

WASHINGTON RIVER PROTECTION SOLUTIONS (WRPS)

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SUBCONTRACT FLOW-DOWN REQUIREMENTS

The SUBCONTRACTOR shall bind all lower-tier Subcontractors, regardless of tier level, to the provisions of this Subcontract where indicated with an asterisk (*) as a required flow down or as stated in the clause text.

DEFINITIONS

Whenever used in this document, the following definitions shall apply unless the content indicates otherwise.

Authorized Procurement Representative – The term “authorized procurement representative” shall be a person with authority to enter into and administer Subcontracts and make related determinations and findings. These individuals are identified with the associated authority in the body of the Subcontract.

Buyer’s Technical Representative (BTR) – The term “Buyer’s Technical Representative (BTR)” means the individual responsible for providing technical direction to the SUBCONTRACTOR. The BTR does not possess any explicit, apparent or implied authority to modify Subcontract terms and conditions.

BUYER – The term “BUYER” means Washington River Protection Solutions, LLC (WRPS).

Government – The term “Government” shall mean the United States of America and includes the U.S. Department of Energy (DOE) Office of River Protection (ORP), or any duly authorized representative thereof, including the BUYER’s Administrative Contracting Officer (ACO).

Lower-Tier Subcontractors - The term “lower-tier Subcontractors” refers to companies or individuals with whom the SUBCONTRACTOR has purchase orders, subcontracts and rental agreements for materials or equipment, and other services not performed directly by the SUBCONTRACTOR under this Subcontract.

SUBCONTRACTOR – The term SUBCONTRACTOR refers to the company, person or organization, including all lower-tier Subcontractors, performing Work under this Subcontract.

Subcontract – The term Subcontract shall mean this Subcontract or Purchase Order between the BUYER and the SUBCONTRACTOR including its terms, conditions, clauses, provisions, written direction and instructions, releases, and documents.

Work – The term “Work” includes all material, labor, tools, and all appliances, machinery, and transportation, necessary to perform and complete the Subcontract’s requirements, and such additional items not specifically indicated or described that can be reasonably inferred as required to complete the Subcontract.

ARTICLE 1.0 ORDER OF PRECEDENCE

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: (i) authorized procurement representative’s written Subcontract, amendments, directions, and instructions; (ii) Special Provisions;

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(iii) General Provisions; (iv) Supplemental Provisions, (v) Statement of Work ('SOW'); (vi) Technical Specifications; and (vi) Drawings.

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

ARTICLE 2.0 OBLIGATIONS OF THE SUBCONTRACTOR

2.1 Independent Contractor

The SUBCONTRACTOR is an independent contractor and shall maintain complete control of and responsibility for its employees, lower-tier Subcontractors, and agents. The SUBCONTRACTOR shall also be solely responsible for the means and methods for carrying out the Work and for the safety of its employees. Nothing contained in this Subcontract shall be construed to create any employer-employee relationship between the SUBCONTRACTOR's employees and the BUYER or to create a contractual relationship between the Government and the SUBCONTRACTOR.

2.2 Authorization for Lower-Tier Subcontracting*

The SUBCONTRACTOR shall not further Subcontract performance of all or any portion of the Work under this Subcontract, except as disclosed in the SUBCONTRACTOR's proposal, without first notifying the BUYER and obtaining the BUYER's authorized procurement representative's written acceptance (consent) for subcontracting the Work and approval of the lower-tier Subcontractor.

2.3 Right of Access*

The BUYER, its Clients, or agents shall have the right to inspect and evaluate the SUBCONTRACTOR's facilities at any time during the procurement process and performance (from Subcontract award through final payment). The BUYER, its Clients, or agents shall have the right of access to lower-tier Subcontractors for the purpose of verifying the quality of their Work. Access to lower-tier Subcontractors shall be coordinated through the SUBCONTRACTOR and verification may be performed jointly with the SUBCONTRACTOR.

2.4 SUBCONTRACTOR Responsibility*

The SUBCONTRACTOR agrees that it is as fully responsible to the BUYER for the acts and omissions of its lower-tier Subcontractors and of persons either directly or indirectly employed by the SUBCONTRACTOR. The SUBCONTRACTOR shall not be relieved of its responsibility for the Work by virtue of any lower-tier Subcontracts it may place regardless of the BUYER's acceptance of such lower-tier Subcontract. The SUBCONTRACTOR is responsible for the quality of Work supplied under the term of this Subcontract. The SUBCONTRACTOR management and employees are expected to learn from experience, prevent adverse operating incidents, and share good Work practices and lessons learned. The SUBCONTRACTOR shall be responsible for assuring that all lower-tier Subcontractors implement adequate quality and process control commensurate with importance to safety, cost, and schedule of the Work. All applicable technical and quality requirements imposed by this Subcontract shall be flowed down to lower-tier Subcontractors through appropriate procurement documents. The SUBCONTRACTOR retains the responsibility for the quality of all Work provided by lower-tier Subcontractors.

If fabricated items are being procured, the SUBCONTRACTOR shall hold a pre-fabrication conference with the BUYER prior to starting fabrication of any Work by the SUBCONTRACTOR and/or its lower-tier Subcontractors.

2.5 SUBCONTRACTOR Certification*

The SUBCONTRACTOR will provide certification that the lower-tier Subcontractor has the necessary permits and licenses for the Work to be performed. The SUBCONTRACTOR guarantees that its lower-tier Subcontractors will comply fully with the terms of this Subcontract applicable to the portion of the Work performed. If any portion of the Work, which has been subcontracted by the SUBCONTRACTOR, is not performed in accordance with this Subcontract, on request by the BUYER's authorized procurement representative, the lower-tier Subcontractor will be replaced at no additional cost to the BUYER and will not be employed again on the Subcontract unless so authorized by the BUYER's authorized procurement representative.

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2.6 SUBCONTRACTOR Assignment*

The SUBCONTRACTOR shall include a provision in every lower-tier Subcontract that authorizes assignment of such lower-tier Subcontracts to the BUYER or the Government without requiring further consent from such lower-tier Subcontractor.

2.7 SUBCONTRACTOR Communications*

The BUYER shall have the right from time to time to contact the SUBCONTRACTOR's lower-tier Subcontractors, upon notification of the SUBCONTRACTOR by the BUYER's authorized procurement representative, to discuss the lower-tier Subcontractor's progress.

2.8 Organizational Conflicts of Interest*

The SUBCONTRACTOR warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, that the SUBCONTRACTOR has disclosed all such relevant information to the BUYER's authorized procurement representative prior to award of this Subcontract and that there are no facts which could give rise to an organizational conflict of interest during the Work's performance.

2.9 Final Acceptance

When the SUBCONTRACTOR deems the Work fully completed, including satisfactory completion of such inspections, tests and documentation as are specified in this Subcontract, the SUBCONTRACTOR shall, within ten (10) working days, give a written notice specifying the Work completed and the date it was completed. Within thirty (30) calendar days after receipt of the notice, the BUYER shall inspect the Work and shall either reject the Work 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.

