOR ANY OF THEIR EMPLOYEES, MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LEGAL LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, COMPLETENESS, OR USEFULNESS OF ANY DATA, APPARATUS, PRODUCT, OR PROCESS DISCLOSED, OR REPRESENTS THAT ITS USE WOULD NOT INFRINGE PRIVATELY OWNED RIGHTS.

(End of notice)

(viii) With respect to any data to which the Contractor has received permission to assert copyright, the DOE has the right, during the period that Contractor is commercializing the software as provided for in paragraph (e)(3)(iv) of this clause, to request the Contractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Contractor refuses such request, to grant such license itself, if the DOE determines that the Contractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(i) of this clause. Before licensing under this subparagraph (viii), DOE shall furnish the Contractor a written request for the Contractor to grant the stated license, and the Contractor shall be allowed thirty (30) days (or such longer period as may be authorized by the contracting officer for good cause shown in writing by the Contractor) after such notice to show cause why the license should not be granted. The Contractor shall have the right to appeal the

decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65—"Appeals."

(ix) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit of the Contractor and/or a licensee which exceeds DOE Program needs, except as expressly provided in writing by the contracting officer. The Contractor may use its net royalty income to effect such maintenance costs.

(4) The following notice may be included in computer software prior to any publication or release and prior to the Contractor's obtaining permission from the Department of Energy to assert copyright in the computer software pursuant to paragraph (c)(3) of this section.

Notice: This computer software was prepared by [insert the Contractor's name and the individual author], hereinafter the Contractor, under Contract [insert the Contract Number] with the Department of Energy (DOE). All rights in the computer software are reserved by DOE on behalf of the United States Government and the Contractor as provided in the Contract. You are authorized to use this computer software for Governmental purposes but it is not to be released or distributed to the public. NEITHER THE GOVERNMENT NOR THE CONTRACTOR MAKES ANY WARRANTY, EXPRESS OR IMPLIED, OR ASSUMES ANY LIABILITY FOR THE USE OF THIS SOFTWARE. This notice including this sentence must appear on any copies of this computer software.

(End of notice)

(5) A similar notice can be used for data, other than computer software, prior to any publication or release and prior to Contractor's obtaining permission of DOE Patent Counsel to assert copyright.

(f) Open software source. The Contractor may release computer software first produced by the Contractor in the performance of this contract under an open source software license. Such software shall hereinafter be referred to as open source software or OSS, subject to the following:

(1) DOE Program notice for copyright assertion for OSS.

(i) The Contractor shall provide written notice to each DOE Program(s) that have provided a substantial portion of the funding (funding source(s)) to develop the software that the Contractor intends to release as OSS unless the funding Program(s) have previously provided blanket approval for all software developed with funding from that Program or a specific DOE project stipulates the software to be released as OSS. Unless Program has objected to the assertion of copyright within ten working days of such written notice, the Contractor may assert copyright in the software. If notification to funding DOE Program(s) is not practicable, the Contractor shall consult with Patent Counsel, which may provide approval. For software developed under a CRADA, User Facility Agreement, or SPP Agreement, authorization from the CRADA Participant(s) or User Facility User(s), or SPP Sponsor(s), as applicable, shall be additionally obtained for OSS release unless such Agreement has a provision providing for copyright.

(ii) If the software is developed with funding from a federal government agency or agencies (funding source(s)) other than DOE, then authorization from all the funding agency(ies) shall be obtained for OSS release, if practicable. Such federal government agency(ies) may provide blanket approval for all software developed with funding from that agency(ies). However, OSS release of any one of such software shall be subject to approval by all other funding sources for the software, if any. If approval from such federal government agency(ies) is not practicable, the Patent Counsel may provide approval instead.

(2) Assert copyright in the OSS. Once the Contractor has met the Program and sponsor approval requirements set forth in paragraph (f)(1) of this clause, copyright in the software to be distributed as OSS

may be asserted by the Contractor, or, for OSS developed under a CRADA, User Facility Agreement, or SPP Agreement, copyright in the software to be distributed as OSS may be asserted either by the Contractor, CRADA Participant, User Facility User, or SPP Sponsor, as applicable, whereby such assertion precludes marking such OSS as protectable from public distribution.

(3) Submit Software Announcement Notice 241.4 to OSTI. The Contractor must submit the Software Announcement Notice (AN) 241.4 (or the current notice as may be required by DOE) to DOE's OSTI, which may require the unique URL (i.e., a persistent identifier) from which the software can be obtained so that OSTI can announce the availability of the OSS and the public has access via the URL.

(4) Maintain OSS record. The Contractor must maintain adequate records of all software distributed as OSS. Upon request of the Patent Counsel, the Contractor shall provide the necessary information regarding any or all OSS.

(5) Provide public access to the OSS. The Contractor shall ensure that the OSS is publicly accessible as open source via the Contractor's website, DOE, software repositories or other industry methods.

(6) Select an OSS license. Each OSS will be distributed pursuant to an OSS license. The Contractor may choose among industry standard OSS licenses or create its own set of Contractor standard licenses. To assist the Contractor, the Assistant General Counsel for Technology Transfer and Intellectual Property, may periodically issue guidance on OSS licenses. Each Contractor-created OSS license, must contain, at a minimum, the following provisions:

(i) An industry standard disclaimer for licensees' and third parties' use of the software; and

(ii) A grant of permission for licensee to distribute OSS containing the licensee's derivative works. This provision may allow the licensee and third parties to commercialize their derivative works or might request that the licensee's derivative works be forwarded to the Contractor for incorporation into future OSS versions.

(7) Collection of administrative costs is permissible. However, the Contractor may not collect a royalty or other fee in excess of a good faith amount for cost recovery from any licensee for the Contractor's OSS.

(8) Relationship to other required clauses in the contract. OSS distributed in accordance with this section shall not be subject to the requirements relating to indemnification of the Contractor or Federal Government, U.S. Competitiveness and U.S. Preference, as set forth in paragraphs (f) and (g) of the clause within this contract entitled Technology Transfer Mission (48 CFR 970.5227-3). The requirement for the Contractor to request permission to assert copyright for the purpose of engaging in licensing software for royalties, as set forth elsewhere in this clause, is not modified by this section.

(9) Government license. For all OSS, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in data copyrighted to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(10) Contractor abandons OSS. If the Contractor ceases to make OSS publicly available, then the Contractor shall submit to OSTI the object code and source code of the latest version of the OSS developed by the Contractor in addition to a revised Announcement Notice 241.4 (which includes an abstract) and the Contractor shall direct any inquiries from third parties seeking to obtain the original OSS to OSTI.

(g) Subcontracting.

(1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that

contain a requirement for production or delivery of data in accordance with the DOE policy and procedures by using "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Other modifications (e.g., Alternates II through IV of that clause or using "Special Works" at 48 CFR 52.227-17) may be made with the approval of the Patent Counsel. The Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of the Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with 48 CFR 927.409(h). In subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE, the Contractor shall instead use the "Rights in Data-Facilities" clause at 48 CFR 970.5227-1.

(2) It is the responsibility of the Contractor to obtain from its subcontractors, technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

- (i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
- (ii) Not proceed with the subcontract without the written authorization of the contracting officer.

(3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data and restricted computer software for their private use.

(h) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth below. All such limited rights data shall be marked with the following "Limited Rights Notice:"

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. _____ with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government

may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(i) Rights in restricted computer software.

