



Mission Support Alliance Provision

SPECIAL PROVISIONS FOR SUBCONTRACTED LABOR

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1.0 ORDER OF PRECEDENCE

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

2.0 INDEPENDENT CONTRACTOR

Subcontractor is an independent contractor for all purposes **and shall assert no claim predicated on co-employment or wage/hour theory**. In no event shall Subcontractor, its agents, representatives, or personnel that it supplies to Buyer under this Subcontract be deemed to be employees of the Buyer. Subcontractor's employees shall be paid exclusively by Subcontractor for all services performed and Subcontractor shall be responsible for and shall comply with all requirements and obligations relating to such employees under local, state or federal law (or foreign law as applicable) including, but not limited to, minimum wage, social security, unemployment insurance, state and federal income tax, and workmen's compensation. Buyer has no responsibility for withholding any portion of salary or wages due employees of Subcontractor or to comply with any of the aforementioned taxes or obligations.

5.0 SUBCONTRACTOR'S PERSONNEL

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.

4.0 INDEMNITY

Subcontractor agrees to assume the risk of and to release, 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 Subcontract in accordance with the State of Washington Comparative Fault Statute (RCW 4.22). 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.



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To the extent that the Subcontractor, Subcontractor's workers or its lower-tier Subcontractors are covered by the Washington Industrial Insurance Act (RCW Title 51 including any amending, substitute or replacement statutes) or any other industrial insurance, worker's compensation or similar act (Acts), Subcontractor specifically waives any and all immunity provided by these Acts.

5.0 STOP WORK AND SUSPENSION

The Buyer may suspend the Subcontractor's right to perform any part of or this entire Subcontract for an indefinite period. Such stoppage may be due to the following:

- A. Imminent Health and Safety Hazard is a given condition or situation which, if not immediately corrected, could result in a 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. 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 (i.e., by directing the operator/implementer of the activity or process causing the imminent hazard to stop work, or by initiating emergency response actions or other actions) to protect the health and safety of the workers and the public, and to protect U.S. Department of Energy (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 Contract official, who will direct the shutdown or other actions, as required. Such mitigating action should subsequently be coordinated with the DOE and Contractor management. The suspension or stop-work order should be promptly confirmed in writing from the Buyer.
- 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 by independent oversight organizations, 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 Buyer management, and the DOE Richland Operations Office Manager.
- 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:



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- (1) Poses an imminent danger to health and safety of workers or the public if allowed to continue;
- (2) Could adversely affect the safe operation of, or could cause serious damage to the facility if allowed to continue; or
- (3) Could result in the release of radiological or chemical hazards to the environment in excess of regulatory limits.

E. The Subcontractor shall comply with the Hanford Site “Stop Work” policy.

If any such suspension is not due to the fault or negligence of the Subcontractor and significantly delays the progress or causes the Subcontractor additional direct expenses in the performance of the Subcontract, Subcontractor's claim for compensation must be supported by appropriate documentation within ten (10) calendar days from the date performance resumes or 30 days after the suspension notice.

If the Subcontractor fails to comply with any Subcontract terms or to make sufficient progress as to endanger performance, the Buyer may suspend or terminate this Subcontract for cause. In the event of termination for cause, the Buyer shall be liable only for any service accepted. The Buyer may complete Subcontract performance by any reasonable means and the Subcontractor shall be responsible for additional costs incurred by the Buyer.

6.0 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, LLC., (Washington State UBI Number 601-678-024), is in possession of a DIRECT PAY PERMIT (number 80) issued by Washington State Department of Revenue, effective January 1, 2002 through July 31, 2013, 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.

7.0 INVOICING AND PAYMENT

All invoicing shall be in a form satisfactory to and approved by Buyer. Except to the extent expressly stated elsewhere in this Subcontract, payment terms shall be thirty (30) calendar days after receipt by Buyer of a proper invoice. All unit pricing, and payments made, shall be in U.S. dollars only, in the forms of cash, check or electronic transfer as may be agreed upon.



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Unless otherwise identified and provided for in the body of this Subcontract, this Subcontract is a **Labor-Hour Subcontract** and direct labor hours are to be provided at specified fixed hourly rates that include wages, indirect costs, overhead, general and administrative expenses, and profit. The amounts shall be computed by multiplying the appropriate hourly rates prescribed in this Subcontract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

At Buyer's request, Subcontractor shall substantiate invoices by evidence by individual daily job timecards, or other substantiation approved by Buyer. Subcontractor shall furnish evidence, satisfactory to Buyer, that all invoiced costs have been paid for in full and that the work is not subject to liens or claims on account thereof. Buyer may withhold payment of invoices until Subcontractor furnishes such evidence. When requested by the Buyer, Subcontractor shall furnish a release prior to the final payment.