In the event the BUYER rejects the Work and specifies defective or uncompleted portions of the Work, the SUBCONTRACTOR shall, within five (5) working days, provide to the BUYER's authorized procurement representative for the BUYER's review and approval, a schedule detailing when all defects will be corrected and/or when the Work will be completed and shall proceed to remedy such defective and uncompleted portions of the Work. Thereafter, the SUBCONTRACTOR shall again give the BUYER's authorized procurement representative a written notice of Work completion, 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 the BUYER has given the SUBCONTRACTOR written final acceptance for purposes of final payment.

Any failure by the BUYER to inspect or to reject the Work or to reject the SUBCONTRACTOR's notice of completion as set forth above, shall not be deemed to be final acceptance of the Work for any purpose by the BUYER nor imply acceptance of, or agreement with, said notice.

2.10 Non-Conformance Reports (NCRs)

Nonconformance Reports (NCRs) generated by the SUBCONTRACTOR, lower-tier Subcontractors and suppliers of items with the proposed disposition of "Use as is" or "Repair" shall be submitted for approval to the BUYER Design Authority, Engineering, and Quality Assurance before the SUBCONTRACTOR initiates any remedial action on the nonconformance.

2.11 Price Anderson Amendment Act (PAAA)*

As a government Prime Contractor providing nuclear safety-related services to the Department of Energy, the BUYER is required by contract to comply with the nuclear safety rules contained in the following regulations:

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- 10 CFR 820, *Procedural Rules for DOE Nuclear Activities*,
- 10 CFR 830, *Nuclear Safety Management*,
- 10 CFR 835, *Occupational Radiation Protection*, and
- 10 CFR 708, *Contractor Employee Protection*.

If specified in the Subcontract, one or more of the nuclear safety regulations identified above have been determined to apply to this Work and therefore compliance is incumbent upon the SUBCONTRACTOR. The SUBCONTRACTOR will flow down these PAAA requirements to its lower-tier Subcontractors for Work performed under this Subcontract.

The SUBCONTRACTOR will accurately, completely, and voluntarily report the nature and actions taken in response to any non-compliance with the nuclear safety rules to the BUYER's PAAA Director, via the BUYER's authorized procurement representative, and will take prompt and comprehensive corrective action to prevent recurrence.

2.12 Indemnification*

The SUBCONTRACTOR agrees to defend, indemnify and hold harmless the 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 or expense arising by reason of the SUBCONTRACTOR's failure to comply with any law, ordinance, regulation, rule or order. This provision includes, but is not limited to, fines or penalties by Government authorities and claims arising from the SUBCONTRACTOR's actual or asserted failure to pay taxes.
- B. Any claim, demand, cause of action, liability, judgment or damages 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 the SUBCONTRACTOR or its lower-tier Subcontractors in performance of the Work. Should any goods or services provided by the SUBCONTRACTOR become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, the SUBCONTRACTOR shall, at the BUYER's option, either procure for the 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, judgment or damages arising from the SUBCONTRACTOR's negligence or acts or omissions which results in injury to or death of persons (including employees of the BUYER, the Government, the SUBCONTRACTOR and the SUBCONTRACTOR's lower-tier Subcontractors) or results in damage to or loss of property (including the property of the BUYER or the Government). The SUBCONTRACTOR's defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of the BUYER or arising from use by the SUBCONTRACTOR of construction equipment, tools, scaffolding or facilities furnished to the SUBCONTRACTOR by the BUYER or the Government.
- D. Any claim, demand, cause of action, liability, judgment or damages arising out of any act or omission by the SUBCONTRACTOR that results in contamination, pollution, or public or private nuisance.
- E. The SUBCONTRACTOR's defense and indemnity obligations shall include the duty to reimburse any attorney's fees and expenses incurred by the BUYER or the Government in investigating or defending any action identified in this provision and for any legal action to enforce the 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. With respect to claims by employees of the SUBCONTRACTOR or its lower-tier Subcontractors, the indemnity obligations created under this clause shall not be limited by the existence of, amount, or type of benefits or compensation, payable by or for the SUBCONTRACTOR, its lower-tier Subcontractors or suppliers under any workers compensation, disability benefits, or other employee benefits acts or regulations, and the SUBCONTRACTOR,

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specifically and knowingly, waives any limitation of liability arising from workers' compensation or such other acts or regulations.

2.13 Limitation of Liability*

Except to the extent that the SUBCONTRACTOR is expressly responsible under this Subcontract for deficiencies in the services required to be performed under the Subcontract (including any materials furnished in conjunction with those services), the SUBCONTRACTOR shall not be liable for loss of or damage to property of the Government that (1) occurs after the BUYER's acceptance of Work performed under this Subcontract and (2) results from any defects or deficiencies in the Work performed and accepted.

The limitation of liability shall not apply when a defect or deficiency in, or the BUYER's acceptance of the Work, from willful misconduct or lack of good faith on the part of any of the SUBCONTRACTOR's managerial personnel. The term "SUBCONTRACTOR's Managerial Personnel", as used in this provision, means the SUBCONTRACTOR's directors, officers, and any of the SUBCONTRACTOR's managers, superintendents, or equivalent representatives who have supervision or direction of:

- All or substantially all of the SUBCONTRACTOR's business;
- All or substantially all of the SUBCONTRACTOR's operations at any one plant, laboratory, or separate location at which the Subcontract is being performed; or
- A separate and complete major industrial operation connected with the performance of the Subcontract.

If the SUBCONTRACTOR carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government or the BUYER through the SUBCONTRACTOR's performance of Work under this Subcontract, the SUBCONTRACTOR shall be liable to the Government or the BUYER, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after the BUYER's acceptance of, and resulting from any defects and deficiencies, in Work under this Subcontract.

The SUBCONTRACTOR shall include this provision, including this paragraph, supplemented as necessary to reflect the relationship of the subcontracting parties, in all lower-tier Subcontracts over \$25,000.

2.14 Codes, Laws, and Regulations*

The SUBCONTRACTOR shall comply strictly with local, municipal, state, federal and governmental laws, orders, codes and regulations applicable to the SUBCONTRACTOR's operations in the performance of the Work hereunder. Prior to offering the Work for acceptance, the SUBCONTRACTOR shall verify and document that the Work being furnished complies with all Subcontract requirements. Where required by code, regulation, or Subcontract requirement, documentary evidence that the Work conforms shall be made available to the BUYER and prior to installation.

The SUBCONTRACTOR shall not, under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or environmental laws or regulations relating to this Subcontract or to the performance thereof, without the BUYER's authorized procurement representative's prior written approval.