(1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract; provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice:"

Restricted Rights Notice - Long Form

(a) This computer software is submitted with restricted rights under Department of Energy Contract No. _____. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice. (b) This computer software may be: (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred; (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced; (3) Reproduced for safekeeping (archives) or backup purposes; (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights. (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above. (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice - Short Form Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. ____ with (name of Contractor).

(End of notice)

(3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, e.g., a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.

(4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure

prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice “Unpublished-rights reserved under the Copyright Laws of the United States.”

(j) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

- DEAR 970.5227-10 PATENT RIGHTS – MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (AUG 2002) (ALTERNATES I AND II) (DEVIATION) (This clause will only be included in the contract if the awardee is a nonprofit organization or small business contractor.) (in full text below)

DEAR 970.5227-10 PATENT RIGHTS – MANAGEMENT AND OPERATING CONTRACTS, NONPROFIT ORGANIZATION OR SMALL BUSINESS FIRM CONTRACTOR (AUG 2002) ALTERNATES I AND II (DEVIATION)

(a) Definitions.

(1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.

(2) Exceptional circumstance subject invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii) and in accordance with 37 CFR Part 401.3(e).

(3) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(6) Patent Counsel means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.

(7) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) Small business firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, are used.

(9) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, (7 U.S.C. 2401(d))) shall also occur during the period of contract performance.

(10) Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) Allocation of Principal Rights.

(1) Retention of title by the Contractor. Except for exceptional circumstance subject inventions, the contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at DOE's Office of International Affairs (International Commitments--IEC) (<http://energy.gov/ia/iec-documents>), or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions.

(3) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor in a determination of exceptional circumstances or granted to a contractor through a determination of greater rights in accordance with subparagraph (b)(4) of this clause, the Contractor does not have a right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:

(A) Uranium enrichment technology;

(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified by statute or executive order or controlled under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) Inventions made under any agreement, contract or subcontract related to the following are exceptional circumstance subject inventions:

(A) DOE Steel Initiative and Metals Initiative;

(B) U.S. Advanced Battery Consortium; and

(C) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI); and,

(D) Solid State Energy Conversion Alliance (SECA) if Contractor is a participant in the "Core Technology Program."

(iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, tasks, or other classifications for the purpose of determining DOE exceptional circumstance subject inventions.

(4) Contractor request for greater rights in exceptional circumstance subject inventions. The Contractor may request rights greater than allowed by the exceptional circumstance determination in an exceptional circumstance subject invention by submitting such a request in writing to Patent Counsel at the time the exceptional circumstance subject invention is disclosed to DOE or within eight (8) months after conception or first actual reduction to practice of the exceptional circumstance subject invention, whichever occurs first, unless a longer period is authorized in writing by the Patent Counsel for good cause shown in writing by the Contractor. DOE may, in its discretion, grant or refuse to grant such a request by the Contractor.

(5) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in an exceptional circumstance subject invention, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may, in its discretion, grant or refuse to grant such a request by the Contractor employee-inventor.

(6) Government assignment of rights in Government employees' subject inventions. If a Government employee is a joint inventor of a subject invention or of an exceptional circumstance subject invention to which the Contractor has rights, the Government may assign or refuse to assign to the Contractor any rights in the subject invention or exceptional circumstance subject invention acquired by the Government from the Government employee, in accordance with 48 CFR 27.304-1(d). The rights assigned to the Contractor are subject to any provision of this clause that is applicable to subject inventions in which the Contractor retains title, including reservation by the Government of a nonexclusive, nontransferable, irrevocable, paid-up license, except that the Contractor shall file its initial patent application claiming the subject invention or exceptional circumstance invention within one (1) year after the assignment of such rights. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the Government employee.

(7) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have the right to retain title to any weapons related subject inventions.

(c) Subject invention disclosure, election of title and filing of patent application by contractor.

(1) Subject invention disclosure. The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s) and all sources of funding by B&R code for the invention. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted or made available for publication at the time of disclosure. The disclosure shall identify if the invention falls within an exceptional circumstance field. DOE will make a determination and advise the Contractor within 30 days of receipt of an invention disclosure as to whether the invention is an exceptional circumstance

subject invention. In addition, after disclosure to the Patent Counsel, the Contractor will notify the agency of any accepted manuscript describing the invention for publication or on sale or public use planned by the contractor that is 60 days prior to the end of the statutory period. The Contractor shall notify Patent Counsel prior to any release or publication of information concerning any non-electable subject invention such as an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(2) Election by the Contractor. Except as provided in paragraph (b)(2) of this clause, the Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) Filing of patent applications by the Contractor. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, or prior to the end of any 1-year statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Contractor's reporting under this subparagraph. Reporting of Subject Invention disclosures, election of title, filing of patent applications and associated activities under subparagraphs (c)(1), (2) and (3) is reported to the agency and Patent Counsel using the NIH's Edison portal unless the Contractor receives a waiver from Patent Counsel.

(5) Contractor's request for an extension of time. Requests for an extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2) and (3) may, at the discretion of Patent Counsel, be granted.

(6) Publication review. During the course of the work under this contract, the Contractor may desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. Contractor's Invention Identification Procedures under paragraph (f)(5) should address timely disclosure of inventions, consider whether review is required, and if so, facilitate such review by Contractor personnel responsible for patent matters prior to disclosure of publications in order that public disclosure of such information will not adversely affect the patent interest of DOE or the Contractor.

(d) Conditions when the Government may obtain title. The Contractor will convey to the DOE, upon written request, title to any subject invention.

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within sixty (60) days after learning of the failure of the Contractor to disclose or to elect within the specified times.

(2) In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in subparagraph (c) above, but prior to its receipt of the written request of the DOE, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(4) If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention to which the Contractor had initially retained title or rights, or in an exceptional circumstance subject invention to which the Contractor was granted greater rights, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(e) Minimum rights of the Contractor and protection of the Contractor's right to file.

(1) Request for a Contractor license. The Contractor may request the right to reserve a revocable, nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. DOE may grant or refuse to grant such a request by the Contractor. When DOE approves such reservation, the Contractor's license will normally extend to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE, except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) Revocation or modification of a Contractor license. The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and DOE licensing regulations at 10 CFR Part 781. This license will not be revoked in the field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application of the subject invention in that foreign country.

(3) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations at 10 CFR part 781 concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor action to protect the Government's interest.

(1) Execution of delivery of title or license instruments. The Contractor agrees to execute or have executed, and promptly deliver to the Patent Counsel all instruments necessary to accomplish the following actions:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) Convey title to DOE when requested under subparagraphs (b) or paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to

Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) Notification of discontinuation of patent protection. The contractor will notify the Patent Counsel of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) Notification of Government rights. The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(5) Invention identification procedures. The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed and shall submit a written description of such procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

(6) Invention filing documentation. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel, upon request, the following information and documents:

- (i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
- (ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
- (iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to the confidentiality provision at 35 U.S.C. 205 and 37 CFR Part 40.

(g) Subcontracts.

(1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.

(2) Inclusion of patent rights clause - non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph

(b)(2) of this clause. The subcontractor retains all rights provided for the contractor in the patent rights clause at 48 CFR 952.227- 11.

(3) Inclusion of patent rights clause - subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work. For subcontracts subject to exceptional circumstances, the contractor must consult with DOE patent counsel with respect to the appropriate patent clause.

