Mission Support Alliance Provision

GENERAL PROVISIONS – COST-REIMBURSABLE SUBCONTRACTS
Rev. 5, February 12, 2020

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Mission Support Alliance Provision

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

1.0 DEFINITIONS

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

1. "Buyer" shall mean Mission Support Alliance, LLC ("MSA") and all of its authorized representatives (i.e. "Contract Specialists") acting in their professional capacities (under DOE Prime Contract No. DE-AC06-09RL14728) entering into this Subcontract with the Subcontractor.

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

3. "Head of Agency" or "Secretary" shall mean the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency.

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

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

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

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

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

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

2.0 ORDER OF PRECEDENCE

A. In the event of a discrepancy among any of the Subcontract terms, conditions, clauses, provisions, written direction and instructions, and documents (collectively, the "Subcontract"), the following order of precedence shall govern resolution: (1) Buyer's written Subcontract modifications, direction, and instructions; (2) Subcontract form and clauses, including clauses incorporated by reference; (3) Technical instructions, including the Statement of Work (SOW), drawings, exhibits and attachments, and applicable standards; (4) Special Provisions; (5) General Provisions; and (6) other documents identified as being part of the Subcontract.

B. 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, and laws shall govern. All remaining terms unaffected by said laws should continue in force.

3.0 SAFETY AND QUALITY STANDARDS

3.1 INSPECTION, TESTING AND QUALITY CONTROL

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

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

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

work, materials or equipment shall prejudice the right of Buyer or the Government.

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

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

3.2 CONDITIONS AND RISKS OF WORK

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

3.3 COUNTERFEIT FASTENERS AND COMPONENTS

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

inquiries into and reporting on fasteners and components determined to be counterfeit shall be recovered by Buyer from Subcontractor.

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

4.0 TIMING OF WORK

4.1 REPORTING AND COORDINATION

A. During the performance of work, Subcontractor shall submit to Buyer periodic progress reports on the actual progress and updated schedules as may be required by this Subcontract or requested by Buyer. In the event Subcontractor's performance of the work is not in compliance with the schedule established for such performance, Buyer may, in writing, require the Subcontractor to submit its plan for schedule recovery, or specify in writing the steps to be taken to achieve compliance with such schedule, and/or exercise any other remedies under this Subcontract. Subcontractor shall thereupon take such steps as may be directed by Buyer or otherwise necessary to improve its progress without additional cost to Buyer.

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

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

4.2 DELAYS

A. Except for defaults of subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform this subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

B. If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Subcontractor and lower-tier subcontractor, and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless

1. The subcontracted supplies or services were obtainable from other sources;

2. The Buyer ordered the Subcontractor in writing to purchase these supplies or services from the other source; and

3. The Subcontractor failed to comply reasonably with this order.

C. Upon request of the Subcontractor, the Buyer shall ascertain the facts and extent of the failure. If the Buyer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this subcontract.

4.3 POSSESSION PRIOR TO COMPLETION

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

4.4 STOP WORK

A. The Buyer may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all, or any part, of the work called for by this subcontract for a period of 90 days after the order is delivered to the

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

1. Cancel the stop-work order; or

2. Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

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

1. The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and

2. The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Buyer decides the facts justify the action, the Buyer may receive and act upon the claim submitted at any time before final payment under this subcontract.

C. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Buyer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

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

4.5 SUSPENSION OF WORK

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

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

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

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

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

4.6 WITHDRAWAL OF WORK

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

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

C. If the withdrawn work has been authorized under an annual Work Authorization Directive, the work shall be terminated in accordance with the procedures in the Subcontract Clause entitled "Termination (Cost-Reimbursement)."

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

4.7 NOTICE OF COMPLETION AND FINAL ACCEPTANCE

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

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

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

5.0 WORK CONDITIONS

5.1 CONTRACTUAL RELATIONSHIP

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

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

5.2 SUBCONTRACTS AND PURCHASE ORDERS

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

B. Subcontractor is responsible for Subcontract performance and performance of its lower-tier Subcontractors regardless of having notified Buyer of the intent to Subcontract. On request of Buyer, any Subcontractor not performing in accordance with the terms of this Subcontract shall be replaced at no additional cost to Buyer and shall not be employed again on the work.

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

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

5.3 PERMITS AND LICENSES

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

5.4 CONFIDENTIAL AND CONTROLLED-USE INFORMATION

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

B. This information, which can include controlled-use (documents marked Official Use Only (OUO), Classified, Unclassified Controlled Nuclear Information (UCNI), Export-Controlled Information (ECI), and Naval Nuclear Propulsion Information (NNPI)), designs, drawings, technical experience, software, processing systems, databases, financial, intellectual property, trade secrets, customers, vendors, personnel records, research, development, inventions, plans, manufacturing, engineering, accounting, bid data, sales, marketing, Subcontract terms, and any information generated pursuant to work performed in accordance with the Subcontract (collectively, Confidential Information), constitutes a commercial asset or information relating to national security of considerable value to Buyer and the Government.

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

D. All Confidential Information furnished by Buyer or the Government, or documentation developed by Subcontractor in performance of this

Subcontract shall remain Buyer's property. Upon completion of work, Subcontractor shall either destroy or return such documentation and any other confidential information reduced to tangible or electronic form, including copies thereof, to Buyer unless Buyer consents otherwise.

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

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

5.5 MATTERS OF COUNTERINTELLIGENCE CONCERN

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

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

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

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

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

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

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

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

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

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

5.6 PUBLICITY

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

5.7 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.

