GENERAL PROVISIONS for COMMERCIAL ITEMS
Rev. 0, October 21, 2020

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This Subcontract, including all attachments thereto, embodies the <u>entire</u> agreement between the Subcontractor and the Buyer and supersedes all other writings. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding not set forth herein.

NOTE, however, that because these General Provisions are provided during a period of contract transition between Mission Support Alliance, LLC and Hanford Mission Integration Services, LLC (HMIS), some of the provisions and information herein are subject to change and/or are described as "To be determined and updated." HMIS will revise and update these General Provisions to include updated provisions and information as they become available. HMIS reserves the right to modify and revise these General Provisions and/or other contract documents as necessary or appropriate, and Subcontractor acknowledges HMIS's right to do so.

1.0 DEFINITIONS

A. Whenever used in this Subcontract, the following definitions shall be applicable unless the content indicates otherwise.

1. "Buyer" shall mean Hanford Mission Integration Solutions, LLC ("HMIS") and all of its authorized representatives (i.e. "Contract Specialists") acting in their professional capacities (under DOE Prime Contract No. 89303320DEM000031) entering into this Subcontract with the Subcontractor.

2. "Government" shall mean the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof, including the Buyer.

3. "Head of 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.

4. "Micro-purchase threshold" shall mean $10,000, except it means—

    a. For acquisitions of construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction), $2,000;

    b. For acquisitions of services subject to 41 U.S.C. chapter 67, *Service Contract Labor Standards*, $2,500; and

    c. For acquisitions of supplies or services that, as determined by the DOE Head of Agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack as described in 13.201(g)(1), except for construction subject to 40 U.S.C. chapter

31, subchapter IV, Wage Rate Requirements (Construction) (41 U.S.C. 1903)—

i. $20,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

ii. $30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

5. "Prime Contract" shall mean Buyer's contract with the Government, DOE Prime Contract No. 89303320DEM000031.

6. "Services" shall mean labor, direction of labor, production of technical information, consulting services or any other services furnished by Subcontractor and any of its lower-tier Subcontractors under this Subcontract.

7. "Simplified acquisition threshold" or "SAT" shall mean $250,000, except for—

   a. Acquisitions of supplies or services that, as determined by the DOE Head of Agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack (41 U.S.C. 1903), the term means—

      i. $750,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

      ii. $1.5 million for any contract to be awarded and performed, or purchase to be made, outside the United States; and

   b. Acquisitions of supplies or services that, as determined by the DOE Head of Agency, are to be used to support a humanitarian or peacekeeping operation (10 U.S.C. 2302), the term means $500,000 for any contract to be awarded and performed, or purchase to be made, outside the United States.

8. "Subcontract" shall mean this Subcontract between Buyer and Subcontractor; also includes purchase order, task orders, releases and other agreements.

9. "Subcontractor" shall mean any company, person, organization, lower-tier Subcontractor, seller, and/or supplier of any tier performing work (including supplying goods and/or services) under this Subcontract. "Subcontractor" also refers to any authorized representatives, successor,

and permitted assigns of any company, person, and/or organization named under this Subcontract.

10. "Supplies" shall mean equipment, components, parts, and materials to be provided by Subcontractor and its lower-tier Subcontractors pursuant to this Subcontract.

11. "Vendor data" shall mean any and all information, data, and documentation to be provided by Subcontractor and any of its lower-tier Subcontractors under this Subcontract.

12. "Work" shall mean supplies, services, and vendor data provided by Subcontractor and any of its lower-tier Subcontractors and all work performed with respect thereto pursuant to this Subcontract.

B. When a contract Clause herein, including a Clause incorporated by reference, uses a word or term that is defined in the federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 on September 20, 2018, unless-

1. This Subcontract or the solicitation for the same provides a different definition;

2. The contracting parties agree to a different definition;

3. The part, subpart, or section of the FAR where the provision or Clause is prescribed provides a different meaning; or

4. The word or term is defined in FAR part 31, for use in the cost principles and procedures.

C. When a contract Clause herein, including a Clause incorporated by reference, uses a word or term that is defined in the Department of Energy Acquisition Regulation (DEAR) (48 CFR chapter 9), the word or term has the same meaning as the definition in 48 CFR 902.101 or the definition in the part, subpart, or section of 48 CFR chapter 9 where the provision or Clause was prescribed on September 20, 2018, unless this Subcontract or the solicitation for the same provides a different definition or the contracting parties otherwise agree to a different definition.

2.0 ORDER OF PRECEDENCE AND FLOWDOWN OF OBLIGATIONS

A. In the event of a discrepancy among any of the Subcontract terms, conditions, Clauses, provisions, written direction and instructions, and documents (collectively, the "Subcontract"), the following order of precedence shall govern resolution: (1) Buyer's written Subcontract modifications, direction, and instructions; (2) Subcontract form and Clauses, including Clauses incorporated by

reference; (3) Special Provisions; (4) General Provisions; (5) Technical instructions, including the Statement of Work (SOW), drawings, exhibits and attachments, and applicable standards; and (6) other documents identified as being part of the Subcontract.

B. Nothing recited above shall be construed as superseding or preempting any applicable statute, rule, ordinance, or regulation (collectively, the "applicable laws"). In the event of a conflict with applicable laws, the specific conflicting term of the Subcontract shall be considered null and without effect, and the applicable laws shall govern. All remaining terms unaffected by said applicable laws shall continue in force.

C. Subcontractor binds itself to Buyer under this Subcontract in the same manner as Buyer is bound to DOE under the Prime Contract for the purpose of effectuating flowdown of obligations and rights under the Prime Contract, including provisions and Clauses of the federal Acquisition Regulation and/or supplemental agency regulations incorporated therein, to the extent necessary to give full effect to the same and preserve the rights of the Government under the Prime Contract. Subcontractor agrees that it shall so bind all lower-tier subcontractors. Subcontractor acknowledges that Buyer has made available all Prime Contract and Subcontract documents. Subcontractor shall make available to all lower-tier subcontractors all Subcontract and Prime Contract documents. In the event of a conflict between a provision or Clause of this Subcontract and an obligation required to be flowed down to Subcontractor under the Prime Contract or other applicable law, the flowed-down obligation shall take precedence to the extent necessary to give full effect to the same and preserve the rights of the parties to the Prime Contract.

D. Subcontractor assumes toward Buyer all obligations and responsibilities which Buyer, under the Prime Contract, assumes toward the Government, insofar as applicable to this Subcontract. Buyer shall have the benefit of all contractual rights, remedies and redress against Subcontractor that the Government, under the Prime Contract, has against the Buyer, insofar as applicable to this Subcontract.

3.0 SAFETY AND QUALITY STANDARDS

3.1. Inspection, Testing, and Quality Control

A. Subcontractor shall inspect all materials, supplies, and equipment which are to be incorporated in the work. In addition, Subcontractor shall conduct a continuous program of quality control for all work. When requested by the Buyer, Subcontractor's quality control program and inspection procedures for the foregoing shall be submitted in writing to Buyer for review and approval, in sufficient detail to delineate those items to be inspected and the

manner in which they are to be inspected, and shall adequately describe all quality control activities contemplated, including provision for adequate documentation of Subcontractor's performance of such quality control and inspection.

B. Subcontractor shall, during the course of performance of the work hereunder, without additional compensation, make, or cause to be made all tests required by this Subcontract. Buyer may require additional inspections and tests. Subcontractor shall furnish Buyer with satisfactory documentation of the results of all inspections and tests. Buyer shall be given not less than five (5) working days' notice of any tests to be made by Subcontractor or any of its lower-tier Subcontractors in order that Buyer may witness any such tests.

C. Buyer and the Government and their representatives, and others as may be required by applicable laws, ordinances and regulations, shall have the right at all reasonable times to inspect the work and all material, supplies and equipment for the work. Subcontractor shall provide, or cause to be provided access and sufficient, safe, and proper facilities for such inspections. Neither the failure to make such inspection nor to discover defective workmanship, materials or equipment, nor approval of or payment to Subcontractor for such work, materials, or equipment shall prejudice the right of Buyer or the Government thereafter to reject or require the correction of defective Work in accordance with the provisions of the Subcontract.

D. If Subcontractor covers any portion of the work prior to any inspection or test provided for in the specifications, inspection schedule, or as previously requested by Buyer, the cost of uncovering and covering the work to allow for such inspection or test shall be borne by the Subcontractor. Buyer may order reexamination of any work. In the event of such reexamination, if any material, equipment or any part of the work is determined by Buyer to be defective, Subcontractor shall not be reimbursed for uncovering, repair, or corrective and restoration costs. If such work is found to be in accordance with the Subcontract requirements upon such reexamination, Buyer shall pay Subcontractor the cost of uncovering and restoration.

E. Rejection by Buyer of any or all parts of defective work for failure to conform to this Subcontract shall be final and binding. Such rejected work shall be promptly corrected or replaced by Subcontractor at Subcontractor's expense. If Subcontractor fails to commence and diligently continue correction or replacement of such rejected work immediately after receipt of written notice from Buyer to correct or replace the rejected work, Buyer may at its option remove and replace the rejected work, and Subcontractor shall

promptly reimburse Buyer for the costs of such removal and replacement of defective work.

3.2. Conditions and Risks of Work

Subcontractor represents that it has carefully examined the drawings and specifications for the work and has fully acquainted itself with all other conditions relevant to the work, and its surroundings, and Subcontractor assumes the risk of such conditions and will, regardless of such conditions, the expense, difficulty of performing the work, or negligence, if any, of Buyer, fully complete the work for the stated Subcontract price without further recourse to Buyer. Information on the site of the work and local conditions at such site furnished by Buyer in specifications, drawings or otherwise is not guaranteed by Buyer and is furnished only for the convenience of Subcontractor.

3.3. Counterfeit Fasteners and Components

Buyer reserves the right to question and/or require Subcontractor to certify and/or furnish proof regarding the quality, authenticity, application, or fitness for use of the items supplied by the Subcontractor under this Subcontract. Any items furnished as part of this Subcontract and which have been previously found by Buyer, the Department of Energy, or the Department of Commerce to be counterfeit or which are listed by the Department of Commerce to be suspect will be deemed, without more proof, to be subject to the above requirement of further proof or certification. Buyer also reserves the right to question the circumstances and make available a report of any such review to the Government. All costs associated with conducting inquiries into and reporting on supplied items determined to be counterfeit shall be recovered by Buyer from Subcontractor.

Suspect/counterfeit items pose potential threats to the safety of workers, the public, and the environment and may have a detrimental effect on security and operations at nuclear facilities. Therefore, any item which is identified by the Buyer or DOE as suspected to be or counterfeit, will be retained by the Buyer and appropriately disposed of. Suspected/counterfeit items will not be returned to the Subcontractor. In addition, the DOE Inspector General will be notified of the supplied suspect/counterfeit items for any further investigation deemed appropriate.

4.0 PROGRESS OF WORK, STOPPAGE, WITHDRAWAL, AND TERMINATION

4.1. Reporting and Coordination

A. During the performance of work, Subcontractor shall submit to Buyer periodic progress reports on the actual progress and updated schedules as may be required by this Subcontract or requested by Buyer. In the event Subcontractor's performance of the work is not in compliance with the

schedule established for such performance, Buyer may, in writing, require the Subcontractor to submit its plan for schedule recovery, or specify in writing the steps to be taken to achieve compliance with such schedule, and/or exercise any other remedies under this Subcontract. Subcontractor shall thereupon take such steps as may be directed by Buyer or otherwise necessary to improve its progress without additional cost to Buyer. If within a reasonable period as determined by Buyer, Subcontractor does not improve performance to meet the currently approved schedule, Buyer may require an increase in Subcontractor's labor force, the number of shifts, additional days of work, and an increase in the amount of plant and equipment, all without additional compensation to Subcontractor. Neither such notice nor Buyer's failure to issue such notice shall relieve Subcontractor of its obligation to achieve the quality of work and rate of progress of work required by this Subcontract. Failure of Subcontractor to comply with Buyer's instructions may be grounds for determination by Buyer that Subcontractor is not prosecuting the work with such diligence as will assure completion within the times specified and may be grounds for termination.

B. Subcontractor recognizes that Buyer, the Government, other Subcontractors, and lower-tier Subcontractors may be working concurrently at the jobsite. Subcontractor agrees to cooperate with Buyer, the Government and other Subcontractors and lower-tier Subcontractors so that the project as a whole will progress with a minimum of delays. Buyer reserves the right to direct Subcontractor to schedule the order of performance of its work in such manner as not to interfere with the performance of others. Subcontractor shall fully cooperate with the other subcontractors and with Buyer's employees. Buyer reserves the right to require Subcontractor to schedule the order of performance of the work to minimize interference with work of any parties involved.

C. If any part of Subcontractor's work is dependent upon the quality and/or completeness of work performed under another Subcontract, Subcontractor shall inspect such other work and promptly report to Buyer any defects therein which render such work unsuitable for the proper execution of the work under this Subcontract. Failure to make such inspections or to report any such defects to Buyer shall constitute Subcontractor's acceptance of such other work as suitable to receive Subcontractor's work; provided however, that Subcontractor shall not be responsible for defects that could not have reasonably been detected.

4.2. DOE-H-2021 (Oct 2014) (*Amended*)

DOE-H-2021 Work Stoppage and Shutdown Authorization (Oct 2014) (Amended)

A. Imminent Health and Safety Hazard. A given condition or situation, which if not immediately corrected, could result in serious injury or death, including exposure to radiation and toxic/hazardous chemicals. Imminent Danger in relation to the facility safety envelope is a condition, situation, or proposed activity which, if not terminated, could cause, prevent mitigation of, or seriously increase the risk of (1) nuclear criticality, (2) radiation exposure, (3) fire/explosion, and/or (4) toxic hazardous chemical exposure.

B. Work Stoppage. In the event of an Imminent Health and Safety Hazard, identified by facility line management or operators or facility health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the imminent hazard situation shall immediately take actions to eliminate or mitigate the hazard (e.g., directing the operator/implementer of the activity or process causing the imminent hazard to stop work, initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect DOE facilities and the environment. In the event an Imminent Health and Safety Hazard is identified, the individual or group identifying the hazard should coordinate with an appropriate Subcontractor official, who will direct the shutdown or other actions, as required.

   i. Such mitigating action(s) should subsequently be coordinated with DOE and Buyer management. The suspension or stop-work order should be promptly confirmed in writing by Buyer's Representatives.

C. ***Shutdown***. In the event of an imminent danger in relation to the facility safety envelope or a non-Imminent Health and Safety Hazard identified by facility line managers, facility operators, health and safety personnel overseeing facility operations, or other individuals, the individual or group identifying the potential health and safety hazard may recommend facility shutdown in addition to any immediate actions needed to mitigate the situation. However, the recommendation must be coordinated with Subcontractor management, Buyer, and the DOE Site Manager. Any written direction to suspend operations shall be issued by Buyer's Representatives, pursuant to the stop work provisions of this Subcontract.

D. ***Facility Representatives***. DOE personnel designated as Facility Representatives provide the technical/safety oversight of operations. The Facility Representative has the authority to "stop work," which applies to the shutdown of an entire plant, activity, or job. This stop-work authority will be used for an operation of a facility which is performing work the Facility Representative believes:

Poses an imminent danger to health and safety of workers or the public if allowed to continue;

Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or

Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.

4.3. Stop Work

A. The Buyer may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this subcontract for a period of ninety (90) days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this Clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the Buyer shall either—

1. Cancel the stop-work order; or
2. Terminate the work covered by the order as provided in the Default, or the *Termination for Convenience of the Government*, Clause of this contract.

B. If a stop-work order issued under this Clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The Buyer shall make an equitable adjustment in the delivery schedule or subcontract price, or both, and the subcontract shall be modified, in writing, accordingly, if—

1. The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and
2. The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Buyer decides the facts justify the action, the Buyer may receive and act upon the claim submitted at any time before final payment under this subcontract.

C. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Buyer shall allow

reasonable costs resulting from the stop-work order in arriving at the termination settlement.

D. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Buyer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

4.4. Suspension of Work

A. The Buyer may order the Subcontractor, in writing, to suspend, delay, or interrupt all or any part of the work of this subcontract for the period of time that the Buyer determines appropriate for the convenience of the Buyer.

B. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Buyer in the administration of this subcontract, or (2) by the Buyer's failure to act within the time specified in this subcontract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this subcontract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the subcontract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Subcontractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this subcontract.

C. A claim under this clause shall not be allowed—

1. For any costs incurred more than twenty (20) days before the Subcontractor shall have notified the Buyer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the subcontract.

4.5. Withdrawal of Work

A. The Buyer may, at its option and during the performance of this Subcontract unilaterally have any of the work contemplated in the Statement of Work of this Subcontract, performed by either another Subcontractor or to have the work performed by Buyer or its employees.

B. Work may be withdrawn; (1) in order for Buyer to conduct pilot programs; (2) if the Subcontractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the Subcontractor; or (4) for any other reason deemed by the Buyer to be in the best interests of Buyer.

C. If the withdrawn work has been authorized under an annual Work Authorization Directive, the work shall be terminated in accordance with FAR 52.249-6 Termination (Cost-Reimbursement).

D. If any work is withdrawn by the Buyer, the Subcontractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

E. Buyer and Subcontractor recognize that under the terms of the Prime Contract Clause entitled "Withdrawal of Work" and FAR 52.243-2, *Changes – Cost-Reimbursement*, incorporated into the Prime Contract, DOE has the right to modify the Prime Contract Attachment entitled, *Hanford Site Services and Interface Requirements Matrix*. In order to minimize the impact on existing work being performed, DOE is obligated to negotiate with Buyer a reasonable Transition Period for each change in which a portion of the work is withdrawn from the Prime Contract and awarded or assigned to an entity other than Buyer. Buyer shall advise Subcontractor of any DOE withdrawal of work scope that impacts Subcontractor work scope and/or that results in the withdrawal of Subcontractor work scope. Subcontractor agrees to be bound by the decisions of DOE regarding withdrawal of work scope to the same extent Buyer is bound. Subcontractor shall similarly advise all lower-tier subcontractors of any DOE withdrawal of work scope that impacts lower-tier subcontract work scope and/or that results in the withdrawal of lower-tier subcontract work scope. Subcontractor shall require all lower-tier subcontractors to agree to be bound by the decisions of DOE regarding withdrawal of work scope to the same extent Buyer and Subcontractor are bound.

4.6. Possession Prior to Completion

Buyer and/or the Government shall have the right to move into Subcontractor's working and storage areas and the right to take possession of or use any completed or partially completed part of Subcontractor's work as Buyer or the Government deem necessary for their operations. In the event Buyer or the Government desires to exercise the foregoing right, Buyer will so notify Subcontractor in writing. Such possession or use shall not constitute acceptance of Subcontractor's work.

4.7. Notice of Completion and Final Acceptance

A. When Subcontractor deems the work fully completed, including satisfactory completion of such inspections, tests, and documentation as are specified in this Subcontract (or in the release Scope of Work and/or testing and acceptance plan), Subcontractor shall, within ten (10) working days thereafter, give a written Notice of Completion of the work to Buyer, specifying the work completed and the date it was completed. Within thirty (30) calendar days after receipt of said Notice of Completion, Buyer may inspect the work and shall either reject the Notice of Completion and specify defective or uncompleted portions of the work, or shall give the Subcontractor a written Notice of Acceptance of the work either for the purpose of final payment only, or for the purposes of final payment and final acceptance.

B. In the event Buyer rejects the Notice of Completion and specifies defective or uncompleted portions of the work, Subcontractor shall within five (5) working days, provide for Buyer review and approval, a schedule detailing when all defects will be corrected and/or the work will be completed and shall proceed to remedy such defective and uncompleted portions of the work. Thereafter, Subcontractor shall again give Buyer a written Notice of Completion of the work, specifying a new date for the completion of the work based upon the date such defective or uncompleted portions of the work were corrected. The foregoing procedure shall apply again and successively thereafter until Buyer has given Subcontractor written Notice of Acceptance for purposes of final payment and final acceptance.

C. Any failure by Buyer to inspect or to reject the work or to reject Subcontractor's Notice of Completion as set forth above, shall not be deemed to be acceptance of the work for any purpose by Buyer nor imply acceptance of, or agreement with, said Notice of Completion.

4.8. Excusable Delays

If Subcontractor's performance of this Subcontract is prevented or delayed by any unforeseeable cause, existing or future, which is beyond the reasonable control of the parties and without the fault or negligence of Subcontractor, Subcontractor shall, within twenty-four (24) hours of the commencement of any such delay, give to Buyer written notice thereof and within five (5) working days of commencement of the delay, a written description of the anticipated impact of the delay on performance of the Work. Delays attributable to and within the control of Subcontractor's suppliers or subcontractors of any tier shall be deemed delays within the control of Subcontractor. Within five (5) working days after the termination of any excusable delay, Subcontractor shall file a written notice with

Buyer specifying the actual duration of the delay. Failure to give any of the above notices shall be sufficient ground for denial of an extension of time. If Buyer determines that the delay was unforeseeable, beyond the control and without the fault or negligence of Subcontractor, Buyer will determine the duration of the delay and will extend the time of performance of this Subcontract by modification accordingly. Such time extension shall be the sole remedy for the delay subject to the rights of Subcontractor and Buyer under the termination Clause.

4.9. Termination for Default

Notwithstanding any other provisions of this Subcontract, Subcontractor shall be considered in default of its contractual obligations under this Subcontract if Subcontractor:

(a) Performs work that fails to conform to the requirements of this Subcontract.

(b) Fails to make progress so as to endanger performance of this Subcontract.

(c) Abandons or refuses to proceed with any of the Work, including modifications directed pursuant to the General Provisions Clause titled "Changes."

(d) Fails to fulfill or comply with any of the terms of this Subcontract.

(e) Engages in behavior that is dishonest, fraudulent, or constitutes a conflict of interest with Subcontractor's obligations under this Subcontract.

(f) Becomes insolvent or makes a general assignment for the benefit of creditors or reasonable grounds for insecurity arise with respect to Subcontractor's performance.

(g) Fails to correct an unsafe condition or noncompliance or demonstrates a persistent pattern of poor safety performance.

Upon the occurrence of any of the foregoing, Buyer shall notify Subcontractor, in writing, of the nature of the failure and of Buyer's intention to terminate the Subcontract for default. If Subcontractor does not cure such failure within seven (7) calendar days from receipt of notification, or sooner if safety to persons is involved, or fails to provide satisfactory evidence that such default will be corrected within a reasonable time, Buyer may, by written notice to

Subcontractor and without notice to Subcontractor's sureties, if any, terminate in whole or in part Subcontractor's right to proceed with the Work and Buyer may prosecute the Work to completion by contract or by any other method deemed expedient. Buyer may take possession of and utilize any data, designs, licenses, equipment, materials, plant, tools, and property of any kind furnished by Subcontractor and necessary to complete the Work.

Subcontractor and its sureties, if any, shall be liable for all costs in excess of the Subcontract price for such terminated work reasonably and necessarily incurred in the completion of the Work as scheduled, including cost of administration of any purchase order or subcontract awarded to others for completion.

Upon termination for default, Subcontractor shall:

(a) Immediately discontinue work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the terminated work.

(b) Inventory, maintain, and turn over to the Buyer all data, designs, licenses, equipment, materials, plant, tools, and property furnished by Subcontractor or provided by Buyer for performance of the terminated work.

(c) Promptly obtain cancellation upon terms satisfactory to Buyer of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated work or assign those agreements as directed by Buyer.

(d) Cooperate with the Buyer in transfer of data, designs, licenses, and information and disposition of work in progress so as to mitigate damages.

(e) Comply with other reasonable requests from Buyer regarding the terminated work.

(f) Continue to perform in accordance with all of the terms and conditions of this Subcontract of such portion of the Work that is not terminated.

If, after termination pursuant to this Clause, it is determined for any reason that Subcontractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the General Condition Clause titled "Termination for Convenience."

4.10. Termination for Convenience

Buyer may, at its option, terminate for convenience any of the Work under this Subcontract in whole or, from time to time, in part, at any time by written notice to Subcontractor. Such notice shall specify the extent to which the performance of the Work is terminated and the effective date of such termination. Upon receipt of such notice Subcontractor shall:

(a) Immediately discontinue the Work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts for materials, services, or facilities, other than as may be required for completion of such portion of the Work that is not terminated.

(b) Promptly obtain assignment or cancellation upon terms satisfactory to Buyer of all purchase orders, subcontracts, rentals, or any other agreements existing for the

performance of the terminated work or assign those agreements directed by Buyer.

(c) Assist Buyer in the maintenance, protection, and disposition of work in progress, plant, tools, equipment, property, and materials acquired by SUBCONTRACTOR or furnished by Buyer under this Subcontract.

(d) Complete performance of such portion of the Work that is not terminated.

Upon any such termination, Subcontractor shall waive any claims for damages, including loss of anticipated profits; on account thereof, but as the sole right and remedy of Subcontractor, Buyer shall pay in accordance with the following:

(a) The subcontract price corresponding to the work performed in accordance with this Subcontract before such notice of termination.

(b) All reasonable costs for work thereafter performed, as specified in such notice.

(c) Reasonable administrative costs of settling and paying claims arising from terminating work under purchase orders or subcontracts.

(d) Reasonable costs incurred in demobilization and the disposition of residual material, plant, and equipment (e). A reasonable overhead and profit on items (a) through (d) of this Clause.

Subcontractor shall submit within thirty (30) calendar days after receipt of notice of termination, a written statement setting forth its proposal for an adjustment to the subcontract price to include only the incurred costs described in this Clause. Buyer shall review, analyze, and verify such proposal, and negotiate an equitable adjustment, and the Subcontract shall be modified accordingly.

5.0 WORK CONDITIONS

5.1. Contractual Relationship

Subcontractor represents that it is fully experienced, licensed, registered, and properly qualified to perform the class of work provided for herein, and that it is properly equipped, organized and financed to perform such work. Subcontractor represents that at the time of submission of its proposal for performance of the work, it was properly licensed and qualified to do business in all governmental jurisdictions in which the work is to be performed. Upon written request by Buyer, Subcontractor shall furnish to it such evidence as Buyer may require relating to the Subcontractor's ability to fully perform this Subcontract. Nothing contained in this Subcontract or any other Subcontract awarded by Subcontractor shall create any contractual relationship between any Subcontractor and Buyer or the Government. Subcontractor shall perform the Work hereunder in accordance with its own means and method subject to compliance with the Subcontract.

Subcontractor agrees that Subcontractor is an independent Subcontractor and an employer subject to all applicable unemployment compensation, occupational safety and health, workers' compensation, or similar statutes so as to relieve Buyer of any responsibility or liability for treating Subcontractor's employees as employees of Buyer for the purpose of their safety or of keeping records, making reports or paying of any payroll taxes or contribution; and Subcontractor agrees to defend, indemnify and hold Buyer harmless and reimburse it for any expense or liability incurred under said statutes in connection with employees of Subcontractor, including a sum equal to any unemployment benefits paid to those who were Subcontractor's employees, where such benefit payments are charged to Buyer under any merit plan or to Buyer reserve account pursuant to any statute. The Subcontractor further agrees, as regards the items set forth below and for work under this Subcontract, that it will keep and have available all necessary records and make all payments, reports, collections and deductions and otherwise do any and all things so as to fully comply with all federal, state and local laws, ordinances and regulations as they affect performance of this Subcontract, so as to fully relieve and protect Buyer and the Government from any and all responsibility or liability therefore or in regard thereto: (1) the production, purchase and sale, furnishing and delivering, pricing, and use or consumption of materials, supplies and equipment; (2) the hire, tenure or conditions of employment of employees and their hours or work and rates of the payment of their work, and (3) the keeping of records, making of reports, and the payment, collection and/or deduction of federal, state, commonwealth and local taxes, contributions, pension funds, welfare funds or similar assessments.

5.2. Subcontracts and Purchase Orders

A. Subcontractor shall not subcontract any on-site work and/or any significant aspects of off-site Subcontract performance without first identifying the proposed Subcontractor and Subcontract scope to Buyer and without advance written approval of the Subcontract scope by Buyer. Subcontractor shall furnish Buyer a copy of the proposed Subcontract demonstrating that all appropriate flow-down provisions and requirements are included and will be met. Buyer reserves the right to reject any proposed Subcontract or Subcontractor as incomplete or unsuitable. Failure of Subcontractor to notify Buyer in advance of Subcontracting and obtaining advance written approval may be considered a material breach of these Subcontract terms.

B. Subcontractor is responsible for Subcontract performance and performance of its lower-tier Subcontractors regardless of having notified Buyer of the intent to Subcontract. On request of Buyer, any Subcontractor not performing in accordance with the terms of this Subcontract shall be

replaced at no additional cost to Buyer and shall not be employed again on the work.

C. Subcontractor shall include a provision in every Subcontract authorizing assignment of such Subcontract to Buyer or the Government without requiring consent from such Subcontractor or supplier

D. As used in Paragraph A above, the term "Subcontract" shall also include purchase orders and rental agreements for materials or equipment, and the term "Subcontractor" shall also include vendors or suppliers of such material or equipment when significant to Subcontract performance.

E. Subcontractor shall perform at least fifty percent (50%) of the total cost of the work to be performed under their Subcontract with its own organization, which shall not include any affiliate of Subcontractor without Buyer's prior written approval and authorization. For the purpose of this Clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

F. Subcontractor shall notify Buyer whenever the amount of lower-tier subcontracted effort exceeds or is anticipated to exceed seventy percent (70%) of the total cost of the work to be performed under their Subcontract. Notification to Buyer shall include the revised cost of the Subcontract effort and shall include verification that there is added value as related to the work to be performed by the lower-tier subcontractor. All lower-tier subcontractors should ensure the amount of lower-tier subcontracted work is less seventy percent (70%) of the total cost of the work to be performed. Lower-tier work exceeding the seventy percent (70%) figure will be required to be reported and authorized by Buyer and, if applicable, DOE.

5.3. Permits and Licenses

Subcontractor shall promptly apply for and procure without additional compensation all permits (except for such permits as may be specifically set forth as Buyer responsibility elsewhere in this Subcontract), certificates and licenses required by governmental authorities having jurisdiction over the work, Subcontractor or the location of the work.

5.4. DOE-H-2063 (Oct 2014) (*Amended*)

DOE-H-2063 Confidentiality of Information (Oct 2014) (Amended)

A. Performance of work under this Subcontract may result in the Subcontractor having access to confidential information via written or electronic documents, or by virtue of having access to DOE's electronic or other systems. Such confidential information includes personally identifiable information (such as social security account numbers) or proprietary

business, technical, or financial information belonging to the Government or other companies or organizations. Subcontractor shall treat this information as confidential and agrees not to use this information for its own purposes, or to disclose the information to third parties, unless specifically authorized to do so in writing by the CO.

B. The restrictions set out in paragraph (a) above, however, do not apply to:

   a. Information which, at the time of receipt by Subcontractor, is in the public domain;

   b. Information which, subsequent to receipt by Subcontractor, becomes part of the public domain through no fault or action of Subcontractor;

   c. Information which Subcontractor can demonstrate was previously in its possession and was not acquired directly or indirectly as a result of access obtained by performing work under this contract;

   d. Information which Subcontractor can demonstrate was received from a third party who did not require Subcontractor to hold it in confidence; or (5) Information which is subject to release under applicable law.

C. Subcontractor shall obtain a written agreement from each of its employees who are granted access to, or furnished with, confidential information, whereby the employee agrees that he or she will not discuss, divulge, or disclose any such information to any person or entity except those persons within Subcontractor's organization directly concerned with the performance of the contract. The agreement shall be in a form satisfactory to Buyer.

D. Upon request of Buyer, Subcontractor agrees to execute an agreement with any party which provides confidential information to Subcontractor pursuant to this Subcontract, or whose facilities Subcontractor is given access to that restrict use and disclosure of confidential information obtained by Subcontractor. A copy of the agreement, which shall include all material aspects of this Clause, shall be provided to the DOE Contracting Officer for approval.

E. Upon request of Buyer, Subcontractor shall supply Buyer with reports itemizing the confidential or proprietary information it receives under this contract and identify the source (company, companies or other organizations) of the information.