(4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(5) Subcontractor refusal to accept terms of patent clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.

(6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

(7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention.

(h) Reporting on utilization of subject inventions.

The Contractor agrees to submit to DOE the annual data call for the Department of Commerce report that includes the number of patent applications filed, the number of patents issued, gross royalties received by the Contractor, licensing activity and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States Industry.

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights.

The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any DOE supplemental regulations to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that --

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations.

If the Contractor is a nonprofit organization, it agrees that -

(1) DOE approval of assignment of rights. Rights to a subject invention in the United States may not be assigned by the Contractor without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions of this clause as the Contractor.

(2) Small business firm licensees. It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(2).

(3) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(l) Communications.

The Contractor shall direct any notification, disclosure or request provided for in this clause to the iEdison invention portal or as otherwise directed by the Patent Counsel.

(m) Reports.

(1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period.

(2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to close-out of the contract, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period under which a subject invention was reported, or a statement that no such subject inventions under subcontracts were reported during the contract performance period.

(n) Examination of Records Relating to Subject Inventions.

(1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor compliance with any requirement of this clause.

(2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, including exceptional circumstance subject inventions, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(o) Facilities License.

In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or product manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(p) Atomic Energy.

(1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Patent agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (p)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(q) Patent Functions.

Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(r) Educational Awards Subject to 35 U.S.C. 212.

The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) which is subject to treaties or international agreements as set forth in paragraph (b)(3) of this clause or agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(s) Annual Appraisal by Patent Counsel.

Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(t) Classified Inventions

(1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

- DEAR 970.5227-12 PATENT RIGHTS—MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (DEC 2000) ALTERNATE I (Applies if either DEAR 952.227-11 or 952.227-11 is included in the subcontract.) (in full text below)

DEAR 970.5227-12 PATENT RIGHTS—MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, ADVANCE CLASS WAIVER (DEC 2000) ALTERNATE I

(a) Definitions.

(1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.

(2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.

(3) Exceptional Circumstance Subject Invention means any subject invention in a technical field or related to a task determined by the Department of Energy to be subject to an exceptional circumstance under 35 U.S.C. 202(a)(ii), and in accordance with 37 CFR 401.3(e).

(4) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(5) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(6) Patent Counsel means DOE Patent Counsel assisting the contracting activity.

(7) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(8) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(9) Weapons Related Subject Invention means any subject invention conceived or first actually reduced to practice in the course of or under work funded by or through defense programs, including Department of Defense and intelligence reimbursable work, or the Naval Nuclear Propulsion Program of the Department of Energy or the National Nuclear Security Administration.

(b) Allocation of Principal Rights—

(1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by the granting of an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.

(2) Advance class waiver of Government rights to the Contractor. DOE may grant to the Contractor an advance class waiver of Government rights in any or all subject inventions, at the time of execution of the contract, such that the Contractor may elect to retain the entire right, title and interest throughout the world to such waived subject inventions, in accordance with the terms and conditions of the advance class waiver. Unless otherwise provided by the terms of the advance class waiver, any rights in a subject invention retained by the Contractor under an advance class

waiver are subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(3) Government license. With respect to any subject invention to which the Contractor retains title, either under an advance class waiver pursuant to subparagraph (b)(2) or a determination of greater rights pursuant to subparagraph (b)(7) of this clause, the Government has a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(4) Foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(5) Exceptional circumstance subject inventions. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(7) of this clause, the Contractor does not have the right to retain title to any exceptional circumstance subject inventions and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any exceptional circumstance subject inventions.

(i) Inventions within or relating to the following fields of technology are exceptional circumstance subject inventions:

(A) Uranium enrichment technology;

(B) Storage and disposal of civilian high-level nuclear waste and spent fuel technology; and

(C) National security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).

(ii) Inventions made under any agreement, contract or subcontract related to the following initiatives or programs are exceptional circumstance subject inventions:

(A) DOE Steel Initiative and Metals Initiative;

(B) U.S. Advanced Battery Consortium; and

(C) Any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI).

(iii) DOE reserves the right to unilaterally amend this contract to modify, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of defining DOE exceptional circumstance subject inventions.

(6) Treaties and international agreements. Any rights acquired by the Contractor in subject inventions are subject to any disposition of right, title, or interest in or to subject inventions provided for in treaties or international agreements identified at Attachment J-6 entitled Treaties and International Agreements/Waived Inventions to this contract. DOE reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and to effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign

governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

(7) Contractor request for greater rights. The Contractor may request greater rights in an identified subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, in accordance with the DOE patent waiver regulations, by submitting such a request in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE pursuant to subparagraph (c)(1) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor under a determination of greater rights is subject to 35 U.S.C. 203 and the provisions of this clause, including the Government license provided for in subparagraph (b)(3) of this clause, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.

(8) Contractor employee-inventor rights. If the Contractor does not elect to retain title to a subject invention or does not request greater rights in a subject invention, including an exceptional circumstance subject invention, to which the Contractor does not have the right to elect to retain title, a Contractor employee-inventor, after consultation with the Contractor and with written authorization from the Contractor in accordance with 10 CFR 784.9(b)(4), may request greater rights, including title, in the subject invention or the exceptional circumstance invention from DOE, and DOE may grant or refuse to grant such a request by the Contractor employee-inventor.

(9) Government assignment of rights in Government employees' subject inventions. If a DOE employee is a joint inventor of a subject invention to which the Contractor has rights, DOE may assign or refuse to assign any rights in the subject invention acquired by the Government from the DOE employee to the Contractor, consistent with 48 CFR 27.304-1(d). Unless otherwise provided in the assignment, the rights assigned to the Contractor are subject to the Government license provided for in subparagraph (b)(3) of this clause, and to any provision of this clause applicable to subject inventions in which rights are retained by the Contractor, and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee. The Contractor shall share royalties collected for the manufacture, use or sale of the subject invention with the DOE employee.

(10) Weapons related subject inventions. Except to the extent that DOE is solely satisfied that the Contractor meets certain procedural requirements and DOE grants rights to the Contractor in weapons related subject inventions, the Contractor does not have a right to retain title to any weapons related subject inventions

(c) Subject invention disclosure, election of title, and filing of patent application by Contractor—

(1) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after an inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:

(i) The contract number under which the subject invention was made;

(ii) The inventor(s) of the subject invention;

(iii) A description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the

physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;

(iv) The date and identification of any publication, on sale or public use of the invention;

(v) The date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;

(vi) A statement indicating whether the subject invention is an exceptional circumstance subject invention, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;

(vii) All sources of funding by Budget and Resources (B&R) code; and

(viii) The identification of any agreement relating to the subject invention, including Cooperative Research and Development Agreements and Strategic Partnership Projects agreements.

Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

(2) Publication after disclosure. After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor. The Contractor shall obtain approval from Patent Counsel prior to any release or publication of information concerning an exceptional circumstance subject invention or any subject invention related to a treaty or international agreement.