5.8 TRAVEL

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

5.9 SCHEDULE COORDINATION

Daily work schedules, facility operations, and holidays can vary on the Hanford Site. Some organizations and facilities observe alternate Friday closures. BEFORE scheduling work, or arriving on site, the Subcontractor shall make specific schedule arrangements for the performance of work or the delivery of services with the Contract Specialist and BTR.

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

5.10 LOWER-TIER SUBCONTRACTED WORK

SUBCONTRACTOR shall notify the BUYER whenever the amount of Lower-Tier Subcontracted effort exceeds or is anticipated to exceed 70% (for services) or 85% (for construction) of the total cost of the work to be performed under their Subcontract. Notification to BUYER shall include the revised cost of the Subcontract effort and shall include verification that there is added value as related to the work to be performed by the Lower-Tier SUBCONTRACTOR. All SUBCONTRACTORS should ensure the amount of lower-tier subcontracted work is less than 70% (for services) or 85% (for construction) of the total cost of the work to be performed. Lower-tier work exceeding the 70% (for services) or 85% (for construction) figure will be required to be reported and justified to the Department of Energy Contracting Officer by BUYER.

6.0 TRANSPORTATION

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

A. GENERAL REQUIREMENTS

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

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

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

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

5. For third party billing instructions contact Traffic Management at (509) 376-6638 or (509) 376-6016.

6. All paperwork required by the Subcontract, such as test reports, certifications and data sheets, must accompany the shipments to Buyer, unless otherwise

specified in the Subcontract. If the document package is not obviously displayed, the exterior markings must indicate location of the paperwork.

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

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

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

B. VALUE AND INSURANCE

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

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

C. SPECIAL INSTRUCTIONS FOR VARIOUS METHODS OF TRANSPORTATION

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

D. SURFACE TRANSPORTATION

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

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

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

4. Type of shipment - For rail from all points, route to Richland, Washington via Union Pacific (UP); or Burlington Northern (BN) to Pasco for delivery by

Washington Central Railroad Company (WCRC). Under no circumstances should carload or less than carload shipments be forwarded via rail without specific prior authorization from the Buyer's traffic department.

E. PREMIUM TRANSPORTATION RESTRICTION

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

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

F. AIR FREIGHT/AIR EXPRESS SERVICES/EXCLUSIVE USE TRUCK

1. Air Express Services

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

   b) Type of shipment – For packages exceeding 150 lbs. in actual or dimensional weight, call Buyer's traffic management department at (509) 376-6638 or (509) 376-6016 for specific routing instructions prior to shipment. NOTE: Dimensional formula in inches is: length x width x height; divided by 194.

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

G. GENERAL NOTES AND RESTRICTIONS

1. UPS size and weight restrictions. Packages can be up to108 inches in length with up to 165 inches in length and girth combined, and 150 lbs. total weight per package.

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

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

4. All air and surface routings, as specifically authorized by the Buyer, shall be shipped freight-collect. General Services Administration (GSA) schedule materials are exempt from this instruction and will be shipped in accordance

with applicable schedule terms and conditions. Freight costs resulting from failure to comply with these instructions are the responsibility of the Subcontractor.

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

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

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

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

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

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

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

7.0 CHANGES

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

   1. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Buyer in accordance with the drawings, designs, or specifications.

   2. Method of shipment or packing.

   3. Place of delivery.

B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, or otherwise affects any other terms and conditions of this subcontract, the Buyer shall make an equitable adjustment in the—

1. Estimated cost, delivery or completion schedule, or both;

2. Amount of any fixed fee; and

3. Other affected terms and shall modify the subcontract accordingly.

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

D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the subcontractor from proceeding with the subcontract as changed.

E. Notwithstanding the terms and conditions of paragraphs A and B of this clause, the estimated cost of this subcontract and, if this subcontract is incrementally funded, the funds allotted for the performance of this subcontract, shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new subcontract estimated cost and, if this subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this subcontract.

(End of clause)

Alternate I (Apr 1984). If the requirement is for services and no supplies are to be furnished, substitute the following paragraph A. for paragraph A. of the basic clause:

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

1. Description of services to be performed.

2. Time of performance (i.e., hours of the day, days of the week, etc.).

3. Place of performance of the services.

Alternate II (Apr 1984). If the requirement is for services and supplies are to be furnished, substitute the following A. for paragraph A. of the basic clause:

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

1. Description of services to be performed.

2. Time of performance (i.e., hours of the day, days of the week, etc.).

3. Place of performance of the services.

4. Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

5. Method of shipment or packing of supplies.

6. Place of delivery.

Alternate III (Apr 1984). If the requirement is for construction, substitute the following A. for paragraph A. of the basic clause:

A. The Buyer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in the plans and specifications or instructions incorporated in the subcontract.

Alternate IV **[Reserved]**

Alternate V (Apr 1984). If the requirement is for research and development, and it is desired to include the clause, substitute the following paragraphs A.1. and A.3. for paragraphs A.1. and A.3 of the basic clause:

A. ***

1. Drawings, designs, or specifications.

*** * * * ***

3. Place of inspection, delivery, or acceptance.

8.0 SUBCONTRACTING PLAN

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

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

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

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

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

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

G. These requirements must be flowed down to all lower tier Subcontractors with subcontracts which meet the requirements of FAR 19.702.

