



# Mission Support Alliance Provision

## GENERAL PROVISIONS FOR COMMERCIAL ITEMS Rev. 1, December 11, 2014

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*This Subcontract embodies the entire 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, or inducement or understanding not set forth herein.*

### 1.0 DEFINITIONS

- A. Whenever used in this document, the following definitions shall be applicable unless the content indicates otherwise:
1. “Buyer” shall mean Mission Support Alliance, LLC (“MSA”) and all of its authorized representatives (i.e. “Contract Specialists”) acting in their professional capacities (under DOE Prime Contract No. DE-AC06-09RL14728) 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 Contracting Officer.
  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. “Item(s)” shall mean commercial item(s) including minor modifications thereto which is customarily used for non-governmental purposes and have been or will be sold, leased, or licensed to the general public.
  5. “Service” shall mean a service of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices and not sold on an hourly rate basis unless it is based on an established catalog or market price for a specific end product service.
  6. “Subcontract” shall mean this Subcontract between Buyer and Subcontractor; also includes purchase order, task orders, releases and other agreements.
  7. “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.
  8. “Supplies” shall mean equipment, components, parts and materials to be provided by Subcontractor and its lower-tier Subcontractors pursuant to this Subcontract.



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9. "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.
10. "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.

### 2.0 ORDER OF PRECEDENCE

Inconsistencies shall be resolved according to the following descending order of precedence: (1) item description, (2) the Subcontract document, (3) Special Provisions set forth in the body of the Subcontract and (4) these Commercial Provisions.

### 3.0 SAFETY AND QUALITY STANDARDS

#### 3.1 INSPECTION, TESTING, AND QUALITY CONTROL

- A. The Subcontractor shall be responsible for performing quality workmanship and shall conduct the quality control measures necessary to ensure items/services conforms to procurement documents, as specified.
- B. When requested by the Buyer, the Subcontractor shall submit their quality control program and implementing procedures for review and approval prior to start of any work activities.
- C. **Suspect/Counterfeit Items** - Procurement of potentially Suspect or Counterfeit Items: The Subcontractor shall warrant that all items furnished under this Contract are genuine (i.e. not counterfeit) and match the quality, test reports, markings, and/or fitness for use required by the contract, as applicable.

See the following web site for additional information:

<http://www.hss.energy.gov/CSA/CSP/sci/SCIAwarenessTrainingManual062007.pdf>

- D. The Buyer, Government, and representatives shall have the right at all reasonable times to witness inspections, tests, and conduct oversight activities at subcontractor or lower-tier facility. The buyer shall be given five (5) working days' notice of any inspection and tests to be made by the Subcontractor or any of its lower-tier Subcontractors in order that the Buyer may witness any such inspection and tests, as applicable when specified in procurement documents.



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### **3.2 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 fasteners and components determined to be counterfeit shall be recovered by Buyer from Subcontractor.

### **3.3 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.



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### 4.0 TIMING OF WORK

#### 4.1 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 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 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 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.



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### 5.0 WORK CONDITIONS

#### 5.1 CONTRACTUAL RELATIONSHIP

- A. Subcontractor represents that it is fully experienced 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.
- B. 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 MATTERS OF COUNTERINTELLIGENCE CONCERN

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



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- 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 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.



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### 5.3 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.

### 5.4 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.

### 6.0 TRANSPORTATION

Transportation expenditures are subject to Government audit. Compliance with instructions and requirements are essential. If transportation instructions are not adhered to the Subcontractor may be charged back any difference in freight costs. Unless otherwise specified in the body of the Subcontract, all Subcontracts are to be shipped free on board (FOB) origin, freight collect.

#### a. GENERAL REQUIREMENTS

- i. All packages must be clearly marked with the Buyer, Subcontract number, and line item number.
- ii. 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.
- iii. Invoices that include two (2) copies of the paid transportation bill must accompany all freight charges.
- iv. 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.
- v. For third party billing instructions contact Traffic Department at (509) 376-5098 or 376-7492.
- vi. 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



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not obviously displayed, the exterior markings must indicate location of the paperwork.

- vii. 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."
- viii. When shipping to Buyer use the following as the ship to address:

U.S. Department of Energy c/o (Mission Support Alliance, LLC)  
Attn: (Subcontract or PO Number)  
2355 Stevens Drive  
Richland, Washington 99354

### b. VALUE AND INSURANCE

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

### c. SPECIAL INSTRUCTIONS FOR VARIOUS METHODS OF TRANSPORTATION

- i. 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.

### d. SURFACE TRANSPORTATION

- i. Type of shipment – 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.)
- ii. 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.
- iii. Type of shipment - For shipments exceeding 1,000 lbs or any truckload quantity or over dimensional load call the Buyer or Buyer's traffic department at (509) 376-5098 or 376-7492 prior to shipment.