F. Subcontractor agrees to flow down this Clause to all lower-tier subcontracts issued under this contract.

5.5. Confidential and Controlled Use Information

A. Confidential and Controlled-Use Information obtained by Subcontractor from Buyer or the Government in connection with this Subcontract shall be held in confidence by Subcontractor and shall not be disclosed to third parties or used by Subcontractor for any purpose other than for the performance of this Subcontract or as authorized in writing by Buyer.

B. Controlled Use information includes documents marked *Official Use Only* (OUO), Classified, Unclassified Controlled Nuclear Information (UCNI), Export-Controlled Information (ECI), or Naval Nuclear Propulsion Information (NNPI)), Confidential information includes designs, drawings, technical experience, software, processing systems, databases, financial, intellectual property, trade secrets, customers, vendors, personnel records, research, development, inventions, plans, manufacturing, engineering, accounting, bid data, sales, marketing, Subcontract terms, or information generated pursuant to work performed in accordance with the Subcontract.

C. Subcontractor shall use such confidential information only for the purpose of performing work in accordance with the Subcontract. Confidential Information may only be released on a need to know basis to employees and Subcontractors who agree to safeguard the information. Subcontractor shall make all reasonable efforts to ensure its employees and lower-tier Subcontractors, maintain such confidential information in strictest confidence. Subcontractor may not disclose Confidential Information to any other person (including the media for purposes of publicity), partnership, venture, firm, government, or corporation without the express written consent of Buyer or the Government, as appropriate.

D. All Confidential Information furnished by Buyer or the Government, or documentation developed by Subcontractor in performance of this Subcontract shall remain Buyer's property. Upon completion of work, Subcontractor shall either destroy or return such documentation and any other confidential information reduced to tangible or electronic form, including copies thereof, to Buyer unless Buyer consents otherwise.

E. Nothing contained in the Subcontract, or in any disclaimer made by Buyer or the Government, shall be construed to grant Subcontractor any license or other rights in or to disclose confidential information or any patent, trademark, or copyright that has been or may be issued unless expressly conveyed by written agreement exclusive of the Subcontract.

F. In the event that work performed by Subcontractor in accordance with the Subcontract involves the collection or generation of data on persons or associations, Subcontractor shall maintain strict confidentiality of records in

accordance with the *Privacy Act of 1974* (5 U.S.C. 552a); the laws of the State of Washington; provisions of the *Fair Credit Reporting Act* (15 U.S.C. 1681); and other applicable federal and state agency regulations. Violations of these statutes may result in criminal penalties.

5.6. Matters of Counterintelligence Concern

Subcontractor shall immediately inform the Buyer of any of the following conditions:

A. Any and all Subcontractor/Subcontractor employee(s) contacts with individuals of any nationality while either within or outside the United States, and while either within or outside the scope of the Subcontractor's official activities in which: illegal or unauthorized access is sought to classified or otherwise sensitive information or Special Nuclear Material by any means.

B. The Subcontractor/Subcontractor employee(s) becomes aware of, through circumstance, observation, third party notice or contact, or other source, while either within or outside the United States; any acts, activity or person(s) attempting to obtain, or obtaining, illegal, or unauthorized access to classified or otherwise sensitive information or Special Nuclear Material by any means.

C. The Subcontractor/Subcontractor employee(s) has concerns that he/she may be a target of actual or attempted exploitation by a foreign national or entity.

D. The Subcontractor is intending to employ a foreign national or foreign nationals (a non-U.S. citizen) for work on the Hanford Site, its facilities, grounds, or associated areas for any purpose.

E. The Subcontractor is intending to host a meeting for any US-DOE/Hanford Site funded program, activity, or business in which a foreign national(s) (a non-U.S. citizen) will be present. This includes all non-public forums, whether on the Hanford Site proper or held at any off-site location.

F. The Subcontractor/Subcontractor employee(s) is traveling to a DOE declared sensitive country on official DOE sponsored travel, regardless of clearance level.

G. The Subcontractor/Subcontractor employee(s) is traveling for pleasure or as sponsored by a non-DOE/corporate interest to a DOE declared sensitive country and is in possession of a United States (U.S.) DOE security clearance or has held a U.S. DOE security clearance within the past five (5) years, or is currently being processed for a U.S. DOE security clearance.

H. The Subcontractor/Subcontractor employee(s) is traveling to any country outside the U.S. to discuss a sensitive subject.

I. The Subcontractor/Subcontractor employee(s) is traveling to any country outside the U.S. wherein that travel is sponsored, in part or in whole, by a foreign country.

5.7. Publicity

Subcontractor shall not make news releases, publicize, or issue advertising pertaining to the work or this Subcontract without first obtaining the written approval of Buyer.

5.8. Subcontracting

A. Subcontractor shall not subcontract performance of the work under this Subcontract without first obtaining Buyer acceptance in writing of the Subcontracting and the Subcontractor.

B. Subcontractor warrants that its lower-tier Subcontractors have been fully informed of the terms of this Subcontract and that all applicable provisions and requirements of this Subcontract are flowed down and invoked in such Subcontracts.

5.9. Travel

Travel costs are not allowable expenses unless authorized elsewhere in this Subcontract by the Buyer and such costs are in accordance with the federal Travel Regulations.

5.10. Schedule Coordination

Daily work schedules, facility operations, and holidays can vary on the Hanford Site. Most organizations and facilities observe a schedule of four (4) tens (10s) (Monday through Thursday). BEFORE scheduling work, or arriving on site, the Subcontractor shall make specific schedule arrangements for the performance of work or the delivery of services with the Contract Specialist and BTR.

The Buyer will not be liable for the cost of any delays, layover, extra travel days, etc., which result from Subcontractor's failure to obtain specific schedule approval in advance.

5.11. Requests for Information, Data, or Documents

A. Subcontractor agrees that Buyer may request information, data documents, and records it determines to be necessary to administer this Subcontract; enforce any provision(s) thereof; comply with any provisions of the Prime Contract or any request for information, data, documents, or records from DOE; or support, verify, justify, explain, or understand information, notices, or requests provided by Subcontractor, including but not limited to requests for payment, invoices, cost submittals, claims, and certified cost or pricing

data. Subcontractor shall promptly provide all such information, data, documents, and/or records in response to any such request.

B. If Subcontractor contends that any information, data, documents, or records requested by Buyer pursuant to Paragraph A above are proprietary, confidential, trade secret, or otherwise likely or certain to cause liability, harm, or loss by disclosure of the same to Buyer and/or the Government, Subcontractor shall notify Buyer within seven (7) calendar days of Buyer's request for disclosure.

C. Upon receipt of Subcontractor's notice specified in Paragraph B above, Buyer shall have the option of rescinding its request or requesting that Subcontractor provide for a third-party audit acceptable and sufficient to support, verify, justify, explain, or understand Subcontractor's certified cost or pricing data, which report shall be produced and provided at Subcontractor's sole expense.

D. Upon Buyer's request for audit as specified in Paragraph C above, Subcontractor shall, at its sole expense, arrange for a third party auditor to conduct an audit of the requested information, data, documents, or records; shall promptly and reasonably make the information, data, documents, or records originally requested by Buyer available to a third party auditor; and shall provide to Buyer an audit report meeting all criteria specified in Buyer's request for audit.

E. Buyer shall have the right, in its sole discretion, to accept or reject as insufficient an audit report provided pursuant to Paragraph D above. If Buyer rejects an audit report, Subcontractor shall, at its sole expense, arrange for further audit and reporting as necessary to satisfy all criteria specified in Buyer's request for audit.

5.12. DEAR 970.5232-3 (Dec 2010) (*Amended and Supplemented*)

DEAR 970.5232-3 Accounts, Records, and Inspection (Dec 2010) (Amended and Supplemented)

A. ***Accounts***. Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to Subcontractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of Subcontractor under this contract. The system of accounts employed by Subcontractor shall be satisfactory to Buyer and in accordance with generally accepted accounting principles consistently applied.

B. Inspection and audit of accounts and records. All books of account and records relating to this Subcontract shall be subject to inspection and audit by Buyer and/or DOE or their designees in accordance with the provisions of DEAR 970.5204-3, *Access to and ownership of records*, at all reasonable times, before and during the period of retention provided for in Paragraph D of this Clause, and Subcontractor shall afford Buyer and/or DOE proper facilities for such inspection and audit.

C. ***Audit of lower-tier subcontractors' records***. Subcontractor also agrees, with respect to any lower-tier subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the lower-tier subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through Buyer and the DOE Contracting Officer.

D. ***Disposition of records***. Except as agreed upon by Buyer and Subcontractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to Subcontractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract shall be delivered to Buyer at or before final payment or otherwise disposed of by Subcontractor no earlier than six years after final payment. Except as otherwise provided in this Subcontract or otherwise agreed upon by Buyer and Subcontractor in writing, all other records in the possession of Subcontractor relating to this contract shall be preserved by the Subcontractor for a period of six years, or a longer period pursuant to any other applicable provision of this Subcontract, after final payment under this Subcontract or otherwise disposed of in such manner as may be agreed upon by Buyer and Subcontractor.

E. ***Reports***. Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as Buyer may from time to time require.

F. ***Inspections***. Buyer 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.

G. ***Subcontracts***. Subcontractor further agrees to require the inclusion of provisions similar to those in Paragraphs A through G and Paragraph H of this Clause in all lower-tier subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where,

under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

H. Comptroller General.

1. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of Subcontractor's or a lower-tier subcontractor's directly pertinent records involving transactions related to this contract or a lower-tier subcontract hereunder and to interview any current employee regarding such transactions.

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

3. Nothing in this contract shall be deemed to preclude an audit by the Government Accountability Office of any transaction under this contract.

I. ***Remedies***. If at any time during or after Subcontract performance, Buyer or DOE determines that unallowable costs were claimed by Subcontractor to the extent of making Subcontractor's management controls suspect, or Subcontractor's management systems that validate costs incurred and claimed suspect, Buyer may, where he or she deems it appropriate, require a refund; withhold Subcontract amounts; reduce Subcontractor's otherwise earned fee; and take such other action as authorized in law, regulation, or this Subcontract.

J. ***Indemnification***. Subcontractor agrees to indemnify, defend, and hold harmless Buyer for any and all liability, loss, damages, penalties, claims, costs, and expenses, including attorney fees and costs of legal action, litigation, or settlement, arising from or relating to Subcontractor's breach of any duty or obligation under this Clause, including, but not limited to, any failure to properly retain data, and any failure to promptly and properly provide information, data, documents, or records necessary to show and support Subcontractor's claimed costs under this Subcontract.

6.0 TRANSPORTATION

Transportation expenditures under this subcontract charged to Buyer are subject to Government audit. Compliance with instructions and requirements is essential. If transportation instructions are not adhered to, Subcontractor may be charged back any

difference in freight costs. Unless otherwise specified in the body of the Subcontract, shipping is to be free on board (FOB) origin, freight collect.

6.1. General Requirements

A. All packages must be clearly marked with the Buyer, Subcontract number, and line item number.

B. Bills of lading and packing lists must be identified by the Subcontract number and line item with one (1) copy being forwarded to the Buyer.

C. Invoices that include two (2) copies of the paid transportation bill must accompany all freight charges.

D. A separate transportation invoice itemizing the basis for the transportation charges must substantiate invoices on all Subcontracts, which include transportation expenditures as a result of a Subcontractor using his own vehicle.

E. For third party billing instructions contact [To Be Determined (TB) and Updated]

F. All paperwork required by the Subcontract, such as test reports, certifications, and data sheets, must accompany the shipments to Buyer, unless otherwise specified in the Subcontract. If the document package is not obviously displayed, the exterior markings must indicate location of the paperwork.

G. Add to the Bill of Lading for collect shipments, the following notation: "Transportation charges herein are for the U.S. Government and the actual transportation cost paid to the carrier(s) by the shipper or consignee is to be reimbursed by the U.S. Government."

H. When shipping to Buyer, use the following as the ship to address:

[To be Determined and Updated]

6.2. Value and Insurance

It is the policy of the U.S. Department of Energy and Buyer not to pay for insurance against loss, damage, or destruction. Where Buyer will bear the cost of transportation and freight rates, are based upon released value, shipments must be released at the maximum value pertaining to the lowest freight rate.

Subcontractors shall not under any circumstances charge back insurance costs to Buyer.

6.3. Special Instructions for Various Methods of Transportation

NOTE: *Where the mode of transportation is not indicated on the face of the Subcontract, the Subcontractor shall not effect shipment without contacting the Buyer. The following is generally the preferred method.*

A. Surface Transportation type of shipment as follows:

1. For packages up to 150 lbs. each from any place in the Continental U.S.A., ship via United Parcel Service (UPS) surface or FedEx Ground and declare no value. (Do not insure.)

2. Type of shipment – For packages exceeding 150 lbs. each, or several packages exceeding a total of 150 lbs. but less than 1,000 lbs., ship collect via motor freight. If no specific motor freight routing is shown call the Buyer.

3. Type of shipment - For shipments exceeding 1,000 lbs. or any truckload quantity or over dimensional load call the Buyer or Buyer's traffic management department at (509) 376-6638 or (509) 376-6016 prior to shipment.

4. Type of shipment - For rail from all points, route to Richland, Washington via Union Pacific (UP); or Burlington Northern (BN) to Pasco for delivery by Washington Central Railroad Company (WCRC). Under no circumstances should carload or less than carload shipments be forwarded via rail without specific prior authorization from the Buyer's traffic management department.

6.4. Premium Transportation Restriction

A. Do not ship via premium transportation unless the Subcontract specifically states to do so, or without specific authorization from the Buyer.

B. The Buyer is the only individual authorized to approve the use of premium transportation. Premium transportation includes the following: air freight, air express services, air freight forwarder, exclusive use truck, or the use of household goods carriers. NOTE: In some cases, air freight or air express routings are not considered "premium" but are the most economical means of transportation.

6.5. Air Freight/Air Express Services/Exclusive Use Truck

A. Air Express Services:

1. Type of shipment – For packages up to 150 lbs. each, where a Subcontract specifies air freight or air express ship via federal Express priority or standard overnight service collect.

2, Type of shipment – For packages over 150 lbs. in actual or dimensional weight, call [to be determined and updated] for specific routing instructions prior to shipment. NOTE: Dimensional formula in inches is: length x width x height; divided by 194.

B. Exclusive use truck or electronic/padded van service. Do not use without Buyer's traffic management department approval.

6.6. General Notes and Restrictions

A. UPS size and weight restrictions. Packages can be up to 108 inches in length with up to 165 inches in length and girth combined, and 150 lbs. total weight per package.

B. Subcontractors shall follow routing instructions specified in the Subcontract or provided verbally by the Buyer or Buyer's traffic management department.

C. Subcontractor shall ship materials routed via UPS as UPS collect, unless otherwise authorized by the Buyer.

D. All air and surface routings, as specifically authorized by the Buyer, shall be shipped freight-collect. General Services Administration (GSA) schedule materials are exempt from this instruction and will be shipped in accordance with applicable schedule terms and conditions. Freight costs resulting from failure to comply with these instructions are the responsibility of the Subcontractor.

E. Immediately following each premium shipment, Subcontractor shall advise Buyer of the date of shipment, complete routing, and carriers' progressive (PRO) number or air bill number.

F. Any hazardous materials shipped under this Subcontract shall be properly packaged, marked, labeled, and certified to the carrier that the shipment is in proper condition for transportation according to the regulations of the Department of Transportation (DOT) CFR 49 parts 171-178 or the International Air Transport Association (IATA) air regulations.

G. Notify the Buyer a minimum of twenty-four (24) hours in advance of the following incoming shipments:

a) Firearms, ammunition, and Department of Transportation (DOT) Class 1 explosives

b) Hazardous or chemical products that requires special handling or transportation precautions or considerations (e.g. toxic or flammable)

c) Oversized or products that require special handling for unloading or movement such as cranes, pilot cars or specialized handling equipment.

H. Additional provisions may be applicable to shipments of radioactive materials (RAM), or special nuclear materials (SNM).

7.0 CHANGES

7.1. Buyer's Right to Order Changes

A. The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

1. Description of services to be performed.
2. Time of performance (i.e., hours of the day, days of the week, etc.).
3. Place of performance of the services.
4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
5. Method of shipment or packing of supplies.
6. Place of delivery.
7. Amount of Government-furnished property.