The SUBCONTRACTOR shall not, under any circumstances, cause or permit, in connection with the Work to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any applicable laws, rules or regulations which are now or hereafter promulgated by any governmental authorities having jurisdiction over the Work. The SUBCONTRACTOR shall comply with all regulatory requirements applicable to the Work performed under this Subcontract and shall be responsible for compliance with all hazardous waste, health and safety, notice, training, and environmental protection laws, rules, regulations and requirements. "Hazardous waste" includes all substances, which are or may be identified as such in applicable Federal or State laws or regulations. The SUBCONTRACTOR shall submit to the BUYER's authorized procurement representative material safety data sheets (OSHA Form 20) as required by applicable regulation.

The SUBCONTRACTOR warrants full compliance and will adhere to all applicable project hazardous waste procedures and, if necessary, obtain or arrange for, at its expense and in accordance with the terms of this Subcontract, all identification numbers, permits, applications and other requirements in connection with the Work. The SUBCONTRACTOR agrees that it will not store

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any hazardous wastes at the jobsite for periods in excess of ninety (90) days or in violation of the applicable jobsite storage limitations imposed by law, the Government or the BUYER, whichever shall be more restrictive. The SUBCONTRACTOR further agrees that it will not permit any accumulation in excess of the small quantity generator exclusion of 40 CFR, Part 261, or other applicable laws, as amended. The SUBCONTRACTOR agrees to take, at its expense all actions necessary to protect third parties, including without limitation, employees and agents of the Government and the BUYER from any exposure to, or hazards of, hazardous and/or toxic wastes or substances generated or utilized in the SUBCONTRACTOR's operations. The SUBCONTRACTOR agrees to report to the appropriate governmental agencies all discharges, releases, and spills of hazardous substances and/or wastes required to be reported by law and to immediately notify the BUYER's authorized procurement representative of the same.

2.15 Foreign Ownership, Control, and Influence*

For purposes of this provision, a foreign interest is defined as any of the following:

- A foreign government or foreign government agency;
- Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
- Any form of business enterprise organized or incorporated under the laws of the United States, or a State or other jurisdiction within the United States, which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or
- Any person who is not a United States citizen.

Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a SUBCONTRACTOR by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material, as defined in 10 CFR Part 710, may result.

The SUBCONTRACTOR shall immediately provide the BUYER written notice of any changes in the extent and nature of FOCI over the SUBCONTRACTOR, which would affect the SUBCONTRACTOR's status. Further, 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 BUYER's authorized procurement representative.

In those cases where a SUBCONTRACTOR has changes involving FOCI, the BUYER must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the BUYER shall consider proposals made by the SUBCONTRACTOR to avoid or mitigate foreign influences.

If the BUYER at any time determines that the SUBCONTRACTOR is, or is potentially, subject to FOCI, the SUBCONTRACTOR shall comply with such instructions as the BUYER's authorized procurement representative shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.

The SUBCONTRACTOR agrees to insert terms that conform substantially to the language of this provision including this paragraph in all lower-tier Subcontracts under this Subcontract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the SUBCONTRACTOR shall require such lower-tier Subcontractors to submit a completed certification prior to award of a lower-tier Subcontract. Information to be provided by a lower-tier Subcontractor pursuant to this provision may be submitted directly to the BUYER's authorized procurement representative.

Information submitted by the SUBCONTRACTOR or any affected lower-tier Subcontractor as required pursuant to this provision shall be treated by the BUYER to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

The requirements of this provision are in addition to the requirement that a SUBCONTRACTOR obtain and retain the security clearances required by the Subcontract. This provision shall not operate as a limitation on the BUYER's rights, including its rights to terminate this Subcontract.

The BUYER may terminate this Subcontract for default either if the SUBCONTRACTOR fails to meet obligations imposed by this provision (e.g., provide the information required by this provision, comply with the BUYER's authorized procurement

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representative instructions about safeguarding classified information, or make this provision applicable to lower-tier Subcontractors) or if, in the BUYER's judgment, the SUBCONTRACTOR creates a FOCI situation in order to avoid performance or a termination for default. The BUYER may terminate this Subcontract for convenience if the SUBCONTRACTOR becomes subject to FOCI and for reasons other than avoidance of performance of the Subcontract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

2.16 Publicity*

The SUBCONTRACTOR will not disclose the nature of its Work under this Subcontract or engage in any other publicity or public media disclosures with respect to this Subcontract without the prior written consent of the BUYER's authorized procurement representative

2.17 Key Personnel

9Certain SUBCONTRACTOR employees may be designated as Key Personnel in this Subcontract. The SUBCONTRACTOR agrees those individuals determined to be key individuals will not be changed or reassigned without the written agreement of the BUYER's authorized procurement representative. If any of the designated key personnel become unavailable for assignment for Work under this Subcontract, the SUBCONTRACTOR, with the prior approval of the BUYER's authorized procurement representative, will replace the employee with an individual substantially equal in abilities and qualifications.

2.18 Suspension of Work*

The authorized procurement representative 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's authorized procurement representative determines appropriate for the convenience of the BUYER. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Such suspensions under this Subcontract shall not exceed one hundred eighty (180) consecutive calendar days each or, in aggregate more than two hundred seventy (270) calendar days.

Upon receiving any such notice of suspension, the SUBCONTRACTOR shall promptly suspend further performance of the Work to the extent specified, and during the period of such suspension shall properly care for and protect all Work in progress and materials, supplies and equipment that the SUBCONTRACTOR has on hand for performance of the Work. Upon the request of the BUYER's authorized procurement representative, the SUBCONTRACTOR shall promptly deliver to the BUYER's authorized procurement representative copies of outstanding Subcontracts of the SUBCONTRACTOR, and shall take such action relative to such Subcontracts as may be directed by the BUYER's authorized procurement representative. The SUBCONTRACTOR shall use its best efforts to utilize its material, labor, and equipment in such a manner as to mitigate costs associated with the suspension.

The BUYER may at any time withdraw the suspension of Work as to all or part of the suspended Work by written notice to the SUBCONTRACTOR specifying the effective date and scope of withdrawal, and the SUBCONTRACTOR shall resume diligent performance of the Work for which the suspension is withdrawn on the specified effective date of withdrawal.

If the performance of all or any part of the Work exceeds the suspension days specified in this provision, 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 shall be modified in writing accordingly. However, no adjustment shall be made under this provision 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 provision of this Subcontract. The SUBCONTRACTOR shall not be entitled to any profits or any damages because of such suspension or withdrawals of suspension.

A claim under this provision shall not be allowed for any costs incurred more than twenty (20) calendar days before the Subcontractor shall have notified the BUYER's authorized procurement representative 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 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.

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2.19 Suspect and Counterfeit Items*

Notwithstanding any other provisions of this Subcontract, the SUBCONTRACTOR warrants that all items provided by the SUBCONTRACTOR shall be genuine, new, and unused unless otherwise specified or approved in writing by the BUYER. The BUYER reserves the right to question and/or require the 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. The SUBCONTRACTOR shall establish and implement appropriate measures to prevent the procurement and incorporation of suspect and counterfeit parts into the deliverable for this Subcontract. In addition, the SUBCONTRACTOR shall report the discovery of suspect and counterfeit items in sufficient detail to establish all circumstances relative to the occurrence to the BUYER's authorized procurement representative.

