GENERAL PROVISIONS
FOR FIXED-PRICE ORDERS UNDER
U.S. DEPARTMENT OF ENERGY
PRIME CONTRACT NO. 89303321-CEM-00080
BATTELLE SAVANNAH RIVER ALLIANCE LLC,
SAVANNAH RIVER SITE
AIKEN, SC 29808

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ARTICLE 1

SECTION APPLIES REGARDLESS OF ORDER PRICE

1.1. DEFINITIONS

Whenever used in this document with initial capitalization, the following definitions shall be applicable unless the context indicates otherwise:

BSRA	Shall mean Battelle Savannah River Alliance, LLC.
BSRA Procurement Specialist	Shall mean a person with the authority to execute, administer, and terminate the Subcontract and make related determinations and findings. The term includes certain authorized representatives of BSRA acting within the limits of their authority as delegated by the BSRA Procurement Specialist.
Contracting Officer	shall mean the Government official executing the Prime Contract No. 89303321-CEM-0000800 between BSRA and DOE. The Contracting Officer is the Government Official who is authorized to execute, administer, and terminate the contract, and includes the authorized representatives thereof, when such individuals are acting within the limits of their authority as delegated by the Contracting Officer.
DOE	shall mean the United States Department of Energy or any duly authorized representative thereof, including any successor or predecessor agency thereof, including the Contracting Officer.
Government	shall mean the United States of America.
"Head of the agency" or "Secretary"	shall mean the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency.
Seller	means the person or organization that has entered into this Subcontract. Seller may also be referred to herein as "Licensor" or "Subcontractor."
Services	shall mean labor, direction of labor, production of technical information, consulting services or any other services furnished by Subcontractor and its Subcontractor under this Subcontract.
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.
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.
Supplies	shall mean equipment, components, parts and materials to be provided by Subcontractor and its subcontractor of any tier pursuant to this Subcontract.
Vendor Data	shall mean any and all information, data, and documentation to be provided by Subcontractor and its subcontractor of any tier under this Subcontract.
Work	shall mean Supplies, Services, and Vendor Data provided by Subcontractor and its subcontractor of any tier and all work performed with respect thereto, pursuant to this Subcontract.

1.2. GENERAL

A. The terms and conditions of these General Provisions and those set forth in this Battelle Savannah River Alliance, LLC (BSRA) Subcontract apply notwithstanding any different or additional terms and conditions which may be submitted or proposed by Subcontractor, and BSRA expressly objects to and shall not be bound by any such additional or different terms and conditions.

B. This Subcontract, which term shall be determined to include related plans, drawings, specifications, and other documents, contains the entire agreement and understanding between the parties as to the subject matter of this Subcontract, and merges and supersedes all prior agreements, understandings commitments, representations, writings, electronic or otherwise, and discussions between them. Neither of the parties will be bound by any prior obligations, conditions, warranties, or representations with respect to the subject matter of this Subcontract. The parties agree that recourse may not be had to the alleged prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of this Subcontract.

C. The failure of either party to enforce at any time any of the provisions of this Subcontract or to require at any time performance by the other party of any of such provisions shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Subcontract or any parts thereof, or the right of either party thereafter to enforce each and every provision.

D. The headings used in this Subcontract are not to be construed as modifying, limiting or expanding in any way the scope or extent of the provisions in this Subcontract.

E. All references herein to the Department of Energy Acquisition Regulations ("DEAR") or Federal Acquisition Regulations ("FAR") are those in effect on the date of this Subcontract.

F. In the event of an inconsistency between provisions of this Subcontract, the inconsistency shall be resolved by giving precedence as follows:

(1.) The terms specified on the face of the purchase order, subcontract, or ordering document issued by BSRA to the Seller;

(2.) These General Provisions of this Subcontract;

(3.) Statements of work and item descriptions; and

(4.) Any other documents not specified above and incorporated by reference into the Subcontract, such as drawings, specifications, standards, or codes.

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

H. Subcontractor shall perform all Work pursuant to this Subcontract as an independent contractor. No act or Subcontract of BSRA shall be determined 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 Subcontractor.

I. Subcontractor is required to register and maintain an active (UEI) Unique Entity ID 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.

1.3. **SUBCONTRACTING**

A. Subcontractor shall not subcontract all or substantially all of the Work without the prior written approval of BSRA. This provision shall not apply to purchases of standard commercial articles or raw materials on which Subcontractor shall perform further work.

B. Subcontractor shall select lower-tier subcontractor on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Subcontract.

C. When the use of subtier subcontractor is determined to be necessary, the Prime Subcontractor 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 codes/standards/material specifications, or other requirements identified within the Procurement documents included with this Subcontract/Subcontract package. The Subcontractor is furthermore responsible to flow down all applicable terms and conditions, including all clauses and articles incorporated by reference, to all subtier subcontractor, which includes verification that the subtier subcontractor has been appropriately qualified to perform the activities required to satisfy this procurement. The Subcontractor 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 Subcontractor deems it necessary to subcontract further its parts of this BSRA contract.

D. When NQA-1 is invoked as the governing quality standard, the Seller and applicable subtier subcontractor 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 subcontractor at all levels. If the Seller or its subtier subcontractor intends to upgrade materials by way of a Commercial Grade Dedication Process, BSRA must be notified of this intent and the Subcontractor's process verified and approved prior to dedicating any material associated with BSRA procurement.

E. The BSRA Procurement Specialist is to be notified in writing, within five (5) 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, buy-outs, change-of-control and

(4.) All identified Nonconformance or Corrective Action Reports associated with BSRA Subcontracts including those issued concerning subtier subcontractor.

1.4. **CHANGES, EXTRAS, AND SUBSTITUTIONS**

A. BSRA may unilaterally and at any time, by a written Change Order from the BSRA Procurement Department, and without notice to the sureties, if any, make changes within the general scope of this Subcontract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Subcontract, and Subcontractor timely requests an equitable adjustment, BSRA shall make an equitable adjustment in (1) the contract price, (2) the time of performance or delivery schedule or both; and (3) other affected terms of this Subcontract, and shall modify this Subcontract accordingly. 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, 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. Where the cost of property made obsolete or excess as a result of a change is included in Subcontractor's proposal for adjustment, BSRA shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute within the meaning of the article of this Subcontract entitled "Disputes". However, nothing herein shall excuse Subcontractor from proceeding with this Subcontract as changed.

B. Any changes, extras or additional work made or performed by Subcontractor without the prior approval of the BSRA Procurement Department shall be at the sole risk and expense of Subcontractor, there being no financial recourse against BSRA or the Government whatsoever.

C. Subcontractor shall not substitute other equipment or materials for those specified in this Subcontract, or vary the quantity of the Work, or otherwise make any changes in the Work, without prior written consent of BSRA.

1.5. **APPROVALS**

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

1.6. **DELIVERY AND PAYMENT**

A. Subcontractor shall work such hours, as may be necessary to meet the Subcontract delivery date(s), or any duly authorized extensions thereof, at no increase in the price of this Subcontract. Subcontractor shall issue electronically all invoices directly to Accounts Payable via the **ACCOUNTSPAY-BSRA@srnl.gov** email account. Subcontractor shall include banking information on each invoice submitted to facilitate proper Electronic Funds Transfer ("EFT"),. The Subcontractor shall include on the invoice the Subcontractor name; invoice date; subcontract/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. 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 reinitiate the ageing of the invoice for payment purposes.

B. Unless otherwise provided in this Subcontract, delivery shall not be made more than fifteen (15) days prior to the delivery dates specified herein and BSRA may return earlier deliveries at Subcontractor's risk and expense. Subcontractor shall comply with the delivery schedule provided in this Subcontract.

C. Unless otherwise specified in this Subcontract, a separate invoice shall be issued upon each delivery of Supplies or completion of Services, and shall be payable by BSRA upon receipt and acceptance of Supplies or completion of Services and receipt by BSRA of a correct invoice. 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 EFT, the specified payment date. Unless freight and other charges are itemized, the discount will be taken on the full amount of invoice.

D. Payment Withheld - Vendor Data. If this Subcontract requires the submittal of Vendor Data, and if such Vendor Data, or any part thereof, is not delivered within the time specified by this Subcontract, or is deficient upon delivery, BSRA may, until such Vendor Data is delivered or deficiencies are corrected, without limiting any of its other rights or remedies, withhold payments not to exceed 20% of the Subcontract price to the Subcontractor.

E. Notwithstanding anything herein, 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 subcontracts with Subcontractor.

F. Overpayments. 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.

1.7. **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 Section. As used in this Section, 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. 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, the 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 to be an incorrect 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 thirty (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.

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 considered 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.

1.8. **PASSAGE OF TITLE AND LIENS**

A. Title to the Supplies shall pass to the Government at the place of delivery to BSRA. If purchased F.O.B. "shipping point", delivery to the carrier shall be considered to be delivery to BSRA.

B. Subcontractor agrees to furnish the Work free and clear of all liens, claims, and encumbrances. In the event that a lien of any nature shall at any time be filed against the Work or Subcontractor or a Subcontractor's facility by any person, firm, or corporation which has supplied equipment, material, services or data, Subcontractor agrees promptly, on demand of BSRA and at Subcontractor's expense, to take any and all action necessary to cause any such lien to be released or discharged there from. Subcontractor agrees to indemnify and hold BSRA harmless from all liens, claims, or demands in connection with the Work.

C. Except as otherwise provided in this Subcontract,

(1.) Subcontractor shall be responsible for the loss or destruction of, or damage to, the Supplies until delivered at the designated delivery point, regardless of the point of inspection.

(2.) After delivery to BSRA at the designated point and prior to acceptance or rejection by BSRA, Subcontractor shall be responsible for the loss or destruction of or damage to the Supplies unless such loss, destruction, or damage results from negligence of the officers, agents, or employees of BSRA or the Government acting within the scope of their employment; and

(3.) Subcontractor shall bear all risks as to the rejected Supplies after rejection.

1.9. **ASSIGNMENT**

A. BSRA may assign this Subcontract to the DOE or to such party as DOE may designate to perform BSRA's obligations hereunder. Upon receipt by Subcontractor of written notice that the DOE or a party so designated by the DOE has accepted an assignment of this Subcontract, BSRA shall be relieved of all responsibility hereunder and Subcontractor shall thereafter look solely to such assignee for performance of BSRA's obligations. Subcontractor shall not assign or transfer this Subcontract or any interest herein, or claims hereunder, without the prior written consent of BSRA or BSRA's assignee.

1.10. **WORKMANSHIP AND MATERIALS**

A. Unless this Subcontract specifies otherwise, the Subcontractor represents that all workmanship, supplies and components, including any former Government Property identified in this Subcontract are new, including recycled (not used or reconditioned) in conformance with industry standards and are not of such age or so deteriorated as to impair their usefulness or safety. The Subcontractor shall not provide material or equipment that contains material that is known to be suspect or counterfeit (see paragraph E below). If the Subcontractor believes that furnishing used or reconditioned supplies or components will be in the Government's interest, the Subcontractor shall so notify the BSRA Procurement Specialist in writing. The Subcontractor's notice shall include a proposal for consideration by BSRA that states the reason for the request to use reconditioned or used supplies or components.

B. Wherein the specifications items are referred to as "equal to" any particular standard, BSRA shall decide the question of equality.

C. If required elsewhere in this Subcontract, Subcontractor shall submit for approval samples of, or test results on, any materials proposed to be incorporated in the Work before making any commitment for the purchase of such materials. Such approval shall not relieve Subcontractor of any of its obligations hereunder.

D. The Subcontractor shall perform all Work under this Subcontract in a skillful and workmanlike manner by agreeing to utilize only experienced, responsible and capable employees, to include subtier subcontractor, in the performance of the work. BSRA may require that the Subcontractor remove from the job, employees to include subtier subcontractor, who endanger persons or property, or whose continued employment under this Subcontract is inconsistent with the interests of security or safety at the Savannah River Site (SRS).

E. Suspect or Counterfeit Parts

(1.) Subcontractor 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. Failure by the Subcontractor to document material substitution or identify that an item has been refurbished or remanufactured is considered to be fraud, and the item then becomes suspect/counterfeit.

(2.) 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.

1.11. **WARRANTY**

A. Subcontractor warrants that the Supplies shall be free from defects in material and workmanship, of the most suitable grade of their respective kinds for the purpose and comply with all requirements set forth in this Subcontract, until one year after confirming supplies are first placed into service by BSRA, or three years after final payment, whichever first occurs. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by BSRA, by promptly: (i) repairing or replacing the nonconforming Supplies specified (and correcting any plans, specifications, or drawings affected); (ii) furnishing BSRA any materials, parts, and instructions necessary to correct or have corrected the nonconformity, or (iii) paying to BSRA a portion of the Subcontract price as is equitable under the circumstances.

B. Subcontractor warrants that the Services shall reflect the industry standards of professional knowledge and judgment, shall be free from defects in workmanship, and shall be in compliance with all requirements of this Subcontract, until one (1) year from the completion of the Services. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by 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 Subcontractor fails to perform its obligations promptly under this Section, BSRA may perform, or have performed such obligations and Subcontractor shall pay BSRA all charges occasioned thereby.

D. The warranty with respect to corrected Supplies or Services shall be subject to the same terms as the warranty provided for in paragraphs A and B of this Section. The warranty for other than corrected or replaced Supplies or Services shall continue until the expiration of such period and a period equal to the time elapsed between the discovery of the nonconformity and its correction.

E. Unless installation is an element of the Work, Subcontractor shall not be obligated under this Section for the costs of removal or reinstallation of any Supplies furnished or items Serviced hereunder from the location of their installation, or for the costs of removal or reinstallation of structural parts or items not furnished by Subcontractor hereunder. Subcontractor shall in any event bear all packing, packaging, and shipping costs from the place of delivery to the Subcontractor's plant and return to the place of delivery, and shall bear all risk of loss or damage for the items upon which Services have been performed or Supplies while in transit.

F. Unless decontamination is an element of the Work, in the event that Subcontractor's costs in correcting any nonconformity under this section are increased solely because the Supplies furnished or items Serviced hereunder must be decontaminated to the level specified in the definition of "radiation area" in 10 CFR 20.202, this Subcontract price shall be equitably adjusted to reflect such additional costs after prompt written notification thereof by Subcontractor to BSRA.

G. The provision of this section shall apply notwithstanding inspection, acceptance, or any other provision of this Subcontract, and shall not limit any other of BSRA's rights and remedies.

H. 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.

I. 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 BSRA Procurement Specialist. 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.

1.12. **SUBCONTRACTOR'S INSPECTION REQUIREMENTS**

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

1.13. **GOVERNMENT PROPERTY**

NOTE: if the total acquisition cost of all Government Property furnished under this Subcontract or Subcontract is $100,000.00 or less, Paragraph F of this Section is deleted and the following Paragraph A is submitted in lieu thereof:

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

B. Government Property

(1.) BSRA shall deliver to the Subcontractor, for use in connection with and under the terms of this Subcontract, the Government Property described elsewhere in the Subcontract or specifications together with any related data and information that the Subcontractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government Property").