B. If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the Buyer will make an equitable adjustment in any one or more of the following and will modify the subcontract accordingly:

1. Ceiling price.
2. Hourly rates.
3. Delivery schedule.
4. Other affected terms.

C. The Subcontractor shall assert its right to an adjustment under this Clause within thirty (30) days from the date of receipt of the written order. However, if the Buyer decides that the facts justify it, the Buyer may receive and act upon a proposal submitted before final payment of the subcontract.

D. Failure to agree to any adjustment will be a dispute subject to resolution under the Claims and Disputes Clause of this Subcontract. However, neither the existence of a dispute nothing nor anything in this Clause excuses the Subcontractor from proceeding with the Subcontract as changed.

7.2. Notice of Changes

A. Except for changes identified as such in writing and signed by Buyer, Subcontractor shall notify Buyer in writing promptly, within 7 calendar days from the date that Subcontractor identifies any condition, circumstance, event, occurrence, or Buyer conduct (including actions, inactions, and written or oral communications) that Subcontractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to Subcontractor, the notice shall state -

1. The date, nature, and circumstances of the condition, circumstance, event, occurrence, or Buyer conduct regarded as a change;
2. The name, function, and activity of each person involved in or knowledgeable about such condition, circumstance, event, occurrence, or Buyer conduct;
3. The identification of any documents and the substance of any written and oral communications involved in such condition, circumstance, event, occurrence, or Buyer conduct;
4. In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
5. The particular elements of contract performance for which Subcontractor may seek an equitable adjustment under this Clause, including -
    i. What work or line items are, have been, or may be affected by the alleged change;
    ii. What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
    iii. What delay and/or disruption in the manner and sequence of performance and effect on continued performance has been or may be caused by the alleged change;
    iv. What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

6. Subcontractor's estimate of the time by which Buyer must respond to Subcontractor's notice to minimize cost, delay, or disruption of performance.

B. Following submission of the notice required by Paragraph A above, Subcontractor shall diligently continue performance of this Subcontract to the maximum extent possible in accordance with its terms and conditions.

C. Buyer shall, within thirty (30) calendar days after receipt of notice, respond to the notice in writing. In responding, Buyer shall do one of the following:

1. Confirm that the condition, circumstance, event, occurrence, or Buyer conduct of which Subcontractor gave notice constitutes a change and when necessary direct the mode of further performance;

2. Countermand any communication or direction regarded as a change;

3. Deny that the condition, circumstance, event, occurrence, or Buyer conduct of which Subcontractor gave notice constitutes a change and when necessary direct the mode of further performance; or

4. In the event Subcontractor's notice information is inadequate to make a decision under (1), (2), or (3) above, advise Subcontractor what additional information, data, documents, or records are required, and establish the date by which such additional information, data, documents, or records shall be furnished and the date thereafter by which Buyer will respond.

D. Equitable adjustments

1. If Buyer confirms that the condition, circumstance, event, occurrence, or Buyer conduct effected a change as alleged by Subcontractor, and the conduct causes an increase or decrease in Subcontractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made –

i. In the Subcontract price or delivery schedule or both; and

ii. In such other provisions of the Subcontractor as may be affected.

2. The Subcontract shall be modified in writing accordingly. In the case of drawings, designs, or specifications which are defective and for which Buyer is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by Subcontractor in attempting to comply with the defective drawings,

designs or specifications before Subcontractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by Buyer under this Clause is included in the equitable adjustment, Buyer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from Subcontractor's failure to provide notice or to continue performance as provided in this Clause.

8.0 SUBCONTRACTING PLAN

A. This Clause applies if the value of any single subcontract action is greater than $700,000.00 or greater than $1,500,000 if the work is for construction of any public facility, unless the Subcontractor is granted an exemption by the Buyer for a reason allowed by FAR 19.702.

B. Subcontractor shall utilize small business concerns to the maximum extent practical as required in FAR part 19.702 and FAR 52.219-8 when subcontracting any part of this Subcontract.

C. Subcontractor must prepare, submit for approval, and implement a subcontracting plan which meets the intent and requirements of FAR 19.704 and FAR 52.219-9 (JAN 2017).

D. An Individual Subcontracting Report (ISR) must be filed in the eSRS on a semi-annual basis as required by FAR 52.219-9 for periods ending March 31 and September 30. A Summary Subcontracting Report (SSR) for the entire year must be filed in eSRS for the period ending September 30. The reports must be filed within thirty (30) days of the end of the period, regardless if any subcontracting activity took place during the period, and for the duration of the Subcontract until a final report is submitted.

E. These requirements must be flowed down to all lower tier Subcontractors with subcontracts which meet the requirements set forth in Paragraph A of this Clause.

F. Subcontractor agrees to indemnify, defend, and hold harmless Buyer for any and all liability, loss, damages, penalties, claims, costs, and expenses, including attorney fees and costs of legal action arising from or relating to Subcontractor's failure to comply in whole or in part with this Clause; FAR 52.219-8 and/or FAR 52.219-9 as incorporated into this Subcontract; and/or Subcontractor's subcontracting plan.

9.0 PAYMENTS

9.1. Backcharges

Costs sustained by Buyer as a result of (1) Subcontractor's non-compliance with any law, ordinance, regulation, rule or order, or this Subcontract, including its Safety provisions; (2) delays to Subcontract performance attributable to unsatisfactory Subcontractor performance; or (3) damage to or loss of property (including the property of Buyer or the Government) resulting from any acts or omissions of Subcontractor or its lower-tier Subcontractors, shall be backcharged to the Subcontractor. Backcharges may include, but are not limited to, costs of labor, material, or equipment; taxes, levies, duties and assessments; and markups for indirect costs, overhead, supervision, and administration. Such backcharges shall offset payments due Subcontractor from pending invoices and if such backcharges exceed invoiced amounts, such backcharges will be invoiced by Buyer to Subcontractor, such backcharges payable within thirty (30) days.

9.2. Title and Offset

A. Subcontractor warrants full and unrestricted title to the Government for all items purchased under this Subcontract and is free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances. Excess items received that are of a nominal value shall be kept by Buyer at no cost to the Buyer. All items received in excess of Subcontract requirements that are returned shall be returned at Subcontractor's expense.

B. Buyer, without waiver or limitation of any rights or remedies of Buyer, shall be entitled from time to time to deduct from any amounts due or owing by Buyer to Subcontractor in connection with this Subcontract (or any other Subcontract with Buyer), any and all amounts owed by Subcontractor to Buyer or the Government in connection with this Subcontract.

9.3. Final Payment Certification and Release

At the time of and as a condition precedent to final payment under this Subcontract, Subcontractor shall execute and deliver to Buyer a certificate and release discharging Buyer of and from all liabilities, obligations, and claims arising out of or under this Subcontract. Buyer shall not be obligated to make final payment to Subcontractor until Subcontractor has delivered to Buyer a certificate and release satisfactory to Buyer that Subcontractor has fully performed under this Subcontract and that all claims of Subcontractor for the work are satisfied upon the making of such final payment, that no property of the Government or property used in connection with the work is subject to any unsatisfied lien or claim as a result of the performance of the work, that all rights of lien against the Government's property in connection with the work are released (including without limitation, if Buyer requests, releases of lien satisfactory in form to Buyer

executed by all persons who by reason of furnishing material, labor or other services to Subcontractor for the work or potential lienors against the Government's property), and that Subcontractor has paid in full all outstanding obligations against the work.

9.4. Taxes

The Subcontract price includes all taxes, duties, and fees. The Subcontractor shall not be reimbursed for personal property taxes on construction equipment and other property owned by the Subcontractor, nor on taxes on net income of the Subcontractor.

The Subcontractor shall not assess and collect Washington State sales or use tax from the Buyer for materials with respect to this Subcontract. The Buyer, Hanford Mission Integration Solutions, LLC (Washington State UBI Number 604-643-190), is in possession of a DIRECT PAY PERMIT [*To be determined and updated*], and shall pay a use tax attributable to materials used in performing work under this Subcontract. A copy is available from the Buyer upon request. All other federal, state, county, municipal, or other sales, use, excise or similar taxes must be included in the Subcontract amount. If the Subcontractor, as a result of this Subcontract becomes eligible for Washington State Business and Occupation Tax Credit for Research and Development spending, the Subcontractor shall take such tax credit and assign such tax credit to the Buyer. NOTE: Labor charges for construction and demolition services which are applied to real property owned by the U.S. Department of Energy, are exempt from sales and use tax.

9.5. Interest Payment

No interest is payable to Subcontractor for any claim it may have, except that specifically imposed by a court of competent jurisdiction on any judgment (and then only from the date of the entry of judgment).

9.6. Audit

At any time before or after final payment under this Subcontract, Buyer may request audit of Subcontractor's invoices and any substantiating information, data, documents, or records. Each payment previously made shall be subject to reduction or withholding to the full extent of amounts on preceding invoices that are found by Buyer not to have been properly payable and shall also be subject to reduction or withholding for overpayments or increase for underpayments.

9.7. Overtime and Overtime Control Reporting

A. Unless expressly stated elsewhere in this Subcontract, work on the Hanford site shall be compatible with Buyer's starting and quitting times, or other times approved by Buyer.

B. Subcontractor acknowledges that overtime premium pay is an allowable cost only if authorized by Buyer in writing and deemed allowable and reasonable by DOE. Subcontractor agrees that it shall not be entitled to additional compensation for overtime premium pay unless the overtime premium pay is authorized by Buyer and DOE and deemed allowable and reasonable.

C. Buyer must approve scheduled overtime work by Subcontractor in advance and in writing. Subcontractor shall notify Buyer in advance of any incidental spot overtime that Subcontractor elects to work due to such operations as concrete placement, non-disruptable work activities, and emergencies to protect life and/or property. Overtime work, whether scheduled or incidental, shall be to Subcontractor's account unless the compensation therefore is specifically authorized in writing by Buyer and deemed allowable and reasonable by DOE.

D. In the event Buyer approves compensation of Subcontractor's overtime in advance, such compensation as separately authorized shall be limited to the actual cost to Subcontractor of the premium portion only of all applicable wages, craft fringe benefits, and payroll burdens imposed by any governmental authority and measured by the compensation payable to employees. To establish the amount of payment, Subcontractor shall submit supporting documents satisfactory in form and content to Buyer for its verification and approval.

E. If DOE disallows or deems unallowable, unreasonable, or otherwise not payable to Buyer any amount paid by Buyer to Subcontractor for overtime premium pay, Buyer shall be entitled to deduct the full amount disallowed and/or deemed unallowable, unreasonable, or otherwise not payable from the total value of the Subcontract.

F. Subcontractor shall submit an Overtime Justification Report each month no later than the 15th day of the month during the period of performance for this Subcontract, showing all overtime hours worked during the previous month and providing justification for every overtime hour worked. This report shall include Common Occupational Classification System sub-codes for all overtime hours and shall differentiate between premium and non-premium overtime. This report shall provide sufficient detail to demonstrate (1) compliance with all provisions of FAR 52.222-2, *Payment for Overtime Premiums* (JULY 1990); (2) all other alternatives to overtime were evaluated and found inadequate or not feasible prior to working overtime; and (3) all overtime hours worked were in the best interest of the Government. The report shall include any other information reasonably requested by Buyer to demonstrate that Subcontractor's overtime premium pay is allowable, allocable, and reasonable.

G. Subcontractor agrees to revise any *Overtime Justification Report* promptly upon request by Buyer. If Subcontractor fails to revise any *Overtime Justification Report* promptly upon request by Buyer, Buyer shall be entitled to withhold the full amount of any payment that would otherwise be due for overtime premium pay for the period covered by the *Overtime Justification Report* for which Buyer requested revision until such time as Subcontractor revises the *Overtime Justification Report* in a manner acceptable to Buyer.

H. Subcontractor agrees to provide promptly any and all information, data, documents, and records requested by Buyer to support any *Overtime Justification Report.* If Subcontractor fails to provide promptly any such information, data, documents, and records requested by Buyer, Buyer shall be entitled to withhold the full amount of any payment that would otherwise be due for overtime premium pay for the period covered by the *Overtime Justification Report* for which Buyer requested revision until such time as Subcontractor revises the *Overtime Justification Report* in a manner acceptable to Buyer.

9.8. Parent Organization Expenses

A. Subcontractor acknowledges that pursuant to Clause H.54 of the Prime Contract, allocations of parent organization expenses are unallowable costs unless authorized by Buyer and the DOE Contracting Officer. Subcontractor shall not seek, and is not entitled to receive, payment for any allocation of parent organization expenses, as defined in this Clause, unless those parent organization expenses have been expressly authorized by Buyer and the DOE Contracting Officer.

B. To protect Buyer from the risk associated with disallowance of parent organization expenses, Buyer may withhold and retain up to five percent (5%) of the amount that would otherwise be due to Subcontractor for general and administrative expenses and until final payment under this Subcontract.

C. If DOE disallows, deems unallowable, or otherwise deems not payable or improperly paid to Buyer any amount paid by Buyer to Subcontractor on grounds that the amount constitutes or includes unallowable parent organization expenses, the full amount disallowed and/or deemed unallowable shall immediately be due and payable by Subcontractor to Buyer and shall be subject to backcharging or offset. Buyer shall be entitled to deduct the full amount disallowed and/or deemed unallowable from the Total Value of the Subcontract.

D. Subcontractor agrees that if its parent organization expenses are authorized by Buyer and the DOE Contracting Officer in any amount and on any terms

and/or conditions, it shall submit a *Parent Organization Support Plan* (POSP) annually on at least 120 days prior to the start of each fiscal year for the duration of this Subcontract.

E. Subcontractor agrees to revise its initial POSP submitted with its offer, or any annual POSP submittal, promptly upon request by Buyer. If Subcontractor fails to revise any POSP promptly upon request by Buyer, Subcontractor shall not be permitted to seek or retain any payment for parent organization expenses associated with the POSP related to Buyer's request, and Buyer shall be entitled to deduct from the total value of the Subcontract the full amount of any payment made for parent organization expenses associated with the POSP related to Buyer's request.

F. Subcontractor agrees to provide promptly any and all information, data, documents, and records requested by Buyer to support its initial POSP or any annual POSP submittal, in accordance with the Clause of this Subcontract entitled "Requests for Information Data, Documents, and Records." If Subcontractor fails to provide promptly any such information, data, documents, and records requested by Buyer or fully and timely comply with the audit procedures specified in the "Requests for Information Data, Documents, and Records" Clause, Subcontractor shall not be permitted to seek or retain any payment for parent organization expenses associated with the POSP related to Buyer's request, and Buyer shall be entitled to deduct from the Total Value of the Subcontract, and to backcharge or offset, the full amount of any payment made for parent organization expenses associated with the POSP related to Buyer's request.

G. Subcontractor shall indemnify, defend, and hold harmless Buyer from any and all costs and expenses, including legal expenses and attorney fees, incurred by Buyer due to disallowance or rejection by DOE of parent organization expenses for which Subcontractor seeks and/or receives payment without express authorization by the by the Contracting Officer or in violation of any part of an approved POSP.

9.9. Allowability of Subcontractor Fee

A. If Subcontractor is part of a teaming arrangement with Buyer as described in FAR Subpart 9.6, *Contractor Team Arrangements*, it shall share in fee with Buyer as provided in the Prime Contract. Separate additional subcontractor fee is not an allowable cost under this Subcontract for individual team members, or for a subcontractor, supplier, or lower-tier subcontractor that is a wholly-owned, majority-owned, or affiliate of any team member.

B. The subcontractor fee restriction in paragraph (a) does not apply to members of Buyer's team that are: (1) small business (es); (2) Protégé firms as part of

an approved Mentor-Protégé relationship under the Prime Contract Clause entitled, *Mentor-Protégé Program*; (3) subcontractors under a competitively awarded firm- fixed price or firm-fixed unit price subcontract; or (4) commercial items as defined in FAR Subpart 2.1, *Definitions of Words and Terms*.

10.0 WARRANTY

A. Subcontractor warrants that the work shall comply strictly with the provisions of this Subcontract and all specifications, drawings, and standards referred to in this Subcontract or thereafter furnished by Buyer, and that the work shall be first-class in every particular and free from defects in materials and workmanship and in any design or engineering furnished by Subcontractor. Subcontractor further warrants that all materials, equipment, and supplies furnished by Subcontractor for the work shall be new, merchantable, of the most suitable grade and fit for their intended purposes unless specifically provided in this Subcontract. Without limitation of any other rights or remedies of Buyer, if any defect in the work in violation of the foregoing warranties arises within the period set forth below, Subcontractor shall, upon receipt of written notice of such defect, promptly furnish, at no cost to Buyer, design and engineering, labor, equipment and materials necessary to correct such defect and cause the work to comply fully with the foregoing warranties.

