



Mission Support Alliance Provision

GENERAL PROVISIONS Rev. 7 January 12, 2011

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This Contract Embodies The Entire Agreement Between The Contractor 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.
- B. The term "Buyer" shall mean the company (under DOE Prime Contract No. DE-AC06-09RL14728) entering into this Contract with the Contractor. The term "buyer" shall mean the Contract Specialist or authorized purchasing agent representing the company issuing this Contract.
- C. "Contract" shall mean this Contract between Buyer and Contractor; also includes purchase order, task orders, releases and other agreements.
- D. "Contractor" shall mean the company, person, or organization performing work under this Contract. For MSA Contracting purposes, the term "Contractor" generally refers to vendors, sellers, and suppliers.
- E. "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.
- F. "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.
- G. "Services" shall mean labor, direction of labor, production of technical information, consulting services or any other services furnished by Contractor and its subcontractors under this Contract.
- H. "Subcontractor" shall mean any subcontractor or supplier of any tier, which supplies goods and/or services to Contractor in connection with Contractor's obligation under this Contract.
- I. "Supplies" shall mean equipment, components, parts and materials to be provided by Contractor and its subcontractors pursuant to this Contract.
- J. "Vendor data" shall mean any and all information, data and documentation to be provided by Contractor and its subcontractors under this Contract.
- K. "Work" shall mean supplies, services, and vendor data provided by Contractor and its subcontractors and all work performed with respect thereto pursuant to this Contract.

2.0 ORDER OF PRECEDENCE

- A. In the event of a discrepancy among any of the Contract terms, conditions, clauses, provisions, written direction and instructions, and documents (collectively, the 'Contract'), the following order of precedence shall govern resolution: (1) Buyer's written Contract modifications,



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direction, and instructions; (2) Contract 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 Contract.

- 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 Contract shall be considered null and without effect, and laws shall govern. All remaining terms unaffected by said laws should continue in force.

3.0 WORK QUALITY STANDARDS

3.1 SAFETY

- A. The Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall comply with, and assist the Buyer in complying with Environmental, Safety, Health, and Quality (ESH&Q) requirements of all applicable laws, regulations and directives.
- B. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of ES&H functions and activities is an integral and visible part of the Contractor's work planning and execution processes. As a minimum, the Contractor shall:
- Thoroughly review the defined scope of work;
 - Identify hazards and ES&H requirements;
 - Analyze hazards and implement controls;
 - Perform work within controls; and
 - Provide feedback on adequacy of controls and continue to improve safety management.
- C. The Contractor shall flow down ESH&Q requirements to the lowest tier subcontractor performing work on the Hanford site commensurate with the risk and complexity of the work.

3.2 WARRANTY

- A. Contractor warrants that the work shall comply strictly with the provisions of this Contract and all specifications, drawings and standards referred to in this Contract 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 Contractor. Contractor further warrants that all materials, equipment and supplies furnished by Contractor for the work shall be new, merchantable, of the most suitable grade and fit for their intended purposes unless specifically provided in this Contract. 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, Contractor shall, upon receipt of written notice of such defect, promptly



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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. Contractor's warranties set forth in subparagraph 3.2-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 Contractor shall extend the warranty period by an equal period of time.
- C. Design and engineering, labor, equipment and materials furnished by Contractor pursuant to subparagraph 3.2-A to correct defects shall be warranted by Contractor in accordance with the warranties set forth in subparagraph 3.2-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 subparagraph 3.2-B above, whichever is longer.
- D. In the event Contractor shall have been notified of any defects in the work in violation of Contractor'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 Contractor, and Contractor shall promptly pay Buyer the costs incurred in correcting such defects.
- E. Contractor shall include, at a minimum, the foregoing warranty requirements in any subcontract that it places.

3.3 USED OR RECONDITIONED EQUIPMENT, RECYCLED "ENVIRONMENTALLY PREFERABLE" PRODUCTS

Used or reconditioned equipment, recycled materials, products made in whole or in part from recycled products and products that are generally known as "environmentally preferable" will be specially provided for in this Contract. Substitution of used, reconditioned equipment, recycled or "environmentally preferable" products will require prior approval of the Buyer.

3.4 INSPECTION, TESTING, AND QUALITY CONTROL

- A. Contractor shall inspect all materials, supplies, and equipment which are to be incorporated in the work. In addition, Contractor shall conduct a continuous program of quality control for all work. When requested by the buyer, Contractor'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 Contractor's performance of such quality control and inspection.



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- B. Contractor shall, during the course of performance of the work hereunder, without additional compensation, make or cause to be made all tests required by this Contract. Buyer may require additional inspections and tests. Contractor 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 Contractor or Contractor's 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. Contractor 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 Contractor for such work, materials or equipment shall prejudice the right of Buyer or the Government.
- D. If Contractor 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 Contractor. 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, Contractor shall not be reimbursed for uncovering, repair or corrective and restoration costs. If such work is found to be in accordance with the Contract requirements upon such reexamination, Buyer shall pay Contractor the cost of uncovering and restoration.
- E. Rejection by Buyer of any or all parts of defective work for failure to conform to this Contract shall be final and binding. Such rejected work shall be promptly corrected or replaced by Contractor at Contractor's expense. If Contractor 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 Contractor shall promptly reimburse Buyer for the costs of such removal and replacement of defective work.

3.5 CONDITIONS AND RISKS OF WORK

Contractor 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 Contractor 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 Contract 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 Contractor.