(2.) The delivery or performance dates for this Subcontract are based upon the expectation that Government Property suitable for use (except for property furnished "as-is") will be delivered to the Subcontractor at the times stated in the Subcontract or if not so stated, in sufficient time to enable the Subcontractor to meet the Subcontract delivery or performance dates.

(3.) If Government Property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt of it, notify the BSRA Procurement Specialist detailing the facts and, as directed by the BSRA Procurement Specialist and at BSRA's expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written electronic request of the Subcontractor, the BSRA Procurement Specialist shall make an equitable adjustment as provided in paragraph I of this section.

(4.) If Government Property is not delivered to the Subcontractor by the required time, the BSRA Procurement Specialist shall, upon the Subcontractor's timely written electronic request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph I of this section.

C. Changes in Government Property

(1.) The BSRA Procurement Specialist may, by written notice,

(a.) Decrease the Government Property provided or to be provided under this Subcontract, or

(b.) Substitute other Government Property for the property to be provided by BSRA, or to be acquired by the Subcontractor for the Government, under this Subcontract. The Subcontractor shall promptly take such action as the BSRA Procurement Specialist may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2.) Upon the Subcontractor's written request, the BSRA Procurement Specialist shall make an equitable adjustment to the Subcontract in accordance with paragraph I of this section, if BSRA has agreed in the Subcontract to make the property available for performing this Subcontract and there is any –

(a.) Decrease or substitution in this property pursuant to subparagraph (b) (1) above; or

(b.) Withdrawal of authority to use this property, if provided under any contract or lease.

D. Title in Government Property

(1.) The Government shall retain title to all Government Property.

(2.) All Government Property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph are subject to the provisions of this Section. Title to Government Property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government Property become a fixture or lose its identity as personal property as being attached to any real property.

(3.) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Subcontractor for BSRA under this Subcontract shall pass to and vest in the Government when its use in performing this Subcontract commences or when BSRA has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4.) If this Subcontract contains a provision directing the Subcontractor to purchase material for which BSRA will reimburse the Subcontractor as a direct item of cost under this Subcontract –

(a.) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(b.) Title to all other material shall pass to and vest in the Government upon –

(5.) Issuance of the material for use in Subcontract performance;

(6.) Commencement of processing of the material or its use in Subcontract performance; or

(7.) Reimbursement of the cost of the material by BSRA, whichever occurs first.

E. Use of Government Property

(1.) The Government Property shall be used only for performing this Subcontract, unless otherwise provided in this Subcontract or approved by the BSRA Procurement Specialist.

F. Property Administration

(1.) The Subcontractor shall be responsible and accountable for all Government Property provided under this Subcontract and shall comply with DOE Property Management Regulations 41 CFR 109, as in effect on the date of this Subcontract.

(2.) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government Property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR and Subpart 945.5 of the DEAR. The Subcontractor shall provide an annual inventory as required in Federal Property Regulation 41 CFR 101 and the Department of Energy Property Management Regulation 41 CFR 109.

(3.) If damage occurs to Government Property, the risk of which has been assumed by BSRA or the Government under this Subcontract, BSRA shall replace the items or the Subcontractor shall make such repairs as BSRA directs. However, if the Subcontractor cannot affect such repairs within the time required, Subcontractor shall dispose of the property as directed by the BSRA Procurement Specialist. When any property for which BSRA is responsible is replaced or repaired, the BSRA Procurement Specialist shall make an equitable adjustment in accordance with paragraph I of this Section.

(4.) The Subcontractor understands that the Subcontract price does not include any amount for repairs or replacement for which BSRA is responsible. Repair or replacement of property for which the Subcontractor is responsible shall be accomplished by the Subcontractor at its own expense.

G. Access

(1.) BSRA and the Government and all their designees have access at all reasonable times to the premises in which any Government Property is located for the purpose of inspecting the Government Property.

H. Risk of loss

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

I. Equitable Adjustment

(1.) When this section specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the "Changes" Section in this Subcontract. When appropriate, the BSRA Procurement Specialist may initiate an equitable adjustment in favor of BSRA. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. BSRA and the Government shall not be liable to suit for breach of contract for:

(a.) Any delay in delivery of Government Property;

(b.) Delivery of Government Property in a condition not suitable for its intended use;

(c.) A decrease in or substitution of Government Property; or

(d.) Failure to repair or replace Government Property for which BSRA or the Government is responsible.

J. Final Accounting and Disposition of Government Property

(1.) Upon completing this Subcontract, or at such earlier dates as may be fixed by the BSRA Procurement Specialist, the Subcontractor shall submit, in a form acceptable to the BSRA Procurement Specialist, inventory schedules covering all items of Government Property (including any resulting scrap) not consumed in performing this Subcontract or delivered to BSRA. The Subcontractor shall prepare for shipment, deliver F.O.B. Origin, or dispose of the Government Property as may be directed or authorized by the BSRA Procurement Specialist. The net proceeds of any such disposal shall be credited to the Subcontract price or shall be paid to BSRA as the BSRA Procurement Specialist directs.

K. Abandonment and Restoration of Subcontractor's Premises

(1.) Unless otherwise provided herein, BSRA –

(a.) May abandon any Government Property in place, at which time all obligations of BSRA and the Government regarding such abandoned property shall cease; and

(b.) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Subcontract completion). However, if the Government Property is withdrawn or is unsuitable for the intended use, or if other Government Property is substituted, then the equitable adjustment under paragraph H of this section may properly include restoration or rehabilitation costs.

L. Communications

(1.) All communications under this section shall be submitted in writing electronically.

M. Overseas Orders

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

1.14. **PUBLIC RELEASE OF INFORMATION**

A. Information, data, photographs, sketches, advertising, announcements, denial, or confirmation of same, or items of a similar nature, relating to this Subcontract, which Subcontractor desires to release or publish, shall be submitted to BSRA for approval eight (8) weeks prior to the desired release date. As part of the approval request, Subcontractor shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases by Subcontractor must have the prior approval of BSRA. Subcontractor shall include all provisions of this section including this sentence in all Subcontracts under this Subcontract. BSRA's approval shall not be unreasonably withheld.

1.15. **FEDERAL, STATE, AND LOCAL TAXES**

A. Definitions

After-imposed Federal tax	as used in this Section, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the Subcontract date but whose exemption was later revoked or reduced during this Subcontract period, on the transactions or property covered by this Subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Subcontract date. It does not include social security tax or other employment taxes.
After-relieved Federal tax	as used in this Section, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the

	transactions or property covered by this Subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the Subcontract date.
All applicable Federal, State, and local taxes and duties	as used in this Section, means all taxes and duties, in effect on the Subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this Subcontract.
Subcontract date	as used in this Section means the date set for bid opening or, if this is a negotiated Subcontract or modification, the effective date of this Subcontract or modification.

B. Subcontractor shall not collect an increment for South Carolina sales or use tax from BSRA for the materials and/or services provided under this Subcontract beyond such taxes paid by the Subcontractor to its subtier subcontractor.

C. The Subcontract price includes all applicable Federal, State, and local taxes and duties. (See paragraph B. above.)

D. The Subcontract price shall be increased by the amount of any after-imposed Federal tax, provided Subcontractor warrants in writing that no amount f or such newly imposed Federal excise tax or duty or rate increase was included in the Subcontract price, as a contingency, reserve or otherwise.

E. The Subcontract price shall be decreased by the amount of any after-relieved Federal tax.

F. The Subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that Subcontractor is required to pay or bear, or does not obtain a refund of, through Subcontractor's fault, negligence, or failure to follow instructions of BSRA.

G. No adjustment shall be made in the Subcontract price under this Article unless the amount of the adjustment exceeds $100.

H. Subcontractor shall promptly notify BSRA of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Subcontract price and shall take appropriate action as BSRA directs.

1.16. **TERMINATION FOR CONVENIANCE OF BSRA**

A. BSRA may, in its sole discretion, and by written notice, terminate this Subcontract, in whole or in part, when it is in BSRA's interest to do so. If this Subcontract is so terminated, the rights, duties, and obligation of the parties, including compensation to Subcontractor, shall be in accordance with Part 49 of the FAR as supplemented or modified by Part 949 of the DEAR in effect on the date of this Subcontract. BSRA shall effectuate the termination of this Subcontract by delivering to Subcontractor a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in Subcontractor under this Subcontract, it shall revert to the Government regardless of any other article of this Subcontract, except for property that Subcontractor disposed of by bona fide sale or properly removed from the site.

B. After receipt of a Notice of Termination, and except as directed by BSRA, Subcontractor shall immediately proceed with the following obligations, regardless of delay in determining or adjusting any amounts due under this article:

(1.) Stop Work as specified in the notice.

(2.) Place no further subcontracts or orders (collectively referred to as "Lower-Tier Subcontracts" in this Section) for materials, services, or facilities, except as necessary to complete the continued portion of this Subcontract.

(3.) Terminate all Lower-Tier Subcontracts to the extent they relate to the Work terminated.

(4.) Assign to the Government, as directed by BSRA, all right, title, and interest of Subcontractor under the Lower-Tier Subcontracts terminated, in which case BSRA shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5.) With approval or ratification to the extent required by BSRA, settle all outstanding liabilities and termination settlement proposals arising from the termination of Lower-Tier Subcontracts; the approval or ratification will be final for purposes of this Section.

(6.) As directed by BSRA, transfer title to the Government and deliver to BSRA

(a.) The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the Work terminated, and

(b.) The completed or partially completed plans, drawings, information, and other property that, if this Subcontract had been completed, would be required to be furnished to BSRA.

(7.) Complete performance of the Work not terminated.

(8.) Take any action that may be necessary, or that BSRA may direct, for the protection and preservation of the property related to this Subcontract that is in the possession of Subcontractor and in which BSRA has or may acquire an interest.

(9.) Use its best efforts to sell, as directed or authorized by BSRA, any property of the types referred to in subparagraph (6) above; provided, however, that Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, BSRA. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by BSRA under this Subcontract, credited to the price or cost of the Work, or paid in any other manner directed by BSRA.

C. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, Subcontractor may submit to BSRA a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by BSRA. Subcontractor may request BSRA to remove those items or enter into an agreement for their storage. Within fifteen (15) days, BSRA will accept title to those items and remove them or enter into a storage agreement. BSRA may verify the list upon removal of the items, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

D. After termination, Subcontractor shall submit a final termination settlement proposal to BSRA in the form and with the certification prescribed by BSRA. Subcontractor shall submit the proposal promptly, but no later than one (1) year from the effective date of termination, unless extended in electronic writing by BSRA upon written request of Subcontractor within this one-year period. However, if BSRA determines that the facts justify it, a termination settlement proposal may be received and acted on after one (1) year or any extension. If Subcontractor fails to submit the proposal within the time allowed, BSRA may determine, on the basis of information available, the amount, if any, due Subcontractor because of the termination and shall pay the amount determined.

E. Subject to paragraph D above, Subcontractor and BSRA may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E or paragraph F below, exclusive of settlement costs, may not exceed the total Subcontract price as reduced by

(1.) The amount of payments previously made and

(2.) The Subcontract price of Work not terminated. This Subcontract shall be amended, and Subcontractor paid the agreed amount. Paragraph F below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

F. If Subcontractor and BSRA fail to agreed on the whole amount to be paid because of the termination of Work, BSRA shall pay Subcontractor the amounts determined by BSRA as follows, but without duplication of any amounts agreed on under paragraph E of this Section:

(1.) For Work performed before the effective date of termination, the total (without duplication of any items) of:

(a.) The cost of the Work;

(b.) The cost of settling and paying termination settlement proposals under terminated Lower-Tier Subcontracts that are properly chargeable to the terminated portion of this Subcontract, if not included in subparagraph (a) above; and

(c.) A sum, as profit on subparagraph (a) above, determined by BSRA under section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Subcontract, to be fair and reasonable; however, if it appears that Subcontractor would have sustained a loss on the entire Subcontract had it been completed, BSRA shall allow no profit under this subparagraph (c) and shall reduce the amount of the settlement to reflect the indicated rate of loss.

(2.) The reasonable costs of settlement of the work terminated, including:

(a.) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(b.) The termination and settlement of Lower-Tier Subcontracts (excluding the amounts of such settlements); and

(c.) Preservation and protection of property under paragraph B (8) of this section.

G. Except for normal spoilage, and except to the extent that BSRA expressly assumed the risk of loss, BSRA shall exclude from the amounts payable to Subcontractor under paragraph F above, the fair value, as determined by BSRA, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to BSRA or to a BSRA Procurement Specialist.

H. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation as supplemented or modified by Part 931 of the Department of Energy Acquisition Regulation, in effect on the date of this Subcontract, shall govern all costs claimed, agreed to, or determined under this Section.

I. If Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph D or K and failed to request a time extension, the decision of BSRA is final and not subject to the section titled, "Disputes". If BSRA has made a determination of the amount due under paragraph D, F, or K, BSRA shall pay Subcontractor

(1.) The amount determined by BSRA, if there is no right of appeal or if no timely appeal has been taken, or

(2.) The amount finally determined on an appeal.

J. In arriving at the amount due Subcontractor under this section, there shall be deducted-

(1.) All un-liquidated advance or other payments to Subcontractor under the terminated portion of this Subcontract;

(2.) Any claim which BSRA or the Government has against Subcontractor under this Subcontract; and

(3.) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Subcontractor or sold under the provisions of this article and not recovered by or credited to BSRA.

K. If the termination is partial, Subcontractor may file a proposal with BSRA for an equitable adjustment of the price(s) of the continued portion of this Subcontract. BSRA shall make any equitable adjustment agreed upon. Any proposal by Subcontractor for an equitable adjustment under this section shall be requested within ninety (90) days from the effective date of termination unless extended electronically by BSRA.

L. BSRA may, under the terms and conditions it prescribes, make partial payments and payments against cost incurred by Subcontractor for the terminated portion of this Subcontract, if BSRA believes the total of these payments will not exceed the amount to which Subcontractor will be entitled. If the total payments exceed the amount finally determined to be due, Subcontractor shall repay the excess to BSRA upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess Payment is received by Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by BSRA because of the circumstances.

M. Unless otherwise provided in this Subcontract or by statute, Subcontractor shall maintain all records and documents relating to the terminated portion of this Subcontract for three (3) years after final settlement. This includes all books and other evidence bearing on Subcontractor's costs and expenses under this Subcontract. Subcontractor shall make these records and documents available to the Government, at Subcontractor's office, at all reasonable times, without any direct charge. If approved by BSRA, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

N. 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 BSRA. Payment for items already completed or in the process of completion, shall be adjusted between the Subcontractor and the BSRA in a fair and reasonable manner for all costs determined to be allowable by BSRA in accordance with the cost principles set forth in the FAR and DEAR, as applicable, 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 BSRA.