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- iv. 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 department.
- e. PREMIUM TRANSPORTATION RESTRICTION
  - i. Do not ship via premium transportation unless the Subcontract specifically states to do so, or without specific authorization from the Buyer.
  - ii. The Buyer is the only individual authorized to approve the use of premium transportation. Premium transportation includes the following: airfreight, air express services, airfreight forwarder, exclusive use truck or the use of household goods carriers.
- f. AIR FREIGHT/AIR EXPRESS SERVICES/EXCLUSIVE USE TRUCK
  - i. Air Express Services
    - 1. Type of shipment – For packages up to 150 Lb each, where a Subcontract specifies airfreight or air express ship via Federal Express priority or standard overnight service collect.
    - 2. For packages over 150 Lb each, ship collect.
    - 3. Type of shipment – For packages exceeding 250 Lb in actual or dimensional weight, call Buyer's traffic department at (509) 376-5098 or 376-7492 for specific routing instructions prior to shipment. Note: dimensional formula in inches (length x width x height divided by 194).
  - ii. Exclusive use truck or electronic/padded van service. Do not use without Buyer's traffic department approval.
- g. GENERAL NOTES AND RESTRICTIONS
  - i. UPS size and weight restrictions are 130 in. length and girth combined, and 150 lb total weight per package.
  - ii. Subcontractors shall follow routing instructions specified in the Subcontract or provided verbally by the Buyer or Buyer's traffic department.
  - iii. Subcontractor shall ship materials routed via UPS as UPS prepay-and-bill, fob destination, unless otherwise authorized by the Buyer.



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- iv. All air and surface routings, as specifically authorized by the Buyer, shall be shipped freight-collect. General services administration 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.
- v. Immediately following each premium shipment, Subcontractor shall advise Buyer of the date of shipment, complete routing, and carriers pro number or airbill number.
- vi. 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 CFR 49 parts 171-178 or the IATA air regulations.
- vii. Notify the Buyer a minimum of 24 hours in advance of the following incoming shipments:
  - 1. Firearms, ammunition, and DOT class 1 explosives
  - 2. Hazardous or chemical products that requires special handling or transportation precautions or considerations (e.g. toxic or flammable)
  - 3. Oversized or products that require special handling for unloading or movement such as cranes, pilot cars or specialized handling equipment.
- viii. Additional provisions may be applicable to shipments of radioactive materials (RAM), or special nuclear materials (SNM).

### 7.0 CHANGES

No substitutions shall be made in this Subcontract without the prior written consent of the Buyer. The Buyer reserves the right to make changes within the general scope of this Subcontract by unilateral modification. Such changes may include changes in (1) the description of the items or services required; (2) the quantities ordered; (3) the method of shipment or packaging, and (4) the time or place of delivery, inspection or acceptance. The Subcontractor shall promptly comply with any such change made by the Buyer. If any change affects the price of or the time required for performance, Subcontractor shall identify the impact as soon as practical and request an equitable adjustment within 10 days of the change notice. The equitable adjustment to the price and/or delivery requirements and other affected provisions of the Subcontract shall be made by a mutual agreement and modification to this Subcontract in a timely manner.



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### 8.0 SUBCONTRACTING PLAN

- A. This clause applies when invoked by the Subcontract, if the value of any single subcontract action is greater than \$650,000.00 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.
- D. Subcontractor must register in the Government's System for Award Management database and keep the information in the database current throughout the term of this subcontract. [www.sam.gov](http://www.sam.gov).
- E. Subcontractor must register in the SBA Electronic Subcontract Reporting System (ESRS) [www.esrs.gov](http://www.esrs.gov) within 30 days after award of a subcontract.
- F. 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 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.
- G. These requirements must be flowed down to all lower tier Subcontractors with subcontracts which meet the requirements of FAR 19.702.

### 9.0 PAYMENTS

#### 9.1 BACKCHARGES

- A. 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



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backcharges will be invoiced by Buyer to Subcontractor, such backcharges payable within 30 days.

- B. The Subcontractor shall protect from damage at no additional cost to Buyer all existing equipment, materials (whether stored or installed), paving, structures, improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Subcontractor. The Subcontractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Subcontract or failure to exercise reasonable care in performing the work.

### **9.2 TITLE AND OFFSETS**

- 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 is entitled to offset and/or deduct any amount owed to the Subcontractor under this Subcontract for any amounts owed the Buyer under this Subcontract or any other Subcontract with the Buyer.

### **9.3 TAXES**

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, Mission Support Alliance (Washington State UBI Number 602-931-756), is in possession of a DIRECT PAY PERMIT (number 80) issued by Washington State Department of Revenue, effective August 1, 2013 through July 31, 2017, 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 that 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.