Any items furnished as part of this Subcontract and which have been previously found by the 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. The 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, components determined to be counterfeit, shall be recovered by the BUYER from the SUBCONTRACTOR.

2.20 SUBCONTRACTOR Generated Documentation*

Documents that furnish evidence of the quality of items and/or activities affecting quality are considered quality assurance records and shall be prepared and controlled in accordance with the BUYER's approved procedures. Submittal of these documents to the BUYER's authorized procurement representative shall be accomplished as specified in the Statement of Work, specification, or other Subcontract documents.

2.21 Acquisition of Real Property*

Notwithstanding any other provision of this Subcontract, the SUBCONTRACTOR will obtain prior approval from the BUYER's authorized procurement representative when, in performance of this Subcontract, the SUBCONTRACTOR acquires or proposes to acquire use of real property by lease when the Government will ultimately assume the liability for, or will otherwise pay for the obligation under the lease as a reimbursable Subcontract cost.

2.22 Management of SUBCONTRACTOR-Held Government-Owned Property or Equipment*

This provision specifies requirements when Government Furnished Property or Equipment (GFP or GFE) is either provided or purchased in accomplishing the Work under this Subcontract with the care and custody being consistent with the current Federal Acquisition Regulation (FAR) clause 52.245-1.

- A. The BUYER reserves the right to furnish any property or services required for the performance of the Work under this Subcontract.
- B. Except as otherwise provided by the authorized procurement representative, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the SUBCONTRACTOR, the cost of which the SUBCONTRACTOR is entitled to be reimbursed as a direct item of cost under this Subcontract, shall pass directly from the vendor to the Government. The BUYER reserves the right to inspect, and to accept or reject, any item of such property. The SUBCONTRACTOR shall make such disposition of rejected items as the authorized procurement representative shall direct. Title to other property, the cost of which is reimbursable to the SUBCONTRACTOR under this Subcontract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this Subcontract, or (2) commencement of processing or use of such property in the performance of this Subcontract, or (3) reimbursement of the cost thereof by the BUYER, whichever first occurs. Property furnished by the BUYER and property purchased by the SUBCONTRACTOR, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall neither be affected by the incorporation of the property into or the attachment to any property not owned by the Government, nor shall such Government property or any part, be or become a fixture or lose its identity by reason of affixation to any realty.

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- C. To the extent directed by the authorized procurement representative, the SUBCONTRACTOR shall identify Government property coming into the SUBCONTRACTOR's possession or custody, by marking and segregating in such a way, satisfactory to the BUYER, as shall indicate its ownership by the Government.
- D. The SUBCONTRACTOR shall make such disposition of Government property which has come into the possession or custody of the SUBCONTRACTOR under this Subcontract as the authorized procurement representative may direct during the progress of the Work or upon completion or termination of this Subcontract. The SUBCONTRACTOR may, upon such terms and conditions as the BUYER's authorized procurement representative may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the authorized procurement representative and the SUBCONTRACTOR as the fair value thereof. The amount received by the SUBCONTRACTOR as the result of any disposition, or the agreed fair value of any such property acquired by the SUBCONTRACTOR, shall be applied in reduction of costs allowable under this Subcontract or shall be otherwise credited to account to the BUYER, as the BUYER's authorized procurement representative may direct. Upon completion of the work or the termination of this Subcontract, the SUBCONTRACTOR shall render an accounting, as prescribed by the BUYER's authorized procurement representative, of all Government property which had come into the possession or custody of the SUBCONTRACTOR under this Subcontract.
- E. Management of Property and Classified Materials:
1. The SUBCONTRACTOR shall take all reasonable precautions, and such other actions as may be directed by the BUYER's authorized procurement representative, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect Government property in the SUBCONTRACTOR's possession or custody.
 2. In addition, the SUBCONTRACTOR shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management.
 3. High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.
- F. Risk of Loss of Government Property:
1. The SUBCONTRACTOR shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
 - a. Willful misconduct or lack of good faith on the part of the SUBCONTRACTOR's managerial personnel;
 - b. Failure of the SUBCONTRACTOR's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the authorized procurement representative to safeguard such property under this provision; or
 - c. Failures of the SUBCONTRACTOR managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with this provision.
 - d. The risk is covered by insurance or the SUBCONTRACTOR is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with Federal Acquisition Regulations (FAR) 31.205-19.
 2. If, after an initial review of the facts, the BUYER's authorized procurement representative informs the SUBCONTRACTOR that there is reason to believe that the loss, destruction of, or damage to the Government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon

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the SUBCONTRACTOR to show that the SUBCONTRACTOR should not be required to compensate the BUYER for the loss, destruction, or damage.

3. In the event that the SUBCONTRACTOR is determined liable for the loss, destruction or damage to Government property in accordance with this provision, the SUBCONTRACTOR's compensation to the BUYER shall be determined as follows:
 - a. For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the BUYER's authorized procurement representative shall determine the value of such property, consistent with all relevant facts and circumstances.
 - b. For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the BUYER's authorized procurement representative shall determine the value of such property, consistent with all relevant facts and circumstances.
4. The SUBCONTRACTOR shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the BUYER's authorized procurement representative may have expressly required the SUBCONTRACTOR to carry such insurance under another provision of this Subcontract.

G. Steps to be Taken in Event of Loss:

In the event of any damage, destruction, or loss to Government property in the possession or custody of the SUBCONTRACTOR the SUBCONTRACTOR:

1. Shall immediately inform the BUYER's authorized procurement representative of the occasion and extent thereof,
2. Shall take all reasonable steps to protect the property remaining, and
3. Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the authorized procurement representative. The SUBCONTRACTOR shall take no action prejudicial to the right of the BUYER to recover therefor, and shall furnish to the BUYER's authorized procurement representative, on request, all reasonable assistance in obtaining recovery.

H. Government property shall be used only for the performance of this Subcontract.

I. Property Management:

1. Property Management System:

The SUBCONTRACTOR shall establish, administer, and properly maintain a property management system that meets the requirements of Federal Acquisition Regulation (FAR) clause 52.245-1 for Government property or equipment in its possession under the Subcontract. The SUBCONTRACTOR's property management system shall be submitted to the BUYER's authorized procurement representative for assessment and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the authorized procurement representative may from time to time prescribe.

2. Property Inventory:

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- a. Unless otherwise directed by the authorized procurement representative, the SUBCONTRACTOR shall within six (6) months after execution of the Subcontract provide a baseline inventory covering all items of Government property.
 - b. If the SUBCONTRACTOR is succeeding another Subcontractor in the performance of this Subcontract, the SUBCONTRACTOR shall conduct a joint reconciliation of the property inventory with the predecessor Subcontractor. The SUBCONTRACTOR agrees to participate in a joint reconciliation of the property inventory at the completion of this Subcontract. This information will be used to provide a baseline for the succeeding Subcontract as well as information for closeout of the predecessor Subcontract.
- J. The SUBCONTRACTOR shall include this provision in all time and material or cost reimbursable lower-tier Subcontracts.