9.0 PAYMENTS

9.1 BACKCHARGES

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

9.2 RIGHT TO OFFSET

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

9.3 FINAL PAYMENT CERTIFICATION AND RELEASE

Buyer shall not be obligated to make final payment to Subcontractor until Subcontractor has delivered to Buyer a certificate and release satisfactory to Buyer

that Subcontractor has fully performed under this Subcontract and that all claims of Subcontractor for the work are satisfied upon the making of such final payment, that no property of the Government or property used in connection with the work is subject to any unsatisfied lien or claim as a result of the performance of the work, that all rights of lien against the Government's property in connection with the work are released (including without limitation, if Buyer requests, releases of lien satisfactory in form to Buyer executed by all persons who by reason of furnishing material, labor or other services to Subcontractor for the work or potential lienors against the Governments property), and that Subcontractor has paid in full all outstanding obligations against the work.

9.4 TAXES

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

The Subcontractor shall not assess and collect Washington State sales or use tax from the Buyer for materials with respect to this Subcontract. The Buyer, Mission Support Alliance, LLC (Washington State UBI Number 602-931-756), is in possession of a DIRECT PAY PERMIT (number 80) issued by Washington State Department of Revenue, effective August 1, 2017 through July 31, 2021, and shall pay a use tax attributable to materials used in performing work under this Subcontract. A copy is available from the Buyer upon request. All other Federal, state, county, municipal or other sales, use, excise or similar taxes must be included in the Subcontract amount. If the Subcontractor, as a result of this Subcontract becomes eligible for Washington State Business and Occupation Tax Credit for Research and Development spending, the Subcontractor shall take such tax credit and assign such tax credit to the Buyer. NOTE: Labor charges for construction and demolition services, which are applied to real property owned by the U.S. Department of Energy, are exempt from sales and use tax.

9.5 INTEREST PAYMENT

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

10.0 WARRANTY

A. Subcontractor warrants that the work shall comply strictly with the provisions of this Subcontract and all specifications, drawings and standards referred to in this Subcontract or thereafter furnished by Buyer, and that the work shall be first-class in every particular and free from defects in materials and workmanship and in any design or engineering furnished by Subcontractor. Subcontractor further warrants that all materials, equipment and supplies furnished by Subcontractor for the work

shall be new, merchantable, of the most suitable grade and fit for their intended purposes unless specifically provided in this Subcontract. Without limitation of any other rights or remedies of Buyer, if any defect in the work in violation of the foregoing warranties arises within the period set forth below, Subcontractor shall, upon receipt of written notice of such defect, promptly furnish, at no cost to Buyer, design and engineering, labor, equipment and materials necessary to correct such defect and cause the work to comply fully with the foregoing warranties.

B. Subcontractor's warranties set forth in clause 10.0-A shall extend for twenty-four (24) months after the date of final written acceptance of the work by Buyer, or eighteen (18) months after the start of regular operation or use of the work by Buyer, whichever occurs first. Any period wherein the work is not available for use due to defects in materials, workmanship or engineering furnished by Subcontractor shall extend the warranty period by an equal period of time.

C. Design and engineering, labor, equipment, and materials furnished by Subcontractor pursuant to clause 10.0-A to correct defects shall be warranted by Subcontractor in accordance with the warranties set forth in clause 10.0-A for a period of eighteen (18) months from the date of completion of the correction, or for the remainder of the warranty period set forth in clause 10.0-B above, whichever is longer.

D. Subcontractor warrants that all services supplied by Subcontractor in performance of this Subcontract shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. At any time and for any reason, Buyer may require Subcontractor to withdraw the services of any person and, in addition, request that Subcontractor promptly provide replacements for such persons satisfactory to Buyer. In addition to the other indemnification provisions within this Subcontract, Subcontractor specifically agrees to indemnify and hold harmless Buyer, from and against any liabilities, claims, charges, or suits for alleged losses, costs, damages or expenses arising from Buyer’s exercise of its rights under this Article.

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

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

G. 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.

11.0 INSPECTION OF SERVICES – COST-REIMBURSEMENT

A. Definitions. "Services," as used in this clause, includes services performed and when applicable, materials furnished or utilized in the performance of services.

B. Subcontractor may be required to provide and maintain an internal quality control/inspection system covering the services performed under this Subcontract that is acceptable to the Buyer. However, Buyer acceptance does not relieve the Subcontractor in any way for full performance responsibility.

C. Complete records of all inspections performed by Subcontractor on work related to the requirements of this Subcontract shall be maintained and made available to the Buyer during Subcontract performance, and for as long afterwards as is required by these General Provisions of this Subcontract.

D. The Buyer reserves the right to inspect and test all services called for by the Subcontract, to the extent practicable, at all times and places during the term of the Subcontract. This right shall extend to any of Subcontractor's sub-tier subcontractors whose work applies directly to this Subcontract. Subcontractor shall make such provisions as necessary in its sub-tier subcontracts and contracts to ensure the preservation of this right. The Buyer shall perform inspections and tests in a manner that will not unduly delay the work.

E. If any of the services provided by Subcontractor do not conform to its requirements, the Buyer may require Subcontractor to perform the services again in conformity with Subcontract requirements at no additional fee if a fee is payable under other provisions of this Subcontract. When defects in services cannot be corrected by re-performance, the Buyer may: (1) require Subcontractor to take necessary action to ensure that future performance conforms to contractual requirements, and (2) reduce any fee payable under this Subcontract to reflect the reduced value of the services performed.

F. If Subcontractor again fails to promptly perform the services or to take necessary action to ensure that future performance is in conformity with contractual requirements, the Buyer may: (1) by Subcontract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the Subcontract for default.

12.0 INDEMNITY

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

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

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

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

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

E. Subcontractor's indemnity obligations shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively, excepting only where the injury, loss, or damage was caused solely by the negligence or willful misconduct of, or by defects in design furnished by, the party to be indemnified.