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3.6 SHIPMENT SAFETY

Contractor shall ensure that all shipments made to the Hanford site in performance of this contract are packaged and loaded for safe handling and unloading. Any person delivering to the Hanford site or to a Buyer-controlled facility should wear appropriate protective equipment and may be required by the Buyer to wear specific personal protective equipment (hand, eye, head or foot protection). Deliveries to the Hanford site or Buyer-controlled facility may be refused and/or unloading work stopped by any Buyer employee for unsafe conditions or practices.

3.7 SUBCONTRACTS AND PURCHASE ORDERS

- A. Contractor shall not subcontract any on-site work and/or any significant aspects of off-site contract performance without first identifying the proposed subcontractor and subcontract scope to Buyer. When requested by Buyer, Contractor 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 Contractor to notify Buyer in advance of subcontracting may be considered a material breach of these contract terms.
- B. Contractor is responsible for contract performance and performance of its 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 contract shall be replaced at no additional cost to Buyer and shall not be employed again on the work.
- C. Contractor shall include a provision in every subcontract authorizing assignment of such subcontract to Buyer or the Government without requiring consent from such subcontractor or supplier
- D. As used in paragraph A above, the term “subcontract” shall also include purchase orders and rental agreements for materials or equipment, and the term “subcontractor” shall also include vendors or suppliers of such material or equipment when significant to contract performance.

3.8 TERMINATION FOR DEFAULT

- A. The Buyer may, subject to paragraphs 3.8-C and 3.8-D below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to—
 - 1. Deliver the supplies or to perform the services within the time specified in this Contract or any extension;
 - 2. Make progress, so as to endanger performance of this Contract; or
 - 3. Perform any of the other provisions of this Contract.



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- B. The Buyer's right to terminate this Contract under subdivisions 1 and 2 above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.
- C. If Buyer terminates this Contract in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to Buyer for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- D. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (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 Contractor.
- E. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- F. If this Contract is terminated for default, Buyer may require the Contractor to transfer title and deliver to the Government, as directed by Buyer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and Contract rights (collectively referred to as "manufacturing materials" in this Clause) that the Contractor has specifically produced or acquired for the terminated portion of this Contract. Upon direction of Buyer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.
- G. The Buyer shall pay Contract price for completed supplies delivered and accepted. The Contractor and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes Clause. Buyer may withhold from these amounts any sum Buyer determines to be necessary to protect Buyer and the Government against loss because of outstanding liens or claims of former lien holders.
- H. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Buyer.



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- I. The rights and remedies of Buyer in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

3.9 STOP WORK – CONTRACTOR FAILURE TO COMPLY

Upon failure of Contractor or its subcontractor(s) to comply with any of the requirements of this Contract, Buyer shall have the authority to stop any operations of Contractor or its subcontractors affected by such failure until such failure is remedied or to terminate this Contract. No part of the time lost due to any such stop work orders shall be made the subject of a claim for extension of time or for increased costs or damages by Contractor.

3.10 COUNTERFEIT FASTENERS AND COMPONENTS

Buyer reserves the right to question and/or require Contractor to certify and/or furnish proof regarding the quality, authenticity, application or fitness for use of the items supplied by the Contractor under this Contract. Any items furnished as part of this Contract 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 Contractor.

4.0 TIMING OF WORK

4.1 REPORTING AND COORDINATION

- A. During the performance of work, Contractor shall submit to Buyer periodic progress reports on the actual progress and updated schedules as may be required by this Contract or requested by buyer. In the event Contractor's performance of the work is not in compliance with the schedule established for such performance, Buyer may, in writing, require the Contractor 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 Contract. Contractor shall thereupon take such steps as may be directed by Buyer or otherwise necessary to improve its progress without additional cost to Buyer.
- B. Contractor recognizes that Buyer, the Government, other contractors and subcontractors may be working concurrently at the jobsite. Contractor agrees to cooperate with Buyer, the Government and other contractors and subcontractors so that the project as a whole will progress with a minimum of delays. Buyer reserves the right to direct Contractor 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 Contractor's work is dependent upon the quality and/or completeness of work performed under another contract, Contractor 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 Contract. Failure to make such



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inspections or to report any such defects to Buyer shall constitute Contractor's acceptance of such other work as suitable to receive Contractor's work; provided however, that Contractor shall not be responsible for defects that could not have reasonably been detected.

4.2 OVERTIME

Unless expressly stated elsewhere in this Contract, work on the Hanford site shall be compatible with Buyer's starting and quitting times, or other times approved by Buyer. Buyer must approve scheduled overtime work by Contractor in advance and in writing. Contractor shall notify buyer in advance of any incidental spot overtime that Contractor elects to work due to such operations as concrete placement, nondisruptable work activities and emergencies to protect life and/or property. Overtime work, whether scheduled or incidental, shall be to Contractor's account unless the compensation therefore is specifically authorized in writing by buyer. In the event buyer approves compensation of Contractor's overtime in advance, such compensation as separately authorized shall be limited to the actual cost to Contractor of the premium portion only of all applicable wages, craft fringe benefits, and payroll burdens imposed by any governmental authority and measured by the compensation payable to employees. To establish the amount of payment, Contractor shall submit supporting documents satisfactory in form and content to Buyer for its verification and approval.