1.17. **DISPUTES**

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

B. The Parties shall attempt to settle any claim or controversy arising from this Subcontract through consultation and negotiations in good faith and spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator chosen by the Parties within thirty (30) days after written notice by one party demanding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator and both Parties will share the costs of the mediation equally. Any dispute which cannot be resolved between the Parties through negotiation or mediation shall be resolved by litigation in a court of competent jurisdiction located in the State of South Carolina. Determination of any substantive issue of law 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 according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of

contract appeals of the Federal Government; if there is no applicable Federal Government contract law, the law of the State of South Carolina shall apply in the determination of such issues.

C. During the pendency of a dispute, the Subcontractor shall proceed diligently with performance of all terms of this Subcontract. The Subcontractor's consent to so proceed shall not restrict or otherwise affect the Subcontractor's right to contest any claim.

1.18. **PRICING OF ADJUSTMENTS**

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

1.19. **COMPLIANCE**

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. Except as otherwise directed by BSRA, Subcontractor shall procure without additional expense to BSRA, all necessary permits or licenses.

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

D. Subcontractor warrants that any and all Work performed and/or Supplies furnished shall comply with all requirements of the Occupational Safety and Health Act of 1970, as the same may be amended from time to time and including all regulations adopted pursuant to such Act, and shall comply with all requirements of any applicable health or safety statute or regulation of any state or local government agency having jurisdiction in the location to which Supplies are to be shipped or Work is to be performed pursuant to this Subcontract.

E. Subcontractor warrants that each and every chemical substance delivered under this Subcontract shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8(b) of the Toxic Substances Control Act (Public Law 94-469).

(Paragraphs F – L applies to Staff Augmentation Services)

F. Subcontractor - Staff Augmentation Services

(1.) Subcontractor 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.

(2.) Compliance shall be a material requirement of this Subcontract. Upon request by BSRA, Subcontractor shall produce documentation of compliance with all laws and regulations pertaining to the Service Contract Act (SCA) of 1965, as Amended (29 CFR Part 541).

(3.) 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 Subcontract by reference.

(4.) 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 clause and 10 CFR 851.

G. 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 SRS 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 SRS. The BSRA Procurement Specialist shall notify the Subcontractor in writing of any noncompliance with the provisions of this Section and corrective action to be taken.

H. 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.

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.

I. Medical results will be provided to the staff augmentation employees.

J. The on-site Medical Surveillance program will be provided by BSRA Medical or 3rd party designee, based on the work scope hazards. The Subcontractor's corporate occupational medicine program must be incompliance with all other 10 CFR 851 requirements.

K. Site Reporting Requirements

(1.) The Subcontractor (staff augmentation) personnel shall immediately notify the STR/End User or the BSRA Procurement Specialist 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:

(a.) Operational emergencies,

(b.) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,

(c.) 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,

(d.) 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,

(e.) Fires/explosions,

(f.) Hazardous energy control failures,

(g.) Operations shutdown directed by management for safety reasons, (8) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.,

(h.) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,

(i.) Loss damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),

(j.) Spread of radioactive contamination or loss of control of radioactive materials,

(k.) Personnel radioactive contamination's or exposures, and

(l.) Violations of procedures.

L. 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.

1.20. **RIGHTS AND PROPOSAL DATA (TECHNICAL)**

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

1.21. **BSRA POLICY ON OPPORTUNITY**

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

1.22. **TERMINATION FOR CAUSE AND DEFAULT**

A. BSRA may, by written notice of default to Subcontractor, terminate this Subcontract in whole or in part in the event of any default by Subcontractor, if Subcontractor fails to:

(1.) Deliver the Supplies or to perform the Services within the time specified in this Subcontract or any extension;

(2.) Make progress, so as to endanger performance of this Subcontract (but see paragraph B below);

(3.) Perform or comply with any of the other provisions of this Subcontract (but see paragraph B below); or

(4.) Fails to provide adequate assurance of future performance.

B. BSRA's right to terminate this Subcontract under this Section, may be exercised if Subcontractor does not cure such failure within ten (10) days (or more if authorized in writing by BSRA) after receipt of the notice from BSRA specifying the failure.

C. If BSRA terminates this Subcontract in whole or in part, in accordance with this Section, BSRA shall not be liable for any amount for items or work not accepted. In addition, BSRA may acquire, under the terms and in the manner BSRA considers appropriate, supplies or services similar to those terminated, and Subcontractor will be liable to BSRA for any excess costs for those supplies or services. However, Subcontractor shall continue the Work not terminated.

D. Except for defaults of Subcontractor's subtier subcontractor, Subcontractor shall not be liable for any excess costs if the failure to perform this Subcontract arises from unforeseeable events or causes beyond the control and without the fault or negligence of Subcontractor. In each instance the failure to perform must be beyond the control and without the fault or negligence of Subcontractor. Examples of such causes include:

(1.) Acts of God or of the public enemy,

(2.) Acts of the Government in either its sovereign or contractual capacity,

(3.) Fires,

(4.) Floods,

(5.) Epidemics,

(6.) Quarantine restrictions

(7.) Strikes,

(8.) Freight Embargos

(9.) Usually severe weather, and

(10.) Delays of Subcontractor's subtier subcontractor at any tier

E. If the failure to perform is caused by the default of a subcontractor at any tier, and the delays of Subcontractor's subtier subcontractor at any tier must be proved to be unforeseeable, beyond the control of both Subcontractor and its subtier subcontractor and without fault or negligence of either, Subcontractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Subcontractor to meet the required delivery schedule.

F. If this Subcontract is terminated for default, BSRA may require Subcontractor to transfer title to the Government and deliver to BSRA, as directed by BSRA, any (1) completed Supplies, and (2) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this section) that Subcontractor has specifically produced or acquired for the terminated portion of this Subcontract. Upon direction of BSRA, Subcontractor shall also protect and preserve property in its possession in which BSRA or the Government has an interest.

G. BSRA shall pay the Subcontract price for completed Supplies delivered and accepted. Subcontractor and BSRA shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the section titled, "Disputes". BSRA may withhold from these amounts any sum it determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.

H. If, after termination, it is determined that Subcontractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of BSRA.

I. The rights and remedies of BSRA in this section are in addition to any other rights and remedies provided by law or under this Subcontract.

1.23. **HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

A. Subcontractor agrees to submit a Safety Data Sheet (for all hazardous materials/chemicals to the BSRA Procurement Specialist / STR/End User for approval before chemicals are brought onto SRS. This obligation applies to all materials delivered under this Subcontract which will involve exposure to hazardous materials/chemicals or items containing these materials/chemicals.

B. All chemical containers shall be clearly labeled per OSHA standards. Chemicals not in an original container shall also be properly labeled with the product name and hazard markings per the Safety Data Sheet on file. Immediate use containers such as painter's pail, etc., are exempt from labeling requirements.

C. Neither the requirements of this Section nor any act or failure to act by BSRA or the Government shall relieve Subcontractor of any responsibility or liability for the safety of BSRA, Government, Subcontractor, or Subcontractor personnel or property.

D. Subcontractor shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the acquisition of licenses and permits) in connection with hazardous materials/chemicals.

E. The Government's and BSRA's rights in data furnished under this Subcontract with respect to hazardous materials/chemicals are as follows:

(1.) To use, duplicate, and disclose any data to which this section is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials/chemicals; (ii) obtain medical treatment for those affected by the material/chemical; and (iii) have others use, duplicate, and disclose the data for BSRA and the Government for these purposes.

(2.) To use, duplicate, and disclose data furnished under this section, in accordance with subparagraph E (1) above, in precedence over any other section of this Subcontract providing for rights in data.

(3.) That BSRA and the Government are not precluded from using similar or identical data acquired from other sources.

(4.) That the data shall not be duplicated, disclosed, or released outside of BSRA or the Government, in whole or in part f or any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this article applies: "This is furnished under United States Government Contract 89303321-CEM-000080 and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of BSRA. This legend shall be marked on any reproduction of this data."

(5.) That Subcontractor shall not place the legend or any other restrictive legend on any data which

(a.) Subcontractor previously delivered to BSRA or the Government without limitations or

(b.) Should otherwise be delivered without limitations.

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

1.24. **PATENTS AND COPYRIGHTS**

A. Subcontractor shall, at its own expense, defend any suit or proceeding brought against BSRA and/or its vendors, mediate and immediate, so far as based on any allegation that any goods, material, equipment, device, item, method, or article (hereinafter referred to as "Product") or any part thereof furnished hereunder constitutes an infringement of any claim of any patent or violation of any copyright.

B. In case the Product or any part thereof furnished hereunder is held, in any suit or proceeding so defended to constitute infringement and its use is enjoined, Subcontractor shall, at its option and its own expense, in a timely manner either (i) procure for BSRA and its vendors, mediate and immediate, the right to continue using Product or part thereof, or (ii) replace it with a substantially equivalent non-infringing Product, or (iii) modify it so it becomes non-infringing but is substantially functionally equivalent.

1.25. **JOINT INTELLECTUAL PROPERTY RIGHTS**

A. "Joint Intellectual Property Rights" shall mean any work under the Subcontract, which:

(1.) Results from the involvement of at least one employee/participant from each of BSRA and the Subcontractor; and

(2.) The subject matter of which is capable of protection under domestic or foreign law, including but not limited to, patents, copyrights, trademarks, or mask works.

B. As to Joint Intellectual Property Rights, in which BSRA has a joint ownership interest, the Subcontractor agrees to negotiate in good faith with BSRA a Memorandum of Agreement to resolve issues of participation in protection and commercialization.

1.26. **COMPLIANCE WITH EMPLOYEES CONCERNS**

A. Subcontractor shall ensure Subcontractor's employees are aware of the DOE-SRS and BSRA Employee Concerns Programs ("ECP") and how to use the program by performing the following:

(1.) Ensure employees are provided with information on the DOE-SRS and BSRA ECP during initial orientation and annual training.

(2.) Ensure that posters identifying the DOE-SRS and BSRA ECP telephone "hotline" numbers are displayed in conspicuous locations throughout the worksite. BSRA will provide posters, as necessary

(3.) Inform Subcontractor employees of the availability of the DOE-SRS ECP in case of dissatisfaction or lack of confidence with other reporting systems.

(4.) Ensure managers and supervisors are aware of the prohibition of any reprisal against employees who have or are believed to have raised or reported concerns.

B. Subcontractor must immediately notify the STR/End User or the BSRA Procurement Specialist of any employee concern involving:

(1.) A condition which constitutes an imminent threat to the health and safety of site personnel or to the general public.

(2.) Circumstances which would cause adverse public reaction or receive local media attention.

(3.) Allegations of reprisal.

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

1.27. **CONFIDENTIALITY OF INFORMATION**

A. To the extent that work under this Subcontract requires that the Subcontractor and subtier subcontractor 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 Specialist 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 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, Subcontractor, subtier subcontractor or permitted assigns.

E. The obligations of this section shall survive completion of the Subcontract.

1.28. **WORKPLACE SUBSTANCE ABUSE PROGRAMS**

A. Fitness for Duty

(1.) Subcontractor and its subtier subcontractor are required to comply with this Workplace Substance Abuse Program section, which addresses the Subcontractor portion of BSRA "Workplace Substance Abuse Program Plan." The Subcontractor shall advise employees and subtier subcontractor 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 subcontractor 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 subcontractor that it is the policy of BSRA that:

(a.) 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;

(b.) 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;

(c.) 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;

(d.) 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.

(e.) 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 (breathe, alcohol and urine) to the designated BSRA representative.

(4.) The Subcontractor agrees to comply with and secure the compliance of its employees and subtier subcontractor 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 twelve (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 section of this Subcontract.

D. Suitability for Employment

(1.) Subcontractor employees, including subtier subcontractor, 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 subcontractor 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.

1.29. **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 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 SRNL Internet Home Page or from the Procurement Specialist.

(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 order):

(i.) Subcontract Number;

(ii.) Subcontractor Employee Name;

(iii.) Subcontractor Employee Address;

(iv.) Subcontractor Employee Social Security Number;

(v.) Subcontractor Employee Date of Birth;

(vi.) 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 Section 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 Subcontractor employees will be issued a site access badge is one (1) year. Subcontractor employees requiring a new badge will report to the Badge Office and repeat the badging process.

(5.) If Work under 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 ten (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

(a.) Subcontract Number

(b.) Subcontractor Employee Name;

(c.) Subcontractor Employee Address;

(d.) Subcontractor Employee Social Security Number;

(e.) Subcontractor Employee Date of Birth;

(f.) Subcontractor Employee'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 Subcontractor's accepted Worker Protection Plan or BSRA's Focused Observation Database if a WPP is not required by the terms of this Subcontract.

(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 I- 9, 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).

D. 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 notification of the employee's name and reason(s) for such suspension or removal.

1.30. **SOUTH CAROLINA TAX REQUIREMENTS FOR NONRESIDENTS**

A. Non-resident Subcontractor 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 & 12-8550. Proof of registration must be submitted to bsrasuppliermgt@srnl.gov and the BSRA Procurement Specialist prior to award.

1.31. **OZONE DEPLETING SUBSTANCE**

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

1.32. **REPORTING OF ROYALTIES**

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

1.33. **SUBCONTRACTOR'S LIABILITY FOR FINES AND PENALTIES**

A. Subcontractor is liable to BSRA for fines and penalties assessed by any governmental entity against BSRA or DOE as a result of Subcontractor's failure to perform its work under the Subcontract in compliance with the requirements of the Subcontract.

B. Subcontractor shall indemnify, defend and hold harmless 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.

C. Liability for Increased Cost or Interest - The Subcontractor is liable to the Government for any increased cost or interest resulting from the Subcontractor's failure to comply with FAR 52.230-2, FAR 52.230-5, or FAR 52.230-6. The Contract price is subject to adjustment by the Contractor to cover any increased cost or interest resulting from such failure.

D. If the Subcontractor submits an unallowable cost as defined under DEAR 970.5242-1 "Penalties for Unallowable Costs," subcontractor is liable for all fines, penalties, and costs assessed by the government contracting officer under this clause for subcontractor's submission of an unallowable cost.

1.34. **FOREIGN NATIONAL**

NOTE: As used in this Section, 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 Section, 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, electronically, 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 Subcontract 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. Subcontractor should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the BSRA Procurement Specialist 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 Procurement Specialist.

B. In addition, the Subcontractor shall obtain the approval of the BSRA Procurement Specialist, 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 lower-tier subcontract at off-site locations. Such approvals will be processed in accordance with the requirements of DOE Subcontract 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 Subcontract 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.

1.35. **WORK ON SRS, GOVERNMENT OR OTHER PREMISES**

A. As to the Work to be done or performed by Subcontractor on premises owned or controlled by SRS, the Government, or the premises of other SRS Subcontractor, Subcontractor assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury including death, or damage to property, sustained in connection with or to have arisen out of the negligent acts or omissions of Subcontractor or its subtier subcontractor, agents, or employees. Subcontractor shall indemnify and hold harmless the Government and BSRA from and against any and all claims, demands, actions, causes of action including those brought by an employee of the Subcontractor or a State Industrial Insurance Subcontractor under a Workers/ Workmen's Compensation Act or statute, suits, damages, expenses including attorney fees and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property attributable directly or indirectly to the negligent acts or omissions of Subcontractor or its subtier subcontractor, agents, or employees arising out of, or in any way connected with the performance of this Subcontract, whether or not caused in any way by some act or omission, negligence or otherwise, of BSRA or the Government; provided however, that the Subcontractor's duty to indemnify shall not arise if such injury, death, destruction or loss is caused by the negligence of BSRA or the Government. Nothing in the foregoing shall be construed to require Subcontractor to indemnify and save harmless the Government and BSRA from any liability arising out of or resulting from a nuclear incident. To the extent necessary to execute the foregoing indemnification and as permitted by law, Subcontractor specifically waives any and all immunity provided by any industrial insurance or Workers/ Workmen's Compensation Act or statute.