Subcontractor's defense and indemnity obligations shall include the duty to reimburse any attorney's fees and expenses incurred by Buyer or the Government for legal action to enforce Subcontractor's indemnity obligations.

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

G. With respect to claims by employees of Subcontractor or its lower-tier Subcontractors, the indemnity obligations created under this Clause, shall not be limited by the fact of, amount, or type of benefits or compensation, payable by or for Subcontractor, its lower-tier Subcontractors or suppliers under any workers compensation, disability benefits, or other employee benefits acts or regulations, and Subcontractor waives any limitation of liability arising from workers' compensation or such other acts or regulations.

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

13.0 LIMITATION OF LIABILITY – SERVICES

A. Subcontractor shall not be liable for loss of or damage to property of the Government that (1) occurs after Buyer acceptance of services performed under this Subcontract and (2) results from any defects or deficiencies in the services performed or materials furnished except as provided in paragraphs 2 and 3 below, and except to the extent that the Subcontractor is expressly responsible under this Subcontract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services).

B. The limitation of liability under paragraph A above shall not apply when a defect or deficiency in, or the Buyer's acceptance of, services performed or materials furnished results 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 clause, means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of:

1. All or substantially all of the Subcontractor's business;

2. 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

3. A separate and complete major industrial operation connected with the performance of the Subcontract.

C. 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 services or furnishing of material 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 Buyer's acceptance of, and resulting from any defects and deficiencies, in services performed or materials furnished under this Subcontract.

D. The Subcontractor shall include this clause, including this paragraph, supplemented as necessary to reflect the relationship of the Subcontracting parties, in all lower-tier Subcontracts over $25,000.00.

14.0 TERMINATION

A. The Buyer may terminate performance of work under this subcontract in whole or, from time to time, in part, if—

1. The Contract Specialist determines that a termination is in the Buyer's interest; or

2. The Subcontractor defaults in performing this subcontract and fails to cure the default within ten (10) days (unless extended by the Contract Specialist) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

B. The Contract Specialist shall terminate by delivering to the Subcontractor a Notice of Termination specifying whether termination is for default of the Subcontractor or for convenience of the Buyer the extent of termination, and the effective date. If, after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Buyer.

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

1. Stop work as specified in the notice.

2. Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

3. Terminate all subcontracts to the extent they relate to the work terminated.

4. Assign to the Buyer, as directed by the Contract Specialist, all right, title, and interest of the Subcontractor under the subcontracts terminated, in which case the Buyer shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

5. With approval or ratification to the extent required by the Contract Specialist, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this subcontract; approval or ratification will be final for purposes of this clause.

6. Transfer title (if not already transferred) and, as directed by the Contract Specialist, deliver to the Buyer—

   a) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

   b) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Buyer; and

   c) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this subcontract, the cost of which the Subcontractor has been or will be reimbursed under this subcontract.

7. Complete performance of the work not terminated.

8. Take any action that may be necessary, or that the Contract Specialist may direct, for the protection and preservation of the property related to this subcontract that is in the possession of the Subcontractor and in which the Buyer has or may acquire an interest.

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

D. The Subcontractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by

the Contract Specialist upon written request of the Subcontractor within this 120-day period.

E. After expiration of the plant clearance period as defined in Subpart 49.001 *Termination of Contracts – definitions*, of the Federal Acquisition Regulation, the Subcontractor may submit to the Contract Specialist a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contract Specialist. The Subcontractor may request the Buyer to remove those items or enter into an agreement for their storage. Within fifteen (15) days, the Buyer will accept the items and remove them or enter into a storage agreement. The Contract Specialist may verify the list upon removal of the items, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.

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

G. Subject to paragraph F. of this clause, the Subcontractor and the Contract Specialist may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended, and the Subcontractor paid the agreed amount.

H. If the Subcontractor and the Contract Specialist fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contract Specialist shall determine, on the basis of information available, the amount, if any, due the Subcontractor, and shall pay that amount, which shall include the following:

1. All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contract Specialist; however, the Subcontractor shall discontinue those costs as rapidly as practicable.

2. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in paragraph H.1. of this clause.

3. The reasonable costs of settlement of the work terminated, including—

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

   b) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

   c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Subcontractor's termination settlement proposal may be included.

4. A portion of the fee payable under the subcontract, determined as follows:

   a) If the subcontract is terminated for the convenience of the Buyer, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the subcontract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

   b) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Buyer is to the total number of articles (or amount of services) of a like kind required by the subcontract.

5. If the settlement includes only fee, it will be determined under paragraph H.4. of this clause.

I. The cost principles and procedures in Part 31, *Contract Cost Principles and Procedures,* of the Federal Acquisition Regulation, in effect on the date of this subcontract, shall govern all costs claimed, agreed to, or determined under this clause.

J. The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contract Specialist under paragraph F., H., or I. of this clause, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph F. and failed to request a time extension, there is no right of appeal. If the Contract Specialist has made a determination of the amount due under paragraph F., H., or I. of this clause, the Buyer shall pay the Subcontractor —

   1. The amount determined by the Contract Specialist if there is no right of appeal or if no timely appeal has been taken; or

   2. The amount finally determined on an appeal.

K. In arriving at the amount due the Subcontractor under this clause, there shall be deducted—

1. All unliquidated advance or other payments to the Subcontractor, under the terminated portion of this subcontract;

2. Any claim which the Buyer has against the Subcontractor under this subcontract; and

3. The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to the Buyer.

L. The Subcontractor and Contract Specialist must agree to any equitable adjustment in fee for the continued portion of the subcontract when there is a partial termination. The Contract Specialist shall amend the contract to reflect the agreement.