Any invoice submitted, which fails to comply with the terms of this Subcontract, including the requirements of form and documentation, may be returned to Subcontractor. Any costs associated with the resubmission of a proper invoice shall be to Subcontractor's account. Final payment shall not relieve Subcontractor of any obligation under Subcontract.

Other Direct Costs (ODCs) associated with providing those services (such as duplicating, electronic media, travel) are only allowed if authorized in the body of the Subcontract by the Buyer. Equipment, components, raw materials, etc. may **not** be provided under this Subcontract. ODCs, when authorized, must be allocable, allowable and reasonable.

8.0 PROPRIETARY RIGHTS

All materials which Subcontractor is required to prepare or develop in the performance and completion of Subcontractor's scope of work hereunder, including documents, calculations, maps, sketches, notes, reports, data, models and samples, and any and all inventions and copyrightable material contained therein, shall become the sole and exclusive property of Buyer. Subcontractor agrees to execute all documents and to take all steps requested by Buyer which are desirable to complete such ownership and property rights.

9.0 SCHEDULE COORDINATION

Daily work schedules, facility operations, and holidays are NOT consistent on the Hanford Site. Some organizations and facilities observe alternate Friday closures. Accordingly, the Subcontractor shall make specific schedule arrangements with Buyers Technical Representative in advance of performance.

Mission Support Alliance will not be liable for the cost of any delays that result from Subcontractor's failure to obtain a specific schedule agreement in advance.



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10.0 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.

11.0 ACCOUNTS RECORDS AND INSPECTION

- A. Subcontractor shall maintain detailed, complete and accurate accounts, records, documents, and other evidence showing and supporting all costs and credits applicable to this Subcontract. The system of accounts employed by the Subcontractor shall be in accordance with generally accepted accounting principles consistently applied.
- B. All books of account and records relating to this Subcontract shall be subject to inspection and audit by DOE, or its designees, including Buyer, at all reasonable times until a minimum of three years after the final payment has been made. The Subcontractor shall afford Buyer and DOE facilities for such inspection and audit.
- C. The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this Subcontract or any other subcontracts hereunder. This paragraph may not be construed to require the Subcontractor or lower-tier Subcontractor to create or maintain any record that the Subcontractor or Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of the law.

12.0 DEAR 952.204-2 SECURITY (AUG 2009)

The subsequent DEAR clause has been flowed down verbatim. For this clause only:

- 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.
- A. *Responsibility.* It is the Contractor's duty to protect all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Contractor's possession in connection with the performance of work under this contract against sabotage, espionage, loss or theft. Except as otherwise



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expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter or special nuclear material in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

- B. *Regulations.* The Contractor agrees to comply with all security regulations and contract requirements of DOE as incorporated into the contract.
- C. *Definition of Classified Information.* The term Classified Information means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, Classified National Security Information, as amended, or prior executive orders, which is identified as National Security Information.
- D. *Definition of Restricted Data.* The term Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].
- E. *Definition of Formerly Restricted Data.* The term "Formerly Restricted Data" means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.
- F. *Definition of National Security Information.* The term "National Security Information" means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.
- G. *Definition of Special Nuclear Material.* The term "special nuclear material" means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include



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source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

H. *Access authorizations of personnel.*

- (1) The Contractor shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and contract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.
- (2) The Contractor must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, prior to selecting the individual for a position requiring a DOE access authorization.
 - a. A review must: verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Contractor is located; and conduct a credit check and other checks as appropriate.
 - b. Contractor reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).
 - c. In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Contractor must comply with all applicable laws, regulations, and Executive Orders, including those: (a) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and (b) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.



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- d. In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug, as defined in 10 CFR Part 707.4. All positions requiring access authorizations are deemed testing designated positions in accordance with 10 CFR Part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.
- e. When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Contractor shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.
- f. The Contractor must furnish to the head of the cognizant local DOE Security Office, in writing, the following information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization:
 - i. The date(s) each Review was conducted;
 - ii. Each entity that provided information concerning the individual;
 - iii. A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;
 - iv. A certification that all information collected during the review was reviewed and evaluated in accordance with the Contractor's personnel policies; and
 - v. The results of the test for illegal drugs.
- l. *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents,



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employees, or Subcontractors to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

J. *Foreign Ownership, Control, or Influence.*

- (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Standard Form (SF) 328, Certificate Pertaining to Foreign Interests, executed prior to award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer.
- (2) If a Contractor has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences
- (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control, or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to protect any classified information or special nuclear material.
- (4) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

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



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- L. *Flow down to subcontracts.* The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under its contract that will require Subcontractor employees to possess access authorizations. Additionally, the Contractor must require such Subcontractors to have an existing DOD or DOE facility clearance or submit a completed SF 328, Certificate Pertaining to Foreign Interests, as required in DEAR 952.204-73, Facility Clearance, and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a Subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, Subcontractor means any Subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.