B. Subcontractor's warranties set forth in Paragraph A of this Clause shall extend for twenty-four (24) months after the date of final written acceptance of the work by Buyer, or eighteen (18) months after the start of regular operation or use of the work by Buyer, whichever occurs first. Any period wherein the work is not available for use due to defects in materials, workmanship or engineering furnished by Subcontractor shall extend the warranty period by an equal period of time.

C. Design and engineering, labor, equipment, and materials furnished by Subcontractor pursuant to this Paragraph A of this Clause to correct defects shall be warranted by Subcontractor in accordance with the warranties set forth in Paragraph A of this Clause for a period of eighteen (18) months from the date of completion of the correction, or for the remainder of the warranty period set forth in Paragraph B of this Claus, whichever is longer.

D. Subcontractor warrants that all services supplied by Subcontractor in performance of this Subcontract shall be supplied by personnel who are careful, skilled, experienced, and competent in their respective trades or professions. At any time and for any reason, Buyer may require Subcontractor to withdraw the services of any person and, in addition, request that Subcontractor promptly provide replacements for such persons satisfactory to Buyer. In addition to the other

indemnification provisions within this Subcontract, Subcontractor specifically agrees to indemnify and hold harmless Buyer, from and against any liabilities, claims, charges, or suits for alleged losses, costs, damages or expenses arising from Buyer's exercise of its rights under this Article.

E. In the event Subcontractor shall have been notified of any defects in the work in violation of Subcontractor's foregoing warranties and shall fail to promptly and adequately correct such defects, Buyer shall have the right to correct or to have such defects corrected for the account of Subcontractor, and Subcontractor shall promptly pay Buyer the costs incurred in correcting such defects.

F. Subcontractor shall include, at a minimum, the foregoing warranty requirements in any Subcontract that it places.

11.0 INDEMNITY

11.1. General Indemnity

Subcontractor agrees to defend, indemnify, and hold harmless Buyer and the Government, the affiliated companies of each, and all of their directors, officers, employees, agents, and representatives, from and against:

A. Any claim, demand, cause of action, liability, loss, penalty, or expense arising by reason of Subcontractor's actual or asserted failure to comply with any law, ordinance, regulation, rule, order, or with this Subcontract. This includes, but is not limited to, fines or penalties by Government authorities and claims arising from Subcontractor's actual or asserted failure to pay taxes.

B. Any claim, demand, cause of action, liability, loss, penalty or expense arising from actual or asserted violation or infringement of rights in any patent, copyright, proprietary information, trade secret, or other property right caused or alleged to be caused by the use or sale of goods, materials, equipment, methods, processes, designs or information, including construction methods, construction equipment, and temporary construction facilities, furnished by Subcontractor or its lower-tier Subcontractors in performance of the work. Should any goods or services provided by Subcontractor become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, Subcontractor shall, at Buyer's option, either procure for Buyer and the Government the right to continue using such goods or services, replace same with equivalent, non-infringing goods or services, or modify the goods or services so that the use thereof becomes non-infringing, provided that any such modification or replacement is of equal quality and provides equal performance to the infringing good or services.

C. Any claim, demand, cause of action, liability, loss, penalty, or expense arising from injury to or death of persons (including employees of Buyer, the Government, Subcontractor and Subcontractor's lower-tier Subcontractors) or from damage to or loss of property (including the property of Buyer or the Government) arising directly or indirectly out of this Subcontract or out of any acts or omissions of Subcontractor or its lower-tier Subcontractors in accordance with the *State of Washington Comparative Fault Statute* (Chapter 4.22 RCW). Subcontractor's defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of Buyer or arising from use by Subcontractor of construction equipment, tools, scaffolding, or facilities furnished to Subcontractor by Buyer or the Government.

D. Any claim, demand, cause of action, liability, loss, penalty, or expense for actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of this Subcontract or out of any acts or omissions of Subcontractor, or its lower-tier Subcontractors.

E. Subcontractor's indemnity obligations shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively, excepting only where the injury, loss, or damage was caused solely by the negligence or willful misconduct of, or by defects in design furnished by, the party to be indemnified. Subcontractor's defense and indemnity obligations shall include the duty to reimburse any attorney's fees and expenses incurred by Buyer or the Government for legal action to enforce Subcontractor's indemnity obligations.

F. In the event that the indemnity provisions in this Subcontract are contrary to the law governing this Subcontract, then the indemnity obligations applicable hereunder shall be construed to be to the fullest extent allowable by applicable law.

G. For purposes of the indemnity provided in this Clause, Subcontractor specifically and expressly waives any immunity that may be granted it under the *Washington State Industrial Insurance Act*, Title 51 RCW, and all other applicable Industrial Insurance/Worker's Compensation Acts or their equivalent in the applicable jurisdiction. With respect to claims by employees of Subcontractor or its lower-tier Subcontractors, the indemnity obligations created under this Clause, shall not be limited by the fact of, amount, or type of benefits or compensation, payable by or for subcontractor, its lower-tier Subcontractors or suppliers under any workers compensation, disability benefits, or other employee benefits acts or regulations, and Subcontractor waives any limitation of liability arising from workers' compensation or such other acts or regulations. Subcontractor

acknowledges that the waiver of immunity contained in this Article was mutually negotiated.

H. Buyer shall be entitled to retain from payments otherwise due Subcontractor such amounts as shall reasonably be considered necessary to satisfy any claims, suits or liens for damages that fall within Subcontractor's indemnity obligations under this Clause, until such claims, suits or liens have been settled and satisfactory evidence to that effect has been furnished to Buyer.

11.2. Patent Indemnity

A. Subcontractor shall indemnify Buyer and the Government, and the officers, agents, and employees of each, against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this Subcontract, or out of the use or disposal by or for the account of Buyer of such supplies or work.

B. This indemnity shall not apply to (1) an infringement resulting from compliance with specific written instructions of Buyer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by Subcontractor, (2) an infringement resulting from addition to or change in supplies or components furnished or work performed that was made subsequent to delivery or performance, or (3) a claimed infringement that is unreasonably settled without the consent of Subcontractor, unless required by final decree of a court of competent jurisdiction.

C. Except as otherwise authorized by Buyer, Subcontractor shall obtain indemnification of Buyer and the Government and their officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the government) from all lower-tier subcontractors for any subcontracted work in accordance with this Clause and FAR 52.227-3.

12.0 CLAIMS AND DISPUTES

12.1. Claims and Disputes

A. All claims and disputes arising under or relating to this Subcontract shall be resolved under this Clause.

B. "Claim," as used in this Clause, means a written demand or written assertion by Subcontractor, as a matter of right, to the payment of money in a sum certain, the adjustment, or interpretation of Subcontract terms, or other relief arising under or relating to this Subcontract. Buyer shall not be liable for, and Subcontractor hereby waives, any Claim or potential Claim of Subcontractor, which was not timely and properly reported, substantiated, and progressed by Subcontractor in accordance with all provisions of this Clause.

1. The following process is to be used if Subcontractor believes it has, or may have, a Claim:

   a) Subcontractor shall give Buyer written notice within five (5) working days after the happening of any event or occurrence which Subcontractor believes may give rise to a Claim by Subcontractor for additional time or money. Within fourteen (14) calendar days after the happening of such event, Subcontractor shall supply Buyer with a written statement supporting Subcontractor's Claim, including but not limited to, Subcontractor's detailed estimate of the change in Subcontract price and/or scheduled time occasioned thereby.

   b) Subcontractor shall substantiate its written statement supporting its notice of Claim with payroll documents, paid invoices, receipts, records of performance, and other documents satisfactory to Buyer and subject to Buyer's verification.

   c) Subcontractor shall provide an updated and revised notice of Claim and written statement every thirty (30) days following initial submission to Buyer of the written statement of Claim, and shall substantiate its updates and revisions with the documents specified in Subparagraph B(1)(b) above. Failure to timely update and revise the notice of Claim and written statement shall constitute release and waiver of any part of the Claim or any adjustment in Subcontract price or time not included in a prior timely notice of Claim and written statement.

   d) Following Buyer's receipt of a timely written notice and statement of Claim, the parties shall negotiate diligently to reach an agreement, but in no case, except with Buyer's prior written consent, shall any work be halted pending such agreement, whether or not the Claim can be resolved to Subcontractor's satisfaction, and Subcontractor shall be bound

by the terms and conditions of this Subcontract to prosecute the work without delay to its successful completion. Buyer shall not be bound to any adjustments in the Subcontract price or scheduled time unless expressly agreed to by Buyer in writing. No Claim hereunder by Subcontractor shall be allowed if asserted after final payment under this Subcontract. Subcontractor's remedies are limited to those expressly set forth in this Subcontract.

e) If after good faith efforts, the Claim is not resolved, the Subcontractor may request from Buyer a final determination as to the Claim pursuant to Paragraphs C through F below.

C. Subcontractor may request from Buyer a final determination as to a Claim for which it has given proper and timely written notice and negotiated diligently and in good faith to resolve as required by Paragraph B above, but which remains unresolved in whole or in part. Subcontractor shall notify Buyer in writing that a dispute exists and that it requests a final determination. A request for a final determination Subcontractor shall be submitted by Subcontractor in writing to the Contract Specialist for a decision within one (1) year after the happening of the event or occurrence giving rise to the Claim, unless the parties agree to a different time period for submittal. Subcontractor agrees that by failing to request a final determination within the time period specified above, Subcontractor releases and waives the Claim and any right to commence litigation or other legal or administrative proceedings with respect to the Claim.

D. The Subcontractor shall provide a certification as specified below when submitting any Claim to Buyer.

1. The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the Subcontract adjustment for which the Subcontractor believes the Buyer is liable; and that I am duly authorized to certify the claim on behalf of the Subcontractor."

2. The certification may be executed by any person duly authorized to bind the Subcontractor with respect to the claim.

3. The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

4. Subcontractor agrees that its failure to provide a Claim certification that fully complies with the requirements of this Paragraph D releases

and waives the Claim and any right to commence litigation or other legal or administrative proceedings with respect to the Claim.

E. Within sixty (60) days of receiving Subcontractor's request for final determination of a Claim, Buyer shall provide to Subcontractor either (1) a written final determination on the Claim or (2) a notice of a reasonable date by which it will render its final determination on the Claim. Subcontractor agrees not to institute, and agrees to stay, any legal proceedings against Buyer with respect to a Claim unless and until Buyer has provided its final determination of the Claim or has failed to provide a final determination within 60 days of Subcontractor's request for final determination or a reasonable date of which it has provided notice in accordance with this Paragraph, whichever is later.

F. Buyer's final determination as to a Claim shall constitute a final decision fully and finally resolving the Claim unless Subcontractor files a lawsuit or initiates other legal proceedings in accordance with this Subcontract.

G. The parties, by mutual consent, may agree to use alternative dispute resolution (ADR) to resolve any Claim or dispute arising from or relating to this Subcontract or the work thereunder. If Subcontractor refuses an offer for ADR, Subcontractor shall inform the Buyer, in writing, of Subcontractor's specific reasons for rejecting the offer.

H. The Subcontractor shall proceed diligently with performance of this Subcontract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Subcontract, and comply with any decision of the Buyer.

I. Subcontractor acknowledges that the Prime Contract provides procedures for resolution of claims and disputes. Subcontractor agrees to submit all Claims to Buyer in such manner and time as will permit Buyer to fully comply with all such Prime Contract procedures and all provisions and requirements of the *Contract Disputes Act*, 41 U.S.C. §§ 7101-7109. Subcontractor agrees not to institute legal or other proceedings against Buyer until all applicable Prime Contract procedures and remedies have been exhausted. Subcontractor shall fully reimburse Buyer for all costs and expenses, including attorney fees and costs of legal action, incurred by Buyer in the enforcement of this Paragraph. Subcontractor shall indemnify and hold harmless Buyer from all liability, loss, damages, penalties, claims, costs, and expenses, including attorney fees and costs of legal action arising from or relating to Subcontractor's failure to comply with this Paragraph.

J. Under no circumstance will Subcontractor submit any Claims or disputes after final payment is received for completion of this Subcontract.

K. Subcontractor's right of recovery for any Claim arising from acts, errors, and/or omissions of the Government, its employees, officers, agents, or representatives shall be limited solely to the relief recovered by Buyer from the Government, and Buyer shall not be liable to Subcontractor for any monies or other relief except those paid by the Government to Buyer for the benefit of Subcontractor. Any Claim by Subcontractor involving, in whole or in part, acts, errors, and/or omissions of the Government, its employees, officers, agents, or representatives, shall be submitted in such manner and time as will permit Buyer to fully comply with all applicable Prime Contract provisions and requirements for passing the Claim through to the Government. Subcontractor agrees to revise and/or resubmit upon Buyer's request any Claim arising from acts, errors, and/or omissions of the Government, its employees, officers, agents, or representatives, and to submit upon Buyer's request any documents, records, data, or information relating to any such Claim. Subcontractor agrees not to institute, and agrees to stay, any legal proceedings against Buyer arising from or relating to a Claim by Subcontractor involving, in whole or in part, acts, errors, and/or omissions of the Government, its employees, officers, agents, or representatives until all proceedings between Buyer and the Government are final and complete. Subcontractor shall indemnify and hold harmless Buyer from all liability, loss, damages, penalties, claims, costs, and expenses, including attorney fees and costs of legal action arising from or relating to Subcontractor's failure to comply with this Paragraph.

12.2. Arbitration Option

In the event that Buyer is required to arbitrate a dispute with a third party, which dispute arises out of or is directly related to this Subcontract, Subcontractor agrees to join in such arbitration proceeding as Buyer may direct and shall submit to such jurisdiction and be finally bound by the judgment rendered in accordance with the arbitration rules as may be established therein.

12.3. Alternative Dispute Resolution

A. Buyer and Subcontractor both recognize that methods for fair and efficient resolution of contractual issues in controversy by mutual agreement are essential to the successful and timely completion of contract requirements. Accordingly, Buyer and Subcontractor shall use their best efforts to resolve any contractual issue in controversy by mutual agreement, subject to and consistent with the "Claims and Disputes" Clause of this Subcontract. Issues of controversy may include a dispute, claim, question, or other disagreement. The parties agree to negotiate with each other in good faith, recognizing their mutual interests, and attempt to reach a just and equitable solution satisfactory to both parties.

B. If a mutual agreement cannot be reached through negotiations within a reasonable period, the parties may use a process of alternative dispute resolution (ADR). The ADR process may involve mediation, facilitation, fact-finding, group conflict management, and conflict coaching by a neutral party. The neutral party may be an individual, a board comprised of independent experts, or a company with specific expertise in conflict resolution or expertise in the specific area of controversy. The neutral party will not render a binding decision, but will assist the parties in reaching a mutually satisfactory agreement. Any opinions of the neutral party shall not be admissible as evidence in any subsequent litigation proceedings.

C. Either party may request to use the ADR process by making a written request to the other party. A voluntary election by both parties is required to participate in the ADR process. The parties must agree on the procedures and terms of the process, and officials of both parties who have the authority to resolve the issue must participate in the agreed-upon process.

D. The provisions of this Clause are intended to complement, but not to supersede or preempt, any of the requirements of the "Claims and Disputes" Clause of this Subcontract.

13.0 GRATUITIES

A. The right of the Subcontractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Subcontractor, its agent, or another representative –

1. Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
2. Intended, by the gratuity, to obtain a subcontract or favorable treatment under a subcontract.

B. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

C. If this subcontract is terminated under paragraph A of this clause, the Buyer is entitled—

1. To pursue the same remedies as in a breach of the subcontract; and
2. In addition to any other damages provided by law, to exemplary damages of not less than three (3) nor more than ten (10) times the cost incurred by the Subcontractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This paragraph C.2 is applicable only if this subcontract uses money appropriated to the Department of Defense.)