(3) Election by the Contractor under an advance class waiver. If the Contractor has the right to elect to retain title to subject inventions under an advance class waiver granted in accordance with subparagraph (b)(2) of this clause, and unless otherwise provided for by the terms of the advance class waiver, the Contractor shall elect in writing whether or not to retain title to any subject invention by notifying DOE within two (2) years of the date of the disclosure of the subject invention to DOE, in accordance with subparagraph (c)(1) of this clause. The notification shall identify the advance class waiver, state the countries, including the United States, in which rights are retained, and certify that the subject invention is not an exceptional circumstance subject invention or subject to a treaty or international agreement. If a publication, on sale or public use of the subject invention has initiated the 1-year statutory period under 35 U.S.C. 102(b), the period for election may be shortened by DOE to a date that is no more than sixty (60) days prior to the end of the 1-year statutory period.

(4) Filing of patent applications by the Contractor under an advance class waiver. If the Contractor has the right to retain title to a subject invention in accordance with an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (b)(7) of this clause, and unless otherwise provided for by the terms of the advance class waiver or greater rights determination, the Contractor shall file an initial patent application claiming the subject invention to which it retains title either within one (1) year after the Contractor's election to retain or grant of title to the subject invention or prior to the end of any 1-year statutory period under 35 U.S.C. 102(b), whichever occurs first. Any patent applications filed by the Contractor in foreign countries or international patent offices shall be filed within either ten (10) months of the corresponding initial patent application or, if such filing has been prohibited by a Secrecy Order, within six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications.

(5) Submission of patent information and documents. If the Contractor files a domestic or foreign patent application claiming a subject invention, the Contractor shall promptly submit to Patent Counsel the following information and documents:

- (i) The filing date, serial number, title, and a copy of the patent application (including an English-language version if filed in a language other than English);
- (ii) An executed and approved instrument fully confirmatory of all Government rights in the subject invention; and
- (iii) The patent number, issue date, and a copy of any issued patent claiming the subject invention.

(6) Contractor's request for an extension of time. Requests for an extension of the time to disclose a subject invention, to elect to retain title to a subject invention, or to file a patent application under subparagraphs (c)(1), (3), and (4) of this clause may be granted at the discretion of Patent Counsel or DOE.

(7) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR part 40.

(d) Conditions when the Government may obtain title notwithstanding an advance class waiver—

(1) Return of title to a subject invention. If the Contractor requests that DOE acquire title or rights from the Contractor in a subject invention, including an exceptional circumstance subject invention, to which the Contractor retained title or rights under subparagraph (b)(2) or subparagraph (b)(7) of this clause, DOE may acquire such title or rights from the Contractor, or DOE may decide against acquiring such title or rights from the Contractor, at DOE's sole discretion.

(2) Failure to disclose or elect to retain title. Title vests in DOE and DOE may request, in writing, a formal assignment of title to a subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE, if the Contractor elects not to retain title to the subject invention under an advance class waiver, or the Contractor fails to disclose or fails to elect to retain title to the subject invention within the times specified in subparagraphs (c)(1) and (c)(3) of this clause.

(3) Failure to file domestic or foreign patent applications. In those countries in which the Contractor fails to file a patent application within the times specified in subparagraph (c)(4) of this clause, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE; provided, however, that if the Contractor has filed a patent application in any country after the times specified in subparagraph (c)(4) of this clause, but prior to its receipt of DOE's written request for title, the Contractor continues to retain title in that country.

(4) Discontinuation of patent protection by the Contractor. If the Contractor decides to discontinue the prosecution of a patent application, the payment of maintenance fees, or the defense of a subject invention in a reexamination or opposition proceeding, in any country, DOE may request, in writing, title to the subject invention from the Contractor, and the Contractor shall convey title to the subject invention to DOE.

(5) Termination of advance class waiver. DOE may request, in writing, title to any subject inventions from the Contractor, and the Contractor shall convey title to the subject inventions to DOE, if the

advance class waiver granted under subparagraph (b)(2) of this clause is terminated under paragraph (u) of this clause.

(e) Minimum rights of the Contractor—

(1) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c)(1) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.

(2) Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine that the Contractor's license is non-transferrable, on a case-by-case basis.

(3) Revocation or modification of a Contractor license. DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensees or its domestic subsidiaries or affiliates have achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.

(4) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with applicable regulations in 37 CFR part 404 and DOE licensing regulations.

(f) Contractor action to protect the Government's interest—

(1) Execution and delivery of title or license instruments. The Contractor agrees to execute or have executed, and to deliver promptly to DOE all instruments necessary to accomplish the following actions:

(i) Establish or confirm the Government's rights throughout the world in subject inventions to which the Contractor elects to retain title;

(ii) Convey title in a subject invention to DOE pursuant to subparagraph (b)(5) and paragraph (d) of this clause; or

(iii) Enable the Government to obtain patent protection throughout the world in a subject invention to which the Government has title.

(2) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to

Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) Contractor procedures for reporting subject inventions to DOE. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation and approval of the effectiveness of such procedures by the Contracting Officer.

(4) Notification of discontinuation of patent protection. With respect to any subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall notify Patent Counsel of any decision to discontinue the prosecution of a patent application, payment of maintenance fees, or defense of a subject invention in a reexamination or opposition proceeding, in any country, not less than thirty (30) days before the expiration of the response period for any action required by the corresponding patent office.

(5) Notification of Government rights. With respect to any subject invention to which the Contractor has title, the Contractor agrees to include, within the specification of any United States patent application and within any patent issuing thereon claiming a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(6) Avoidance of royalty charges. If the Contractor licenses a subject invention, the Contractor agrees to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the subject invention to any party.

(7) DOE approval of assignment of rights. Rights in a subject invention in the United States may not be assigned by the Contractor without the approval of DOE.

(8) Small business firm licensees. The Contractor shall make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and may give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision as to whether to give a preference in any specific case is at the discretion of the Contractor.

(9) Contractor licensing of subject inventions. To the extent that it provides the most effective technology transfer, licensing of subject inventions shall be administered by Contractor employees on location at the facility.

(g) Subcontracts—

- (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
- (2) Inclusion of patent rights clause—non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties, in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202 and subparagraph (b)(5) of this clause.
- (3) Inclusion of patent rights clause—subcontractors other than non-profit organizations or small business firms. Except for the subcontracts described in subparagraph (g)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties and any applicable exceptional circumstance, in any contract for experimental, developmental, demonstration or research work.
- (4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.
- (5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such refusal and including relevant information for expediting disposition of the matter; and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
- (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.
- (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.
- (h) Reporting on utilization of subject inventions. Upon request by DOE, the Contractor agrees to submit periodic reports, no more frequently than annually, describing the utilization of a subject invention or efforts made by the Contractor or its licensees or assignees to obtain utilization of the subject invention. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information reasonably specified by DOE. Upon request by DOE, the Contractor also agrees to provide reports in connection with any march-in proceedings undertaken by DOE, in accordance with paragraph (j) of this clause. If any data or information reported by the Contractor in accordance with this provision is considered privileged and confidential by the Contractor, its licensee, or assignee and the Contractor properly marks the data or information privileged or confidential, DOE agrees not to disclose such information to persons outside the Government, to the extent permitted by law.
- (i) Preference for United States industry. Notwithstanding any other provision of this clause the Contractor agrees that with respect to any subject invention in which it retains title, neither it nor any assignee may grant to any person the exclusive right to use or sell any subject invention in the United States unless such

person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, DOE may waive the requirement for such an agreement upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-In rights. With respect to any subject invention to which the Contractor has elected to retain or is granted title, DOE may, in accordance with the procedures in the DOE patent waiver regulations, require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by government regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement to substantially manufacture in the United States and required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel identified in the contract.