4.3 DELAYS

- A. In the event Contractor or Buyer is delayed in performing any of their respective obligations in this Contract and such delay is caused by acts of God, war, riots, civil insurrection, acts of the public enemy, accidents, acts of civil or military authority, fires, floods, or earthquakes, beyond the reasonable control of the party delayed, such delay will be excused and the period of such delay will be added to the time for performance of the obligation delayed, unless the date, schedule or time period for performance of the obligation is expressly stated in this Contract to be guaranteed. In the event any delay due to the foregoing causes or events occurs or is anticipated, the party delayed or anticipating delay shall promptly notify the other party in writing of such delay or expected delay and the cause and estimated duration of such delay. In the event of a delay due to the foregoing causes or events, the party delayed shall, at no cost to the other party, exercise due diligence to shorten and avoid the delay and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay.
- B. Contractor shall, within five (5) working days of the commencement of any delay, give to buyer written notice thereof and of the anticipated effects thereof. Within two (2) working days of the termination of any delay, Contractor shall file a written notice with buyer specifying the actual duration of the delay. If Buyer determines that a delay was beyond the control and without the fault or negligence of Contractor, Buyer shall determine the duration of the delay and shall extend the time of performance of this Contract thereby.



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- C. Contractor shall not be entitled to, and hereby expressly waives recovery of, any damages suffered by reason of delays of any nature, and extension of time shall constitute the sole liability of Buyer and Contractor's sole remedy for delays.

4.4 POSSESSION PRIOR TO COMPLETION

Buyer and/or the Government shall have the right to move into Contractor's working and storage areas and the right to take possession of or use any completed or partially completed part of Contractor'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 Contractor in writing. Such possession or use shall not constitute acceptance of Contractor's work.

4.5 NOTICE OF COMPLETION AND FINAL ACCEPTANCE

- A. When Contractor deems the work fully completed, including satisfactory completion of such inspections, tests and documentation as are specified in this Contract, Contractor 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 Contractor 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, Contractor 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, Contractor 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 Contractor 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 Contractor'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 CHANGES

5.1 CHANGES

- A. The scope of work shall be subject to change by additions, deletions or revisions thereto by Buyer. Contractor will be notified of such changes by receipt of additional and/or revised drawings, specifications, exhibits or other written notification.



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- B. Contractor shall submit to buyer within ten (10) working days after receipt of notice of a change, a detailed takeoff with supporting calculations and pricing for the change together with any requested adjustments in the schedule. The pricing shall be itemized as required by buyer and shall be in sufficient detail to permit an analysis of all labor, material and equipment and shall cover all work involved in the change, whether such work was deleted, added or modified. Amounts related to subcontracts shall be supported in similar detail. In addition, if the proposal includes a time extension, justification therefore shall also be furnished.
- C. Contractor shall not perform changes in the work in accordance with subparagraph 5.1-A and 5.1-B until Buyer has approved in writing the pricing for the change and any adjustment in the schedule for performance of the work, except as set forth in subparagraph 5.1-D. Upon receiving such written approval from Buyer, Contractor shall diligently perform the change in strict accordance with this Contract.
- D. Notwithstanding subparagraph 5.1-C Buyer may expressly authorize Contractor in writing to perform the change prior to such approval by Buyer. Contractor shall not suspend performance of this Contract during the review and negotiation of any change, except as may be directed by Buyer pursuant to Clause 5.2, "Suspension of Work." In the event Buyer and Contractor are unable to reach timely agreement regarding any change, Contractor shall then comply with Clause 5.4, "Claims."
- E. Contractor shall not comply with oral changes in the work. If Contractor believes that any oral notice or instruction received from Buyer will involve a change in the cost, time to perform or integrity of work, it shall require that the notice or instruction be given in writing and shall comply with the provisions of subparagraphs 5.1-B, 5.1-C and 5.1-D. Any costs incurred by Contractor to perform oral changes shall be for Contractor's account, and Contractor waives any and all rights to claim from Buyer for such costs or additional time to perform the work as a result of compliance by Contractor with such oral changes.

5.2 SUSPENSION OF WORK

- A. Buyer may at any time, and from time to time, by written notice to Contractor suspend further performance of all or any portion of the work by Contractor. Said notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Such suspensions shall not exceed one hundred eighty (180) consecutive calendar days each nor aggregate more than two hundred seventy (270) calendar days. Upon receiving any such notice of suspension, Contractor shall promptly suspend further performance of the work to the extent specified, and during the period of such suspension shall properly care for and protect all work in progress and materials, supplies and equipment Contractor has on hand for performance of the work. Upon the request of Buyer, Contractor shall promptly deliver to buyer copies of outstanding subcontracts of Contractor, and shall take such action relative to such subcontracts as may be directed by Buyer. Contractor shall use its best efforts to utilize its material, labor and equipment in such a manner as to mitigate costs associated with suspension. Buyer may at any time withdraw the suspension of performance of the work as to all or part of the suspended work by written notice to



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Contractor specifying the effective date and scope of withdrawal, and Contractor shall resume diligent performance of the work for which the suspension is withdrawn on the specified effective date of withdrawal.

- B. If Contractor believes that any such suspension or withdrawal of suspension justifies modification of the Contract price or time of completion, Contractor shall comply with the provisions of the procedure set forth in Clause 5.1, "Changes." Contractor shall not be entitled to any prospective profits or any damages because of such suspension or withdrawals of suspension.