M.

1. The Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract, if the Contract Specialist believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

2. If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contract Specialist because of the circumstances.

N. The provisions of this clause relating to fee are inapplicable if this subcontract does not include a fee.

(End of clause)

Alternate I (Sept 1996). If the subcontract is for construction, substitute the following paragraph 4. for paragraph H.4. of the basic clause:

4. A portion of the fee payable under the subcontract determined as follows:

a) If the subcontract is terminated for the convenience of the Buyer, the settlement shall include a percentage of the fee equal to the percentage

of completion of work contemplated under the subcontract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

b) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the subcontract.

Subcontractor. If the subcontract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the Contract Specialist determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph M.2. from the basic clause.

Alternate II (Sept 1996). If the subcontract is for construction with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, the following paragraph 4. shall be substituted for paragraph H.4. of the basic clause. Paragraph M.2. may be deleted from the basic clause if the Contract Specialist determines that the requirement to pay interest on excess partial payments is inappropriate.

4. A portion of the fee payable under the subcontract determined as follows:

a) If the subcontract is terminated for the convenience of the Buyer, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the subcontract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

b) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the subcontract.

15.0 LAWS AND REGUALTIONS

15.1 ARBITRATION OPTION

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

15.2 VALIDITY OF PROVISIONS

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

15.3 WAIVER

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

15.4 GRATUITIES

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

1. Offered or gave a gratuity (*e.g.*, an entertainment or gift) to an officer, official, or employee of the Government; and

2. Intended, by the gratuity, to obtain a subcontract or favorable treatment under a subcontract.

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

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

1. To pursue the same remedies as in a breach of the subcontract; an

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

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

15.5 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.

15.6 SURVIVAL

The provisions of this Subcontract which by their nature are intended to survive the termination, cancellation, completion or expiration of this Subcontract shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

15.7 TRIAL

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

15.8 IMMIGRATION REFORM AND CONTROL ACT COMPLIANCE

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

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

15.9 EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT

The Subcontractor shall comply with the requirements of 29 CFR Part 471, *Obligations of Federal Contractors and Subcontractors; Notification of Employee Rights Under Federal Laws*, specifically as set forth as Appendix A to Subpart A. This requirement applies to any Subcontract in excess of $10,000.00 and is to be flowed down to any tier lower Subcontractor as well in excess of $10,000.00. The required information posters are available at www.dol.gov/olms/.

15.10 CLAIMS AND DISPUTES

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

B. "Claim," as used in this Clause, means a written demand or written assertion by one of the Subcontracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Subcontract terms, or other relief arising under or relating to this Subcontract.

1. The following process is to be used if the Subcontractor believes they have a claim:

a) Subcontractor shall give Buyer written notice within five (5) working days after the happening of any event which Subcontractor believes may give rise to a claim by Subcontractor for additional time or money. Within ten (10) working days after the happening of such event, Subcontractor shall supply Buyer with a statement supporting Subcontractor's claim, including but not limited to, Subcontractor's detailed estimate of the change in Subcontract price and scheduled time occasioned thereby.

b) Subcontractor shall substantiate its claim with payroll documents, paid invoices, receipts, records of performance, and other documents satisfactory to Buyer and subject to its verification. Neither Buyer nor the Government shall be liable for, and Subcontractor hereby waives, any claim or potential claim of Subcontractor, which was not reported by Subcontractor in accordance with the provisions of this clause. The parties shall negotiate diligently to reach an agreement, but in no case, except with Buyer prior written consent, shall any work be halted pending such agreement, whether or not the claim can be resolved to Subcontractor's satisfaction, and Subcontractor shall be bound by the terms and conditions of this Subcontract to prosecute the work without delay to its successful completion. Buyer shall not be bound to any adjustments in the Subcontract price or scheduled time unless expressly agreed to by Buyer in writing. No claim hereunder by Subcontractor shall be allowed if asserted after final payment under this Subcontract. Subcontractor's remedies are limited to those expressly set forth in this Subcontract.

c) If after good faith efforts, the claim is not resolved, the Subcontractor may proceed to clauses C – F directly below.

C. A claim by the Subcontractor shall be submitted in writing to the Contract Specialist for a decision within six (6) years after accrual of the claim, unless the Subcontracting parties agreed to a shorter time period (See clause B.1a

and B.1b) above for the time period). A claim by the Buyer against the Subcontractor shall be subject to a written decision by the Contract Specialist.

1. The Subcontractor shall provide the certification specified in clause C.3. and C.4. of this clause when submitting any claim.

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

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

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

D. The Buyer's decision shall be final unless the Subcontractor appeals or files a suit.

E. If the claim by the Subcontractor is submitted to the Buyer or a claim by the Buyer is presented to the Subcontractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Subcontractor refuses an offer for ADR, the Subcontractor shall inform the Buyer, in writing, of the Subcontractor's specific reasons for rejecting the offer.

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

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

15.11 GOVERNING LAW

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

15.12 ASSIGNMENT

A. Neither this Subcontract nor any interest therein nor claim hereunder shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by Buyer. This shall include assignments of Subcontractor's accounts receivable.