(l) Reports—

(1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (f)(3) and (f)(4) of this clause.

(2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.

(m) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the

contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility (1) to practice or have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

(n) Atomic energy—

(1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Patent agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (o)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(o) Classified inventions—

(1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.

(2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the

United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

(3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.

(p) Examination of records relating to inventions—

(1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, including exceptional circumstance subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.

(2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.

(3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.

(4) Power of inspection. With respect to a subject invention for which the Contractor has responsibility for patent prosecution, the Contractor shall furnish the Government, upon request by DOE, an irrevocable power to inspect and make copies of a prosecution file for any patent application claiming the subject invention.

(q) Patent functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.

(r) Educational awards subject to 35 U.S.C. 212. The Contractor shall notify the Contracting Officer prior to the placement of any person subject to 35 U.S.C. 212 in an area of technology or task (1) related to exceptional circumstance technology or (2) any person who is subject to treaties or international agreements as set forth in paragraph (b)(6) of this clause or to agreements other than funding agreements. The Contracting Officer may disapprove of any such placement.

(s) Annual appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

(t) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent rights of DOE or the Contractor.

(u) Termination of contractor's advance class waiver. If a request by the Contractor for an advance class waiver pursuant to subparagraph (b)(2) of this clause or a determination of greater rights pursuant to paragraph (c) of this clause contains false material statements or fails to disclose material facts, and DOE relies on the false statements or omissions in granting the Contractor's request, the waiver or grant of any Government rights (in whole or in part) to the subject invention(s) may be terminated at the discretion of the Secretary of Energy or designee. Prior to termination, DOE shall provide the Contractor with written notification of the termination, including a statement of facts in support of the termination, and the Contractor shall be allowed thirty (30) days, or a longer period authorized by the Secretary of Energy or designee for good cause shown in writing by the Contractor, to show cause for not terminating the waiver or grant. Any termination of an advance class waiver or a determination of greater rights is subject to the Contractor's license as provided for in paragraph (f) of this clause.

- DEAR 952.227-11 PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SHORT FORM) (MAR 1995) (applies if subcontractor is non-profit organization or small business firm subcontract and the subcontract is for experimental, developmental, demonstration or research work).
- DEAR 952.227-13 PATENT RIGHTS—ACQUISITION BY THE GOVERNMENT (SEP 1997) (applies if subcontractor is other than non-profit organizations and small business firms and the subcontract is for experimental, developmental, demonstration or research work.)
- DEAR 970.5232-3 ACCOUNTS, RECORDS AND INSPECTIONS (DEC 2010) (applies to all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.)

- DEAR 970.5245-1 PROPERTY (AUG 2016) (ALTERNATE I) (AUG 2016) (Applies to all cost reimbursable subcontracts.)

G. LIST OF APPLICABLE LAWS AND REGULATIONS (LIST A)/DOE DIRECTIVES (LIST B):

- (1) Pursuant to DOE-H-7017 Application of DOE Contractor Requirements Documents (SEP 2017) and, DEAR 970.5204-2 Laws, Regulations, as incorporated into this Subcontract, the following list of applicable laws and regulations (List A)/DOE Directives (List B).
 - a. In addition to any other provisions in this Subcontract, Subcontractor agrees that it will comply with all applicable laws and regulations and DOE directives. The DOE directives can be located electronically at <https://www.directives.doe.gov/>.
 - b. Subcontractor acknowledges that the DOE Directives made applicable to the performance of this Subcontract shall be identified on the face of the purchase order, subcontract, or ordering document issued by BSRA to the Subcontractor.
- (2) The federal, state, and local regulations found in the BSRA Prime Contract in the Section H clause entitled, DOE-H-7017 Application of DOE Contractor Requirements Documents, and Section I clause entitled, DEAR 970.5204-2 Laws, Regulations, and DOE directives, which have been incorporated in this Subcontract, constitute List A Applicable Federal, State, and Local Regulations. Omission of any applicable law or regulation from the Prime Contract and this Subcontract does not affect the obligation of the Subcontractor to comply with such law or regulation.
- (3) List B below contains a list of applicable DOE directives, followed by a list of implementing documents, that are required for this Subcontract. The DOE directives contain requirements relevant to the scope of work under this Subcontract. In most cases, the requirements applicable to the Subcontractor are contained in a Contractor Requirements Document (CRD) attached to the DOE directive. The Subcontractor is encouraged to continuously evaluate the work scope and contract requirements for opportunities to improve efficiency or creativity and propose alternative methods to those specified in the DOE directives.
- (4) The BSRA Contracting Officer may, from time to time revise List B in accordance with any revisions by DOE in connection with the administration of BSRA's Prime Contract.

List B - DOE Directives

Directive	Title	Date Issued
DOE O 140.1	Interface with the Defense Nuclear Facilities Safety Board	5/14/2018
DOE P 141.1	Department of Energy Management of Cultural Resources	5/2/2001

DOE M 142.2-1 Admin Chg 1	Manual for Implementation of the Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency	6/27/2013
DOE O 142.2A Admin Chg 1	Voluntary Offer Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency	6/27/2013
DOE O 142.3A Chg 2 (LtdChg)	Unclassified Foreign Visits And Assignments Program	12/13/2019
DOE O 144.1 Admin Chg 1	Department of Energy American Indian Tribal Government Interactions and Policy	11/6/2009
DOE O 150.1A	Continuity Programs	3/31/2014
DOE O 151.1D Chg 1 (MinChg)	Comprehensive Emergency Management System	10/4/2019
DOE O 153.1	Departmental Radiological Emergency Response Assets	6/27/2007
DOE O 200.1A Chg 1 (MinChg)	Information Technology Management	1/13/2017
DOE O 203.1	Limited Personal Use of Government Office Equipment including Information Technology	1/7/2005
DOE P 205.1	Departmental Cyber Security Management Policy	5/8/2001
DOE O 205.1C	Department of Energy Cyber Security Program	5/15/2019
DOE O 206.1 Chg 1 (MinChg)	Department of Energy Privacy Program	11/1/2018
DOE O 206.2	Identity, Credential, and Access Management (ICAM)	2/19/2013
DOE O 210.2A	DOE Corporate Operating Experience Program	4/8/2011
DOE O 221.1B	Reporting Fraud, Waste, And Abuse To The Office Of	9/27/2016
DOE O 221.2A	Cooperation With The Office Of Inspector General	2/25/2008
DOE O 225.1B	Accident Investigations	3/4/2011
DOE O 226.1B	Implementation of Department of Energy Oversight Policy	4/25/2011
DOE P 226.2	Policy For Federal Oversight And Contractor Assurance	8/9/2016
DOE O 227.1A Chg 1 (AdminChg)	Independent Oversight Program	1/21/2020
DOE O 231.1B Admin Chg 1	Environment, Safety and Health Reporting	11/28/2012
DOE O 232.2A Chg 1 (MinChg)	Occurrence Reporting and Processing of Operations	10/4/2019
DOE O 241.1B Chg 1 (Admin Chg)	Scientific and Technical Information Management	4/26/2016
DOE O 243.1B Chg 1 (Admin Chg)	Records Management Program	7/8/2013
DOE O 252.1A Admin Chg 1	Technical Standards Program	3/12/2013
DOE O 313.1	Management and Funding of the Department's Overseas	11/19/2009
DOE O 350.1 Chg 7 (LtdChg)	Contractor Human Resource Management Programs	2/19/2020
DOE P 364.1	Health And Safety Training Reciprocity	4/14/2014
DOE O 410.2 Admin Chg 1	Management of Nuclear Materials	4/10/2014
DOE O 411.2	Scientific Integrity	1/4/2017
DOE P 411.2A	DOE Scientific Integrity Policy	1/4/2017
DOE O 413.1B	Internal Control Program	10/28/2008