5.3 TERMINATION FOR CONVENIENCE

- A. Buyer may terminate performance of work under this Contract in whole or, from time to time, in part if Buyer determines that a termination is in Buyer's interest. Buyer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by Buyer, the Contractor 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) for materials, services, or facilities, 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 Government, as directed by Buyer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case 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 Buyer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this Clause.
 - 6. As directed by Buyer, transfer title to the Government and deliver to Buyer (1) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated and (2) 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 Buyer.
 - 7. Complete performance of the work not terminated.



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8. Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
 9. Use its best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in subparagraph 5.3-B.6 above; provided, however, that the Contractor (1) is not required to extend credit to any purchaser and (2) may acquire the property under the conditions prescribed by, and at prices approved by, Buyer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this Contract, credited to the price or cost of the work, or paid in any other manner directed by Buyer.
- C. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to buyer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by Buyer. The Contractor may request Buyer to remove those items or enter into an agreement for their storage. Within 15 days, Buyer will accept title for and on behalf of the Government to those items and remove them or enter into a storage agreement. Buyer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- D. After termination, the Contractor shall submit a final termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by buyer upon written request of the Contractor within this 1-year period. However, if Buyer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If Contractor fails to submit the proposal within the time allowed, Buyer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- E. Subject to paragraph D. above, the Contractor and Buyer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E. or paragraph F. below, exclusive of costs shown in subparagraph F. 3. below, may not exceed the total Contract price as reduced by (1) the amount of payments previously made and (2) the Contract price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount. Paragraph F. below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- F. If the Contractor and Buyer fail to agree on the whole amount to be paid because of the termination of work, Buyer shall pay the Contractor the amounts determined by



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Buyer as follows, but without duplication of any amounts agreed on under paragraph E above.

1. The Contract price for completed supplies or services accepted by Buyer (or sold or acquired under subparagraph B.9. above) not previously paid for, adjusted for any saving of freight and other charges.
 2. The total of:
 - a. The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph 1 above.
 - b. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision 2. a. above; and
 - c. A sum, as profit on subdivision 2. a. above, determined by Buyer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this Contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, Buyer shall allow no profit under this subdivision 2. c. and shall reduce the settlement to reflect the indicated rate of loss.
 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 cost incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- G. Except for normal spoilage, and except to the extent that Buyer expressly assumed the risk of loss, Buyer shall exclude from the amounts payable to the Contractor under paragraph F. above, the fair value, as determined by Buyer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to Buyer.
- H. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Clause.



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- I. If Buyer has made a determination of the amount due under paragraphs D., F., or K., Buyer shall pay the Contractor the amount determined by Buyer.

- J. In arriving at the amount due Buyer under this Clause, there shall be deducted –
 - 1. All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;
 - 2. Any claim which Buyer has against the Contractor under this Contract; and
 - 3. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this Clause and not recovered by or credited to Buyer.

- K. If the termination is partial, the Contractor may file a proposal with Buyer for an equitable adjustment of the price(s) of the continued portion of the Contract. Any proposal by the Contractor for an equitable adjustment under this Clause shall be requested within 90 days from the effective date of termination unless extended in writing by buyer.
 - 1. Buyer may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if Buyer believes the total of these payments will not exceed the amount to which the Contractor may be entitled.
 - 2. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to 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 Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of the retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by Buyer because of the circumstances.

- L. Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to Buyer, or the Government at the Contractor's office, at all reasonable times, without any direct charge. If approved by Buyer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.



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5.4 CLAIMS

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

Contractor 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 Contractor hereby waives, any claim or potential claim of Contractor, which was not reported by Contractor in accordance with the provisions of this paragraph. 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 Contractor's satisfaction, and Contractor shall be bound by the terms and conditions of this Contract to prosecute the work without delay to its successful completion. Buyer shall not be bound to any adjustments in the Contract price or scheduled time unless expressly agreed to by buyer in writing. No claim hereunder by Contractor shall be allowed if asserted after final payment under this Contract. Contractor's remedies are limited to those expressly set forth in this Contract.

6.0 MATERIALS AND EQUIPMENT

6.1 PROTECTION OF MATERIALS, EQUIPMENT, AND WORK

Contractor shall at all times in accordance with the best practices and at no additional cost to Buyer, preserve and protect material and equipment used by Contractor in the execution of the work from damage or loss due to weather, fire, theft, unexplained disappearance or other similar casualty.

- A. Contractor shall at all times in accordance with the best practices and at no additional cost to Buyer, protect from damage due to Contractor's operations, equipment and materials (whether stored or installed), paving, structures and any and all other items on jobsite belonging to the Government, Buyer or others.
- B. Neither Buyer or the Government shall be responsible for any loss suffered by Contractor or damage to the work, or to materials, tools and equipment of Contractor or of any other Contractor, and Contractor assumes responsibility for any such loss or damage and for any cost of repairing, making good, or replacing any such loss or damage that may be directed by Buyer or the Government.

6.2 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

- A. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under



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this Contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Buyer.

- B. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Buyer may have the necessary work performed and charge the cost to the Contractor.