D. The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this subcontract.

14.0 FLOWDOWN CLAUSES FROM PRIME CONTRACT

14.1. Labor Standards

A. The DOE Contracting Officer will determine the appropriate labor standards that apply to specific work activities in accordance with the *Wage Rate Requirements* (Construction) statute (formerly known as the Davis-Bacon Act), the *Service Contract Labor Standards* (SCLS) statute (formerly known as the *Service Contract Act of 1965*), or other applicable federal labor standards law. Once a determination is made and the Subcontractor notified, Subcontractor shall comply with the determination and all applicable labor standards Clauses and requirements. Subcontractor shall also ensure that appropriate labor standards Clauses and requirements are flowed down to and incorporated into any applicable lower tier subcontracts.

B. Subcontractor shall comply, and shall be responsible for compliance by any lower tier subcontractor, with the *Wage Rate Requirements* (Construction), the SCLS, or other applicable labor standards law. Subcontractor shall conduct such payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and as requested or directed by the DOE and the Buyer. When performing work subject to the Wage Rate Requirements (Construction), Subcontractor shall maintain payroll records for a period of six (6) years from completion of the Subcontract, for laborers and mechanics performing the work. In accordance with subparagraph (g) of FAR 52.222-41, *Service Contract Labor Standards*, and subparagraph (b)(4) of FAR 52.222-6, *Construction Wage Rate Requirements*, Subcontractor and its subcontractors shall post in a prominent job-site location, the wage determination and, as applicable, Department of Labor Publications WH-1321, *Employee Rights under the Davis-Bacon Act*, and/or WH-1313, *Employee Rights on Government Contracts*.

C. In addition to any other requirements in the Subcontract, Subcontractor shall as soon as possible notify the Buyer and the DOE Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR Parts 4, 6, and 8 and as defined in subparagraph (t) of FAR 52.222-41, *Service Contract Labor Standards*; disputed labor standards determinations; Department of Labor

investigations; or legal or judicial proceedings related to the labor standards under this subcontract. Subcontractor shall furnish such additional information as may be required from time to time by Buyer and/or the DOE Contracting Officer.

14.2. DOE-H-2053 (Oct 2014) (*Amended*)

DOE-H-2053 Worker Safety and Health Program In Accordance with 10 CFR 851 (Oct 2014) (Amended)

A. The Subcontractor shall comply with all applicable safety and health requirements set forth in 10 CFR 851, *Worker Safety and Health Program*, and any applicable DOE directives incorporated into the Prime Contract. The Subcontractor shall develop, implement, and maintain a written *Worker Safety and Health Program* (WSHP) which shall describe the Subcontractor's method for complying with and implementing the applicable requirements of 10 CFR 851. The WSHP shall be submitted to and approved by DOE. The approved WSHP must be implemented prior to the start of work. In performance of the work, the Subcontractor shall provide a safe and healthful workplace and must comply with its approved WSHP and all applicable federal and state environment, health, and safety regulations.

B. The Subcontractor shall take all reasonable precautions to protect the environment, health, and safety of its employees, Buyer personnel, DOE personnel, and members of the public. When more than one contractor works in a shared workplace, the Subcontractor shall coordinate with the other contractors to ensure roles, responsibilities, and worker safety and health provisions are clearly delineated. The Subcontractor shall participate in all emergency response drills and exercises related to the Subcontractor's work, and interface with other DOE contractors and subcontractors.

C. The Subcontractor shall take all necessary and reasonable steps to minimize the impact of its work on DOE functions and employees, and immediately report all job-related injuries and/or illnesses which occur in any DOE facility to Buyer and the Contracting Officer Representative (COR). Upon request, the Subcontractor shall provide to Buyer and/or the COR a copy of occupational safety and health self-assessments and/or inspections of work sites for job hazards for work performed at DOE facilities.

D. Buyer may notify the Subcontractor, in writing, of any noncompliance with the terms of this Clause, and the corrective action(s) to be taken. After receipt of such notice, the Subcontractor shall immediately take such corrective action(s).

E. In the event that the Subcontractor fails to comply with the terms and conditions of this Clause, Buyer may, without prejudice to any other legal or

contractual rights, issue a stop-work order halting all or any part of the work. Thereafter, Buyer may, at its discretion, cancel the stop-work order so that the performance of work may be resumed. The Subcontractor shall not be entitled to an equitable adjustment of the contract amount or extension of the performance schedule due to any stop-work order issued under this Clause.

F. The Subcontractor shall flow down the requirements of this Clause to all lower-tier subcontracts at any tier.

G. In the event of a conflict between the requirements of this Clause and 10 CFR 851, the requirements of 10 CFR 851 shall take precedence.

14.3. Subcontract Timekeeping Records Signature Requirement

A. Subcontractor shall provide to Contractor timecards for its hourly employees and the hourly employees of sub-tier subcontractors Subcontractor shall provide the subcontract and sub tier timecards with every request for payment of the subcontractor costs to the subcontractors. Subcontractor's provision of timecards as required by this Clause shall be a condition of payment for subcontractor costs. The timecards must reflect actual hours worked. The timecards must be signed by the employee and certified by the employee's supervisor prior to Subcontractor providing them to Contractor. Subcontractor and sub tiers shall maintain adequate timekeeping procedures, controls, and processes for billing Government work.

B. Subcontractor shall comply with all requests from Buyer for information, data, or documents relating to its timecards, timekeeping procedures, controls, or processes. Subcontractor shall promptly provide all information, data, and documents requested by Buyer. Subcontractor. Subcontractor shall, at least once every three (3) years, conduct a labor audit of cost reimbursable lower-tier subcontractors and sub tiers. The audit shall be conducted to either Institute of Internal Auditors standards (if conducted internally) or GAGAS (if conducted externally), unmodified. This Clause shall be flowed down to all cost reimbursable type and non-fixed price subcontracts and sub tiers.

14.4. Hanford Site Recreation Policy

A. Subcontractor shall comply with the *Hanford Site Recreation Policy*, as updated by DOE.

B. Subcontractor shall flow down the requirements of this Clause to any lower-tier subcontractors.

C. Subcontractor agrees to indemnify, defend, and hold harmless Buyer for any and all liability, loss, damages, penalties, claims, costs, and expenses,

including attorney fees and costs of legal action, litigation, or settlement, arising from or relating to Subcontractor's or any lower-tier subcontractor's failure to comply with the *Hanford Site Recreation Policy*.

14.5. DOE-H-2064 Alternate II (Oct 2014) (*Amended*)

DOE-H-2064 Use of Information Technology Equipment, Software, and Third Party Services – Alternate II (Oct 2014) (Amended)

A. ***Acquisition of Information Technology***. The Government may provide information technology equipment, existing computer software (as described in 48 CFR 27.405), and third party services for Subcontractor's use in the performance of the Subcontract; and Buyer or the DOE Contracting Officer may provide guidance to Subcontractor regarding usage of such equipment, software, and third party services. Subcontractor is not authorized to acquire (lease or purchase) information technology equipment, existing computer software, or third party services at the Government's expense without prior written approval of the DOE Contracting Officer. Should Subcontractor propose to acquire information technology equipment, existing computer software, or third party services, Subcontractor shall provide to Buyer justification for the need, including a complete description of the equipment, software, or third party service to be acquired, and a lease versus purchase analysis if appropriate.

B. Subcontractor shall immediately provide written notice to Buyer when an employee of Subcontractor no longer requires access to the Government information technology systems.

C. Subcontractor shall not violate any software licensing agreement, or cause Buyer or the Government to violate any licensing agreement.

D. Subcontractor agrees that its employees will not use, copy, disclose, modify, or reverse engineer existing computer software provided to it by Buyer or the Government except as permitted by the license agreement or any other terms and conditions under which the software is made available to Subcontractor.

E. If at any time during the performance of this contract Subcontractor has reason to believe that its utilization of Buyer- or Government-furnished existing computer software may involve or result in a violation of the software licensing agreement, Subcontractor shall promptly notify Buyer, in writing, of the pertinent facts and circumstances. Pending direction from Buyer, Subcontractor shall continue performance of the work required under this Subcontract without utilizing the software.

F. Subcontractor agrees to include the requirements of this Clause in all lower-tier subcontracts and to require any lower-tier subcontractors to agree to include the requirements of this Clause in all subcontracts at any tier.

G. Subcontractor shall comply with the requirements of those DOE directives, or parts thereof, identified elsewhere in the contract.

H. Subcontractor agrees to indemnify, defend, and hold harmless Buyer for any and all liability, loss, damages, penalties, claims, costs, and expenses, including attorney fees and costs of legal action, litigation, or settlement, arising from or relating to Subcontractor's failure to comply with any provision of this Clause or any breach of Subcontractor's duties and obligations under this Clause.

14.6. DOE H-2019 (Oct 2014) (*Amended*)

DOE H-2019 Disposition of Intellectual Property – Failure to Complete Contract Performance (Oct 2014) (Amended)

A. The following provisions shall apply in the event Subcontractor does not complete Subcontract performance for any reason:

1. The Government may take possession of and use all technical data, including limited rights data, restricted computer software, and data and software obtained from subcontractors, licensors, and licensees, necessary to complete the work in conformance with this contract, including the right to use the data in any Government solicitations for the completion of the work contemplated under this contract. Technical data includes, but is not limited to, specifications, designs, drawings, operations manuals, flowcharts, software, databases, and any other information necessary for of the completion of the work under this contract. Limited rights data and restricted computer software will be protected in accordance with the provisions of the Clause DEAR 970.5227-1, Rights in Data-Facilities (DEC 2000), incorporated into this Subcontract. Subcontractor shall ensure that its lower-tier subcontractors and licensors make similar rights available to the Government and its contractors.

2. Subcontractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice by Subcontractor, and any other intellectual property, including technical data, which are owned or controlled by Subcontractor, at any time through completion of this contract and which are incorporated or embodied in the construction of the facilities or which are utilized in the operation or remediation of the

facilities or which cover articles, materials or products manufactured at a facility: (1) to practice or to have practiced by or for the Government at the facility; and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or title to, any rights or patents or other intellectual property herein licensed.

3. In addition, Subcontractor will take all necessary steps to assign permits, authorizations, leases, and licenses in any third party intellectual property to the Government, or such other third party as the Government may designate, that are necessary for the completion of the work contemplated under this Contract.

B. Subcontractor agrees to indemnify, defend, and hold harmless Buyer for any and all liability, loss, damages, penalties, claims, costs, and expenses, including attorney fees and costs of legal action, litigation, or settlement, arising from or relating to any breach of its duties and obligations under this Clause.

14.7. FAR 52.204-10 (Oct 2016) (*Amended)*

FAR 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2016) (Amended)

A. If the value of this Subcontract is $30,000 or more, unless otherwise directed by Buyer, by the end of the month following the month of award, and annually thereafter (calculated from the prime contract award date), Subcontractor shall report to Buyer the names and total compensation of each of the five most highly compensated executives for Subcontractor for Subcontractor's preceding completed fiscal year at http://www.fsrs.gov, if:

1. In the subcontractor's preceding fiscal year, the subcontractor received-

a. Eighty percent or more of its annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of federal financial assistance; and

b. 25,000,000 or more in annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of federal financial assistance; and

2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the *Securities Exchange Act of 1934* (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the *Internal Revenue Code of 1986*. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

B. Subcontractor shall notify Buyer within five (5) calendar days of any changes to data reported during the performance of this Subcontract.

C. If Subcontractor in the previous tax year had gross income from all sources under $300,000, Subcontractor is exempt from the aforementioned reporting requirements. However, Subcontractor must notify Buyer after award of the Subcontract to alert them of your exemption.

D. The FSRS database at http://www.fsrs.gov will be prepopulated with some information from SAM and FPDS databases. If FPDS information is incorrect, the Subcontractor should immediately notify the Buyer. If the SAM database information is incorrect, the Subcontractor is responsible for correcting this information and agrees to indemnify and hold Buyer harmless for any violation of this provision.

14.8. FAR 52.204-13 (Oct 2016) (*Amended*)

FAR 52.204-13 System for Award Management Maintenance (Oct 2016) (Amended)

A. Definitions. As used in this Clause — "Data Universal Numbering System (DUNS) number" means the 9–digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for federal Contractors.

B. "Data Universal Numbering System+4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4–character suffix that may be assigned by a business concern (D&B has no affiliation with this 4– character suffix). This 4–character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at subpart 32.11) for the same concern.

C. "Electronic Funds Transfer (EFT) indicator" means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart 32.11) for the same entity.

D. "Registered in the System for Award Management (SAM) database" means that —

1. The Subcontractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well as data required by the federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM database;
2. The Subcontractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM database;
3. The Subcontractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM database; and
4. The Government has marked the record "Active".

E. "System for Award Management (SAM)" means the primary Government repository for prospective federal awardee and federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes —

1. Data collected from prospective federal awardees required for the conduct of business with the Government;
2. Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and
3. Identification of those parties excluded from receiving federal contracts, certain subcontracts, and certain types of federal financial and non-financial assistance and benefits.

F. "Unique entity identifier" means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See www.sam.gov for the designated entity for establishing unique entity identifiers.

G. Subcontractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from Buyer's or the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, Subcontractor is required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate, and complete. Subcontractor specifically

agrees to notify Buyer in writing within five (5) days of any change to its SAM database information.

H. If Subcontractor has legally changed its business name, doing business as name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, Subcontractor shall provide the responsible Buyer representative a minimum of one business day's written notification of its intention to —

1. Change the name in the SAM database;
2. Comply with the requirements of subpart 42.12 of the FAR; and
3. Agree in writing to the timeline and procedures specified by the responsible Buyer representative. The Subcontractor shall provide with the notification sufficient documentation to support the legally changed name.

I. If Subcontractor fails to comply with the requirements of this Paragraph, or fails to perform the agreement at Subparagraph (3) of this Paragraph, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Subcontractor to be other than the Subcontractor indicated in the Subcontract will be considered to be incorrect information. Buyer has the unilateral right to withhold contract payments from Subcontractor until the requirements of this Paragraph have been compiled with.

J. Subcontractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see FAR subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM. Information provided to the Subcontractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Subcontractor will be considered to be incorrect information. Buyer has the unilateral right to withhold contract payments from Subcontractor until the information is corrected in accordance with this paragraph.

K. The Subcontractor shall ensure that the DUNS number is maintained with Dun & Bradstreet throughout the life of the contract. The Subcontractor shall communicate any change to the DUNS number to the Buyer within 30 days after the change, so an appropriate modification can be issued to update the data on the subcontract. A change in the DUNS number does not necessarily require a novation be accomplished. Dun & Bradstreet may be contacted —

1. Via the internet at http://fedgov.dnb.com/webform or if the Contractor does not have internet access, it may call Dun and Bradstreet at 1–866–705–5711 if located within the United States; or
2. If located outside the United States, by contacting the local Dun and Bradstreet office.

L. Subcontractor shall ensure that the unique entity identifier is maintained with the entity designated at https://www.sam.gov/SAM/ for establishment of the unique entity identifier throughout the life of the contract. Subcontractor shall communicate any change to the unique entity identifier to Buyer within thirty (30) calendar days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

M. Subcontractor agrees to indemnify, defend, and hold harmless Buyer for any and all liability, loss, damages, penalties, claims, costs, and expenses, including attorney fees and costs of legal action, litigation, or settlement, arising from or relating to Subcontractor's breach of any duty or obligation described in this Section, specifically including Subcontractor's breach of its duty to retain complete and accurate information in the aforementioned government databases and to notify Buyer of any material changes to any of that information within five (5) calendar days of any change.

14.9. FAR 52.219-4 (*Amended*)

FAR 52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Amended)

A. This Clause applies to any Subcontractor representing itself as a HUBZone concern.

B. Subcontractor shall spend –

1. For services (except construction), at least 50 percent of the cost of personnel for contract performance on its own employees or employees of other HUBZone small business concerns;
2. For supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, on the concern or other HUBZone small business concerns;
3. For general construction –
   i. At least 15 percent of the cost of contract performance to be incurred for personnel on its own employees;

ii. At least 50 percent of the cost of the contract performance to be incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors;

iii. No more than 50 percent of the cost of contract performance to be incurred for personnel on concerns that are not HUBZone small business concerns; or

4. For construction by special trade contractors –

i. At least 25 percent of the cost of contract performance to be incurred on its own employees;

ii. At least 50 percent of the cost of the contract performance to be incurred for personnel on its own employees or on a combination of its own employees and employees of HUBZone small business concern subcontractors;

iii. No more than 50 percent of the cost of contract performance to be incurred for personnel on concerns that are not HUBZone small business concerns.