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

15.13 COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS

A. Definitions

1. Adverse Determination means:

   a) A judgment of liability against the Subcontractor and in favor of the employee in an action in a judicial forum;

   b) A recommended decision under 29 CFR 24.6 by an Administrative Law Judge that the Subcontractor has violated the employee provisions of the statutes or executive orders for which the Secretary of Labor has been assigned enforcement responsibility;

   c) An initial agency decision, under 10 CFR 708.10 that the Subcontractor has engaged in conduct prohibited by 10 CFR 708.5;

   d) Any decision against the Subcontractor by the head of an executive agency under Section 6006 of the Federal Acquisition Streamlining Act, Pub. L. 103-355 (adding Section 315 of the Federal Property and Administrative Services Act of 1949 (41 U. S. C. 251, et seq.);

2. Retaliatory or Discriminatory Acts means(s) discharge, demotion, reduction in pay, coercion, restraint, threats, intimidation or other similar negative action taken against an employee by the Subcontractor during the term of this Subcontract as a result of activities protected by the statutes enumerated in 29 CFR 24.1(a) or as a result of the employee's disclosure of information, participation in a proceeding or refusal to engage in illegal or dangerous activities as set forth in 10 CFR 708.5(a).

3. Employee Action means an action filed in Federal or state court for redress of retaliatory or discriminatory action by the Subcontractor, any administrative procedure brought by an employee or federal agency under 29 CFR Part 24, or any other complaint filed against the Subcontractor for retaliatory or discriminatory acts under 10 CFR Part 708 by an employee of any other Contractor or subcontractor which is cognizable under 10 CFR 708.

4. Litigation Costs include attorney, consultant, and expert witness fees, but exclude costs of settlements and judgments.

B. All costs incurred in the investigation and/or defense of an employee action under this Subcontract Clause shall be differentiated and accounted for by the Subcontractor so as to be separately identifiable. Subsequent to an adverse determination, such costs, as well as costs associated with any interim relief that may be granted, may not be paid from any advanced funding provided pursuant to this Subcontract. Notwithstanding the foregoing, Buyer may, in appropriate circumstances, provide for conditional payment upon provisions of adequate security, or other adequate assurance, and agreements by the Subcontractor to repay all litigation costs incurred subsequent to an adverse determination, as well as any interim relief cost, plus interest, unless there is a final determination that the Subcontractor is not liable for any retaliatory or discriminatory acts. The allowance of such costs, notwithstanding any other provision of the Subcontract, will be determined in accordance with this Clause.

C. Litigation costs and settlement costs incurred in connection with the defense of, or a settlement of, an employee action is allowable if incurred by the Subcontractor before any adverse determination of the employee's claim, if approved as just and reasonable by Buyer and otherwise allowable under the Subcontract. Cost incurred in pursuit of mediation or other forms of alternative dispute resolution are allowable, if approved as just and reasonable by Buyer, and no adverse determination of the employee's claim has occurred. Additionally, Buyer may, in appropriate circumstances, reimburse the Subcontractor for litigation and costs of judgments and settlements, which, in aggregate, do not exceed any prior settlement offer approved by Buyer and rejected by the employee.

D. Except as provided in paragraphs 13.15-C., 13.15-D., and 13.15-E., any other cost associated with an employee action (including litigation costs connected with, a judgment resulting from, or settlement subsequent to the employee action) are not allowable unless the Subcontractor receives a judgment or final determination favorable to the Subcontractor. In such event, reasonable litigation costs incurred by the Subcontractor are allowable, and the Subcontractor may submit a request for reimbursement for all such costs incurred subsequent to the adverse determination.

E. Cost incurred by the Subcontractor as a result of an employee action for retaliatory or discriminatory acts that resulted from compliance with either (1) specific terms or conditions of the Subcontract or (2) written instructions from Buyer shall be allowable.

F. Reasonable litigation costs and settlement costs incurred by, and judgments entered by the Office of Hearings and Appeals against, the Subcontractor as a result of an employee action for discrimination under 10 CFR 708 are allowable where the Office of Contractor Employee Protection has issued a proposed disposition denying the relief being sought by the employee and the employee requests a hearing by the Office of Hearing and Appeals.

G. The provisions of this paragraph shall not apply to the defense of suits by employees or ex-employees of the Subcontractor under FAR 31.205-47.

H. The Subcontractor shall insert or have inserted the substance of this Clause in all cost reimbursement subcontracts, with respect to work performed at a DOE-owned or -leased facility where 10 CFR 708 is also applicable under provisions of the Subcontract Clause entitled "Whistleblower Protection for Contractor Employees."

16.0 SECURITY

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

16.1 DEFINITIONS

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

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

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

D. "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to executive order 12356 or prior Subcontracts to require protection against unauthorized disclosure, and which is so designated.

E. Special Nuclear Material (SNM) – the term "SNM" means: (1) Plutonium, uranium enriched in the isotope 238 or in the isotope 235, and any other material which pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special Nuclear Material, but does not Include source material; or (2) any material artificially enriched by any of the foregoing, but does not Include source material.

16.2 RESPONSIBILITY

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

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

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

D. The Subcontractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954 as amended, executive order 12356, and the DOE's Regulations or Requirements applicable to the particular level and category of classified information to which access is required.

E. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under this Subcontract, may subject the Subcontractor, its Agents,

Employees, or lower-tier Subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C, 2100 et seq.; 18 U.S.C. and 794, and executive order 12356).

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

16.3 CLASSIFIED MATTER

A. Protecting and Controlling Classified Matter

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

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

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

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

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

e) Security containers required for the storage of classified matter shall be approved by the Buyer Security Representative. Classified matter that is not under the personal control of an authorized person shall be stored in GSA approved security containers equipped with X-07 or X-08 Mas Hamilton combination locks.