DOE O 413.2C Chg 1 (MinChg)	Laboratory Directed Research and Development,	8/2/2018
DOE O 413.3B Chg 5 (MinChg)	Program and Project Management for the Acquisition of	4/12/2018
DOE O 414.1D Chg 1 (Admin Chg)	Quality Assurance	5/8/2013
DOE O 415.1 Chg 2 (MinChg)	Information Technology Project Management	1/17/2017
DOE P 420.1	Department Of Energy Nuclear Sa fety Policy	2/8/2011
DOE O 420.1C Chg 3 (LtdChg)	Facility Sa fety	11/14/2019
DOE O 422.1 Chg 3 (MinChg)	Conduct of Operations	10/4/2019
DOE O 425.1D Chg. 2 (MinChg)	Verification Of Readiness to Start Up or Restart Nuclear	10/4/2019
DOE O 426.2 Chg 1 (Admin Chg)	Personnel Selection, Training, Qualification, And	7/29/2013
DOE O 430.1C Chg 1 (MinChg)	Real Property Asset Management (in accordance with Section	10/4/2019
DOE O 433.1B Chg 1 (Admin Chg)	Maintenance Management Program for DOE Nuclear	3/12/2013
DOE P 434.1B	Conduct And Approval Of Select Agent And Toxin Work At	11/25/2016
DOE O 435.1 Chg 1 (PgChg)	Radioactive Waste Management	8/28/2001
DOE N 435.1	Contact-Handled and Remote-Handled Transuranic Waste	8/9/2011
DOE M 435.1-1 Chg 2 (Admin	Radioactive Waste Management Manual	6/8/2011
DOE O 436.1	Departmental Sustainability	5/2/2011
DOE M 441.1-1 Chg 1 (Admin	Nuclear Material Packaging	2/24/2016
DOE O 442.1B	Department of Energy Employee Concerns Program	1/31/2019
DOE O 442.2 Chg 1 (PgChg)	Differing Professional Opinions for Technical Issues	10/5/2016
DOE O 443.1C	Protection of Human Research Subjects	11/26/2019
DOE P 444.1	Preventing and Responding to all Forms of Violence in the	11/6/2014
DOE P 450.4A Chg 1 (MinChg)	Integrated Safety Management Policy	1/18/2018
DOE P 451.1	National Environmental Policy Act Compliance Program	12/21/2017
DOE O 452.3	Management of the Department of Energy Nuclear Weapons	6/8/2005
DOE O 452.7 Chg 1 (AdminChg)	Protection of Use Control Vulnerabilities and Designs	5/29/2020
DOE O 452.8	Control of Nuclear Weapon Data	7/21/2011
DOE P 454.1 Chg 1 (AdminChg)	Use Of Institutional Controls	12/7/2015
DOE P 456.1 Chg 1 (AdminChg)	Secretarial Policy Statement on Nanoscale Sa fety	11/20/2019
DOE O 456.1A	The Sa fe Handling of Unbound Engineered Nanoparticles	7/15/2016
DOE O 457.1A	Nuclear Counterterrorism	8/26/2013
DOE O 458.1 Chg 3 (AdminChg)	Radiation Protection of the Public and the Environment	1/15/2013
DOE O 460.1D	Hazardous Materials Pa cking and Transportation Sa fety	12/20/2016
DOE O 460.2A	Departmental Materials Tra nsportation and Pa cking	12/22/2004
DOE M 460.2-1A	Radioactive Material Transportation Practices Manual	6/4/2008
DOE P 470.1B	Sa feguards and Security Program	2/10/2016

DOE O 470.3C	Design Basis Threat (DBT) Policy	11/23/2016
DOE O 470.4B Chg 2 (MinChg)	Safeguards and Security Program	1/17/2017
DOE O 470.5	Insider Threat Program	6/2/2014
DOE O 470.6 Chg 1 (MinChg)	Technical Security Program	1/11/2017
DOE O 471.1B	Identification and Protection of Unclassified Controlled	3/1/2010
DOE O 471.3 Chg 1 (Admin Chg)	Identifying And Protecting Official Use Only Information	1/13/2011
DOE M 471.3-1 Chg 1 (Admin	Manual For Identifying And Protecting Official Use Only	1/13/2011
DOE O 471.6 Chg 3 (Admin Chg)	Information Security	9/12/2019
DOE O 472.2 Chg 2 (PgChg)	Personnel Security	7/9/2014
DOE O 473.3A Chg 1 (MinChg)	Protection Program Operations	1/2/2018
DOE O 474.2 Chg 4 (PgChg)	Nuclear Material Control and Accountability	9/13/2016
DOE O 475.1	Counterintelligence Program	12/10/2004
DOE O 475.2B	Identifying Classified Information	10/3/2014
DOE P 481.1	DOE's Policy Regarding Laboratories, Plants and Sites	12/17/2014
DOE O 483.1B Chg 2 (MinChg)	DOE Cooperative Research and Development Agreements	12/13/2019
DOE O 484.1 Chg 2 (Admin Chg)	Reimbursable Work For Department Of Homeland Security	6/30/2014
DOE P 485.1A	Foreign Engagements with DOE National Laboratories	12/13/2019
DOE O 486.1	Department of Energy Foreign Government Talent	6/7/2019
DOE O 522.1A	Pricing of Departmental Materials and Services	8/2/2018
DOE O 534.1B	Accounting	1/6/2003
DOE P 547.1A	Small Business First Policy	3/30/2018
DOE O 550.1 Chg 1 (LtdChg)	Official Travel	12/13/2019
DOE O 5639.8A	Security of Foreign Intelligence Information and Sensitive	7/23/1993
DOE O 5670.1A	Management and Control of Foreign Intelligence	1/15/1992

Implementing Documents

Document Number	Title	Date
F-ESR-A-00075	National Fire Protection Association Exemption	4/22/2004
F-ESR-A-00080	National Fire Protection Association Exemption	7/31/2000
F-ESR-A-00081	National Fire Protection Association Exemption	7/31/2000

28. WAIVER OF BENEFITS (STAFF AUGMENTATION SUBCONTRACTS ONLY)

- A. Prior to performance, the Subcontractor shall obtain from each Subcontractor employee and submit to BSRA a signed acknowledgement and waiver of any BSRA salary and benefits programs in a form satisfactory to BSRA, whereby the Subcontractor employee

agrees and understands that (s)he is an employee of the Subcontractor, and not of Battelle Savannah River Alliance, LLC (BSRA) or the United States Department of Energy, that the employee will receive all compensation (salary and benefits) from Subcontractor and will not be eligible for any salary or benefits programs provided by BSRA , including but not limited to base salary, health and welfare plans, pension plans, and 401(k) investment savings programs.