C. If Subcontractor is a HUBZone joint venture, Subcontractor agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

D. Notice. Subcontractor acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this Subcontract. The HUBZone offeror shall provide Buyer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. Subcontractor also agrees to notify Buyer in writing within five (5) calendar days of any material change or lapse to its HUBZone status, including if it fails to renew its status as a HUBZone concern with the Small Business Administration.

E. Indemnity. Subcontractor agrees to indemnify, defend, and hold harmless Buyer for any and all liability, loss, damages, penalties, claims, costs, and expenses, including attorney fees and costs of legal action, litigation, or settlement, arising from or relating to Subcontractor's breach of any duty or obligation described in this Clause.

14.10. Shipment Notification

A. Subcontractor and/or any lower-tier subcontractor shall notify Energy Northwest seven (7) days in advance (1) of movement of "common" explosives over 1,800 pounds excluding small arms ammunitions or classified shipments within five (5) miles of Energy Northwest and/or, (2) of any railroad shipment from/to Hanford north of the rail spur to the Fast Flux Test Facility.

B. For EM radioactive material/waste shipments by motor carrier and/or rail, the additional security measures described below shall be implemented. Documentation that the security measures were performed shall be maintained with the shipping papers.

1. Additional Security Measures to be Implemented for Motor Carriers transporting Radioactive Material/Waste Shipments:

i. Verify and document that site security plans require drivers entering the faculty for loading/unloading of shipments to sign in at the security gate and be escorted to the loading/unloading location unless a security badge has been issued.

ii. Verify and document the name of the drivers, who will be entering DOE facilities to pick up shipments to be used for commercial shipments, are on the list provided by the motor carrier.

iii. Verify and document the motor carriers to be used have provided documentation that all drivers meet the personal security requirements addressed in the *U.S. Department of Transportation's Security Sensitive Visits*.

iv. Obtain copies of documentation from the carriers that all drivers are citizens of the United States.

v. Verify the drivers have a Commercial Driver's License, with proper hazardous materials endorsements, and attach a copy to the shipment documentation to be kept on file for each shipment.

vi. Verify the drivers have a Commercial Driver's License, with proper hazardous materials endorsements, and attach a copy to the shipment documentation to be kept on file for each shipment.

vii. Verify and document the carriers utilize satellite tracking and/or maintains cellular telephone contact with the driver, including the requirement that the driver must contact carrier dispatch at regular intervals.

viii. Require security staff to perform and document per-loading equipment inspections to avoid explosive and other devices as detailed in Measure 18 of CRD Notice 473.9 (Supplemented Rev. 0), Security Conditions.

NOTE: *DOE Notice, Measure 18. Implement screening for other deliveries at designated inspection points to identify explosives and incendiary devices. Use canine (K-9) teams for inspections, when available. Instruct Site personnel to report suspicious packages to Security and refrain from handling them until cleared by appropriate authority.*

ix. Provide the drivers a briefing and a copy of written instructions regarding en route shipment security measures to be taken. Ensure the drivers can read and understand the instructions provided and have the driver sign a copy of the instructions. Attach signed and dated copy of the instructions to the shipment documentation to be kept on file.

x. Request consignee notification of receipt of shipments.

1. Additional Security Measures to be Implemented for Motor Carriers transporting Radioactive Material/Waste Shipments:

i. Obtain a copy of the rail carrier's security plan. Ensure the plan identifies communications links, frequency of communication, and points of contact information for security-related emergencies.

ii. Implement a mechanism to be notified by the carrier should cars/train encounter any unexpected occurrences en route. Ensure the rail carrier has access to the information.

iii. Require security staff to perform and document pre-loading equipment inspections to avoid explosive and other as detailed in Measure 18 of CRD Notice 473.9 (Supplemented Rev. 0), Security Conditions.

NOTE: *DOE Notice, Measure 18. Implement screening procedures for other deliveries at designated inspection points to identify explosives and incendiary devices. Use K-9 teams for inspections, when available. Instruct site personnel to*

report suspicious packages to Security and refrain from handling them until cleared by appropriate authority.

iv. Verify and document the rail carrier has a communication system (through central dispatch consignee notification of arrival cars/trains).

v. Request consignee notification of arrival of cars/trains.

14.11. DOE-H-2020 (Oct 2014) (*Amended)*

DOE-H-2020 Price-Anderson Amendments Act Noncompliance (Oct 2014)

Subcontractor shall establish an internal Price-Anderson Amendments Act (PAAA) noncompliance identification, tracking, and corrective action system and shall provide access to and fully support Buyer and DOE reviews of the system. Subcontractor shall also implement a PAAA reporting process that meets applicable DOE standards. Subcontractor shall be accountable for ensuring that all lower-tier subcontractors adhere to these requirements.

14.12. DOE-H-2043 (Oct 2014) (*Revised*)

DOE-H-2043 Assignment/Transfer of Prime Contracts/Subcontracts (Oct 2014) (Revised)

A. Assignment and Transfer of other DOE Prime Contracts. During the period of performance (POP) of this Contract it may become necessary for the DOE to transfer and assign DOE prime contracts in whole or in part supporting site work to this Contract. The Contractor shall accept the transfers and assignments of contracts. Transfer and assignment of prime contracts to the Contractor, if any, will be for administration purposes, and once transferred, will become subcontracts to the Contractor. Any recommendations and/or suggestions on individual transfers shall be submitted in writing to the CO prior to the transfer or assignment.

B. Assignment and Transfer of this Prime Contract. During the POP of this Contract it may become necessary for the DOE to transfer and assign in whole or in part this Contract to another DOE contractor. The Contractor shall accept the transfers and assignment. Transfer and assignment, if any, will be for administration purposes, and once transferred, will become a subcontract to the assignee. Any recommendations and/or suggestions on individual transfers shall be submitted in writing to the CO prior to the transfer or assignment.

C. Transfer and Assignment of Subcontracts. The Contractor agrees to transfer and assign or accept transfer and assignment of subcontracts as determined necessary by DOE for continuity of operations. The transfer and assignment may be to or from another contractor or to or from DOE as a prime contract.

Transfer or assignment of subcontracts to or from the Contractor, if any, will be for administration purposes, and once transferred, will become subcontracts to the Contractor. The Contractor shall use its best efforts to negotiate changes to the assigned subcontracts incorporating mandatory flow-down provisions at no cost. If the subcontractor refuses to accept the changes or requests price adjustments, the Contractor will notify the CO in writing.

D. The requirements of this clause is required as a flow-down clause in all subcontracts.

15.0 LAWS AND REGULATIONS

15.1. Validity of Provisions

In the event any Clause, or any part or portion of any Clause, of this Subcontract shall be held invalid, void, or otherwise unenforceable, such holding shall not affect the remaining part or portions of that Clause, or any other Clause hereof.

15.2. Waiver

Buyer's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Subcontract, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, and/or any right or privilege. No asserted waiver of any right or benefit by Buyer shall be valid unless such waiver is in writing, signed by Buyer, supported by consideration and specifies the extent and nature of the rights or benefits being waived.

15.3. Interpretation

Headings and titles of Clauses, Sections, paragraphs or other subparts of this Subcontract are for convenience of reference only and shall not be considered in interpreting the text of this Subcontract. No provision in this Subcontract is to be interpreted for or against any party because that party or its counsel drafted such provision.

15.4. Severability

Every provision of this Subcontract is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the terms or provisions within this Subcontract.

15.5. Survival

The provisions of this Subcontract which by their nature are intended to survive the termination, cancellation, completion, or expiration of this Subcontract shall

continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion, or expiration.

15.6. Trial

Subcontractor hereby knowingly, voluntarily and intentionally waives (to the extent permitted by applicable law) any right it may have to a trial by jury of any dispute arising under or relating in any way to this Subcontract and agrees that any such dispute may, at Buyer's option, be tried before a judge sitting without a jury.

15.7. Immigration Reform and Control Act Compliance

A. If the work to be performed under this Subcontract calls for the Subcontractor to provide workers to Buyer and the Subcontractor (1) operates as an independent business offering to the general public to provide workers for the performance of services and (2) provides direct compensation to the workers supplied to Buyer, this Clause shall be applicable.

B. Subcontractor specifically agrees that it is the employer of personnel performing work under this Subcontract and that it shall comply with all requirements of the Immigration Reform and Control Act of 1986, P.L. 99-603 (hereinafter referred to in this Clause as IRCA), including but not limited to verification of the employment eligibility and identity of such personnel. Subcontractor further agrees that it shall indemnify and hold Buyer and the Government harmless against any and all liability, loss or damage which Buyer may suffer as a result of claims, demands, costs or judgments against it arising out of Subcontractor's providing personnel under this Subcontract in violation of the requirements of the IRCA.

15.8. Governing Law

Irrespective of the place of performance, this Subcontract will be construed and interpreted according to the federal Common Law of Government Contracts as enunciated and applied by federal judicial bodies, Boards of Contract Appeals and quasi-judicial agencies of the federal Government. To the extent that the federal Common Law of Government Contracts is not dispositive, the law of the State of Washington shall apply. In the event that either party hereto must resort to litigation to enforce a right or remedy conferred by law, equity or the provisions of this Subcontract, the parties hereby consent to the action being brought in the court of competent jurisdiction in the state of Washington.

15.9. Assignment

A. Neither this Subcontract nor any interest therein nor shall any claim hereunder be assigned or transferred by Subcontractor except as expressly

authorized in writing by Buyer. This shall include assignments of Subcontractor's accounts receivable.

B. Buyer may assign this Subcontract, in whole or in part to DOE or to such party as DOE may designate to perform Buyer's obligations hereunder. Upon receipt by Subcontractor of written notice that the DOE or a party so designated by DOE or Buyer has accepted an assignment of this Subcontract, Buyer shall be relieved of all responsibility hereunder and Subcontractor shall thereafter look solely to such assignee for performance of Buyer's obligations.

C. During the period of performance of this Subcontract it may become necessary for Buyer or DOE to transfer and assign contracts in whole or in part supporting site work to this Subcontract. Subcontractor shall accept the transfers and assignments of contracts. Transfer and assignment of contracts to Subcontractor, if any, will be for administration purposes, and once transferred, will become subcontracts to the Subcontractor. Subcontractor shall incorporate all mandatory flow-down provisions into any transferred contract at no cost. Any recommendations and/or suggestions on individual transfers shall be submitted in writing to Buyer prior to the transfer or assignment.

D. Subcontractor agrees to transfer and assign or accept transfer and assignment of lower-tier subcontracts as determined necessary by Buyer or DOE for continuity of operations. The transfer and assignment may be to or from another contractor or subcontractor or to or from DOE as a prime contract. Subcontracts transferred or assigned to Subcontractor, once transferred, will become lower-tier subcontracts to Subcontractor. Subcontractor shall use its best efforts to negotiate changes to the assigned lower-tier subcontracts incorporating mandatory flow-down provisions at no cost. If the lower-tier subcontractor refuses to accept the changes or requests price adjustments, Subcontractor will notify Buyer in writing.

E. Subcontractor shall flow down in all lower-tier subcontracts the requirements of Paragraphs B through E of this Clause.

15.10. Employee Rights under the National Labor Relations Act

For any Subcontract in excess of $10,000.00, Subcontractor shall comply with the requirements of 29 CFR Part 471, *Obligations of Federal Contractors and Subcontractors; Notification of Employee Rights Under Federal Laws,* specifically as set forth in Appendix A to Subpart A of 29 CFR Part 471; and FAR 52.222-40, *Notification of Employee Rights Under the National Labor Relations Act* (DEC 2010). The required information posters are available from the Department of Labor Office of Labor-Management Standards at www.dol.gov/olms/.

Subcontractor shall include the substance of this requirement and FAR 52.222-40, *Notification of Employee Rights under the National Labor Relations Act* (DEC 2010) in any lower-tier subcontract in excess of $10,000.00.

15.11. Labor Relations

A. Subcontractor shall respect the right of employees to be free from discrimination in the workplace, including, but not limited to, discrimination within the meaning of the *Age Discrimination in Employment Act of 1967*, as amended, and to organize, form, join, or assist labor organizations; bargain collectively through their chosen labor representatives; engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of these activities, consistent with applicable laws.

B. Consistent with applicable labor laws and regulations, Subcontractor shall recognize and bargain in good faith with the collective bargaining representative(s) of employees performing work that has previously been performed by represented employees and is covered by the scope of this Subcontract.

C. Subcontractor shall submit its economic bargaining parameters for which Buyer reimburses costs to, and obtain the approval of, Buyer regarding allowability of the costs, and compliance with the terms and conditions of the Subcontract, including those for pension and medical benefit costs, prior to Subcontractor entering into the collective bargaining process. During the collective bargaining negotiations, Subcontractor shall notify, and obtain the approval of, Buyer before submitting or agreeing to any collective bargaining proposal that increases or may increase allowable costs above those previously approved in the economic bargaining parameters, or that could involve changes in any pension or other benefit plans, and such other items of special interest as are identified by Buyer. The approval of the economic bargaining parameters by Buyer under this Paragraph does not waive any other terms and conditions of the Subcontract.

D. Subcontractor will seek to maintain harmonious bargaining relationships that reflect a judicious expenditure of public funds, equitable resolution of disputes and effective and efficient bargaining relationships consistent with the requirements of FAR Subpart 22.1, *Basic Labor Policies*, DEAR Subpart 970.2201-1, *Labor Relations*, and all applicable federal and state labor relations laws.

E. Subcontractor shall use its best efforts to ensure that collective bargaining agreements negotiated under this Subcontract contain provisions designed to assure no disruption in services during the performance of the

Subcontract. All such agreements entered into during the Subcontract period of performance should, to the extent that the parties to those collective bargaining agreements agree, provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other disruption in services. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties agree upon some other method of assuring no disruption in services. Subcontractor shall include the substance of this Paragraph in any lower-tier subcontracts.

F. Subcontractor shall immediately notify Buyer or designee of all labor relations issues and matters of interest, including, but not limited to, organizing initiatives, unfair labor practice charges or complaints, work stoppages, picketing, labor arbitrations, National Labor Relations Board charges, legal or judicial proceedings, and settlement agreements and will furnish such additional information as may be required from time to time by the CO.

G. Subcontractor shall immediately notify Buyer or designee of any planned or actual strike or work stoppage involving its employees or employees of a lower-tier subcontractor.

H. Subcontractor shall provide Buyer or designee a copy of all arbitration decisions issued by an arbitrator within one week of receipt of the decision.

16.0 SECURITY

NOTE - ***This section applies to all subcontracts that require a security clearance.***

16.1. Definitions

A. "Classified Information" means restricted data, formerly restricted data, or national security information.

B. "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of Special Nuclear Material; or (3) the use of Special Nuclear Material in the production of energy, but shall not Include data declassified or removed from the restricted data category pursuant to Section 142 of the *Atomic Energy Act of 1954* P.L. 83-703, as amended.

C. "Formerly Restricted Data" means all data removed from the restricted data category under Section 142.D of the *Atomic Energy Act of 1954*, as amended.

D. "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has

been determined pursuant to Executive Order 12356 or prior Subcontracts to require protection against unauthorized disclosure, and which is so designated.

E. Special Nuclear Material (SNM) – the term "SNM" means: (1) Plutonium, uranium enriched in the isotope 238 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the *Atomic Energy Act of 1954*, as amended, 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.

16.2. Responsibility

A. It is the Subcontractor's duty to safeguard all classified information, Special Nuclear Material, and other U.S. Department of Energy (DOE) property. The Subcontractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the Subcontractor's possession in connection with the performance of work under this Subcontract. Except as otherwise expressly provided in this Subcontract, the Subcontractor shall, upon completion or termination of this Subcontract, transmit to Buyer any classified matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of this Subcontract.

B. If retention by the Subcontractor of any classified matter is required after the completion or termination of the Subcontract and such retention is approved by the Buyer, the Subcontractor will complete a certificate of possession to be furnished to Buyer specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the Buyer, the security provisions of this Subcontract will continue to be applicable to the matter retained. Special Nuclear Material will not be retained after the completion or termination of this Subcontract.