2.23 Holiday and Work Schedules*

Daily work schedules and facility operations are not uniform among Hanford Site Contractors. In addition, some organizations and facilities observe alternate Friday closures. Accordingly, before scheduling deliveries, the SUBCONTRACTOR shall make specific schedule arrangements for the delivery of services or materials with the BUYER's authorized procurement representative, Facility Manager, Delivery Warehouse Manager, or Building Manager, etc. The BUYER's authorized procurement representative will not be liable for the cost of any delays, demurrage, layover, extra travel days, etc. which result from the SUBCONTRACTOR's failure to obtain a specific schedule in advance. Current Hanford Site Facility Closure days are: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day (and following Friday), Christmas Eve and Christmas Day.

2.24 SUBCONTRACTOR's Personnel and Notification*

Any employee of the SUBCONTRACTOR deemed by the BUYER, in their sole judgment, to be objectionable shall be removed from the Work and/or BUYER's jobsite immediately upon the BUYER's authorized procurement representative request and shall be promptly replaced by the SUBCONTRACTOR at no extra expense to the BUYER. The SUBCONTRACTOR shall nevertheless retain all authority and control over its employees, including responsibility for all costs arising from providing reasonable accommodations for its employees.

Upon verbal or written notification by the BUYER's authorized procurement representative that a SUBCONTRACTOR employee's services are no longer required under this Subcontract, the SUBCONTRACTOR shall notify the impacted employee within twenty-four (24) hours of receiving the BUYER's authorized procurement representative notification. The SUBCONTRACTOR then shall confirm in writing within twenty-four (24) hours to the BUYER's authorized procurement representative that notification has been given to the impacted employee.

If requested by the BUYER's authorized procurement representative, the SUBCONTRACTOR shall furnish the BUYER's authorized procurement representative with the names and addresses of lower-tier Subcontractors and others who have performed or are performing the Work under this Subcontract.

2.25 Lowest Price Warranty

SUBCONTRACTOR warrants that the prices set forth in this Subcontract do not exceed those charged by SUBCONTRACTOR to any other customers purchasing the same item in like or comparable quantities.

The BUYER's authorized procurement representative or an authorized representative shall have the right to examine the records of the SUBCONTRACTOR as necessary to assure that the prices charged for the item under this Subcontract do not exceed those charged by the SUBCONTRACTOR to any other customer purchasing the same items in like or comparable quantities.

2.26 Permits, Licenses, and Fees

The SUBCONTRACTOR will obtain and pay for all applicable permits and licenses required by law that are associated with the Work.

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2.27 Possession Prior To Completion

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

2.28 Hazardous or Toxic Substances

If the Work under this Subcontract involves hazardous or toxic substances, the SUBCONTRACTOR will comply with all safety or training requirements promulgated by law or regulation.

2.29 Inspection, Testing, and Quality Control

The SUBCONTRACTOR shall inspect all materials, supplies, and equipment, which are to be incorporated in the Work. In addition, the SUBCONTRACTOR shall conduct a continuous program of quality control for all Work. If required in the Subcontract, the SUBCONTRACTOR's quality control program and inspection procedures for the foregoing may be required to be submitted to the BUYER's authorized procurement representative for review. However, neither review nor acceptance of the SUBCONTRACTOR's quality control program or inspection procedures shall relieve the SUBCONTRACTOR of its obligation to conduct comprehensive inspections of the Work, to furnish conforming materials, to perform acceptable Work, and to provide adequate safety precautions in conformance with this Subcontract.

Documents that furnish evidence of the quality of items and/or activities affecting quality are considered quality assurance records and shall be prepared and controlled in accordance with BUYER approved procedures. Submittal of these documents to the BUYER shall be accomplished as specified in the Statement of Work or other procurement documents.

The offering of the item is evidence of the SUBCONTRACTOR's verification that all procurement requirements have been satisfied.

The 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. The BUYER may require additional inspections and tests. The SUBCONTRACTOR shall furnish the BUYER's authorized procurement representative with satisfactory documentation of the results of all inspections and tests. The BUYER's authorized procurement representative shall be given not less than five (5) working days notice of any tests to be made by the SUBCONTRACTOR or the SUBCONTRACTOR's lower-tier Subcontractors in order that the BUYER may witness any such tests.

The 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. The 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 the SUBCONTRACTOR for such Work, materials or equipment shall prejudice the right of the BUYER or the Government.

If any part of the SUBCONTRACTOR's Work is dependent upon the quality and/or completeness of Work performed under a lower-tier Subcontract, the SUBCONTRACTOR shall inspect such other Work and promptly report to the BUYER's authorized procurement representative 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 the BUYER's authorized procurement representative shall constitute the SUBCONTRACTOR's acceptance of such other Work as suitable to receive the SUBCONTRACTOR's Work under this Subcontract; provided however, that the SUBCONTRACTOR shall not be responsible for defects that could not have reasonably been detected.

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2.30 Sustainable Acquisition Products and Services

In the performance of this Subcontract, the SUBCONTRACTOR shall specify, furnish, and use sustainable acquisition products and services (i.e., products and services with a lesser or reduced effect on human health and the environment), to the maximum possible extent consistent with the Subcontract requirements and the intended end use of the products or services. Information on sustainable acquisition products and services is available at: <http://www.epa.gov/opptintr/epp/>.

2.31 Conference Management and Attendance

SUBCONTRACTOR conference management and attendance shall be approved by the BUYER's authorized procurement representative prior to arranging and/or attending, and upon approval, conducted pursuant to the requirements contained in DOE Order 110.3A, Conference Management, or any subsequent version of the order in effect at the time of Subcontract award.

ARTICLE 3.0 OBLIGATIONS OF THE BUYER

3.1 Changes

The Work shall be subject to change by additions, deletions or revisions thereto by the BUYER. The SUBCONTRACTOR will be notified of such changes by receipt of additional and/or revised drawings, specifications, exhibits or other written notification.

The SUBCONTRACTOR shall submit to the BUYER's authorized procurement representative within ten (10) working days after receipt of notice of a change, a detailed proposal with supporting calculations and pricing for the change together with any requested adjustments in the schedule. The pricing shall be itemized as required by the BUYER and shall be in sufficient detail to permit an analysis of all labor, material and equipment and shall cover all Work involved in the change, whether such Work was deleted, added or modified. Amounts related to Subcontracts shall be supported in similar detail. In addition, if the proposal includes a time extension, justification therefore shall also be furnished.

The SUBCONTRACTOR shall not perform changes in the Work until the BUYER's authorized procurement representative has approved in writing the change and any adjustment in the schedule for performance of the Work. Upon receiving such written approval from the BUYER's authorized procurement representative, the SUBCONTRACTOR shall diligently perform the change in strict accordance with the Subcontract.