B. When Subcontractor shall perform any part of the Work on the premises of SRS or the Government during the performance of this Subcontract, the Subcontractor shall have in force and effect, policies of insurance conforming to the terms set forth in Paragraph C of this Section.

C. The Subcontractor shall procure and thereafter maintain at its own expense, the following insurance:

(1.) Workers' Compensation and Employer's Liability.

Limits of liability: Worker's Compensation: Statutory limits in the jurisdiction wherein the work is to be performed.

Employer's Liability: A minimum of $1,000,000.

(2.) Comprehensive general liability including Bodily Injury and Property Damage.

Limits of Liability: A minimum of $1,000,000 Combined Single Limit. Endorsements: BSRA and the Government to be endorsed as Additional Insured. Contractual Liability including all coverage endorsed on the basic policy.

(3.) Automobile Liability including Bodily Injury and Property Damage including All Owned, Non-Owned and Hired.

Limits of Liability: $1,000,000 Combined Single Limit.

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

(4.) Certificates of insurance evidencing that the requirements of this Section have been met shall be furnished to BSRA before work is commenced with respect to high hazardous performance under this Subcontract, (Ref. OSR 1-183). In addition, a copy of the policy endorsement for Comprehensive General Liability insurance (Ref. paragraph C(2) above), naming BSRA and the Government as "Additional Insured", shall be submitted with the certificate of insurance. Provisions shall be made for thirty days advance notice by mail to BSRA of change in or cancellation of such insurance. Certificates shall be issued by insurance carriers satisfactory to BSRA.

(a.) With respect to all other services, Statements of Certification of insurance evidencing that the requirements of this Article have been met shall be furnished to BSRA before work is commenced. In addition, a Statement of Endorsement for Comprehensive General Liability insurance (Ref. paragraph C(2) above), naming BSRA and the Government as "Additional Insured", shall be submitted with the certificate of insurance. Provisions shall be made for thirty days advance notice by mail to BSRA of change in or cancellation of such insurance. Certificates shall be issued by insurance carriers satisfactory to BSRA.

(5.) In the event the Subcontractor fails to furnish such Certifications or Statements of Certification of Insurance, as required in Paragraph 2 herein above, prior to commencement of work or to continue to maintain such insurance during the performance of the Subcontract, BSRA shall have the right to stop work and/or to withhold any payments or partial payments required to be made under this Subcontract; and shall have the right to continue withholding any or all of said payments so long as the Subcontractor has not complied with the requirements of this Article.

(6.) On subcontracts involving blasting or other hazardous operations, the Subcontractor's insurance shall specifically state that all blasting or such other hazardous operations are fully covered.

D. Subcontractor agrees to comply with and require its subtier subcontractor to comply with all applicable laws, rules, and regulations with respect to state industrial insurance or Workers/Workmen's Compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal and state income taxes. Subcontractor further agrees to indemnify BSRA and the Government against, and to save and hold harmless BSRA and the Government from, any and all liability and expense with respect to claims against BSRA or the Government which may result from the failure or alleged failure of Subcontractor or of any of its subtier subcontractor to comply therewith.

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

1.36. **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 Specialist 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.

1.37. **ACCESS TO DOE OWNED OR LEASED FACILITIES**

(NOTE: This Section applies if employees of Subcontractor will require physical 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 Specialist;

(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 Specialist, 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 Subcontractor'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 Lower-tier 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.

1.38. **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 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.

1.39. **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.scstp.org.

1.40. **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.

1.41. **DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS**

A. This Subcontract is a/an _____ 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 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 subcontractor 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.

1.42. **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.

1.43. **DOE O 442.2 – DIFFERING PROFESSIONAL OPINIONS FOR TECHNICAL ISSUES INVOLVING ENVIRONMENT, SAFETY, AND HEALTH**

A. Subcontractor 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 Subcontractor 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/qa/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 the DPO.

(5.) Report to the DOE when requested on the status of assigned implementation actions resulting from the DPO resolution and on the closure of these implementations actions.

1.44. **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 flow 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 AND ITS SUBTIER SUBCONTRACTOR MUST MEET THE FOLLOWING REQUIREMENTS.

A. GENERAL REQUIREMENTS

(1.) Subcontractor, and its subtier subcontractor, 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.

(2.) 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.

(3.) 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.

(4.) 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.

(5.) 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.

(6.) 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 three (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 f or making a complaint or disclosing information to a supervisor, management official, the OIG, or other appropriate authority.

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

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

A. GENERAL REQUIREMENTS.

(1.) 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.

(1.) Subcontractor must ensure that all their employees and subtier subcontractors understand that they must:

(a.) 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.

(b.) not impede or hinder another employee's or subtier subcontractor's cooperation with the OIG.

(c.) 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.

1.46. **DOE O 486.1A – FOREIGN GOVERNMENT SPONSORED OR AFFILIATED ACTIVITIES**

Note: This section 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

A. Regardless of the performer of the work, the subcontractor is responsible for complying with the requirements of this Section. The definitions found in Attachment 2 to DOE O 486.1A, referenced in and made a part of this section, provide information applicable to subcontracts in which this section is inserted. The Subcontractor is responsible for flowing down the requirements of this DOE Order and Section 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.

ARTICLE 2

SECTIONS APPLY TO THE SUBCONTRACT UNLESS OTHERWISE SPECIFIED

2.1. **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:

(a.) https://www.acquisition.gov/?q=browsefar

(b.) http://www.energy.gov/management/downloads/searchable-electronicdepartmentenergy-acquisition-regulation

(c.) The full text of any Section H clause may be accessed electronically at [https://www.energy.gov/srs/articles/battelle-savannah-river-alliance-llc-contract].

(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 section shall mean the "Resolution of Disputes" clause of this Subcontract. Subcontractor shall flow down to its lower-tier 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 insure Subcontractor's obligations to BSRA and to the Government, and to enable BSRA to meet its contractual obligations to the Federal Government.

2.2. **GOVERNMENT SUBCONTRACT**

A. This Subcontract is entered into by the parties in support of a U.S. government contract.

B. 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:

(1.) "Commercial item" means a commercial item as defined in FAR 2.101.

(2.) "Contract" means this Subcontract.

(3.) "Contracting Officer" means the BSRA's Procurement Specialist.

(4.) "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.

(5.) "FAR" means the Federal Acquisition Regulation, used as Chapter 1 of Title 48, Code of Federal Regulations.

(6.) "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.

(7.) "Laboratory" or "Savannah River National Laboratory" or "SRNL" means the subject contract performance site composed of Government-owned and leased buildings and research facilities.

(8.) "Prime Contract" means the M&O contract between the U.S. government and Battelle Savannah River Alliance, LLC Contract No. 89303321-CEM-000080.

(9.) "Subcontract" means any contract placed by the Contractor or lower-tier subcontractors under this Subcontract.

C. As an exception to the foregoing, the terms "Government" and "Contracting Officer" do not change in the following circumstances:

(1.) 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;

(2.) in the phrases "Government Property," "Government-Furnished Property," "Government Furnished Material," and "Government-Owned Property;"

(3.) in the Patent Rights clauses incorporated therein, if any;

(4.) when title to property is to be transferred directly to the Government;

(5.) when access to proprietary financial information or other proprietary data is required, except as otherwise provided in this Subcontract; and

(6.) where specifically modified in this Subcontract.

D. Substitute the following party names in all FAR and DEAR clauses, as applicable:

(1.) "BSRA" for "agency," "government," "Department of Energy," "DOE," "Department," or "United States;" [or similar term];

(2.) "BSRA Procurement Specialist" for "Contracting Officer," "Administrative Contracting Officer," and "ACO;" and

(3.) "Supplier" or "Subcontractor" for "Contractor" or "offeror."

E. 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.

2.3. **AMENDMENT REQUIRED BY PRIME CONTRACT**

A. The Parties hereby agree to amend this Section 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.

2.4. **SECTION H SPECIAL CONTRACT REQUIREMENTS OF BSRA PRIME GOVERNMENT CONTRACT**

A. CLAUSES INCORPORATED BY REFERENCE

(1.) The following Section H clauses apply to this Subcontract:

H.03 DOE-H-7003	CONTRACTOR ASSURANCE SYSTEM (SEP 2017) (REVISED)
H.08 DOE-H-7009	ADDITIONAL DEFINITIONS (SEP 2017)
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)
H.16 DOE-H-7018	EXTERNAL REGULATION (SEP 2017)
H.25 DOE-H-2080	WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES
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)
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.60 DOE-H-2073	RISK MANAGEMENT AND INSURANCE PROGRAMS (DEC 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, Personal Identity Verification of Contractor Personnel)
H.68 DOE-H-2063	CONFIDENTIALITY OF INFORMATION (OCT 2014)
H.69 DOE-H-2069	PAYMENTS FOR DOMESTIC EXTENDED PERSONNEL ASSIGNMENTS (OCT 2014) (REVISED)

(2.) 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) (applicable to all subcontracts over SAT when subcontractor performance will involve advisory and assistance services, as defined in FAR 2.101.)

(3.) The following Section H clauses apply to this Subcontract, if the value of this Subcontract exceeds $15,000:

H.10 DOE-H-7011	CONTRACTS FORMATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING $15,000 (SEP 2017)

(4.) 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.24 DOE-H-7024	WORKERS' COMPENSATION INSURANCE (SEP 2017) (applicable to services 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.51 DOE-H-2048	PUBLIC AFFAIRS – CONTRACTOR RELEASES OF INFORMATION (OCT 2014)
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.66	N/A WITHDRAWAL OF WORK
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)
H.84	H.84 Contractor's Obligations Regarding Funding Opportunity Announcement DE-FOA-0003612 Genesis Mission (July 2026) [MOD 213] (Full Text Shall be Attached to Subcontract When Applicable) (Applicable to Subcontracts whose funding is attributed to the Genesis Mission)

2.5. **FEDERAL ACQUISITION REGULATION (FAR) FLOWDOWNS**

A. CLAUSES INCORPORATED BY REFERENCE

(1.) 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 SUBCONTRACTS OR STATEMENTS (JAN 2017)
FAR 52.204-13	SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (OCT 2018)
FAR 52.204-18	COMMERCIAL AND GOVERNMENTENTITY 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 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (JAN 2019)
FAR 52.222-1	NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)
FAR 52.223-19	COMPLIANCE WITH ENVIRONMENTAL MANAGEMENTSYSTEMS (MAY 2011)
FAR 52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) (This clause applies to contracts in which subcontractor is a small business concern.)
FAR 52.242-15	STOP-WORK ORDER (AUG 1989) - ALTERNATE I (APR 1984)
FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (JAN 2019)
FAR 52.249-14	EXCUSABLE DELAYS (APR 1984)
FAR 52.252-2	CLAUSES INCORPORATED BY REFERENCE (FEB 1998)
FAR 52.252-6	AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)
FAR 52.253-1	COMPUTER GENERATED FORMS (JAN 1991)

(2.) 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)

(3.) 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 52.215-2	AUDIT AND RECORDS – NEGOTIATION (OCT 2010) (Note that Alternate II [Aug 2016] applies if the Contractor is an educational institution/other non-profit organization)
FAR 52.215-14	FAR 52.215-14 INTEGRITY OF UNIT PRICES (OCT 2010)
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.)

(4.) The following FAR clauses apply to this Subcontract, if the value of this Subcontract exceeds $10,000

FAR 52.222-40	NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (DEC 2010)

(5.) 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)

(6.) 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)

(7.) 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 FIRSTTIER SUBCONTRACT AWARDS (OCT 2018) (This clause applies if this Subcontract is a first-tier subcontract award that exceeds $30,000)

(8.) 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)

(9.) 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.)
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)

(10.) 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 subcontractor is a small business concern)

(11.) The following FAR clauses apply if the value of the Subcontract exceeds $2,000,000, unless otherwise specified in the prime contract:

FAR 52.215-12	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCT 2010) (Applicable only if not otherwise exempt under FAR 15.403)
FAR 52.215-13	SUBCONTRACTOR CERTIFIED COST OR PRICING DATA— MODIFICATIONS (OCT 2010) (Applicable only if not otherwise exempt under FAR 15.403)

(12.) 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 52.203-14	DISPLAY OF HOTLINE POSTER(S) (OCT 2015) (This clause applies if the contract is expected exceed $5.5 million—or a lesser amount established by the applicable agency—and BATTELLE or the applicable agency has a fraud hotline poster, or the Prime Contract is funded with disaster assistance funds.)
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 subcontractor may have federal contract information residing in or transiting through its information system.)
FAR 52.215-10	PRICE REDUCTION FOR DETECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011) (Applicable if the submission of certified cost or pricing data is required)
FAR 52.215-11	PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA - MODIFICATIONS (AUG 2011) (Applicable if the submission of certified cost or pricing data is required for modifications)
FAR 52.215-15	PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2010) (Applicable if the submission of certified cost or pricing data is required or if any pre-award or post-award cost determination is subject to FAR Part 31)
FAR 52.215-18	REVERSION OR ADJUSTMENT OF PLANS FOR POST-RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005) (Applicable if the Subcontract meets the applicability requirements of FAR 15.408(j))
FAR 52.215-19	NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) (Applicable if the Subcontract meets the applicability requirements of FAR 15.408(k))
FAR 52.215-23	LIMITATIONS ON PASS-THROUGH CHARGES (OCT 2009) (This clause applies to all cost-reimbursement contracts that exceed the simplified acquisition threshold and, if the contract is with DoD, all cost-reimbursement contracts and fixed-price contracts, except those identified in FAR 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in FAR 15.403-4)
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 52.222-90	ADDRESSING DEI DISCRIMINATION BY FEDERALCONTRACTORS (DEVIATION APR 2026)
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.)

Material (If none, Insert "None")	Identification No.