C. Subcontractor agrees to conform to all security regulations and requirements of DOE.

D. The Subcontractor shall not permit any individual to have access to any classified information, except in accordance with the *Atomic Energy Act of 1954*, as amended, Executive Order 12356 *National Security Information*, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

E. 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 safeguard any classified information 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 lower-tier Subcontractors to criminal liability under the laws of the United States. (See the *Atomic Energy Act of 1954*, as amended, 42 U.S.C., 2100 et seq.; 18 U.S.C. and 794, and Executive Order 12356).

F. Except as otherwise authorized in writing by the Buyer, the Subcontractor shall insert provisions similar to the foregoing in all Subcontracts and lower-tier Subcontracts under this Subcontract.

16.3. Classified Matter

A. Protecting and Controlling Classified Matter

1. Classified matter in use shall be constantly attended by, under the control of a person possessing the proper access authorization and a need-to-know, or as stipulated by local DOE policy. The level of protection against loss or compromise afforded to classified matter, regardless of form, shall be commensurate with the level of its classification. Losses, potential compromises, and unauthorized disclosures of classified matter must be treated as classified information and immediately reported to the Buyer's Security Representative. All activities associated with classified matter must comply with applicable laws, directives, and local policies:

   a. Classification levels shall be used in determining the degree of protection and control required for classified matter.

   b. Access to classified matter shall be limited to persons who possess appropriate access authorization and who require such access (need-to-know) in the performance of official duties. Controls shall be established to detect and deter unauthorized access to classified matter.

   c. Custodians and authorized users of classified matter are responsible for the protection and control of such matter.

   d. Buildings and rooms containing classified matter shall be afforded security measures approved by the Buyer Security Representative.

   e. Security containers required for the storage of classified matter shall be approved by the Buyer Security Representative. Classified matter that is not under the personal control of an authorized

person shall be stored in GSA approved security containers equipped with X-07 or X-08 Mas Hamilton combination locks.

f. Only authorized Hanford Site locksmiths are permitted to work on security containers used for the protection of classified matter.

16.4. Use of Information Systems to Process Classified Matter

The Subcontractor must ensure that information systems, i.e., personal computers, microcomputers, networks, data applications, etc., used to collect, create, communicate, compute, disseminate, process, store, and/or control classified information comply with applicable laws, directives, and local policies. The Subcontractor shall not use information systems to process classified matter without receiving the appropriate written authorization from the Buyer.

16.5. Classified Inventions - Special

A. The Subcontractor shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this Subcontract in any country other than the United States, an application or registration for a patent without first obtaining written approval of the Contract Specialist through the Buyer.

B. When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this Subcontract, the subject matter of which is classified for reasons of security, the Subcontractor shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Subcontractor shall by separate letter identify by agency and number, the Subcontract or Subcontracts that require security classification markings to be placed on the application.

C. The substance of this Clause shall be included in Subcontracts, which cover or are likely to cover classified subject matter.

17.0 SUBCONTRACTOR REPORTING AND REGISTRATION REQUIREMENTS

A. Subcontractor must register in the Government's System for Award Management (SAM) database and keep the information in the database current throughout the term of this subcontract. www.sam.gov/SAM.

B. Subcontractor must register in the SBA Electronic Subcontract Reporting System (eSRS) www.esrs.gov within thirty (30) days after award of a subcontract.

18.0 CLAUSES INCORPORATED BY REFERENCE

A. The following Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) Clauses are hereby incorporated by reference to this Subcontract. The obligations of the Buyer to the Government as provided in said Clauses shall be deemed to be the obligations of the Subcontractor to Buyer. If there is a conflict between a Clause referenced in Subsection D below, as amended in accordance with Subsections B and C below, and the terms and conditions found elsewhere in this Subcontract, the Clause referenced in the Subsection E table below, as amended, shall take precedence.

B. Wherever necessary to suitably identify Buyer and Subcontractor, affect the proper intent of the Clause, and make the context of the Clause applicable to this Subcontract, unless otherwise indicated in the Subsection E table below,

1. "Contractor" shall mean "Subcontractor";
2. "Contract" shall mean this Subcontract;
3. "Subcontractor" shall refer to Subcontractor's sub-tier subcontractors;
4. "Government," "Contracting Officer," and equivalent phrases shall mean "Buyer," and "Buyer's contract administrator," as applicable, except (1) in the phrases "Government Property," "Government-Owned Equipment," "Government facilities," "Government information," and similar phrases; (2) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or duly authorized representative, (3) when access to proprietary financial information or other proprietary data is required, (4) when title to property is to be transferred directly to the Government, and (5) as otherwise noted below or modified by provisions of Section H of this Subcontract;
5. "Disputes" shall mean "Claims," and any reference to "disputes" provisions or procedures shall mean the claims provisions and procedures specified in this subcontract, except where necessary to preserve the rights of the United States Government.

C. Notwithstanding the foregoing, nothing herein shall be construed to mean that Buyer may modify or limit any rights the United States Government may have as set forth in the FAR and DEAR Clauses below. Nor shall anything herein be construed to provide Subcontractor or Buyer with rights that only the United States Government has the authority to grant or perform.

D. The text of the FAR/DEAR Clauses may be obtained from Buyer upon request. Also, the full text of a Clause may be accessed electronically at these addresses:

1. https://www.acquisition.gov/?q=browsefar
2. http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation

E. Table of Clauses Incorporated by Reference

FAR/DEAR REFERENCE	CLAUSE TITLE	NOTES
THE BELOW CLAUSES APPLY TO ALL SUBCONTRACTS REGARDLESS OF THE DOLLAR THRESHOLD.		
FAR 52.203-3	Gratuities (APR 1984)	
FAR 52.203-5	Covenant Against Contingent Fees (MAY 2014)	
FAR 52.203-6	Restrictions on Subcontractor Sales to the Government (SEP 2006)	For purposes of this clause, "Government" shall mean "Government or Buyer"
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 52.203-12	Limitation on Payments to Influence Certain Federal Transactions.(OCT 2010)	
FAR 52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017)	
FAR 52.204-9	Personal Identity Verification of Contractor Personnel (JAN 2011)	Applies to all subcontracts, when subcontractor will have routine access to federal facilities and/or federal computer systems.
FAR 52.204-21	Basic Safeguarding of Covered Contractor Information Systems. (JUN 2016)	Applies if subcontractor has federal contract information residing in or transiting through its information system

FAR 52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018)	
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)	
FAR 52.209-10	Prohibition on Contracting With Inverted Domestic Corporations. (NOV 2015)	
FAR 52.215-2	Audit and Records - Negotiation. (OCT 2010)	
FAR 52.215-22	Limitations of Pass-Through Charges – Indentification of Subcontractor Effort (JUN 2013)	
FAR 52.215-23	Limitations on Pass-Through Charges (OCT 2009)	
FAR 52.216-7	Allowable Cost and Payment (JUN 2013), *as modified by* DEAR 952.216-7	
FAR 52.219-8	Utilization of Small Business Concerns (NOV 2016)	
FAR 52.219-28	Post-Award Small Business Program Rerepresentation (JUL 2013)	
FAR 52.222-1	Notice to the Government of Labor Disputes. (FEB 1997)	
FAR 52.222-2	Payment for Overtime Premiums (JUL 1990)	
FAR 52.222-3	Convict Labor. (JUN 2003)	

FAR 52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation (MAY 2018)	
FAR 52.222-19	Child Labor - Cooperation with Authorities and Remedies. (JAN 2018)	
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 (MAR 2015)	
FAR 52.222-55	Minimum Wages Under Executive Order 13658 (DEC 2015)	
FAR 52.222-62	Paid Sick Leave Under Executive Order 13706 (Jan 2017)	
FAR 52.223-5	Pollution Prevention and Right-to-Know Information. (MAY 2011)	
FAR 52.223-6	Drug-Free Workplace. (MAY 2001)	
FAR 52.223-15	Energy Effieicncy in Energy Consuming Products (DEC 2007)	
FAR 52.224-1	Privacy Act Notification (APR 1984)	Applies to all subcontracts subject to FAR 52.224-2.
FAR 52.224-2	Privacy Act (APR 1984)	Applies to subcontracts involving the redesign, development, or operation of a system of records on individuals subject to this Act.
FAR 52.224-3	Privacy Training (JAN 2017)	

FAR 52.225-13	Restrictions On Certain Foreign Purchases (JUN 2008)	
FAR 52.232-17	Interest. (MAY 2014)	
FAR 52.232-39	Unenforceability of Unauthorized Obligations (June 2013)	The term "Government" is not modified and retains its meaning
FAR 52.232-40	Providing Accelerated Payments to Small Business Subcontractors (DEC 2013)	Applies if subcontractor is a small business concern.
FAR 52.231-9	Privacy or Security Safeguards. (AUG 1996)	The term "Government" is modified to mean "Government and/or Buyer"
FAR 52.242-1	Notice of Intent To Disallow Costs. (APR 1984)	
FAR 52.242-4	Certification of Final Indirect Costs (JAN 1997)	
FAR 52.242-5	Payments to Small Business Subcontractors. (JAN 2017)	
FAR 52.242-13	Bankruptcy. (JUL 1995)	
FAR 52.244-2	Subcontracts. (OCT 2010)	
FAR 52.245-1	Government Property (JAN 2017) as modified by DEAR 952.245-5	Applies to subcontracts involving government property.
FAR 52.247-63	Preference For U.S. - Flag Air Carriers (JUN 2003)	
FAR 52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)	
FAR 52.253-1	Computer Generated Forms (JAN 1991)	

DEAR 952.203-70	Whistleblower Protection for Contractor Employees (DEC 2000)	Applies to all subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites
DEAR 952.204-2	Security (AUG 2016)	Applies if involves or is likely to involve classified information or SNM.
DEAR 952.204-70	Classification/Declassification (SEP 1997)	
DEAR 952.204-73	Facility Clearance (AUG 2016)	
DEAR 952.204-77	Computer Security (AUG 2006)	
DEAR 952.208-70	Printing (APR 1984)	
FAR 52.217-8	Option to Extend Services (NOV 1999)	
FAR 52.217-9	Option to Extend the Term of the Contract (MAR 2000)	
DEAR 952.217-70	Acquisition of Real Property (APR 1984)	
DEAR 952.225-71	Compliance with Export Control Laws and Regulations (Export Clause) (NOV 2015)	
DEAR 952.250-70	Nuclear Hazards Indemnity Agreement (AUG 2016)	Applies to all subcontracts which may involve risk of public liability, unless Subcontractor is subject to Nuclear Regulatory Commission (NRC) sections 170b, 170c, or 170k.
DEAR 952.251-70	Contract Employee Travel Discounts (AUG 2009)	Applies to all Cost-Reimbursement Subcontracts involving travel.

DEAR 970.5204-2	Laws, Regulations, and DOE Directives (DEC 2000)	
DEAR 970.5204-3	Access to and Ownership of Records (OCT 2014) (Deviation)	Applies to all subcontracts, involving complex or hazardous work on-site.
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.
DEAR 970.5227-1	Rights in Data – Facilities (DEC 2000)	
DEAR 970.5232-3	Accounts, Records, and Inspection (DEC 2010) Alternate I (DEC 2000)	
The below clause applies to all subcontracts exceeding $250.00 that include royalties		
FAR 52.227-9	Refund of Royalties (APR 1984)	
The below clause applies to all subcontracts exceeding $2,500.00		
FAR 52.222-41	Service Contract Labor Standards (MAY 2014)	
The below clauses apply to all subcontracts exceeding $3,500.00		
FAR 52.222-54	Employment Eligibility Verification (JAN 2009)	
The below clause applies to all subcontracts exceeding Micro-purchase Threshold		
FAR 52.223-18	Encouraging Contractor Policies To Ban Text Messaging While Driving. (AUG 2011)	
The below clause applies to all subcontracts exceeding $10,000.00		
FAR 52.222-40	Notification of Employee Rights Under the National Labor Relations Act. (DEC 2010)	Does not apply to work performed outside the United States
The below clause applies to all subcontracts exceeding $15,000.00		

FAR 52.222-20	Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000. (MAY 2014)	Applies if materials and equipment are being procured as part of the Subcontract
FAR 52.222-36	Affirmative Action For Workers With Disabilities (JUL 2014)	
The below clause applies to all subcontracts exceeding $35,000.00		
FAR 52.209-6	Protecting The Government's Interest When Subcontracting With Contractors Debarred, Suspended, Or Proposed For Debarment (OCT 2015)	
The below clauses apply to all subcontracts exceeding $150,000.00		
FAR 52.203-7	Anti-Kickback Procedures (MAY 2014)	Definitions in (a) apply without amendment
FAR 52.203-16	Preventing Personal Conflicts of Interest. (DEC 2011)	Applies when Subcontractor's employees will perform acquisition functions closely associated with inheritently government functions.
FAR 52.222-35	Equal Opportunity for Veterans (OCT 2015)	
FAR 52.222-37	Employment Reports Veterans (FEB 2016)	
FAR 52.248-1	Value Engineering (OCT 2010)	Does not apply to construction, architech and engineering, or research and development subcontracts.

FAR 52.227-1	Authorization and Consent (DEC 2007)	
The below clauses apply to all subcontracts exceeding Simplified Acquisition Threshold		
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)	
FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights (APR 2014)	
FAR 52.204-14	Service Contract Reporting Requirements. (OCT 2016)	
FAR 52.215-2	Audits and Records - Negotiation (OCT 2010)	
FAR 52.215-14	Integrity Of Unit Prices (OCT 2010)	Paragraph (b) not incorporated
FAR 52.222-1	Notice to the Government of Labor Disputes. (FEB 1997)	
FAR 52.222-17	Nondisplacement of Qualified Workers (MAY 2014)	
FAR 52.227-1	Authorization and Consent. (DEC 2007)	
FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007)	
DEAR 952.209-72	Organizational Conflicts of Interest Alternate I (AUG 2009)	Fill-ins: (b)(1)(i) zero (0)
The below clauses apply to all subcontracts exceeding $500,000.00		

DEAR 952.226-74	Displaced Employee Hiring Preference (JUN 1997)	
DEAR 952.226-74	Displaced Employee Hiring Preference (JUN 1997)	
The below clauses apply to all subcontracts exceeding $700,000.00 ($1.5M if Construction)		
FAR 52.219-9	Small Business Subcontracting Plan (JAN 2017) Alternate II (NOV 2016)	Applies to large business subcontractors
FAR 52.219-16	Liquidated Damages – Subcontracting Plan (JAN 1999)	Applies to all subcontracts subject to FAR 52.219.9
The below clauses apply to all subcontracts exceeding Certified Cost and Pricing Data Threshold ($750,000.00)		
FAR 52.215-10	Price Reduction for Defective Certified Cost or Pricing Data (AUG 2011)	
FAR 52.215-11	Price Reduction for Defective Certified Cost or Pricing Data - Modifications. (AUG 2011)	
FAR 52.215-12	Subcontractor Certified Cost or Pricing Data (OCT 2012)	
FAR 52.215-13	Subcontractor Cost or Pricing Data – Modifications (OCT 2010)	
FAR 52.215-15	Pension Adjustments and Asset Reversions (OCT 2010)	
FAR 52.215-18	Reversion of Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions (JUL 2005)	
FAR 52.215-19	Notification Of Ownership Changes (OCT 1997)	

FAR 52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (OCT 2010) Alternate III (OCT 1997)	Fill in: (c) CD-ROM
FAR 52.230-2	Cost Accounting Standards (Oct 2015) (Deviation 2018-O0012)	Paragraph (b) modified to read: "If the parties fail to agree whether Subcontractor or a lower-tier subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by Buyer, such failure to agree shall be resolved pursuant to the claim and dispute resolution provisions of this Subcontract."
FAR 52.230-6	Administration of Cost Accounting Standards (JUN 2010)	Applies to all subcontracts subject to FAR 52.230-2, FAR 52.230-3, FAR 52.230-4, or FAR 52.230-5.
FAR 52.242-3	Penalties for Unallowable Costs (MAY 2014)	
The below clause(s) apply to subcontracts exceeding $5,500,000.00		
FAR 52.203-13	Contractor Code of Business Ethics and Conduct (OCT 2015)	Applies if performance period exceeds 120 days.
FAR 52.203-14	Display of Hotline Poster(s) (OCT 2015)	