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### 10.0 WARRANTY

Subcontractor warrants that all items and services conform to Subcontract specifications, drawings, and other descriptions and will be of merchantable quality, fit and sufficient for the purposes for which they are intended as evidenced in the Subcontract. Warranty shall begin upon Buyer's acceptance and extend for a period of (1) the manufacturer's warranty or six months, whichever is longer, if Subcontractor is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if the Subcontractor is the manufacturer of the item or has modified it. If any nonconformity is discovered within that time, Subcontractor shall promptly repair or replace such items or re-perform services. Transportation of replacement items, return of nonconforming items and repeat performance of services shall be at Subcontractor's expense. If repair, replacement or re-performance of services is not timely, Buyer may elect to return the nonconforming items, repair, replace and/or re-procure the item or service at Subcontractor's expense. This warranty shall restart upon Buyer's acceptance of the repair, replacement or re-performance.

### 11.0 INDEMNITY

- A. Subcontractor agrees to defend, indemnify and hold harmless the Buyer, Government, affiliated companies and their directors, officers, employees, agents and representatives, from and against all loss, damage, liability, cost and expense (including attorney's fees) arising out of any (1) failure to comply with any law, ordinance, regulation, rule or order, (2) injury (including death) to any person or (3) damage to any property in any way connected with the performance of this Contract. Subcontractor agrees to indemnify, hold harmless and defend Buyer and the Government from and against all laborers', materialman's, mechanics', or other liens arising from the performance of Subcontractor's obligations under this Subcontract and shall keep the premises of Buyer and the Government free from all such claims, liens, and encumbrances.
- B. 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. Subcontractor specifically waives any bar or limitation against employee lawsuits arising under the workers' compensation laws of the State of Washington

### 12.0 TERMINATION

#### 12.1 TERMINATION FOR CONVENIENCE

The Buyer reserves the right to terminate this subcontract, or any part hereof, for its sole convenience. In the event of such termination, the Subcontractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this



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subcontract, the Subcontractor shall be paid a percentage of the subcontract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Subcontractor can demonstrate to the satisfaction of the Buyer using its standard record keeping system, have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Buyer any right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

### **12.2 TERMINATION FOR CAUSE**

The Buyer may terminate this subcontract, or any part hereof, for cause in the event of any default by the Subcontractor, or if the Subcontractor fails to comply with any subcontract terms and conditions, or fails to provide the Buyer, upon request, with adequate assurances of future performance. In the event of termination for cause, the Buyer shall not be liable to the Subcontractor for any amount for supplies or services not accepted, and the Subcontractor shall be liable to the Buyer for any and all rights and remedies provided by law. If it is determined that the Buyer improperly terminated this subcontract for default, such termination shall be deemed a termination for convenience.

## **13.0 LAW AND REGULATIONS**

### **13.1 RESOLUTION OF DISPUTES**

- A. The Subcontractor and Buyer agree to make good-faith efforts to settle any dispute or claim that arises under this Subcontract through discussion and negotiation. If such efforts fail to achieve a mutually agreeable resolution, the parties agree to alternative disputes resolution (ADR) and to join in such arbitration proceeding as Buyer may determine appropriate. Parties shall submit to such jurisdiction and be bound by the judgment rendered according to the ADR rules. Subcontractor shall proceed diligently without interruption in the performance of this Subcontract pending final resolution of any dispute arising under this Subcontract between the parties hereto or between the Subcontractor and its lower-tier Subcontractors.
- B. If ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be a court of competent jurisdiction in the State of Washington.
- C. 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).



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### 13.2 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 3 nor more than 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.

### 13.3 ASSIGNMENT

Neither this Subcontract nor any portion hereof shall be assigned or delegated without Buyer's prior written consent. This shall include assignments of Subcontractor's accounts receivable. Buyer reserves the right to assign this Subcontract to DOE or its designee, and in case of such assignment and by notice to the Subcontractor, Buyer shall have no further Subcontract responsibility.

### 14.0 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. NOTE: If there is a conflict between the referenced clauses and the terms and conditions found elsewhere in this Subcontract, the below referenced clauses shall take precedence.