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 subcontractor 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 52.229-8	TAXES -- FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990) (applicable when the contract is cost reimbursement type and to be performed wholly or partly in a foreign country)
FAR 52.230-2	COST ACCOUNTING STANDARDS (MAY 2018) (DEVIATION) (This clause applies in negotiated contracts, unless the contract is exempted [pursuant to 48 CFR 9903.201-1], the contract is subject to modified coverage [pursuant to 48 CFR 9903.201-2], or the clause at FAR 52.230-4 is used.)
FAR 52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010) (Applies if FAR 52.230-2 or FAR 52.230-3 applies)
FAR 52.232-17	INTEREST (MAY 2014) (This clause applies unless it is contemplated that the contract will be in one or more of the following categories: [1] Contracts at or below the simplified acquisition threshold; [2] Contracts with Government agencies; [3] Contracts with a State or local government or instrumentality; [4] Contracts with a foreign government or instrumentality; [5] Contracts without any provision for profit or fee with a nonprofit organization; [6] Contracts described in Subpart 5.5, Paid Advertisements; [7] Any other exceptions authorized under agency procedures.)
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 52.242-3	PENALTIES FOR UNALLOWABLE COSTS (MAY 2014) (applies unless the subcontract is fixed priced without cost incentives or firm-fixed price for the purchase of commercial items)
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.-FLAGCOMMERCIAL 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).

2.6. **DEPARTMENT OF ENERGY ACQUISITION REGULATIONS SUPPLEMENT (DEAR) FLOWDOWNS**

A. CLAUSES INCORPORATED BY REFERENCES

(1.) 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 970.5204-2	LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)
DEAR 970.5204-1	COUNTERINTELLIGENCE (DEC 2010)
DEAR 970.5225-1	COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)
DEAR 970.5226-3	COMMUNITY COMMITMENT (DEC 2000)
DEAR 970.5227-6	PATENT INDEMNITY – SUBCONTRACTS (DEC 2000)
DEAR 970.5227-8	REFUND OF ROYALTIES (AUG 2002)
DEAR 970.5229-1	STATE AND LOCAL TAXES (DEC 2000)
DEAR 970.5244-1	CONTRACTOR PURCHASING SYSTEM (AUG 2016) PF 2015-17 (DEVIATION MAR 2015)

(2.) 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.)

(3.) 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.)
DEAR 970.5227-4	AUTHORIZATION AND CONSENT (AUG 2002) (DEVIATION)
DEAR 970.5227-5	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000) (DEVIATION)

(4.) The following DEAR clauses apply to this Subcontract, if the value of this Subcontract exceeds $500,000:

DEAR 952.226-74	DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997) (not applicable to subcontracts for commercial items)
DEAR 970.5226-2	WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000) (not applicable to subcontracts for commercial items)

(5.) 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 (AUG2006) (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 SUBCONTRACT (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.).
DEAR 970.5208-1	PRINTING (DEC 2000) (Applies to all subcontracts that require printing)
DEAR 970.5215-3	CONDITIONAL PAYMENTOF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (AUG 2009) (Applies to subcontracts cost-type contracts that involve the payment of fee, profit, and incentives)
DEAR 970.5222-1	COLLECTIVE BARGAINING SUBCONTRACTS – 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 970.5222-2	OVERTIME MANAGEMENT (DEC 2000) (Applies to all subcontracts where labor rates are reimbursed on the basis of actual costs or where any overtime premium may be incurred by subcontractor and where reimbursement from prime would be claimed.)
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.)
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 (Applies 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.)
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.)
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.)
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.)

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

A. 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).

(1.) In addition to any other provisions in this Subcontract, Subcontractor agrees that it will comply with the all applicable laws and regulations and DOE directives. The DOE directives can be located electronically at https://www.directives.doe.gov/.

(2.) 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.

B. 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.

C. 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.

D. The BSRA Contracting Officer may, from time-to-time via issuance of a Contractor Administration Notice (CAN) or other means, revise the document titled, "BSRA PRIME CONTRACT DOE DIRECTIVES (LIST B)". The document can be found on the SRNL external webpage. Use the following URL (https://www.srnl.gov/procurement)

2.8. AUDIT AND RECORDS NEGOTIATION

A. Cost or Pricing Data

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

B. Reports

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

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

(b.) The data reported

C. Availability

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

(a.) If this Subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and

(b.) Records relating to appeals under the Disputes article or to litigation or the settlement of the Government and BSRA claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.

D. Inspections

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

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

F. Comptroller General

(1.) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this Subcontract or a lower-tier subcontract hereunder.

(2.) This paragraph may not be construed to require the Subcontractor or a subtier subcontractor to create or maintain any record that the Subcontractor or subtier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

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

2.9. **SUSTAINABLE ACQUISITION PROGRAM**

Section applies if the Subcontract exceeds $100,000.00

A. Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the Department of Energy (DOE) is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and well-being of its Federal employees and subcontractor service providers. In the performance of work under this contract, the subcontractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions and protects the health and well-being of Federal employees, contract service providers and visitors using the facility.

B. Green purchasing or sustainable acquisition has several interacting initiatives. The subcontractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The subcontractor may request an equitable adjustment to the terms of its contract using the procedures in the Changes clause of the contract. The initiatives important to these Executive Orders are explained on the following Government or Industry Internet Sites:

(1.) Recycled Content Products are described at http://epa.gov/cpg

(2.) Biobased Products are described at http://www.biopreferred.gov/

(3.) Energy efficient products are at http://www.energystar.gov/products for Energy Star products

(4.) Energy efficient products are at http://www.femp.energy.gov/procurement for FEMP designated products

(5.) Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at http://www.epeat.net the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site

(6.) Greenhouse gas emission inventories are required, including Scope 3 emissions which include subcontractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at http://www.archives.gov/federal-register/executive- orders/disposition.html

(7.) Non-Ozone depleting alternative products are at http://www.epa.gov/ozone/strathome.html

(8.) Water efficient plumbing products are at

C. The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223- 17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the subcontractor require provision of any of the above

types of products, the subcontractor must provide the energy efficient and environmentally sustainable type of product unless that type of product—

(1.) Is not available

(2.) Is not life cycle cost effective or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable (EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level);

(3.) Does not meet performance needs; or,

(4.) Cannot be delivered in time to meet a critical need.

D. In the performance of this contract, the subcontractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (http://www.epa.gov/greeningepa/practices/eo134 23.html) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (http://www.archives.gov/federal-register/executive-orders/disposition.html). The Subcontractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non- ozone depleting substances and other environmentally preferable products and services. This guide is available on the Internet at: (http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf.)

E. In complying with the requirements of paragraph (C) of this clause, the Subcontractor(s) shall coordinate its activities with and submit required reports through the Environmental Sustainability Coordinator or equivalent position. Reporting under this paragraph and paragraphs (F) and (G) of this clause is only required if the contract or subcontract offers subcontracting opportunities for energy efficient and environmentally sustainable products or services exceeding $100,000 in any contract year.

F. The Subcontractor shall prepare and submit performance reports, if required, using prescribed DOE formats, at the end of the Federal fiscal year, on matters related to the acquisition of environmentally preferable and sustainable products and services. This is a material delivery under the contract. Failure to perform this requirement may be considered a failure that endangers performance of this contract and may result in termination for default.

G. These provisions shall be flowed down only to first tier subcontracts exceeding the Simplified Acquisition Threshold that support operation of the DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services. The Subcontractor, if subcontracting opportunities for sustainable and environmentally preferable products or services exceed the threshold in paragraph (E) of this clause, will comply with the procedures in paragraphs (C) through (E) of this clause regarding the collection of all data necessary to generate the reports required under paragraphs (C) through (E) of this clause, and submit the reports directly to the BSRA's Environmental Sustainability Coordinator at the supported facility. The Subcontractor shall require the subtier subcontractor to advise the Subcontractor if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in paragraph (C) of this clause apply. The reports may be submitted at the conclusion of the subcontract term provided that the subcontract delivery term is not multi-year in nature. If the delivery term is multiyear, the Subcontractor shall require the subtier subcontractor to report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

2.10. **EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT [OCT 2010]**

Section applies if the Subcontract exceeds $100,000.00

A. Since this contract involves subcontractor operation of Government-owned facilities and/or motor vehicles, the provisions of Executive Order 13423 are applicable to the subcontractor to the same extent they would be applicable if the Government were operating the facilities or motor vehicles. Information on the requirements of the Executive Order may be found at http://www.archives.gov/federal-register/executive-orders.

ARTICLE 3

ARTICLE APPLIES ONLY IF SPECIFIED IN THE ORDER REGARDLESS OF ORDER PRICE

3.1. **DEAR 970.5223-1 - INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION**

A. For the purpose of this Section,

(1.) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and

(2.) Employees include Subcontractor and subtier subcontractor employees.

B. In performing work under this Subcontract, the Subcontractor and any subtier subcontractor, shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health ("ES&H") functions and activities becomes an integral, but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:

(1.) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and subtier subcontractor employees managing or supervising employees performing work.

(2.) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3.) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4.) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5.) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6.) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

(7.) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by BSRA and the Subcontractor. These agreed-upon conditions and requirements of the Subcontract are binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work.

C. The Subcontractor and any subtier subcontractor shall manage and perform work in accordance with Section 3.2 or a documented a Worker Protection Plan (WPP) that fulfills all conditions in paragraph B. of this Section to the degree specified in Section 3.3 or 3.4, as indicated applicable to this Subcontract. Documentation in the Subcontract shall describe how the Subcontractor will:

(1.) Define the Work to be performed;

(2.) Identify and analyze hazards associated with the work;

(3.) Develop and implement hazard controls;

(4.) Perform work within controls; and

(5.) Provide feedback on adequacy of controls and continue to improve safety management.

D. The Subcontract shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to Subcontract requirements and funding limits while maintaining the integrity of the WPP. The Subcontract shall also describe how the Subcontractor will measure WPP effectiveness.

E. The Subcontractor shall submit to the BSRA Procurement Specialist documentation of its WPP for review and acceptance. The BSRA Procurement Specialist will establish dates for submittal, discussions, and revisions to the WPP. The BSRA Procurement Specialist will provide guidance on preparation, content, review, and acceptance of the WPP. On an annual basis, the Subcontractor shall review and update, for BSRA acceptance, its safety performance objectives, performance measures, and commitments consistent with, and in response to, Subcontract requirements, funding limits and direction.

Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire WPP. Accordingly, the Subcontract shall be integrated with the Subcontractor's business processes, as applicable to the scope of work contained in this Subcontract, for work planning, budgeting, authorization, execution, and change control.

F. The Subcontractor and any subtier subcontractor, shall comply with, and assist BSRA in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the Section of this Subcontract on entitled, DEAR 970.5204-2 Laws, Regulations, and DOE Directives. The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this Subcontract.

G. The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements including those specified in the Subcontract. If the Subcontractor fails to provide resolution or, if at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the BSRA Procurement Specialist may issue an order stopping work in whole or in part. Any stop work order issued by the BSRA Procurement Specialist under this Section (or issued by the Subcontractor to a subtier subcontractor shall be without prejudice to any other legal or contractual rights of BSRA. In the event that the BSRA Procurement Specialist issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the BSRA Procurement Specialist. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Section.

H. BSRA shall hold the Subcontractor responsible for compliance with the ES&H requirements applicable to this Subcontract, including performance of work by any subtier subcontractor. In utilizing the Focused Observation Checklists, Subcontractor are required to forward any self - identified safety deficiencies to the STR/End User. The STR/End User will forward the deficiencies to BSRA Contractor Assurance for screening.

3.2. **ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE – CATEGORY A**

(Compliance by the Subcontractor with the requirements of this Section 3.2 shall satisfy any/all requirements of Section 3.1, "Integration of Environment, Safety and Health into Work Planning and Execution", applicable to the scope of work contained in this Subcontract.)

A. The Subcontractor, and any subtier subcontractor, shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety, and health of employees and members of the public. All work shall be performed to include lower-tier subcontracted work in compliance with all applicable BSRA/DOE environmental, safety, and health requirements, including DOE Regulation 10 CFR 851, "Worker Safety and Health Program", and orders, and procedures including related reporting requirements and all subsequent updates to OSHA and 10 CFR 851. Such procedures provide authority to BSRA employees to call a "time out/stop work" when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property. The Subcontractor shall ensure that its employees, including lower-tier Subcontractor employees are aware of this authority, and also have similar "time out/stop work" authority when performing work under this Subcontract. The BSRA Procurement Specialist shall notify the Subcontractor in writing of any noncompliance with the provisions of this Section and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said BSRA/DOE regulations, requirements and procedures the BSRA Procurement Specialist may, without prejudice to any other legal or contractual rights of BSRA, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the BSRA Procurement Specialist. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Section.

B. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the BSRA Procurement Specialist a completed Prequalification Checklist for review and acceptance by the appropriate contractor's organization(s). The Prequalification Checklist shall contain the following minimum requirements, as applicable:

(1.) Letter acknowledging a Corporate Safety and Health Policy and confirmation of compliance with BSRA procedures. In addition, for any tasks identified in the Statement of Work as outside the scope of BSRA procedures, the Subcontractor shall provide to the BSRA Procurement Specialist for BSRA review and acceptance any appropriate documentation, procedures or manuals containing task hazard reviews and safeguards to be implemented. Whenever a significant change or addition is made to such documentation, procedures or manuals, the Subcontractor shall re-submit the revised document to BSRA for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor must submit annually to BSRA either an update to the documentation, procedures or manuals for acceptance or a letter stating that no changes are necessary in the current accepted documents.

(2.) EMR & TRC Worksheet

(3.) Safety and Industrial Hygiene Representation: The Subcontractor shall designate required representation as specified in the Subcontract. The designation must include qualifications and duties.

(4.) Insurance Confirmation of EMR Rate

(5.) OSHA 300 Logs/Summaries

(6.) Focused Observation Checklists

(7.) Designated Local Medical Provider

(8.) Assigned Competent Person (ACP): The Subcontractor shall designate in writing an Assigned Competent Person ("ACP"), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation f or non-badged material/equipment delivery Personnel and other non-badged Subcontractor personnel seeking temporary badges in support of the Subcontractor's work scope. The ACP shall be a responsible employee, cognizant of the Subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of applicable focused observation safety checklists to any non-badged temporary personnel anticipating entry onto SRS, and shall meet entering personnel at the BSRA Badging Office, Building 703-46A when they report for temporary badging. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA.

C. Equipment Safety

(1.) The Subcontractor shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, and (copy available on the BSRA Internet Home Page) and provide one (1) copy to the Subcontract Technical Representative (STR)/End User, prior to placing any such equipment in service on the Savannah River Site. Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy-duty equipment on the Savannah River Site, the Subcontractor shall complete the "Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist", copy available on the SRNL Home Page or from the Procurement Specialist, and provide a copy to the STR/END USER.

D. Site Reporting Requirements

(1.) The Subcontractor shall immediately notify the STR/END USER or BSRA Procurement Specialist of any event/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 (DOE M 231.1-2) and can include (but are not limited to):

(a.) Operational emergencies,

(b.) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,

(c.) Any on–the-job injury where an 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,

(d.) 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,

(e.) Fires/explosions

(f.) Hazardous energy control failures

(g.) Operations shutdown directed by management for safety responses,

(h.) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.,

(i.) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,

(j.) Loss, damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),

(k.) Spread of radioactive contamination or loss of control of radioactive materials,

(l.) Personnel radioactive contaminations or exposures, and

(m.) Violations of procedures.