7.0 LABOR AND WORK RULES

7.1 CONTRACTOR'S PERSONNEL

- A. At all times during the course of the work, Contractor shall provide at the jobsite a qualified, competent and responsible supervisor who shall be satisfactory to Buyer. The supervisor shall have authority to represent Contractor and directions given to him shall be binding on Contractor. Upon buyer written request, Contractor shall give the supervisor, in writing, complete authority to act on behalf of, and to bind Contractor in all matters pertaining to the work and this Contract. Contractor shall furnish buyer a copy of the authorization. Contractor shall not transfer or remove any of its supervisory or key personnel from performance of work without the prior written approval of buyer.
- B. Any employee of Contractor deemed by Buyer, in their sole judgment, to be objectionable shall be removed from the jobsite immediately upon Buyer request and shall be promptly replaced by Contractor at no extra expense to Buyer. Contractor shall nevertheless retain all authority and control over its employees, including responsibility for all costs arising from providing reasonable accommodations for its employees.
- C. If requested by Buyer, Contractor shall furnish it with the names and addresses of Contractor's subcontractors, field employees of Contractor and its subcontractors, and others who have performed or are performing the work hereunder.

7.2 LABOR HARMONY

Contractor agrees that all labor employed by it, its agents, and/or subcontractors for work on the jobsites shall be in harmony with and be compatible with all other labor used by Buyer or other Contractors. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the work, Contractor shall immediately give notice thereof including all relevant information to Buyer.



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7.3 WORK RULES

Contractor shall comply strictly with Buyer and the Government's rules governing the conduct of Contractor and Contractor's employees, agents, and subcontractors at and about the jobsite. Contractor agrees that it shall ensure that its supervisory personnel, employees, agents, and subcontractors at the jobsite comply strictly with such rules. Buyer reserves the right to, from time to time, revise any such rules and Contractor shall comply fully with such rules as revised in accordance with the foregoing provisions.

7.4 EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT

The Contractor shall comply with the requirements of 29 CFR Part 471 specifically as set forth as Appendix A to Subpart A. <http://edocket.access.gpo.gov/2010/pdf/2010-11639.pdf>. This requirement applies to any subcontract in excess of \$10,000 and is to be flowed down to any tier lower subcontractor as well in excess of \$10,000. The required information posters are available at www.olms.dol.gov.

8.0 INDEMNITY

8.1 INDEMNITY

Contractor 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 Contractor's actual or asserted failure to comply with any law, ordinance, regulation, rule or order, or with this Contract. This Clause 8.1 includes, but is not limited to, fines or penalties by Government authorities and claims arising from Contractor'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 Contractor or its subcontractors in performance of the work. Should any goods or services provided by Contractor become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, Contractor 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, Contractor and Contractor's subcontractors) or from damage to or loss of property (including



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the property of Buyer or the Government) arising directly or indirectly out of this Contract or out of any acts or omissions of Contractor or its subcontractors in accordance with the State of Washington Comparative Fault Statute (RCW 4.22). Contractor's defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of Buyer or arising from use by Contractor of construction equipment, tools, scaffolding, or facilities furnished to Contractor 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 Contract or out of any acts or omissions of Contractor, or subcontractors.
- E. Contractor'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. Contractor'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 Contractor's indemnity obligations.
- F. In the event that the indemnity provisions in this Contract are contrary to the law governing this Contract, 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 Contractor or its 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 Contractor, its subcontractors or suppliers under any workers compensation, disability benefits, or other employee benefits acts or regulations, and Contractor 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 Contractor such amounts as shall reasonably be considered necessary to satisfy any claims, suits or liens for damages that fall within Contractor'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.

8.2 NUCLEAR SAFETY AND INDEMNITY

The provisions of 48 CFR 952.250-70, *Nuclear Hazards Indemnity Agreement*, are incorporated by reference into these terms and conditions for the delivery of any product or service that has nuclear safety implications. Contractor shall flow down these provisions to all subcontractors and suppliers unless expressly waived in writing by Buyer.

Contractor will be indemnified by the U.S. Department of Energy (DOE) against (1) claims for public liability, and (2) legal costs arising from any nuclear incident under the



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provisions of 48 CFR 952.250-70. However, Contractor and its subcontractors and suppliers that are indemnified are subject to civil penalties under provisions of the Atomic Energy Act of 1954, as amended, for violations of DOE nuclear safety related rules, regulations, and orders. In addition, directors, officers, and employees of Contractor and its subcontractors and suppliers that are indemnified are subject to criminal penalties for knowing and willful violations.

9.0 BONDS

If requested by the Buyer, Contractor shall obtain payment and performance bonds, each in an amount equal to 100% of the Contract price. The bonds shall be written on forms satisfactory to Buyer. Contractor's sureties shall be only those approved by the Department of Treasury, as indicated in Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

10.0 WORK CONDITIONS

10.1 CONTRACTUAL RELATIONSHIP

Contractor 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. Contractor 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, Contractor shall furnish to it such evidence as Buyer may require relating to the Contractor's ability to fully perform this Contract. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any subcontractor and Buyer or the Government.

Contractor agrees that Contractor is an independent Contractor 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 Contractor'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 Contractor 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 Contractor, including a sum equal to any unemployment benefits paid to those who were Contractor's employees, where such benefit payments are charged to Buyer under any merit plan or to Buyer reserve account pursuant to any statute. The Contractor further agrees, as regards the items set forth below and for work under this Contract, 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 Contract, 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



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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.

10.2 PERMITS AND LICENSES

Contractor 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 Contract), certificates and licenses required by governmental authorities having jurisdiction over the work, Contractor or the location of the work.