Notwithstanding the paragraph above, the BUYER's authorized procurement representative may expressly authorize the SUBCONTRACTOR in writing to perform the change prior to approval by the BUYER's authorized procurement representative. The SUBCONTRACTOR shall not suspend performance of the Subcontract during the review and negotiation of any change, except as may be directed by the BUYER's authorized procurement representative pursuant to the "Suspension of Work" provision.

The SUBCONTRACTOR shall not comply with verbally directed changes to the Work. If the SUBCONTRACTOR believes that any oral notice or instruction received from the BUYER will involve a change in the cost, time to perform or integrity of Work, the SUBCONTRACTOR shall require that the notice or instruction be given in writing by the BUYER's authorized procurement representative within three (3) calendar days. Any costs incurred by the SUBCONTRACTOR to perform verbally directed changes shall be the SUBCONTRACTOR's responsibility, and the SUBCONTRACTOR waives any and all rights to a claim from the BUYER for such costs or additional time to perform the Work as a result of compliance by the SUBCONTRACTOR with such verbally directed changes.

3.2 Technical Representative Responsibilities

The BUYER has elsewhere in this Subcontract designated the Buyer's Technical Representative (BTR). The BTR is responsible for monitoring and providing technical guidance for this Subcontract and should be contacted regarding questions or problems of a technical nature. The BTR is also responsible for appropriate surveillance of the SUBCONTRACTOR while on site. In no event, however, will an understanding or agreement, amendment, change order, or any deviation from the terms of this Subcontract be effective or binding upon the BUYER unless formalized by proper Subcontract documents executed by the BUYER's authorized procurement representative prior to completion of this Subcontract. On all matters that pertain to Subcontract terms, the SUBCONTRACTOR shall contact the BUYER's authorized procurement representative specified within

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this Subcontract. When in the opinion of the SUBCONTRACTOR, the BTR requests or directs efforts outside the existing scope of the Subcontract; the SUBCONTRACTOR shall promptly notify the BUYER authorized procurement representative in writing. No action by the SUBCONTRACTOR shall be taken until the BUYER's authorized procurement representative has issued an appropriate modification (amendment) to the Subcontract.

3.3 Observation of the Work

The BUYER reserves the right to inspect or otherwise evaluate the Work during the various stages to observe the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the intent of this Subcontract. The BUYER will not be required to make comprehensive or continuous inspections to check quality or quantity of the Work. Visits and observations made by BUYER will not relieve the SUBCONTRACTOR of its obligation to conduct comprehensive inspections of the Work, to furnish materials, to perform acceptable Work, and to provide adequate safety precautions in conformance with this Subcontract.

ARTICLE 4.0 GENERAL LEGAL PROVISIONS

4.1 Confidential and Proprietary Information*

The BUYER possesses information of a confidential and proprietary nature about businesses, products, services, and processes of the BUYER and the Government. This information, which relates to designs, technical experience, classified information, software, processing systems, databases, financial and other data, intellectual property including trade secrets, customers and vendors, personnel records, research, development, inventions, construction plans, manufacturing, engineering, accounting, bid data, sales and marketing including Subcontract terms, and any information generated pursuant to Work performed in accordance with the Subcontract (collectively, Confidential Information), constitutes a commercial asset of considerable value to the BUYER and the Government. The SUBCONTRACTOR shall use such Confidential Information only for the purpose of performing Work in accordance with the Subcontract and not disclose such Confidential Information to any other person (including the media for purposes of publicity), partnership, venture, firm, government, or corporation without the express written direction of the BUYER or the Government, as appropriate. The SUBCONTRACTOR further shall make all reasonable efforts to require its employees and any others, including lower-tier Subcontractors, to maintain such Confidential Information in strictest confidence.

Confidential Information shall not include the following:

- Information that is acquired by the SUBCONTRACTOR from others who have no confidential commitment to the BUYER or the Government; or
- Information that is part of the public domain or becomes, without fault or participation of the SUBCONTRACTOR, part of the public domain, by publication or otherwise; or
- Information that is in the SUBCONTRACTOR's possession prior to the BUYER's or the Government's disclosure to it; or
- Information that is developed independently by the SUBCONTRACTOR; or
- Information that is required to be publicly disclosed under operation of law, for which the SUBCONTRACTOR will provide at least five (5) calendar days notice to the BUYER's authorized procurement representative, as appropriate, before disclosure.

All drawings, specifications, prints, financial and other data, and any other written or electronically encoded materials (collectively, 'Documentation') furnished by the BUYER and the Government to the SUBCONTRACTOR shall remain the BUYER's property. In addition, all Documentation developed by the SUBCONTRACTOR in the performance of Work in accordance with the Subcontract shall become the BUYER's property. Upon completion of Work, the SUBCONTRACTOR shall either destroy or return such Documentation and any other Confidential Information reduced to tangible or electronic form, including copies thereof, to the BUYER unless the BUYER's authorized procurement representative consents to otherwise.

Nothing contained in the Subcontract, or in any disclaimer made by the BUYER or the Government, shall be construed to grant the SUBCONTRACTOR any license or other rights in or to disclosed 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.

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In the event that Work performed by the SUBCONTRACTOR in accordance with the Subcontract involves the collection or generation of data on persons or associations, the SUBCONTRACTOR shall maintain strict confidentiality of records in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), provisions of the Fair Credit Reporting Act (15 U.S.C. 1681), and applicable federal and state agency regulations. Violations of these statutes may result in criminal penalties.

4.2 Claims for Extra Work

In any case where the SUBCONTRACTOR anticipates additional compensation will become due, the SUBCONTRACTOR will notify the BUYER's authorized procurement representative, in writing, of its intention to make a claim for such compensation before it begins the extra Work on which it bases the claim. The prompt notification of a potential additional claim in Work by the SUBCONTRACTOR is required to be completed in writing within three (3) calendar days from the date that the SUBCONTRACTOR identifies any BUYER conduct (including actions, inactions, and written or oral communications) that the SUBCONTRACTOR regards as a claim for additional Work. Following submission of the notice required, the SUBCONTRACTOR shall diligently continue performance of this Subcontract to the maximum extent possible in accordance with the Subcontract's terms and conditions. If such notification is not given and the SUBCONTRACTOR fails to keep strict account of actual costs for this extra Work, then the SUBCONTRACTOR hereby waves any claim for such additional compensation. Such notice by the SUBCONTRACTOR, and the accounting of the SUBCONTRACTOR's actual costs for the extra Work, will not be construed as proving the validity of the claim. Claims for additional compensation shall be made in detail and submitted, in writing, to the BUYER's authorized procurement representative within ten (10) working days of identifying this effort as extra Work for which the SUBCONTRACTOR bases its claim. The submission shall contain a detailed proposal with supporting calculations and pricing for the claim together with any requested adjustments in the schedule. The pricing shall be itemized as required by the BUYER's authorized procurement representative and shall be in sufficient detail to permit an analysis of all labor, material and equipment costs and shall cover all Work involved in the claim. If the claim is found to be valid, it will be allowed and reimbursed for as provided in this Subcontract.