(2.) Immediate notification is required of such events to ensure BSRA meets its commitment for thirty (30) minute notification to appropriate DOE authorities. The Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor and their employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

3.3. **ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE – CATEGORY B**

(Compliance by the Subcontractor with the requirements of this Section 3.3 shall satisfy any/all requirements of Section 3.1, "Integration of Environment, Safety and Health into Work Planning and Execution", applicable to the scope of work contained in this Subcontract.)

A. The Subcontractor and any subtier subcontractor shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements, including new DOE Regulation 10 CFR 851, "Worker Safety and Health Program" which will apply to any work performed on the Savannah River Site and all subsequent updates to OSHA and 10 CFR 851. The Subcontractor and any subtier subcontractor shall comply with site-specific ES&H requirements when specified in the Subcontract. The BSRA Procurement Specialist shall notify the Subcontractor in writing of any noncompliance with the provisions of this Section. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said regulations and requirements, the BSRA Procurement Specialist may, without prejudice to any other legal or contractual rights of BSRA, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the BSRA Procurement Specialist. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Section.

B. Prequalification Checklist Prior to the start of work under this Subcontract, Subcontractor shall provide to BSRA's Procurement Specialist a completed Prequalification Checklist for review and acceptance by the appropriate contractor's organization(s). The Prequalification Checklist shall contain the following minimum requirements, as applicable:

(1.) (WPP) Worker Protection Plan Checklist

(2.) EMR & TRC Worksheet

(3.) Safety and Industrial Hygiene Representation: The Subcontractor shall designate required representation as specified in the Subcontract. The designation must include qualifications and duties.

(4.) Worker Protection Plan (WPP) and Task Specific Plan (TSP): The Subcontractor shall possess and maintain a corporate WPP which implements the requirements applicable to the normal course of the Subcontractor's business. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the BSRA Procurement Specialist a copy of the WPP and sample Task Specific Plans (TSP) for review and acceptance by the appropriate BSRA organization(s). Note: Subcontractor is responsible for conducting hazard analysis and documenting additional TSPs. Work under this Subcontract shall not commence until the WPP and TSPs have been accepted by BSRA. The Subcontractor shall provide a copy of the accepted WPP and TSP to any subtier subcontractor and shall ensure Subcontractor employee's performing work at the site have access to the WPP document accepted by BSRA, and other standards, controls and procedures including DOE worker protection publications applicable to the workplace. The Subcontractor's employees and the Employees of any subtier subcontractor shall comply with the WPP and TSPs in the performance of the work under this Subcontract. The Subcontractor shall provide mechanisms to involve workers in the development of WPP goals, objectives, and performance measures and in the identification and control of workplace hazards. Whenever a significant change or addition is made to the WPP, it shall be re-submitted to BSRA for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor must submit annually to BSRA either an updated WPP for acceptance or a letter stating that no changes are necessary in the current accepted WPP.

(5.) Insurance Confirmation of EMR Rate

(6.) OSHA 300 Logs/Summaries

(7.) Focused Observation Checklists

(8.) Designated Local Medical Provider

(9.) Assigned Competent Person (ACP): The Subcontractor shall designate in writing an Assigned Competent Person ("ACP"), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation f or non-badged material/equipment delivery Personnel and other non-badged Subcontractor personnel seeking temporary badges in support of the Subcontractor's work scope. The ACP shall be a responsible employee, cognizant of the Subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of applicable focused observation safety checklists to any non- badged temporary personnel anticipating entry onto SRS, and shall meet entering personnel at the BSRA Badging Office, Building 703-46A when they report for temporary badging. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA and the WPP.

C. Equipment Safety

(1.) The Subcontractor shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, (copy available on the BSRA Internet Home Page) and provide one (1) copy to the Subcontract Technical Representative (STR)/End User, prior to placing any such equipment in service on the Savannah River Site. Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy-duty equipment on the Savannah River Site, the Subcontractor shall complete the "Self -propelled Equipment Loading, Unloading & Transport Safety Review Checklist", copy available on the SRNL Home Page or from the Procurement Representative, and provide a copy to the STR/END USER.

D. Safety Data Sheets

(1.) The Subcontractor shall provide the STR/END USER copies of Safety Data Sheets for all chemicals brought to SRS prior to the initial use of such chemicals. In addition, the Subcontractor shall provide the STR/END USER with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow National Fire Protection Association ("NFPA") storage guidelines.

E. Environmental Compliance

(1.) The Subcontractor and any subtier subcontractor shall comply with all applicable environmental protection laws, Executive Orders, ordinances, regulations, directives, and codes. Upon request, the Subcontractor shall submit an Environmental Compliance Plan ("ECP") outlining the methods proposed to address the environmental requirements specified in the scope of work. The ECP shall specify the person responsible for ensuring the requirements are met.

F. Site Reporting Requirements

(1.) The Subcontractor shall immediately notify the STR/END USER or BSRA Procurement Specialist of any event/condition that may require reporting to the 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 (DOE M 231.1-1-2) and can include (but are not limited to):

(a.) Operational emergencies,

(b.) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,

(c.) Any on–the-job injury where an 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,

(d.) 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

(e.) Fires/explosions

(f.) Hazardous energy control failures,

(g.) Operational shutdown directed by management for safety reasons,

(h.) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.

(i.) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,

(j.) Loss damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),

(k.) Spread of radioactive contamination or loss of control of radioactive materials,

(l.) Personnel radioactive contaminations or exposures, and

(m.) Violations of procedures.

(2.) Immediate notification is required of such events to ensure BSRA meets its commitment for thirty (30) minute notification to appropriate DOE authorities. The Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor and their employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

3.4. **ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE – CATEGORY C**

(Compliance by the Subcontractor with the requirements of this Section 3.4 shall satisfy any/all requirements of Section 3.1, "Integration of Environment, Safety and Health into Work Planning and Execution", applicable to the scope of work contained in this Subcontract.)

A. The Subcontractor and any subtier subcontractor shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements, including new DOE Regulation 10 CFR 851, "Worker Safety and Health Program" which will apply to any work performed on the Savannah River Site and all subsequent updates to OSHA and 10 CFR 851. The Subcontractor and any subtier subcontractor shall comply with site-specific ES&H requirements when specified in the Subcontract. The BSRA Procurement Specialist shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said regulations and requirements, the BSRA Procurement Specialist may, without prejudice to any other legal or contractual rights of BSRA, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the BSRA Procurement Specialist. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Section.

B. Prequalification Checklist

(1.) Prior to the start of work under this Subcontract, Subcontractor shall provide to contractor's Procurement Specialist a completed Prequalification Checklist for review and acceptance by the appropriate contractor's organization(s). The Prequalification Checklist shall contain the following minimum requirements, as applicable:

(a.) (WPP) Worker Protection Plan Checklist

(b.) EMR & TRC Worksheet

(c.) Safety and Industrial Hygiene Representation: The Subcontractor shall designate required representation as specified in the Subcontract. The designation must include qualifications and duties.

(d.) Worker Protection Plan (WPP): The Subcontractor shall possess and maintain a corporate Worker Protection Plan (WPP) which implements the requirements applicable to the normal course of the Subcontractor's business. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the BSRA Procurement Specialist a copy of the WPP for review and acceptance by the appropriate BSRA organizations. The Subcontractor's employees and the employees of any subtier subcontractor, shall comply with the WPP in the performance of the work under this Subcontract. Work under the Subcontract shall not commence until the WPP has been received and accepted by BSRA. The Subcontractor shall provide a copy of the WPP to any subtier subcontractor and shall ensure Subcontractor employee's performing work at the site have access to the WPP document accepted by BSRA, and other standards, controls and procedures including DOE worker protection publications applicable to the workplace. The Subcontractor shall provide mechanisms to involve workers in the development of WPP goals, objectives, and performance measures and in the identification and control of workplace hazards. Whenever a significant change or addition is made to the WPP, it shall be re-

submitted to BSRA for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor must submit annually to BSRA either an updated WPP for acceptance or a letter stating that no changes are necessary in the current accepted WPP.

(e.) Insurance Confirmation of EMR Rate

(f.) OSHA 300 Logs/Summaries

(g.) Focused Observation Checklists

(h.) Designated Local Medical Provider

(i.) Assigned Competent Person (ACP): The Subcontractor shall designate in writing an Assigned Competent Person (ACP), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged Subcontractor personnel seeking temporary badges in support of the Subcontractor's work scope. The ACP shall be a responsible employee, cognizant of the Subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of applicable focused observation safety checklists to any non-badged temporary personnel anticipating entry onto SRS, and shall meet entering personnel at the BSRA Badging Office, Building 703-46A when they report for temporary badging. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA and the WPP.

C. Equipment Safety

(1.) The Subcontractor shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, (copy available on the BSRA Internet Home Page) and provide one (1) copy to the Subcontract Technical Representative (STR)/End User, prior to placing any such equipment in service on the Savannah River Site. Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy-duty equipment on the Savannah River Site, the Subcontractor shall complete the "Self -propelled Equipment Loading, Unloading & Transport Safety Review Checklist", copy available on the SRNL Home Page or from the Procurement Specialist, and provide a copy to the STR/END USER.

D. Safety Data Sheets

(1.) The Subcontractor shall provide the STR/End User copies of Safety Data Sheets for all chemicals brought to SRS prior to the initial use of such chemicals. In addition, the Subcontractor shall provide the STR/End User with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow NFPA storage guidelines.

E. Environmental Compliance

(1.) The Subcontractor and any subtier subcontractor shall comply with all applicable environmental protection laws, Executive Orders, ordinances, regulations, directives, and codes. Upon request, the Subcontractor shall submit an Environmental Compliance Plan (ECP) outlining the methods proposed to address the environmental requirements specified in the scope of work. The ECP shall specify the person responsible for ensuring the requirements are met.

(a.) Operational emergencies,

(b.) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,

(c.) Any on–the-job injury where an 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,

(d.) Any violation of Lockout/Tag out controls where there are no credible barriers left between the worker, and the energy source regardless of whether or not there was an injury

(e.) Fires/explosions

(f.) Hazardous energy control failures,

(g.) Operations shutdown directed by management for safety reasons,

(h.) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.

(i.) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations, and

(j.) Loss damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),

(k.) Spread of radioactive contamination or loss of control of radioactive materials,

(l.) Personnel radioactive contaminations or exposures, and

(m.) Violations of procedures.

(2.) Immediate notification is required of such events to ensure BSRA meets its commitment for thirty (30) minute notification to appropriate DOE authorities. The Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor and their employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

3.5. **GENERAL CONDITIONS OF EQUIPMENT RENTAL**

A. Rental Payments

(1.) Upon the submission of proper invoices or vouchers, Battelle Savannah River Alliance, LLC (BSRA) shall pay, as full compensation for use of the equipment, rent at rates set forth in the Subcontract to which these General Conditions are attached. Payments will be made at the end of each month or at the end of the rental, whichever occurs first, for rental accrued during the previous rental period.

B. Rental Rates

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

(2.) Should the total rental calculated on the applicable Base Rental rate, exclusive of overtime, exceed the proposed rate for the next longer rental term the lesser rental shall be paid.

C. Condition of Equipment

(1.) When delivered to job site, the equipment shall be in condition to render efficient, economical, and continuous service and its condition shall comply fully with all applicable Federal and State statutes and any regulations issued there under. Each item of equipment shall be inspected, tested, and inventoried by lessor and BSRA at job site upon arrival and immediately prior to return shipment. A joint electronically written report shall be made, and copies filed with each of the parties. lessor shall accept BSRA's report in the event the lessor fails to participate in such inspections. Such inspections and reports shall fix and determine the rights and obligations of the parties with reference to the condition of the equipment.

(2.) If BSRA determines that any equipment furnished does not comply with this Subcontract, BSRA shall promptly inform the lessor in writing. If the lessor fails to replace the equipment or correct the defects as required by BSRA, BSRA may

(a.) By contract or otherwise, correct the defect or arrange for the lease of similar equipment and shall charge or set of against the lessor any excess costs occasioned thereby, or

(b.) Terminate the Subcontract under the Default article of this Subcontract.

(3.) BSRA shall make repairs or, at its option, shall reimburse lessor for repairs due to damage caused by exceeding manufacturer's rated capacities. All other repairs attributable to equipment failure shall be lessor's responsibility. Should equipment become inoperative because of necessary repairs which are the lessor's responsibility, rental period will discontinue upon BSRA's notification to the lessor of such conditions, and rental period will resume only when equipment is placed in a condition as required under this Section 3. BSRA will notify lessor prior to making repairs for the account of the lessor. Unless otherwise specified in the Subcontract, BSRA will furnish all fuel and lubricants and all operators and mechanics for necessary operation, use, and servicing of the equipment.

(4.) Equipment, when returned to lessor, shall be in as good condition as when delivered at job site, usual and ordinary wear and tear accepted.

D. Rental Period

(1.) The period for which rental is payable for an item of equipment shall begin on the date equipment is delivered to the job site, except that if BSRA gives a definite required delivery date to the lessor prior to shipment, the Rental Period shall not start until such date. However, rent shall accrue only for the period that the equipment is in the possession of BSRA. The Rental Period shall end when the equipment is delivered for shipment to the point of origin or such other return point as may be designated by lessor, such delivery to be evidenced by a bill of lading or other similar evidence covering shipment. If lessor fails to notify BSRA of destination prior to time equipment is ready for return shipment, no rental time shall accrue until such notification is given BSRA and equipment is loaded for Shipment.

(2.) If equipment is not in required condition, as determined by BSRA, when it arrives at the job site, the Rental Period shall not begin until it shall, at the expense of lessor, have been placed in proper condition.

(3.) If the inspection report made immediately prior to return shipment establishes that the equipment is not in condition required of BSRA under paragraph C(4) of this Section, BSRA shall do all things necessary to place it in such condition and the Rental Period shall not terminate prior to placing the equipment is such condition.

(4.) Unless otherwise stated in the Subcontract, BSRA makes no representation or guarantee as to the length of the Rental Period or the amount of rental, which will accrue, for any equipment, it being the intent that the equipment may be rented for as long as BSRA requires. The rental of any equipment which does not perform to BSRA's satisfaction may be terminated upon notice by BSRA to lessor.

E. Transportation Costs

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

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

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

G. Liability Provisions

(1.) By acceptance of the Subcontract to which these conditions apply, lessor agrees that

(a.) Lessor assumes and hereby relieves BSRA of any and all liability for any loss or damage to the equipment rented to BSRA occurring during the period from the date of shipment to BSRA to the date of return to lessor as the result of any cause other than the sole fault or negligence of BSRA;

(b.) BSRA's liability under this provision shall be limited to the fair market value of the equipment taking into consideration its age and condition immediately prior to said loss or damage.

H. Recapture Provisions

Note: Optional and in effect only if so stated in the Terms and Conditions of the Subcontract.

(1.) If this provision is applicable,

(a.) a recapture valuation mutually agreeable to BSRA and lessor shall be established and stated in the Subcontract

(b.) Lessor certifies that there are no encumbrances of any nature, legal or equitable, held by any person against the equipment rented hereunder, unless so stated in the Subcontract.