10.3 INDEPENDENT CONTRACTOR

By accepting this Contract, Contractor certifies that it is acting as an independent Contractor with responsibility for and control over the details and means for performing the work, provided that Contractor is in compliance with the terms of this Contract. Anything in this Contract, which may appear to give Buyer the right to direct Contractor as to the details of the performance of the work or to exercise a measure of control over the Contractor, shall mean that the Contractor shall follow the desires of the Buyer only as to the intended results of the work. Nothing in this Contract shall be deemed to represent that Contractor, or any of the Contractor's employees or agents, are the agents, representatives or employees of Buyer or the Government.

10.4 UNCLASSIFIED COMPUTER SECURITY REQUIREMENTS

When made available by the Buyer as part of this Contract, Buyer's telecommunications and computer systems may be used only in performance of this Contract. Contractor will ensure that personnel who are allowed access to the Hanford Local Area Network (HLAN) understand and comply with Buyer's Computer Access and data security rules. Foreign Nationals may not be granted access until cleared by the Foreign National Visits and Assignments office.

When authorized to connect Contractor owned computers to HLAN, Contractor will:

1. Identify a single contact responsible for coordinating appropriate controls with the Project Hanford Management Contract (MSC) Computer Protection Program Manager (CPPM).
2. Obtain approval from the CPPM prior to making any connections
3. Ensure that any computer connected to the HLAN must be physically separated from any other network by Buyer approved means
4. Allow Buyer unrestricted access to those computers for periodic inspection and to verify that all "data in all forms" is erased prior to final payment on the Contract (41 CFR 109-43).



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10.5 CONFIDENTIAL AND CONTROLLED-USE INFORMATION

- A. Confidential and Controlled-Use Information obtained by Contractor from Buyer or the Government in connection with this contract shall be held in confidence by Contractor and shall not be disclosed to third parties or used by Contractor for any purpose other than for the performance of this contract 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, contract terms, and any information generated pursuant to work performed in accordance with the Contract (collectively, Confidential Information), constitutes a commercial asset or information relating to national security of considerable value to Buyer and the Government.
- C. Contractor shall use such confidential information only for the purpose of performing work in accordance with the Contract. Confidential Information may only be released on a need to know basis to employees and subcontractors who agree to safeguard the information. Contractor shall make all reasonable efforts to ensure its employees and subcontractors, maintain such confidential information in strictest confidence. Contractor 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 Contractor in performance of this contract shall remain Buyer's property. Upon completion of work, Contractor 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 Contract, or in any disclaimer made by Buyer or the Government, shall be construed to grant Contractor 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 Contract.
- F. In the event that work performed by Contractor in accordance with the Contract involves the collection or generation of data on persons or associations, Contractor 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



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other applicable federal and state agency regulations. Violations of these statutes may result in criminal penalties.

10.6 PUBLICITY

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

10.7 ASSIGNMENT

- A. Neither this Contract nor any interest therein nor claim hereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by Buyer. This shall include assignments of Contractor's accounts receivable.
- B. Buyer may assign this Contract, in whole or in part to DOE or to such party as DOE may designate to perform Buyer's obligations hereunder. Upon receipt by Contractor of written notice that the DOE or a party so designated by DOE or Buyer has accepted an assignment of this Contract, Buyer shall be relieved of all responsibility hereunder and Contractor shall thereafter look solely to such assignee for performance of Buyer's obligations.

10.8 LAWS AND REGULATIONS

- A. Contractor shall comply strictly with local, municipal, state, federal and governmental laws, orders, codes, rules, ordinances, and regulations applicable to Contractor's operations in the performance of the work hereunder.
- B. Contractor shall not, under any circumstances, apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water, or noise pollution laws or regulations relating to this Contract or to the performance thereof, without Buyer's prior written approval.
- C. Contractor shall comply with Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees, which provides that employees may not be forced to pay dues and fees beyond their share of bargaining unit costs related to collective bargaining, contract administration, and grievance adjustment. Contractor agrees to properly follow this Executive Order and display Department of Labor posters where employees can readily see it.
- D. Contractor shall not, under any circumstances, cause or permit, in connection with the work to be performed hereunder, the discharge, emission or release of any hazardous substance and/or waste, pollutant, contaminant or other substance in violation of any applicable laws, rules or regulations which are now or hereafter promulgated by any governmental authorities having jurisdiction over the work. Contractor shall comply with all legal regulatory requirements applicable to the work performed under this Contract and shall



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be responsible for compliance with all hazardous waste, health and safety, notice, training, and environmental protection laws, rules, regulations and requirements. "Hazardous waste" includes all substances, which are or may be identified as such in 40 CFR, Part 261 or other applicable laws or regulations. Contractor shall submit to buyer material safety data sheets (OSHA Form 20) as required by applicable regulation. As an inducement to award of this Contract, Contractor warrants full compliance and that it will adhere to all applicable project hazardous waste procedures and if necessary, obtain or arrange for at its expense all identification numbers, permits, applications and other things required in connection with the activities under this Contract. Contractor agrees that it will not store any hazardous wastes at the jobsite for periods in excess of ninety (90) days or in violation of the applicable jobsite storage limitations imposed by law, the Government or Buyer, whichever shall be more restrictive. Contractor further agrees that it will not permit any accumulation in excess of the small quantity generator exclusion of 40 CFR, Part 261, or other applicable laws, as amended. Contractor agrees to take, at its expense all actions necessary to protect third parties, including without limitation, employees and agents of the Government and Buyer from any exposure to, or hazards of, hazardous and/or toxic wastes or substances generated or utilized in Contractor's operations. Contractor agrees to report to the appropriate governmental agencies all discharges, releases and spills of hazardous substances and/or wastes required to be reported by law and to immediately notify Buyer of the same.