4.3 Assignment*

The SUBCONTRACTOR shall not assign any of the duties or rights or any claim arising out of or related to this Subcontract, whether arising in tort, Subcontract or otherwise, without the written consent of the BUYER's authorized procurement representative. Any unauthorized assignment is void and unenforceable. These conditions and the entire Subcontract are binding on the heirs, successors, and assigns of the SUBCONTRACTOR.

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

4.4 Termination*

A. Termination for Convenience: The BUYER may terminate all or part of this Subcontract for its convenience. In such event, the SUBCONTRACTOR will be entitled to compensation for Work performed up to the date of termination and reasonable termination expenses as determined within the discretion of the BUYER. The SUBCONTRACTOR will not be entitled to compensation or profit on Work not performed. The termination process will be conducted based on the applicable principles in accordance with the Federal Acquisition Regulations (FAR) Part 49.

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- B. Termination for Default: The BUYER may, by written notice, terminate the whole or any part of this Subcontract for default in the event that the SUBCONTRACTOR fails to perform any of the provisions of this Subcontract, or fails to make progress as to endanger performance of this Subcontract in accordance with its terms, or, in the opinion of the BUYER, becomes financially or legally incapable of completing the Work and does not correct such to the BUYER's reasonable satisfaction within a period of seven (7) calendar days after receipt of notice from the BUYER specifying such failure. If, after notice of termination, it is determined for any reason that the SUBCONTRACTOR was not in default or that the default was excusable, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to "termination for convenience." In the event of termination for default, the SUBCONTRACTOR will not be entitled to termination expenses.
- C. Regardless of the cause of termination, the SUBCONTRACTOR shall deliver to the BUYER legible copies of all completed or partially completed Work products and instruments of service and all materials and equipment previously paid for by the BUYER.
- D. In no case shall termination for any cause constitute a claim for consequential damages or damages based on loss of anticipated profits.
- E. The rights and remedies of the BUYER provided in this provision are not exclusive and are in addition to any other rights and remedies provided by law or equity under this Subcontract.

4.5 Governing Law*

Irrespective of the place of performance, this Subcontract will be construed and interpreted according to Federal Government Contract Law as enunciated and applied by Federal judicial bodies, Boards of Contract Appeals and quasi-judicial agencies of the Federal Government. To the extent that this law 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.

4.6 Severability and Survival

If any of the provisions contained in this Subcontract are held invalid, illegal, or unenforceable, the enforceability of the other remaining provisions shall not be affected or impaired thereby. Limitations of liability, indemnities, and other express representations shall survive termination of this Subcontract for any cause.

4.7 Authorization to Proceed

Execution of this Subcontract by the BUYER will be authorization for the SUBCONTRACTOR to proceed with the Work unless otherwise indicated in this Subcontract.

4.8 No Third-Party Beneficiaries*

This Subcontract conveys no rights or benefits to anyone other than the SUBCONTRACTOR and the BUYER, and has no third-party beneficiaries.

4.9 Arbitration

In the event that the BUYER is required to arbitrate a dispute with a third party, which dispute arises out of or is directly related to this Subcontract, the SUBCONTRACTOR agrees to join in such arbitration proceeding as the 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.

4.10 Disputes

In the event that the parties cannot, through negotiations, reach agreement on any issue arising out of the Subcontract, the issue will be considered a dispute and shall be resolved in accordance with the following: If efforts at resolution through good faith discussions and/or negotiations fail to resolve the dispute, the parties agree that before taking any other action, they will consider the use of Alternate Dispute Resolution (ADR). In the event that non-binding ADR is agreed upon, the site of the proceedings shall be Richland, Washington, unless otherwise agreed upon in writing by the parties. The rules for ADR and the selection of the mediator

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or arbitrator shall be determined by mutual agreement of the parties. If agreed, the mediator or arbitrator shall allocate cost, except that there shall be no pre-decisional interest costs, each party shall bear its discretionary costs, and the parties will equally share the cost of the mediator or arbitrator.

In the event ADR fails or is not used, primary jurisdiction for the resolution of any claim arising under this Subcontract shall reside in the United States Federal District Court for the Eastern District of Washington. If the requirements for jurisdiction in the United States District Court are not met, the litigation shall be brought in a Court of competent jurisdiction in Benton County, Washington. This Subcontract shall be enforced and interpreted, irrespective of the place of performance, in accordance with the Federal law of Government Subcontracts. To the extent that Federal law is not dispositive of an issue, the laws of the State of Washington shall be applied.

Unless otherwise directed in writing by the BUYER's authorized procurement representative, the SUBCONTRACTOR shall proceed diligently with the performance of the Subcontract pending final resolution of the dispute.

4.11 Waiver

The 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 the BUYER shall be valid unless such waiver is in writing, signed by the BUYER's authorized procurement representative, supported by consideration and specifies the extent and nature of the rights or benefits being waived.

4.12 Gratuities*

The SUBCONTRACTOR, its employees, agents or representatives shall not offer or give to an officer, official or employee of the BUYER or the Government, gifts, entertainment, payments, loans or other gratuities to influence the award of a Subcontract or obtain favorable treatment under a Subcontract.

Violation of this provision may be deemed by the BUYER to be a material breach of this Subcontract and any other Subcontract with the BUYER and subject all Subcontracts with the SUBCONTRACTOR to termination for default, as well as any other remedies by law or in equity.

4.13 Interpretation

Heading 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.

ARTICLE 5.0 SUPPLEMENTAL TERMS AND CONDITIONS

General Intent. This Agreement is subject to the terms and conditions of the BUYER's Prime Contract Number DE-AC27-08RV14800. The general intent of these provisions is to incorporate into the Subcontract all required Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) flow down clauses, and any other State or Federally-mandated contract clauses, which are required to be so incorporated either by the FAR, DEAR, the BUYER's Prime Contract or the applicable State or Federal law. To reference the cited FAR and DEAR flowdown clauses, the following web addresses are provided:

<http://farsite.hill.af.mil/>

<http://farsite.hill.af.mil/vfdoea.htm>

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GENERAL PROVISIONS

June 21, 2011

Revision 3

Substitution of the Parties: Wherever required to make any FAR, DEAR, or Prime Contract clause incorporated herein meaningful, the term “Contractor” shall be read “SUBCONTRACTOR,” and the term “Government” or “Contracting Officer” shall be read “BUYER” with the exception of DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (June 1996).

Specific Incorporated Clauses: Without in any way limiting the FAR, DEAR, or Prime Contract clauses to be incorporated herein, the following FAR and DEAR Contract Clauses are hereby specifically incorporated herein by reference with the same force and effect as if they were given in full text.