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

16.4 USE OF INFORMATION SYSTEMS TO PROCESS CLASSIFIED MATTER

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

16.5 CLASSIFIED INVENTIONS – SPECIAL

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

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

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

17.0 CLAUSES INCORPORATED BY REFERENCE

A. The following Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses are hereby incorporated by reference to this Subcontract. The obligations of the Buyer to the Government as provided in said clauses shall be deemed to be the obligations of the Subcontractor to Buyer. NOTE: If there is a conflict between the referenced clauses and the terms and conditions found elsewhere in this Subcontract, the below referenced clauses shall take precedence.

B. Wherever necessary to make the context of the clauses set forth below applicable to this Subcontract, the term "disputes" shall mean "claims"; “Contractor” shall mean

"Subcontractor"; "Government," and "Contract Specialist," and equivalent phrases shall mean "Buyer," except the terms "Government," and "Contract Specialist" do not change: (1) in the phrases "Government Property," "Government-Owned Equipment," (2) when a right, act, authorization, or obligation can be granted or performed only by the Government or the Prime Contract Contracting Officer or duly authorized representative, (3) when access to proprietary financial information or other proprietary data is required, (4) when title to property is to be transferred directly to the Government, and (5) as otherwise noted below.

C. The text of the FAR/DEAR clauses may be obtained from the Buyer upon request or by linking to the regulations via the Buyer's INTERNET homepage at www.hanford.gov/pmm.

D. Referenced Clauses

FAR/DEAR REFERENCE	CLAUSE TITLE	NOTE
The below clauses apply to all subcontracts regardless of the dollar threshold.		
FAR 52.204-9	Personal Identity Verification of Contractor Personnel (JAN 2011)	Applies to all subcontracts, when subcontractor will have ***routine*** access to federal facilities and/or federal computer systems.
FAR 52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2019)	None
FAR 52.216-7	Allowable Cost and Payment (JUN 2011)	None
FAR 52.216-8	Fixed Fee (JUN 2011)	None
FAR 52.216-10	Incentive Fee (JUN 2011)	None
FAR 52.216-11	Cost Contract – No Fee and Alternate I (APR 1984)	None
FAR 52.222-4	Contract Work Hours and Safety Standards Act – Overtime Compensation (JUL 2005)	Applies to all subcontracts involving employment of laborers and mechanics.
FAR 52.222-17	Nondisplacement of Qualified Workers (JAN 2013)	None
FAR 52.222-21	Prohibition Of Segregated Facilities (FEB 1999)	Applies to all subcontracts subject to FAR 52.222-26.

FAR 52.222-26	Equal Opportunity (APR 2015)	Applies to all subcontracts not exempted by Executive Order 11246.
FAR 52.222-50	Combating Trafficking in Persons (FEB 2009)	None
FAR 52.224-1	Privacy Act Notification (APR 1984)	Applies to all subcontracts subject to FAR 52.224-2.
FAR 52.224-2	Privacy Act (APR 1984)	Applies to subcontracts involving the redesign, development, or operation of a system of records on individuals subject to this Act.
FAR 52.225-13	Restrictions On Certain Foreign Purchases (JUN 2008)	None
FAR 52.232-22	Limitation of Funds (APR 1984)	None
FAR 52.233-3	Protest After Award (AUG 1996) ALT I (JUNE 1985)	None
FAR 52.234-4	Earned Value Management System (JUL 2006)	Applies to all subcontracts required to use EVMS.
FAR 52.236-7	Permits and Responsibilities (NOV 1991)	Applies to construction subcontracts for dismantling, demolition, or removal of improvements.
FAR 52.242-1	Notice of Intent to Disallow Costs (APR 1984)	None
FAR 52.242-4	Certification of Final Indirect Costs (JAN 1997)	None
FAR 52.244-6	Subcontracts For Commercial Items (DEC 2010)	None
FAR 52.245-1	Government Property (AUG 2010)	Applies to subcontracts involving government property.
FAR 52.247-63	Preference For U.S. - Flag Air Carriers (JUN 2003)	None
DEAR 952.203-70	Whistleblower Protection for Contractor Employees	Applies to all subcontracts involving

	(DEC 2000)	work performed on behalf of DOE directly related to activities at DOE-owned or leased sites
DEAR 952.204-2	Security (MAR 2011)	None
DEAR 952.204-70	Classification/Declassification (SEP 1997)	None
DEAR 952.208-70	Printing (APR 1984)	None
DEAR 952.215-70	Key Personnel (DEC 2000)	None
DEAR 952.217-70	Acquisition of Real Property (APR 1984)	Applies to all subcontracts involving real property.
DEAR 952.250-70	Nuclear Hazards Indemnity Agreement (JUN 1996)	Applies to all subcontracts which may involve risk of public liability, unless Subcontractor is subject to Nuclear Regulatory Commission (NRC) sections 170b, 170c, or 170k.
DEAR 952.251-70	Contract Employee Travel Discounts (AUG 2009)	Applies to all Cost-Reimbursement Subcontracts involving travel.
DEAR 970.5204-2	Laws, Regulations, and DOE Directives (DEC 2000)	None
DEAR 970.5204-3	Access to and Ownership of Records (OCT 2014) (Deviation)	Applies to all subcontracts subject to DEAR 970.5223-1.
DEAR 970.5223-1	Integration of Environment, Safety, and Health Into Work Planning and Execution (DEC 2000)	Applies to all subcontracts, involving complex or hazardous work on-site.
DEAR 970.5223-4	Workplace Substance Abuse Programs at DOE Sites (DEC 2000)	Applies to all subcontracts subject to 10 CFR 707, regardless of dollar threshold. All other subcontracts (with a value of $25,000.00 or more) are subject to this clause if the subcontract involves: (i) Access to or handling of classified information