11.0 BACKCHARGES

Costs sustained by Buyer as a result of (1) Contractor's non-compliance with any law, ordinance, regulation, rule or order, or this Contract, including its Safety provisions; (2) delays to contract performance attributable to unsatisfactory Contractor performance; or (3) damage to or loss of property (including the property of Buyer or the Government) resulting from any acts or omissions of Contractor or its subcontractors, shall be backcharged to the Contractor. 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 Contractor from pending invoices and if such backcharges exceed invoiced amounts, such backcharges will be invoiced by Buyer to Contractor, such backcharges payable within 30 days.

12.0 LIENS AND OFFSETS

12.1 LIENS

- A. To the full extent permitted by applicable law, Contractor hereby waives and releases any and all rights of material men or mechanics' liens and similar rights for payment for services, labor, equipment, or materials furnished by Contractor in performance of the work and granted by law to persons supplying materials, equipment, services and other things of value to approve or modify land or structures hereon, which Contractor may have against the Government's



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premises, property belonging to Buyer or the Government, or to either of them, or funds payable by the Government to Buyer.

- B. Contractor shall at all times promptly pay for all services, materials, equipment and labor used or furnished by Contractor in the performance of the work under this Contract and shall, to the fullest extent allowed by law, at its expense keep the Government's premises and all property belonging to Buyer and the Government, or to either of them, free and clear of any and all of the above mentioned liens and rights of lien arising out of services, labor, equipment or materials furnished by Contractor or its employees, materialmen or subcontractors in the performance of the work. If Contractor fails to release and discharge any lien or threatened lien against the Government's premises or the property of Buyer and the Government, or of either of them, arising out of performance of the work within five (5) working days after receipt of written notice from Buyer to remove such claim of lien or otherwise deal with the lien claimant, and Contractor shall pay Buyer any and all costs and expenses of Buyer in so doing, including reasonable attorney's fees incurred by Buyer.

12.2 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 Contractor in connection with this Contract (or any other Contract with Buyer), any and all amounts owed by Contractor to Buyer or the Government in connection with this Contract.

12.3 FINAL PAYMENT CERTIFICATION AND RELEASE

Buyer shall not be obligated to make final payment to Contractor until Contractor has delivered to Buyer a certificate and release satisfactory to Buyer that Contractor has fully performed under this Contract and that all claims of Contractor 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 Contractor for the work or potential lienors against the Governments property), and that Contractor has paid in full all outstanding obligations against the work.

13.0 GENERAL

13.1 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 Contract, Contractor 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.



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13.2 VALIDITY OF PROVISIONS

In the event any clause, or any part or portion of any clause of this Contract 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.

13.3 WAIVER

Buyer's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Contract, 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.

13.4 GRATUITIES

- A. Contractor, its employees, agents or representatives shall not offer or give to an officer, official or employee of Buyer or the Government, gifts, entertainment, payments, loans or other gratuities to influence the award of a Contract or obtain favorable treatment under a contract.
- B. Violation of this Clause may be deemed by Buyer to be a material breach of this Contract and any other contract with Buyer and subject all contracts with Contractor to Termination for Default, as well as any other remedies at law or in equity.

13.5 INTERPRETATION

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

13.6 SURVIVAL

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

13.7 TRIAL

Contractor 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 Contract and agrees that any such dispute may, at Buyer's option, be tried before a judge sitting without a jury.

13.8 IMPLEMENTATION OF SECTION 3161 POLICY ON WORKFORCE RESTRUCTURING



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- A. Pursuant to the requirements of Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102-484) preference is to be provided to displaced Contractor employees whose eligibility is defined in the DOE guidelines on work force restructuring or the site work force restructuring plan, including lower tier subcontractor employees, for work at the Hanford Site in accordance with the following unless modified by final Section 3161 guidance issued by DOE. The Contractor shall:
1. Require subcontractors and sub-tier subcontractors offering or bidding to perform a work activity to provide hiring preference, to the extent practicable, in filling vacancies to displaced employees who meet the eligibility criteria contained in the DOE's Work Force Restructuring Guidelines and who are qualified for the prospective work or, through further retraining, can become qualified within the time frames and dollar amounts provided for in the guidelines (displaced workers with the hiring preference are listed on the Department's Job Opportunity Bulletin Board System {JOBBS} along with their qualifications); consistent with applicable law or employment seniority plans or practices of the DOE, with Section 3152 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, and with the terms of any legally enforceable affirmative action plan.
 2. Provide, or through its subcontractors provide, the training contemplated by subparagraph 13.8-A.1. above; and
 3. Discuss with affected unions or subcontractors and bargain where required by law regarding the implementation of the hiring preference provided by subparagraph 13.8-A.1. above.
- B. The Contractor and any lower tier subcontractor subject to subparagraph 13.8-A.1. above shall negotiate with affected unions to implement the hiring preference. This includes if necessary, special agreements for allocation of work or arrangements for exceptions to internal union rules that might otherwise be obstacles to implementation of the hiring preference, consistent with the Departmental guidance regarding Section 3161.
- C. The Contractor and any subcontractor shall comply with plans issued by DOE pursuant to Section 3161.
- D. Nothing in this Clause shall be construed to excuse the Contractor or any subcontractor from compliance with the requirements of any applicable law.
- E. Nothing in this Clause is intended to create rights in third parties or persons.