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- B. Wherever necessary to make the context of the clauses set forth below applicable to this Subcontract, the term "disputes" shall mean "claims"; "Contractor" shall mean "Subcontractor"; "Government," and "Contracting Officer," and equivalent phrases shall mean "Buyer," except the terms "Government," and "Contracting Officer" do not change: (1) in the phrases "Government Property," "Government-Owned Equipment," (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.
- C. The text of the FAR/DEAR clauses may be obtained from the Buyer upon request or by linking to the regulations via the Buyer's INTERNET homepage at [www.hanford.gov/pmm](http://www.hanford.gov/pmm).
- D. Referenced Clauses

<u>FAR/DEAR REFERENCE</u>	<u>CLAUSE TITLE</u>	<u>NOTE</u>
<b>The below clauses apply to all subcontracts regardless of the dollar threshold.</b>		
FAR 52.204-9	Personal Identity Verification of Contractor Personnel (JAN 2011)	Applies when Subcontractor will have <i>routine</i> access to federal facilities and/or federal computer systems, regardless of dollar threshold.
FAR 52.222-17	Nondisplacement of Qualified Workers (Jan 2013)	None
FAR 52.222-21	Prohibition of Segregated Facilities (FEB 1999)	Applies to all subcontracts subject to FAR 52.222-26.
FAR 52.222-26	Equal Opportunity (MAR 2007)	Applies to all subcontracts not exempted by Executive Order 11246.
FAR 52.222-50	Combating Trafficking in Persons (APR 2006)	None
FAR 52.225-13	Restrictions on Certain Foreign Purchases (JUN 2008)	None
FAR 52.244-6	Subcontracts For Commercial Items (DEC 2010)	None
FAR 52.245-1	Government Property (AUG 2010)	Applies to subcontracts involving government property.
DEAR 952.203-70	Whistleblower Protection for Contractor Employees (DEC	Applies to all subcontracts involving work performed on



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	2000)	behalf of DOE directly related to activities at DOE-owned or leased sites.
DEAR 952.204-2	Security (MAR 2011)	Applies to all subcontracts requiring a facility clearance.
DEAR 952.204-70	Classification/Declassification (SEP 1997)	Applies to all subcontracts involving classified information,
DEAR 952.250-70	Nuclear Hazards Indemnity Agreement (JUN 1996)	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 970.5204-2	Laws, Regulations, and DOE Directives (DEC 2000)	None
DEAR 970.5227-1	Rights in Data – Facilities (DEC 2000)	Applies to all subcontracts involving technical data and computer software.
DEAR 970.5227-2	Rights in Data – Technology Transfer (DEC 2000)	None
DEAR 970.5227-6	Patent Indemnity - Subcontracts (Dec 2000)	None
DEAR 970.5227-9	Notice of Right to Request Patent Waiver (Dec 2000)	None
DEAR 970.5227-10	Patent Rights – Management and Operating Contracts, Non-Profit Organization or Small Business Firm Contractor	None
DEAR 970.5227-11	Patent Rights – Management and Operating Contracts, For-Profit Contractor, Non-Technology Transfer (DEC 2000)	None
DEAR 970.5232-3	Accounts, Records, and Inspection (DEC 2010) Alternate I (DEC 2000)	None
<b>The below clause applies to all subcontracts exceeding \$250.00</b>		
FAR 52.227-9	Refunds of Royalties (APR 1984)	
<b>The below clauses apply to all subcontracts exceeding \$3,000.00</b>		



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FAR 52.222-54	Employment Eligibility Verification (JAN 2009)	Except when the subcontract is for commercial off-the-shelf items.
<b>The below clause applies to all subcontracts exceeding \$15,000.00</b>		
FAR 52.222-36	Affirmative Action for Workers with Disabilities (OCT 2010)	None.
<b>The below clauses apply to all subcontracts exceeding \$100,000.00</b>		
FAR 52.222-35	Equal Opportunity for Veterans (SEP 2010)	None.
FAR 52.222-36	Affirmative Action for Workers with Disabilities (OCT 2010)	None.
<b>The below clauses apply to all subcontracts exceeding \$150,000.00</b>		
FAR 52.203-6	Restrictions of Subcontractor Sales to the Government (SEP 2006)	None.
FAR 52.203-7	Anti-Kickback Procedures (OCT 2010)	None.
FAR 52.203-12	Limitations on Payments to Influence Certain Federal Transactions (OCT 2010)	None.
FAR 52.219-8	Utilization of Small Business Concerns (JAN 2011)	None
FAR 52.222-36	Affirmative Action for Workers with Disabilities (OCT 2010)	None.
FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007)	None.
<b>The below clauses apply to all subcontracts exceeding \$500,000.00</b>		
DEAR 952.226-74	Displaced Employee Hiring Preference (JUN 1997)	None
DEAR 952.223-78	Sustainable Acquisition Program (OCT 2010)	Applies to all subcontracts that support operation of the DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services.
DEAR 970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal	None



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	Year 1993 (DEC 2000)	
<b>The below clauses apply to all subcontracts exceeding \$650,000.00</b>		
FAR 52.219-9	Small Business Subcontracting Plan (OCT 2001)	None
FAR 52.219-16	Liquidated Damages – Subcontracting Plan (JAN 1999)	Applies to all subcontracts subject to FAR 52.219.16