29. COMPLIANCE WITH DIESEL EMISSION REDUCTION ACT (DERA)

- A. All diesel-powered equipment bought on-site for ARRA work is required to burn ultra-low sulfur diesel fuel (<< 15 ppm). Fuel certification will be available for inspection upon request.
- B. All pre-1996 model year non-road diesel engine equipment brought on-site for ARRA work shall be retrofitted with EPA verified control equipment. Equipment certification will be submitted prior to commencement of work.
- C. SRS is implementing South Carolina State Transport Police (SCSTP) maximum idling regulation SCCL§56-35-10. All “self-propelled diesel motor vehicles licensed for use on a public roadway to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating of ten thousand and one pounds or more” shall be shut down if the idling period will exceed 10 consecutive minutes. Additional guidance on maximum idling time can be obtained at www.scsttp.org.

30. INSPECTION EXCEPTION FOR THORIATED TUNGSTEN ELECTRODES

- A. The Government has determined that 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.

31. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS

- A. This Subcontract 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 Subcontract, then the DPAS will control.
- B. 15 CFR 700.17 provides an exemption for all rated 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 that delivery can be obtained in a timely fashion without the use of the priority rating.
- C. This rating must be passed on to subtier 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.

32. DOE O 442.2 DIFFERING PROFESSIONAL OPINIONS FOR TECHNICAL ISSUES INVOLVING ENVIRONMENT, SAFETY AN HEALTH

- A. Subcontractors/Suppliers and any subtier subcontractor are responsible for flowing down the requirements of the Contractor Requirements Document (CRD) identified in DOE O 442.2 to the extent necessary to ensure compliance with this requirement. The Subcontractors/ Suppliers and any subtier subcontractor must:
- (1) Ensure that all Subcontractor and any subtier subcontractor employees are notified quarterly that they have the right to report environment, safety and health technical concerns that have not been resolved through routine work processes through the Department of Energy Differing Professional Opinion (DPO) process (the DOE DPO process can be found in Attachment 2 to DOE O 442.2 and at <http://www.hss.doe.gov/nuclearsafety/ga/dpo.html>). The notification must provide points of contact (name, phone number and email addresses of DPO Managers) as listed on the DOE DPO web page, as well as the DOE DPO web page address.
 - (2) Protect Subcontractor and any subtier subcontractor employees from reprisal or retaliation for reporting a DPO.
 - (3) Provide Subcontractor and any subtier subcontractor employees' reasonable time and resources to use the DPO Process.
 - (4) Assist DOE as requested in the resolution of DPOs.
 - (5) Report to DOE when requested on the status of assigned implementation actions resulting from the DPO resolution and on the closure of these implementations actions.

33. EXPORT CONTROL

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

34. CONFIDENTIALITY OF INFORMATION

- A. To the extent that work under this Subcontract requires that the Subcontractor and subtier subcontractors be granted access to confidential or proprietary business, technical or financial information belonging to the Government, BSRA or other companies, the Subcontractor shall, maintain such information in confidence and agrees not to further disseminate such information to any third parties unless specifically authorized by BSRA or the Purchasing Representative in writing. The foregoing obligations, however, shall not apply to:
- (1) Information which is or becomes available to the public through no fault of the Subcontractor;
 - (2) Information which the Subcontractor can demonstrate by written record was previously known to them and was not acquired directly or indirectly from the government or other companies subject to any obligations of confidentiality;
 - (3) Information which the Subcontractor can demonstrate by written record was independently developed by the Subcontractor independent of any disclosure under this Subcontract

- B. The Subcontractor shall obtain the written electronic agreement, in a form satisfactory to BSRA, of each Subcontractor employee or subtier subcontractor permitted access to such confidential information, whereby the Subcontractor employee or subtier subcontractor agrees they will not discuss or disclose any such information or data to any person or entity except those within their organization having a need to know to accomplish the purpose of this Subcontract.
- C. Upon request of BSRA or the Government, the Subcontractor agrees to sign an agreement identical, in all material respects and in a form satisfactory to BSRA and/or the Government, with each company supplying information and/or access to particular facilities to the Subcontractor or subtier subcontractor under this Subcontract, and to supply a copy of such agreement to BSRA. Upon request of BSRA, the Subcontractor shall supply BSRA with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Subcontractor received such information.
- D. Subcontractor will indemnify and hold BSRA harmless from any and all liabilities, claims, demands, actions, costs, damages and any expenses relating thereto (including but not limited to reasonable attorney's fees) arising from any unauthorized disclosure of information, by any of its directors, officers, employees, agents, subtier subcontractors or permitted assigns.
- E. The obligations of this Article shall survive completion of the Subcontract.

35. CONTRACTOR REQUIREMENTS DOCUMENT DOE O 221.1B, REPORTING FRAUD, WASTE AND ABUSE TO THE OFFICE OF INSPECTOR GENERAL

Regardless of the performer of the work, the Subcontractor is responsible for complying with the requirements of this Contractor Requirements Document (CRD). This flowed down applies to subcontracts with a value of \$5.5 million or more and with a period of performance of 120 days or longer.

SUBCONTRACTOR/SUPPLIER AND ITS SUBTIER SUBCONTRACTORS/SUPPLIERS MUST MEET THE FOLLOWING REQUIREMENTS.

- A. GENERAL REQUIREMENTS.
 - (1) Subcontractor, and its subtier subcontractors, must not deter or dissuade employees from notifying an appropriate authority of actual or suspected violations of law, rule or regulation (including criminal acts under Title 18 of the United States Code, Crimes and Criminal Procedure); gross mismanagement; a gross waste of funds; serious threats to environment, safety, and health; and abuse of authority relating to DOE programs, operations, facilities, contracts, or information technology systems. Appropriate authorities include but are not limited to the Office of Inspector General (OIG), a supervisor, an Employee Concerns office, general counsel, security officials, the U.S. Government Accountability Office, outside law enforcement agency such as the Federal Bureau of Investigation (FBI) or State/local police. Subcontractor's, and its subtier subcontractors', employees are not expected to report allegations based on mere suspicion or speculation. When in doubt, officials are encouraged to contact a local OIG representative to determine whether reporting is necessary.
 - (2) Individuals who contact the OIG are not required to reveal their identity to the OIG. However, persons who report allegations are encouraged to identify themselves in the event additional questions arise as the OIG evaluates or pursues their allegations. Confidentiality for DOE Federal employees is established by the

Inspector General Act of 1978, section 7(b), which prevents the OIG from disclosing the identity of a DOE Federal employee who reports an allegation or provides information, without the individual's consent, unless the OIG determines that disclosure is unavoidable during the course of the investigation. Because of their unique role within DOE, the OIG also applies this provision to DOE facility management contractor employees. All others who report allegations are not automatically entitled to confidentiality. Such individuals may request confidentiality, which will be evaluated on a case-by-case basis.