(2.) At any time during or at the end of the rental period of the equipment, BSRA may purchase the equipment by paying to lessor the difference between such valuation and total rental paid, plus a charge to cover interest at a rate specified in this Subcontract for the unpaid balance of the equipment valuation for each month or fraction thereof that such equipment has been under rental to BSRA. Title to such equipment shall then vest in BSRA and lessor shall deliver to BSRA such instruments of title as BSRA may require, free of any and all liens and encumbrances.

I. Equipment Operated and Maintained

(1.) The following provisions shall be applicable if equipment is rented on the basis of operation and maintenance by the lessor:

(a.) All rental rates stipulated in this Subcontract include all charges for operation and maintenance of the equipment by lessor.

(b.) Lessor has qualified or will promptly qualify and will make all payments under the terms of the unemployment compensation laws of the state in which the equipment will be operated. In addition, lessor will, at lessor's expense, carry insurance in minimum limits as specified in the Section titled "Work on BSRA, Government or other Premises", included in these General Provisions.

(c.) Lessor shall obtain BSRA's prior approval Before employing any Subcontractor. Each Subcontractor must also carry insurance as specified in subparagraph (2), supra. Lessor shall carry Contractor's Protective Public Liability, Bodily Injury, and Protective Property Damage insurance of the same minimum limits.

(d.) Lessor shall be responsible for all persons engaged to operate or maintain the equipment or to perform any other work lessor is obligated to perform under this Subcontract. None of said persons shall constitute employees of BSRA.

(e.) In the operation of the equipment, lessor shall comply with all Federal, State, and local regulations and with all safety regulations in effect on the BSRA site. In addition, lessor shall

(i.) Comply with recognized safety practices for the type of work being performed including the furnishing of necessary safety equipment

(ii.) Conduct and protect operations in such a manner as to avoid exposing others to injury.

(2.) Lesser shall ensure that all equipment operators have appropriate qualifications and experience for operating the specified equipment, to include any applicable State, Federal or local licenses or certifications.

J. Notices

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

3.6. **GENERAL EMPLOYEE TRAINING AND ANNUAL REFRESHER TRAINING FOR SUBCONTRACT EMPLOYEES**

The following terms are applicable if performance of this Subcontract will require the Subcontractor's employee(s) to perform work on SRS premises for more than ten (10) working days.

A. General Employee Training (GET)

(1.) The Subcontractor shall inform his employees and the employees of his subtier subcontractor and agents that it is the policy of BSRA to adhere to the requirements contained in the DOE Order entitled "Personnel Selection, Training, Qualification and Certification Requirements for DOE Nuclear Facilities," which requires any individual, employed either full or part-time at any DOE reactor or non-reactor facility to receive selected general training.

(2.) Successful Completion Required. Said employees, referred to in the remainder of this document as "individual", must successfully complete the training known as "General Employee Training" ("GET") as offered by the SRS. GET is required for individuals who require badged access to the general site. GET is Web Based (on-line).

(3.) Successful Completion Defined: Successful completion occurs when the individual

(a.) Is given access to the on-line GET,

(b.) Completes the GET,

(c.) Obtains a test score of 80% or greater on the examination (100% is the highest obtainable score),

(4.) Unsuccessful Completion Defined: If the individual fails to complete successfully GET, the individual is given a failure notice and is to notify the Subcontract Technical Representative (STR)End/User. The individual will be allowed several chances to successfully complete the GET. Multiple attempts are not allowed on the same day. Continued failure to successfully complete GET will result in resolution by the STR/End User.

(5.) Access to GET. The STR/End User shall direct the individual when to complete GET.

B. Consolidated Annual Training (CAT)

(1.) CAT is required after an individual's initial successful completion of GET, regardless of the individual's present employer. CAT is required to be completed in January each year the individual has a SRS security badge. The STR/End User may be contacted for assistance.

C. Annual Safeguards and Security Refresher Training (S&S). S&S training is required to be completed in November-December each year and is required for each individual regardless of the month GET is completed.

D. GET, CAT and the S&S Training can be completed offsite on a computer, cell phone or tablet at www.srs.gov. The link to the training is available in the lower left corner of the home page. The training can also be completed on SRS network computers. The S&S Training is a prerequisite and must be completed before completing CAT. Individuals are encouraged to use Internet Explorer to complete the training.

3.7. **SECURITY EDUCATION REQUIREMENTS FOR SUBCONTRACTOR**

The following items are applicable if performance of this Subcontract will require the Subcontractor or the Subcontractor's employee(s) to receive a security badge.

A. Subcontractor Security Education Coordinator

(1.) If this Subcontract will require a force of more than thirty (30) subcontract employees receive badges, then the Subcontractor shall provide to the BSRA Security Education Office, the name of its representative appointed to administer its Security Education Program. This representative shall be referred to as the Subcontractor Security Education Coordinator (SSEC).

(2.) If this Subcontract will require that less than thirty (30) subcontract employees receive badges, then the BSRA Subcontract Technical Representative (STR)/End User will perform the activities discussed in this Section.

B. Company Roster

(1.) The SSEC will be responsible for providing the STR/End User with a roster of all subcontract personnel receiving a badge. At a minimum, the data shall include name, social security number, work telephone number, clearance level and place where work is generally performed. This list shall be kept current and updated every sixty (60) days.

C. Initial Briefing

(1.) The SSEC will ensure that all subcontract personnel, regardless of clearance level, receive an Initial Security Briefing. This briefing is shown during General Employee Training. This briefing consists of a videotape shown during GET, or at the time of badging for those individuals not required to attend GET.

D. Comprehensive Briefing

(1.) If subcontract personnel have a clearance at the inception of this Subcontract, or receive a clearance at any time during the course of the Subcontract, the SSEC/STR/End User will ensure that those subcontract employees receive a Comprehensive Briefing from BSRA.

E. Annual Refresher Briefing

(1.) The SSEC/STR/End User shall ensure that all subcontract employees receive, at least once in a twelve (12) month period, an Annual Security Refresher briefing from BSRA. This briefing is provided during GET Refresher Training.

F. Foreign Travel Briefing

(1.) If a subcontract employee plans a trip to a sensitive country, whether on official business or for pleasure, the SSEC/STR/End User is responsible for ensuring that the individual receives a foreign travel briefing from BSRA before departing and a debriefing upon return. The OPSEC Officer is responsible for these briefings.

G. Badge Retrieval at Termination

(1.) The Subcontractor is responsible for ensuring that badges are returned or accounted for when a subcontract employee terminates employment or when a Subcontract is completed. The employee must report to Employment Processing Center, for proper completion of out-processing and badge return. This effort should be coordinated with the BSRA STR/End User.

H. Termination Briefing

(1.) When a subcontract employee terminates employment or is reassigned, the SSEC/STR/End User will ensure that a termination briefing by BSRA is given and the appropriate forms are executed. Briefing materials and appropriate forms are provided by BSRA.

3.8. **UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)**

In the performance of this Subcontract, the Subcontractor is responsible for complying with the following requirements and for flowing down all requirements to subtier subcontractor.

A. 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.

B. 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 Computer Protection Plan is required during the performance of this Subcontract.

C. 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 ¼ 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 Subcontractor, the Subcontractor may return the UCNI matter to the STR/End User for disposition, with the prior approval of the STR/End User.

D. The Subcontractor shall report to the BSRA Security Office or the BSRA Procurement Specialist any incidents involving the unauthorized disclosure of UCNI.

E. 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 Subcontractor Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part C.

F. 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 subcontractor and maintains a current list of all Reviewing Officials; and

(3.) May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.

G. 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, Part B.

3.9. **SCIENTIFIC AND TECHNICAL INFORMATION**

A. Written Electronic submissions of technical reports will consist of two virus-free copies that are readable in the following formats:

(1.) Text will be submitted in native software (that is compatible with the suite of document creation software currently used at SRS) (fonts identified) or in RTF (rich text format).

(2.) Embedded objects and files that are linked to a document must be supplied as well, as follows:

(a.) Raster images (for example, photographs) will be submitted as TIFF or EPS @ resolution>100 dpi.

(b.) Vector art (for example, line art) will be submitted as EPS images.

(c.) Data-driven displays (e.g., spreadsheet charts) must be accompanied by data set used to generate them.

3.10. **COUNTERINTELLIGENCE**

A. The Subcontractor shall take all reasonable precautions in the work under this Subcontract to protect BSRA/DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 475-1, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other Pertinent national and Departmental Counterintelligence requirements.

B. The Subcontractor shall comply with requirements established by the DOE-SR Counterintelligence Officer. The DOE-SR Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of Subcontractor employees traveling to foreign countries or interacting with foreign nationals. The Subcontractor shall be responsible for requesting defensive Counterintelligence briefings and debriefings of Subcontractor employees who have traveled to foreign countries or interacted with foreign nationals. The Subcontractor shall coordinate Counterintelligence Awareness training activities with the BSRA Procurement Specialist. The Subcontractor shall immediately report targeting, suspicious activity and other Counterintelligence concerns to the BSRA Procurement Specialist; and provides assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

3.11. **NON-PROLIFERATION**

A. If any item(s) provided under this Subcontract are foreign made and will require importation into the United States to fulfill the requirements under this Subcontract, the Subcontractor represents that delivery of such items will not violate any non-proliferation laws, rules or regulations of the country or countries from which the materials are to be exported.

3.12. **LIMITATION OF FUNDS**

NOTE: This Section is applicable only if this Subcontract is partially funded.

A. Of the total price of this Subcontract, the sum of $_____ is presently available for payment and allotted to this Subcontract. It is anticipated that additional funds will be allocated to the Subcontract in accordance with the following schedule until the total price of the Subcontract is funded: [insert schedule or Attach]

B. The Subcontractor agrees to perform or have performed work on this Subcontract up to the point at which, if this Subcontract is terminated pursuant to the Termination For Convenience of BSRA Section of this Subcontract, the total amount payable by BSRA (including amounts payable for Subcontracts and settlement costs) pursuant to the Termination For Convenience of BSRA Section would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount at the time allotted to the Subcontract. The Subcontractor is not obligated to continue performance of the work beyond that point. BSRA is not obligated in any event to pay or reimburse the Subcontractor more than the amount from time to time allotted to the Subcontract, anything to the contrary in the Termination for Convenience of BSRA article notwithstanding.

C. It is contemplated that funds presently allotted to this Subcontract will cover the work to be performed until _____ .

(1.) If funds allotted are considered by the Subcontractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Subcontractor shall notify BSRA in writing when within the next 60 days the work will reach a point at which, if the Subcontract is terminated pursuant to the Termination For Convenience of BSRA section of the Subcontract, the total amount payable by BSRA (including amounts payable for Subcontracts and settlement costs) pursuant to the Termination For Convenience of BSRA section will approximate seventy-five (75) percent (%) of the total amount then allotted to the Subcontract.

(a.) The notice shall state the estimated date when the point referred to in this paragraph C of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in paragraph C(1) of this Section, or an agreed date substituted for it.

(b.) The Subcontractor shall, sixty (60) days in advance of the date specified in this paragraph C of this section, or an agreed date substituted for it, advise BSRA in writing as to the estimated amount of

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

(2.) If , after the notification referred to in paragraph C of this clause, additional funds are not allotted by the date specified in paragraph C of this clause, or an agreed date substituted for it, BSRA shall, upon the Subcontractor's electronic request, terminate this Subcontract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination for Convenience of BSRA article.

D. When additional funds are allotted from time to time for continued performance of the work under this Subcontract, the parties shall agree on the applicable period of Subcontract performance to be covered by these funds. The provisions of paragraphs B and C of this section shall apply to these additional allotted funds and the substituted date pertaining to them, and the Subcontract shall be modified accordingly.

E. If , solely by reason of BSRA's failure to allot additional funds in amounts sufficient for the timely performance of this Subcontract, the Subcontractor incurs additional costs or is delayed in the performance of the work under this Subcontract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the work to be performed.

F. BSRA may at any time before termination, and, with the consent of the Subcontractor, after notice of termination, allot additional funds for this Subcontract.

G. The provisions of this clause with respect to termination shall in no way be determined to limit the rights of BSRA under the Default Section of this Subcontract. This clause shall become inoperative upon the allotment of funds for the total price of the work under this Subcontract except for rights and obligations then existing under this clause.

H. Nothing in this clause shall affect the right of BSRA to terminate this Subcontract pursuant to the Termination for Convenience of BSRA Section of the Subcontract.

3.13. **PROGRESS PAYMENTS**

NOTE: If applied, this section consists of additional paragraphs to the section titled, "Delivery and Payment". In the event of an inconsistency between these additional paragraphs A-E and the section titled, "Delivery and Payment", these additional paragraphs take precedence.

A. BSRA shall make progress payments monthly as the work proceeds or at more frequent intervals as determined by BSRA, on estimates of work accomplished which meet the standards of quality established under the Subcontract, as approved by BSRA. If requested by BSRA, the Subcontractor shall furnish a breakdown of the total Subcontract price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide abasis for determining progress payments. In the preparation of estimates BSRA may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Subcontractor at locations other than the site may also be taken into consideration if:

(1.) Consideration is specifically authorized by this Subcontract; and

(2.) The Subcontractor furnished satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Subcontract.

B. All materials and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as:

(1.) Relieving the Subcontractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2.) Waiving the right to BSRA to require the fulfillment of all the terms of the Subcontract.

C. In making progress payments, BSRA shall retain, until completion and acceptance of all work, ten (10) percent of the estimated value of work accomplished as of the date of the current application for payment. After the estimated value of Work accomplished exceeds fifty (50) percent of the Subcontract amount, and provided the Subcontractor is proceeding with the Work in the manner and time satisfactory to BSRA, BSRA may reduce the amount to be retained to five (5) percent of the estimated value of Work accomplished as of the date of the current application for payment, or to such lesser amount, including none, as may be decided upon by BSRA.

D. Notwithstanding any provision of this Subcontract, progress payments shall not exceed 80 percent on work accomplished on undefinitized Subcontract actions. An Subcontract action is any action resulting in an Subcontract, as defined as "Contract" in FAR Subpart 2.1, including Subcontract modifications for additional supplies or services, but not including Subcontract modifications that are within the scope and under the terms of the Subcontract, such as Subcontract modifications issued pursuant to the "Changes, Extras and Substitution" Section, or funding and other administrative changes.

3.14. **VARIATION OF ESTIMATED QUANTITY**

NOTE: If invoked in this Subcontract, this Section applies to services only.

A. If the quantity of a unit-priced item in this Subcontract is an estimated quantity and the actual quantity of the unit-priced item varies more than fifteen (15) percent (%) above or below the estimated quantity, an equitable adjustment in the Subcontract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Subcontract or may request, in writing, an extension of time, to be received by BSRA within ten (10) days from the beginning of the delay, or within such further period as may be granted by BSRA before the date of final settlement of the Subcontract. Upon the receipt of a written request for an extension, BSRA shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of BSRA, is justified.

3.15. **CHANGES, EXTRAS, AND SUBSTITUTIONS – (SUPPLEMENT)**

NOTE: Inclusion of this Section supplements the section titled, "Changes, Extras and Substitutions" within these General Provisions.