		or special nuclear materials; (ii) High risk of danger to life, the environment, public health and safety, or national security; or (iii) Transportation of hazardous materials to or from a DOE site.
DEAR 970.5227-1	Rights in Data – Facilities (DEC 2000)	Applies to all subcontracts involving technical data and computer software.
DEAR 970.5227-2	Rights in Data – Technology Transfer (DEC 2000)	None
DEAR 970.5227-6	Patent Indemnity - Subcontracts (DEC 2000)	None
DEAR 970.5227-9	Notice of Right to Request Patent Waiver (DEC 2000)	None
DEAR 970.5227-10	Patent Rights – Management and Operating Contracts, Non-Profit Organization or Small Business Firm Contractor (AUG 2002)	None
DEAR 970.5227-11	Patent Rights – Management and Operating Contracts, For-Profit Contractor, Non-Technology Transfer (DEC 2000)	None
DEAR 970.5232-3	Accounts, Records, and Inspection (DEC 2010) Alternate I (DEC 2000)	None
The below clause applies to all subcontracts exceeding $250.00		
FAR 52.227-9	Refunds of Royalties (APR 1984)	None
The below clause applies to all subcontracts exceeding $2,500.00		
FAR 52.222-41	Service Contract Act Of 1965, As Amended (NOV 2007)	None
The below clauses apply to all subcontracts exceeding $3,000.00		
FAR 52.222-54	Employment Eligibility Verification (JAN 2009)	None
FAR 52.223-17	Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (MAY 2008)	None

The below clause applies to all subcontracts exceeding $15,000.00		
FAR 52.222-36	Affirmative Action For Workers With Disabilities (OCT 2010)	None
The below clause applies to all subcontracts exceeding $30,000.00		
FAR 52.209-6	Protecting The Government's Interest When Subcontracting With Contractors Debarred, Suspended, Or Proposed For Debarment (DEC 2010)	None
The below clauses apply to all subcontracts exceeding $100,000.00		
FAR 52.222-35	Equal Opportunity for Veterans (SEP 2010)	None
FAR 52.222-37	Employment Reports Veterans (SEP 2010)	None
DEAR 952.223-78	Sustainable Acquisition Program (OCT 2010)	Applies to all subcontracts that support operation of the DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services.
DEAR 970.5227-4	Authorization and Consent (AUG 2002)	Applies to all subcontracts involving research and development.
The below clauses apply to all subcontracts exceeding $150,000.00		
FAR 52.203-5	Covenant Against Contingent Fees (APR 1984)	None
FAR 52.203-6	Restrictions On Subcontractor Sales to the Government (SEP 2006)	None
FAR 52.203-7	Anti-Kickback Procedures (OCT 2010)	None
FAR 52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (JAN 1997)	None
FAR 52.203-12	Limitation on Payments to Influence Certain Federal Transactions (OCT 2010)	None

FAR 52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights	None
FAR 52.215-2	Audits and Records - Negotiation (OCT 2010)	None
FAR 52.215-14	Integrity Of Unit Prices (OCT 2010)	Applies except commercial item or service contracts where supplies are not required.
FAR 52.219-8	Utilization of Small Business Concerns (JAN 2011)	None
FAR 52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007)	None
DEAR 952.209-72	Organizational Conflicts of Interest Alternate I (JUN 1997)	Applies to subcontracts for advisory and assistance services as defined in FAR 2.101.
The below clauses apply to all subcontracts exceeding $500,000.00		
DEAR 952.226-74	Displaced Employee Hiring Preference (JUN 1997)	None
DEAR 970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (DEC 2000)	None
The below clauses apply to all subcontracts exceeding $700,000.00 ($1.5M if Construction)		
FAR 52.219-9	Small Business Subcontracting Plan (OCT 2001)	None
FAR 52.219-16	Liquidated Damages – Subcontracting Plan (JAN 1999)	Applies to all subcontracts subject to FAR 52.219.9
The below clauses apply to all subcontracts exceeding $750,000.00		
FAR 52.215-13	Subcontractor Cost or Pricing Data – Modifications (OCT 2010)	Applies when it is anticipated that certified cost and pricing data will be required.
FAR 52.215-15	Pension Adjustments and Asset Reversions (OCT 2010)	Applies when it is anticipated that certified

		cost and pricing data will be required.
FAR 52.215-18	Reversion of Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions (JUL 2005)	Applies when it is anticipated that certified cost and pricing data will be required.
FAR 52.215-19	Notification Of Ownership Changes (OCT 1997)	Applies when it is anticipated that certified cost and pricing data will be required.
FAR 52.215-21	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data – Modifications (OCT 2010) Alternate III (OCT 1997)	
FAR 52.230-2	Cost Accounting Standards (OCT 2010)	Applies to all negotiated subcontracts unless exempted from CAS.
FAR 52.230-3	Disclosure and Consistency of Cost Accounting Practices (MAY 2012)	Applies to all negotiated subcontracts unless exempted from CAS.
FAR 52.230-5	Cost Accounting Standards Educational Institution (MAY 2012)	Applies to all negotiated subcontracts unless exempted from CAS..
FAR 52.230-6	Administration of Cost Accounting Standards (JUN 2010)	Applies to all subcontracts subject to FAR 52.230-2, FAR 52.230-3, FAR 52.230-4, or FAR 52.230-5.
FAR 52.242-3	Penalties for Unallowable Costs (MAY 2001)	None