- (3) Individuals who contact the OIG are encouraged to provide relevant and specific details of the issue, including the identity of the person, company, or organization alleged to have engaged in wrongdoing; a description of the alleged impropriety; the DOE facility and program affected by the alleged misconduct; Contract/Subcontract numbers; date(s) of alleged wrongdoing; how the complainant is aware of the alleged impropriety; the identity of potential witnesses; and the identity and location of supporting documentation.
- (4) The following issues are exempt from reporting to the OIG:
 - a. Threats of actual or imminent bodily injury or death (such as assault, arson, etc.). However, threats of actual or imminent bodily injury or death must be reported immediately to BSRA, site security, and Federal, State, or local law enforcement authorities in accordance with DOE or local site guidance.
 - b. Information about espionage. Information regarding espionage, including approaches made by representatives of other Governments for the commission of espionage or the collection of information, must be reported to the Department's Deputy Director of Counterintelligence and BSRA Counterintelligence.
- (5) The following issues may be reported to the OIG, but are routinely referred to other appropriate authorities:
 - a. Regulatory violations already submitted to or discovered by the Office of Enterprise Assessments;
 - b. Professional disagreements of opinion;
 - c. Non-compliance with internal office policies and procedures; policy disagreements;
 - d. Security infractions;
 - e. Employee grievances and disputes among employees;
 - f. Prohibited personnel practices;
 - g. Employee performance concerns, and minor conduct issues such as tardiness and other minor leave issues, insubordinate behavior and failure to follow instructions, and discourteous and unprofessional behavior;
 - h. Failure to pay legitimate debts;

- i. Equal employment opportunity complaints (including sexual harassment complaints);
- j. Classification appeals (related to both documents and personnel positions);
- k. Theft of personal property; and
- l. Off-duty conduct that does not involve DOE funds, programs, operations, facilities, subcontracts, or information technology systems.

B. SPECIFIC CONTRACTOR REQUIREMENTS.

- (1) In accordance with Federal Acquisition Regulation (FAR) clause 52.203-13, the Subcontractor shall timely disclose, in writing, to the OIG whenever, in connection with the award, performance, or closeout of a DOE contract or any subcontract thereunder, the Subcontractor has credible evidence that a principal, employee, agent, or subtier subcontractor of the Subcontractor has committed:
 - a. A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the U.S. Code; or
 - b. A violation of the Civil False Claims Act, found in Title 31 of the U.S. Code.
- (2) Notify Subcontractor's and its subtier subcontractors' employees annually of their duty to report actual or suspected violations of law, rule, or regulation outlined above.
- (3) Prominently display DOE OIG hotline posters within business segments performing work under a DOE subcontract and at DOE work sites.
- (4) Subcontractor and its subtier subcontractors' personnel with appropriate authority may gather additional information prior to reporting the matter to the OIG, provided:
 - a. relevant information and documents are not altered, destroyed or hidden, and
 - b. personnel are not influenced in their recollection of events or discouraged or prohibited from contacting, or cooperating with, the OIG.
- (5) With the exceptions of traffic violations and thefts of personal property, ensure that criminal allegations or offenses involving DOE funds, programs, operations, facilities, subcontracts, or information technology systems that are reported to an outside law enforcement agency such as the FBI or state/local police are reported to the OIG within 3 business days of making or becoming aware of such a report to ensure timely and appropriate coordination among law enforcement agencies with DOE jurisdiction.
- (6) Ensure that no nondisclosure policy, directive, form, or agreement is implemented or enforced that restricts Subcontractor's and its subtier subcontractors' employees from reporting information about actual or suspected violations of law, statute, or regulation involving fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement to the OIG.

- (7) Ensure that no Subcontractor and its subtier subcontractor employee with authority takes or threatens to take any action against any Subcontractor and its subtier subcontractor employee as a reprisal for making a whistleblower complaint or disclosing information in support of a whistleblower complaint to a supervisor, management official, the OIG or other appropriate authority.
- (8) Report to the OIG any credible evidence, including a credible statement from the alleged victim, that reprisal action is being or has been taken, or is threatened to be taken, against a Subcontractor and its subtier subcontractor employee for making a complaint or disclosing information to a supervisor, management official, the OIG, or other appropriate authority.

36. CONTRACTOR REQUIREMENTS DOCUMENT DOE O 221.2A, COOPERATION WITH THE OFFICE OF INSPECTOR GENERAL

The subcontractor and their subtier subcontractors must meet the following requirements.

- A. GENERAL REQUIREMENTS. Subcontractor must ensure that their employees and subtier subcontractors cooperate fully and promptly with requests from the Office of Inspector General (OIG) for information and data relating to DOE programs and operations.
- B. SPECIFIC REQUIREMENTS. Subcontractors must ensure that all their employees and subtier subcontractors understand that they must:
 - (1) comply with requests for interviews and briefings and must provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements.
 - (2) not impede or hinder another employee's or subtier subcontractor's cooperation with the OIG.
 - (3) ensure that reprisals are not taken against DOE contractor or BSRA employees who cooperate with or disclose information to the OIG or other lawful appropriate authority.

37. DOE O 486.1A, FOREIGN GOVERNMENT SPONSORED OR AFFILIATED ACTIVITIES

Note: This article applies to Research & Development or Demonstration subcontracts, at any tier, to the extent necessary to ensure the Subcontractor's or subtier subcontractors' compliance with the requirements, where the Subcontractor's or subtier subcontractors' work within the scope of the Subcontract is performed on or at a Department of Energy of Energy (DOE)/National Nuclear Security Administration (NNSA) site/facility, including DOE/NNSA/contractor leased space.

- A. Regardless of the performer of the work, the subcontractor is responsible for complying with the requirements of this article. The definitions found in Attachment 2 to DOE O 486.1A, referenced in and made a part of this article, provide information applicable to subcontracts in which this article is inserted. The Subcontractor is responsible for flowing down the requirements of this DOE Order and article to subtier subcontractors, at any tier, to the extent necessary to ensure compliance. Subcontractor personnel participation in any Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk is prohibited. Subcontractor Employee participation in any Other Foreign Government Sponsored or Affiliated Activity is restricted.

- (1) The Subcontractor shall be required to complete a PF-249 Certification form prior to execution of a subcontract, including any subsequent modifications; and on a recurring annual basis.
- (2) In addition to the PF-249 Certification Form the Subcontractor shall immediately notify BSRA upon identification or notification it or any of its personnel/subtiers are involved with A Foreign Government Sponsored Talent Program or Other Government Sponsored or Affiliated Activity.
- (3) The Subcontractor shall cooperate with BSRA/DOE to determine if any disclosed or otherwise identified activity falls within the boundaries of prohibited and/or restricted activities.
- (4) Upon notification to BSRA of potential activity the Subcontractor recognizes it may be required to stop performance of work under the subcontract during the investigatory period until a final determination is made and/or approval is granted by DOE, including a decision on any exemption request. The Subcontractor specifically acknowledges that in the event it is required to delay performance of work as a result of compliance with this clause this may qualify as grounds for termination for cause in accordance with this Subcontract.

38. ENSURING ADEQUATE COVID SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (Deviation) FAR 52.223-99

(This clause applies to solicitations and subcontracts for services or any subcontract with Service Contract Act/Wage Determination components, including construction, solicitations, and orders placed under existing indefinite-delivery subcontracts. It does not apply to orders under the simplified acquisition or only for the provision/manufacturing of products.)

ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)

- (a) **Definition.** As used in this clause - United States or its outlying areas means—
 - (1) The fifty States;
 - (2) The District of Columbia;
 - (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
 - (4) The territories of American Samoa, Guam, and the United States Virgin Islands; and
 - (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.
- (b) **Authority.** This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).
- (c) **Compliance.** The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.
- (d) **Subcontracts.** The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

In addition, Subcontractors performing onsite work at BSRA must be fully vaccinated before being allowed on site, to include the badging process, by the EO 14042 mandated deadline of January 4, 2022, or by the subcontract period of performance start date and may be required to show proof of vaccination upon request.