A. In the event of an emergency which BSRA determines endangers life or property, BSRA may use oral orders to Subcontractor for any work required by reason of such emergency. Subcontractor shall commence and complete such emergency work as directed by BSRA. Such orders will be confirmed by written Change Order.

B. Pricing of Adjustments. When costs are a factor in any determination of an order adjustment pursuant to the Section titled "Changes, Extras and Substitutions", or any other section of this Subcontract, such costs, upward or downward, shall be submitted by Subcontractor in the form of a lump sum proposal. The proposal shall include an itemized breakdown of all increases or decreases in at least the following detail:

(1.) Direct Labor

(a.) Charges for labor furnished and used by Subcontractor shall be allowable for all manual classifications up to and including foremen. Charges shall not be included for superintendents, assistant superintendents, general foreman, surveyors, office personnel, timekeepers, a maintenance mechanics; these costs are recovered in the overhead and profit rates established by this Section. Labor rates used to calculate the costs shall be those rates in effect during accomplishment of the changes.

(b.) Direct labor costs shall include, in addition to direct payroll costs, payroll taxes, insurance, vacation allowance, subsistence, travel time, overtime premium and any other payroll additives Required to be paid by Subcontractor by law or labor agreement(s), e.g. project agreement, collective bargaining agreement(s), etc. Copies of certified pertinent payrolls shall be submitted to BSRA.

(2.) Equipment

(a.) Charges shall be allowable for the rental and operation of all Subcontractor's equipment furnished and used by Subcontractor, except for equipment or tools with a new cost at point of origin of Five Hundred Dollars ($500) or less each, which are determined to be covered in the overhead and profit rates established by this Section.

(b.) For Subcontractor-owned equipment, reasonable equipment charges shall be allowed in accordance with the following:

(i.) Rental rates as agreed upon in the Subcontract; or

(ii.) Rental rates not greater than seventy percent (70%) of Data Quest Blue Book daily rental rates applicable for the period of performance of the change; and

(iii.) Appropriately discounted to stand-by rates for idle time reasonably required.

(c.) When the operated use of equipment is infrequent and, as determined by BSRA, such equipment need not remain at the work site continuously, charges shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at BSRA's direction shall be charged at the standby rate.

(d.) For rental equipment not owned by Subcontractor, charges will be computed on the basis of actual invoice cost.

(e.) For the cost of both rented and owned to be allowable, Subcontractor must justify and BSRA agree that the individual pieces of equipment are needed, are appropriate for the work, and that the mobilization costs are allocable to the change.

(3.) Materials

(a.) Approved incurred costs for material incorporated into the changed Work or required for temporary facilities made necessary by the change shall be allowable at net cost delivered to the Jobsite.

(4.) Overhead, Profit and All Other Costs

(a.) Overhead, profit and markup percentages included in the proposal, shall include, but not be limited to, insurance, use of small tools, incidental job burdens, and general home and field office expense. No percentages for overhead, profit or Subcontractor markup will be allowed on employment taxes under Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA).

(b.) The percentages for overhead and profit will be negotiated and may vary according to the nature, extent and complexity of the Work involved. The maximum percentage for the overhead, profit and markup shall not exceed those shown below.

(c.) For work subcontracted to a subtier subcontractor by Subcontractor, the proposal submitted to BSRA shall only include one overhead percentage and one profit percentage in addition to Subcontractor's markup. No more than these three percentages will be allowed regardless of the number of tiers of Subcontractor. The subtier subcontractor's percentage of overhead and profit shall not exceed those shown below.

Subcontracted Work	Overhead	Profit	Markup
$1 to $19,999	0%	0%	8.0%
$20,000 to $49,999	0%	0%	5.5%
$50,000 and above	0%	0%	2.0%
Direct Hire Work:	Overhead	Profit	Markup
$1 to $19,999	10.0%	10.0%	0%
$20,000 to $49,999	7.5%	7.5%	0%
$50,000 and above	6.75	6.75%	0%

3.16. **RIGHT OF REFUSAL OF EMPLOYMENT**

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

3.17. **COPYRIGHTS FOR BSRA DIRECTED TECHNICAL PERFORMANCE**

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

3.18. **PERFORMANCE-BASED MILESTONE PAYMENTS**

A. Amount of payments and limitations on payments. Subject to such other limitations and conditions as are specified in this Subcontract and this section, the amount of payments and limitations on payments shall be specified in the Subcontract's description of the basis for payment.

B. Subcontractor request for performance-based payment.

(1.) The Subcontractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to BSRA. Unless otherwise authorized by the BSRA, all performance-based payments in any period for which payment is being requested shall be included in a single request,

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

C. Approval and payment of requests.

(1.) The Subcontractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The BSRA Procurement Specialist shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the Subcontract. BSRA may, at any time, require the Subcontractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2.) The approval by BSRA of a request for performance-based payment does not constitute an acceptance by BSRA and does not excuse the Subcontractor from performance of obligations under this Subcontract.

D. Liquidation of performance-based payments

(1.) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole Subcontract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2.) If at any time the amount of payments under this Subcontract exceeds any limitation in this Subcontract, the Subcontractor shall repay to BSRA the excess. Unless otherwise determined by BSRA, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

E. Reduction or suspension of performance-based payments

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

(1.) The Subcontractor failed to comply with any material requirement of this Subcontract (which includes paragraphs (H) and (I) of this section).

(2.) Performance of this contract is endangered by the Subcontractor's—

(a.) Failure to make progress; or

(b.) Unsatisfactory financial condition

(3.) The Subcontractor is delinquent in payment of any subtier subcontractor or Subcontractor under this Subcontract in the ordinary course of business.

F. Title

(1.) Title to the property described in this paragraph (F) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this Subcontract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this Subcontract.

(2.) "Property," as used in this Section, includes all of the following described items acquired or produced by the Subcontractor that are or should be allocable or properly chargeable to this Subcontract under sound and generally accepted accounting principles and practices:

(a.) Parts, materials, inventories, and work in process;

(b.) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this Subcontract;

(c.) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (F)(2)(b) of this clause; and

(d.) Drawings and technical data, to the extent the Subcontractor or Subcontractor are required to deliver them to BSRA by other sections of this Subcontract.

(3.) Although title to property is in the Government under this Section, other applicable sections of this Subcontract (e.g., the termination or special tooling sections) shall determine the handling and disposition of the property.

(4.) The Subcontractor may sell any scrap resulting from production under this Subcontract, without requesting BSRA's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to BSRA.

(5.) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Subcontractor must obtain BSRA's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be determined not to be in compliance with the terms of the Subcontract and not payable (if the property is part of or needed for performance), and the Subcontractor shall refund the related performance-based payments in accordance with paragraph (D) of this section.

(6.) When the Subcontractor completes all of the obligations under this Subcontract, including liquidation of all performance-based payments, title shall vest in the Subcontractor for all property (or the proceeds thereof) not—

(a.) Delivered to, and accepted by, BSRA under this Subcontract; or

(b.) Incorporated in supplies delivered to, and accepted by, BSRA under this Subcontract and to which title is vested in the Government under this section.

(7.) The terms of this Subcontract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this section.

G. Risk of Loss

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

H. Records and Controls

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

I. Reports and BSRA access.

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

J. Special terms regarding default

(1.) If this Subcontract is terminated under the Default section,

(a.) the Subcontractor shall, on demand, repay to BSRA the amount of unliquidated performance-based payments, and

(b.) title shall vest in the Subcontractor, on full liquidation of all performance-based payments, for all property for which BSRA elects not to require delivery under the Default section of this Subcontract. BSRA shall be liable for no payment except as provided by the Default section.

K. Reservation of Rights

(1.) No payment or vesting of title under this clause shall—

(a.) Excuse the Subcontractor from performance of obligations under this Subcontract; or

(b.) Constitute a waiver of any of the rights or remedies of the parties under the Subcontract.

(2.) BSRA's rights and remedies under this article—

(a.) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this Subcontract; and

(b.) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this section or the exercise of any other right, power, or privilege of BSRA.

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

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

(1.) The name and address of the Subcontractor;

(2.) The date of the request for performance-based payment;

(3.) The Subcontract number and/or other identifier of the Subcontractor under which the request is made;

(4.) Such information and documentation as is required by the Subcontract's description of the basis for payment; and

(5.) A certification by a Subcontractor official authorized to bind the Subcontractor, as specified in paragraph (M) of this section.

M. Content of Subcontractor's certification

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

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

(a.) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Subcontractor, in accordance with the Subcontract and the instructions of BSRA;

(b.) (Except as reported in writing on), all payments to subtier subcontractor under this Subcontract have been paid, or will be paid, currently, when due in the ordinary course of business;

(c.) There are no encumbrances (except as reported in writing on) against the property acquired or produced for, and allocated or properly chargeable to, the Subcontract which would affect or impair the Government's title;

(d.) There has been no materially adverse change in the financial condition of the Subcontractor since the submission by the Subcontractor to BSRA of the most recent written electronic information dated _____ ; and

(e.) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the Subcontract, and the amount of all payments under the Subcontract will not exceed any limitation in the Subcontract.

3.19. **DEAR 952.204 – SECURITY REQUIREMENTS (JUNE 2009)**

NOTE: Applicable if under the terms of this Subcontract, Subcontractor will be required to possess access authorizations (L or Q Security Clearance). As prescribed in 904.404(d) (1), the following clause shall be included in Subcontracts entered into undersection 31 (research assistance, 42 U.S.C. 2051), or section 41 (ownership and operation of production facilities, 42 U.S.C. 2061) of the Atomic Energy Act of 1954, and in other Subcontracts which involve or are likely to involve classified information or special nuclear material.

A. Responsibility. It is the Subcontractor's duty to protect all Classified Information, special nuclear material and other DOE property. The Subcontractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all Classified Information and all classified matter (including documents, material and Special Nuclear Material) which are in the Subcontractor's possession in connection with the performance of work under this Subcontract against sabotage, espionage, loss or theft. Except as otherwise expressly provided in this Subcontract, the Subcontractor shall, upon completion or termination of this Subcontract, transmit to DOE any classified matter or Special Nuclear Material in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of this

Subcontract. If retention by the Subcontractor of any classified matter is required after the completion or termination of the Subcontract, the Subcontractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the DOE Contracting Officer, the security provisions of the Subcontract shall continue to be applicable to the classified matter retained. Special Nuclear Material shall not be retained after the completion or termination of the Subcontract.

B. Regulations. The Subcontractor agrees to comply with all security regulations and Subcontract requirements of DOE in effect on the date of award.

C. Definition of Classified Information. The term "Classified Information" means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior Executive Orders, which is identified as National Security Information.

D. Definition of Restricted Data. The term "Restricted Data" means all data concerning design, manufacture, or utilization of atomic weapons, production of special nuclear material; or the use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].

E. Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.

F. Definition of National Security Information. The term "National Security Information" means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor Executive Order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

G. Definition of Special Nuclear Material. The term "Special Nuclear Material" means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235,and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

H. Access Authorizations of Personnel

(1.) The Subcontractor shall not permit any individual to have access to any Classified Information or Special Nuclear Material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and Subcontract requirements applicable to the particular level and category of Classified Information or particular category of Special Nuclear Material to which access is required.

(2.) The Subcontractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, (BSRA to provide this testing), prior to selecting the individual for a position requiring a DOE access authorization.

I. A review must: Verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and the three listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Subcontractor is located; and conduct a credit check and other checks as appropriate.

(1.) Subcontractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).

(2.) In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Subcontractor must comply with all applicable laws, regulations, and Executive Orders, including those:

(a.) Governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and

(b.) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.

(3.) In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug (BSRA to provide this testing), as defined in 10 CFR Part 707.4. All positions requiring access authorizations are determined to be testing designated positions in accordance with 10 CFR Part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.

(4.) When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Subcontractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to Classified Information or matter or Special Nuclear Material (in categories requiring access authorization) until an access authorization has been granted.

(5.) The Subcontractor must furnish to the head of the cognizant local DOE Security Office, in writing, the following information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization:

(a.) The date(s) each review was conducted;

(b.) Each entity that provided information concerning the individual;

(c.) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;

(d.) A certification that all information collected during the review was reviewed and evaluated in accordance with the Subcontractor's personnel policies; and the results of the test for illegal drugs (BSRA to provide this testing).

(e.) The results of the test for illegal drugs (BSRA to provide this testing)

J. Criminal Liability

(1.) It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any Classified Information, Special Nuclear Material, or other Government property that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under this Subcontract, may subject the Subcontractor, its agents, employees, or Subcontractor to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

K. Foreign Ownership, Control, or Influence

(1.) The Subcontractor shall immediately provide the cognizant security office written electronic notice of any change in the extent and nature of foreign ownership, control or influence over the Subcontractor which would affect any answer to the questions presented in the Standard Form (SF) 328, Certificate Pertaining to Foreign Interests, executed prior to award of this Subcontract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting. Officer

L. If a Subcontractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Subcontractor to avoid or mitigate foreign influences.

M. If the cognizant security office at any time determines that the Subcontractor is, or is potentially, subject to foreign ownership, control, or influence, the Subcontractor shall comply with such instructions as the DOE Contracting Officer shall provide in writing, electronically, to protect any Classified Information or Special Nuclear Material.

N. The DOE Contracting Officer may terminate this Subcontract for default either if the Subcontractor fails to meet obligations imposed by this clause or if the Subcontractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The DOE Contracting Officer may terminate this Subcontract for convenience if the Subcontractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of

performance of the Subcontract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

O. Employment announcements

(1.) When placing announcements seeking applicants f or positions requiring access authorizations, the Subcontractor shall include in the written electronic vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

P. Flow down to any subcontractor at any tier. The Subcontractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all Subcontracts under its lower-tier subcontract that will require any subcontractor (at any tier) employees to possess access authorizations. Additionally, the subcontractor at any tier must require such subcontractor to have an existing DOD or DOE facility clearance or submit a completed SF 328, Certificate Pertaining to Foreign Interests, as required in DEAR 952.204-73 and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a subcontractor (at any tier), pursuant to this clause may be submitted directly to the DOE Contracting Officer.

3.20. **DEAR 952.204-71 – SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011)**

The following is applicable in subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations

A. In connection with any activities in the performance of this subcontract, the Subcontractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this subcontract, relating to those countries, which may from time to time, be identified to the Subcontractor by written notice as sensitive foreign nations. The Subcontractor shall have the right to terminate its performance under this subcontract upon at least forty-five (45) days prior written notice to BSRA Procurement Specialist if the Subcontractor determines that it is unable, without substantially interfering with its polices or without adversely impacting its performance to continue performance of the work under this Subcontract as a result of such notification. If the Subcontractor elects to terminate performance, the provisions of this subcontract regarding Termination for the Convenience of BSRA Section shall apply.

B. The provisions of this section shall be included in any of Subcontractor's contracts/agreements with a subtier subcontractor's supporting performance of this Subcontract which may involve making unclassified information about nuclear technology available to sensitive foreign nations.