5.1 Federal Acquisition Regulation (48 CFR Chapter 1) Clauses and Department of Energy Acquisition Regulation (48 CFR Chapter 9) Clauses

Applicable to all orders:

1. FAR 52.202-1 Definitions (Jul 2004) as modified by DEAR 952.202-1 (March 2002)*
2. FAR 52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (March 2009)
3. FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Sep 2007)*
4. FAR 52.222-50 Combating Trafficking in Persons (Aug 2007)*
5. FAR 52.223-15 Energy Efficiency in Energy Consuming Products (Dec 2007)
6. FAR 52.224.1 Privacy Act Notification (Apr 1984)*
7. FAR 52.224-2 Privacy Act (Apr 1984)*

FAR 52.225-13 Restrictions on Certain Foreign Purchases (June 2008)*

8. FAR 52-227-9 Refund of Royalties (Apr 1984)*
9. FAR 52-227-14 Rights in Data-General (Modified per DEAR 927.409)(a) (June 1997) (Alternate 1-Jul 1995)*
10. FAR 52.227-16 Additional Data Requirements (Jun 1987)*
11. FAR 52.244-6 Subcontracts for Commercial Items and Commercial Components (Dec 2010)*
12. FAR 52.247-63 Preference for U.S. Air Flag Carriers (Jun 2003)*
13. FAR 52.247-64 Preference for U.S. Flag Commercial Vessels (Feb 2006)*
14. DEAR 952.204-2 Security (May 2009)*
15. DEAR 952.204-70 Classification/Declassification (Sep 1997)*
16. DEAR 952.204-71 Sensitive Foreign Nations Controls (Apr 1994)*
17. DEAR 952.208-70 Printing (Apr 1984)*
18. DEAR 952.227-9 Refund of Royalties (Apr 1984)*
19. DEAR 952.250-70 Nuclear Hazards Indemnity Agreement (Jun 1996)*
20. DEAR 952.227-11 Patent Rights – Retention by the SUBCONTRACTOR (Short Form) (Feb 1995)* (Applies to subcontracts for experimental, research, developmental, or demonstration work when the subcontractor is a domestic small business or nonprofit organization as defined at FAR 27.301)
21. DEAR 952.227-13 Patent Rights – Acquisition by the Government (Sept 1997)* (Applies to Subcontracts for experimental, research, developmental, or demonstration work when the Subcontractor is a domestic large business)
22. DEAR 952.247-70 Foreign Travel (Dec 2000)*
23. DEAR 970.5227-1 Rights in Data - Facilities (Dec 2000)*
24. DEAR 970.5232-3 Accounts, Records, and Inspections (Dec 2010)*

Applicable to all orders over \$2,500:

25. FAR 52.222-41 Service Contract Act of 1965, as Amended (Nov 2007)*
26. FAR 52.222-47 SCA Minimum Wages and Fringe Benefits applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA) (May 1989)*

Applicable to all orders over \$3,000:

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- 27. FAR 52.222-3 Convict Labor (Jun 2003)*
- 28. FAR 52.222-54 Employment Eligibility Verification (January 2009)*

Applicable to all orders over \$10,000:

- 29. FAR 52.222-21 Prohibition of Segregated Facilities (Feb 1999)*
- 30. FAR 52.222-26 Equal Opportunity (Mar 2007)*
- 31. FAR 52.222-36 Affirmative Action for Workers with Disabilities (Jun 1998)*
- 32. FAR 52.222-37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (Sep 2008)*
- 33. FAR 52.227-3 Patent Indemnity (Apr 1984)*

Applicable to all orders over \$15,000:

- 34. FAR 52.222-20 Walsh-Healey Public Contracts Act (Dec 1996)*

Applicable to all orders over \$30,000:

- 35. FAR 52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Jan 2005)*

Applicable to all orders over \$150,000:

- 36. FAR 52.203-5 Covenant Against Contingent Fees (Apr 1984)*
- 37. FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (Sep 2006)*
- 38. FAR 52.203-7 Anti-Kickback Procedures (Oct 2010)*
- 39. 37. FAR 52.204-4 Printing/Copying Double-Sided on Postconsumer Fiber Content Paper (May 2011)
- 40. FAR 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (Jan 1997)*
- 41. FAR 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997)*
- 42. FAR 52.203-12 Limitation on Payments to Influence Certain Federal Transactions (Oct 2010)*
- 43. FAR 52.215-2 Audit and Records-Negotiation (Oct 2010)*
- 44. FAR 52-215-14 Integrity of Unit Prices (Dec 2010)*
- 45. FAR 52.222-4 Contract Work Hours & Safety Standards Act-Overtime Compensation (Jul 2005)*
- 46. FAR 52.222-35 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (Sep 2006)*
- 47. FAR 52.222-39 Notification of Employee Rights Concerning Payment Of Union Dues or Fees (Dec 2004)*
- 48. FAR 52.223-14 Toxic Chemical Release Reporting (Aug 2003)*
- 49. FAR 52.227-2 Notice and Assistance Concerning Patent and Copyright Infringement (Dec 2007)*
- 50. FAR 52.242-13 Bankruptcy (Jul 1995)*
- 51. DEAR 952.223-78 Sustainable Acquisition Program (Oct 2010)
- 52. DEAR 970.5227-4 Authorization and Consent (Aug 2002)*
- 53. DEAR 970.5227-5 Notice and Assistance Regarding Patent and Copyright Infringement (Aug 2002)*

Applicable to all orders over \$500,000:

- 54. DEAR 952.226-74 Displaced Employee Hiring Preference (Jun 1997)*
- 55. DEAR 970.5226-2 Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Dec 2000)*

Applicable to all orders over \$650,000:

- 56. FAR 52.219-9 Small Business Subcontracting Plan (Sep 2006) - Alternate. II (Jan 2011)* - Small Business Exempted

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Applicable to all orders over \$700,000:

- 57. FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data- (Oct 2010)*
- 58. FAR 52.215-11 Price Reduction for Defective Cost or Pricing Data-Modification (Oct 2010)*
- 59. FAR 52.215-12 Subcontractor Cost or Pricing Data (Oct 2010)*
- 60. FAR 52.215-13 Subcontractor Cost or Pricing Data – Modifications (Oct 2010)*
- 61. FAR 52.215-15 Pension Adjustments and Asset Reversions (Dec 1998)*
- 62. FAR 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions (Jul 2005)*
- 63. FAR 52.215-19 Notification of Ownership Changes (Oct 1997)*
- 64. FAR 52.230-2 Cost Accounting Standards (Oct 2008)* - Small Business Exempted
- 65. FAR 52.230-3 Disclosure and Consistency of Cost Accounting Practices (Oct 2008)* - Small Business Exempted
- 66. FAR 52.230-6 Administration of Cost Accounting Standards (Jun 2010)* - Small Business Exempted

Applicable to all orders over \$5,000,000:

- 64 FAR 52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010)