13.9 IMMIGRATION REFORM AND CONTROL ACT COMPLIANCE

- A. If the work to be performed under this Contract calls for the Contractor to provide workers to Buyer and the Contractor (1) operates as an independent business offering to the general public to provide workers for the performance of



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services and (2) provides direct compensation to the workers supplied to Buyer, this Clause shall be applicable.

- B. Contractor specifically agrees that it is the employer of personnel performing work under this Contract 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. Contractor 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 Contractor's providing personnel under this Contract in violation of the requirements of the IRCA.

13.10 TOXIC SUBSTANCES CONTROL ACT

Contractor warrants that each and every chemical substance delivered under this Contract, if any, shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 2607(b) of the Toxic Substances Control Act (15 U.S.C. 2601-2629).

13.11 TAXES

The Contractor shall not assess and collect Washington State sales or use tax from the Buyer for materials with respect to this Contract. The Buyer, Mission Support Alliance (Washington State UBI Number 602-931-756), is in possession of a DIRECT PAY PERMIT (number 80) issued by Washington State Department of Revenue, effective January 1, 2002 through July 31, 2013, and shall pay a use tax attributable to materials used in performing work under this Contract. 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 Contract amount. If the Contractor, as a result of this Contract becomes eligible for Washington State Business and Occupation Tax Credit for Research and Development spending, the Contractor shall take such tax credit and assign such tax credit to the Buyer. Note that labor charges for construction and demolition services, which are applied to real property owned by the U.S. Department of Energy, are exempt from sales and use tax.

13.12 INVOICING AND PAYMENT

- A. Contractor shall prepare all invoices in a form satisfactory to and approved by buyer. Except to the extent expressly stated elsewhere in this Contract, the Contract price shall be payable thirty (30) calendar days after receipt by Buyer of a proper invoice. All unit pricing, and payments made, shall be in U.S. dollars only, in the forms of cash, check or electronic transfer as may be agreed upon.
- B. As a minimum, the invoice shall clearly identify the invoice number, Contract, release and/or item number(s) for which payment is being requested, and contain a corresponding description of each item billed, and amount being billed. Submittal of an invoice constitutes Contractor's certification that the



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materials, work and/or services have been delivered and are in accordance with all terms of the Contract.

- C. At Buyer's request Contractor shall furnish evidence, satisfactory to buyer, that all labor and materials furnished and equipment used during the period covered by any invoice has been paid for in full and that the work is not subject to liens or claims on account thereof. Buyer may withhold payment of invoices until Contractor furnishes such evidence.
- D. In the event an invoice is submitted, in accordance with Contract terms, for work accomplished on a reimbursable or unit price/unit rate basis, it shall be accompanied by documentation supporting each element of measurement and/or cost. The final invoice shall be submitted for payment after completion and acceptance of work by Buyer and compliance by Contractor with all terms of this Contract. It shall be supported by a written acceptance of the work signed by buyer, and a certification and release.
- E. Any invoice submitted, which fails to comply with the terms of this Contract, including the requirements of form and documentation, may be returned to Contractor. Any costs associated with the resubmission of a proper invoice shall be to Contractor's account. Final payment shall not relieve Contractor of any obligation under Contract guarantees.

13.13 DISPUTES

- A. All disputes arising under or relating to this Contract shall be resolved under this Clause.
- B. "Claim," as used in this Clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of Contract terms, or other relief arising under or relating to this Contract.
- C. A claim by the Contractor shall be submitted in writing to the Contract Specialist for a decision within 6 years after accrual of the claim, unless the contracting parties agreed to a shorter time period. A claim by the Buyer against the Contractor shall be subject to a written decision by the Contract Specialist.
 - 1. The Contractor shall provide the certification specified in paragraph D.3. and 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 Contract adjustment for which the



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Contractor believes the Buyer is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.”

4. The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- D. The Buyer’s decision shall be final unless the Contractor appeals or files a suit.
- E. If the claim by the Contractor is submitted to the Buyer or a claim by the Buyer is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Buyer, in writing, of the Contractor’s specific reasons for rejecting the offer.
- F. The Contractor shall proceed diligently with performance of this Contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract, and comply with any decision of the Buyer.

13.14 GOVERNING LAW

Irrespective of the place of performance, this Contract 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 Contract, the parties hereby consent to the action being brought in the court of competent jurisdiction in the state of Washington.

13.15 INTEREST PAYMENT

No interest is payable to Seller 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).

14.0 CLAUSES INCORPORATED BY REFERENCE

- A. The following Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses are hereby incorporated by reference to this Contract. The obligations of the Buyer to the Government as provided in said clauses shall be deemed to be the obligations of the Contractor to Buyer. NOTE: If there is a conflict between the referenced clauses and the terms and conditions found elsewhere in this Contract, the below referenced clauses shall take precedence.
- B. Wherever necessary to make the context of the clauses set forth below applicable to this Contract, the term "disputes" shall mean "claims" and the terms "Government," "Contracting Officer," and equivalent phrases shall mean Buyer, except the terms "Government," and



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

C. Referenced Clauses

<u>FAR/DEAR REFERENCE</u>	<u>CLAUSE TITLE</u>	<u>NOTE</u>
FAR 52.252-2	Clauses Incorporated by Reference (FEB 1998)	
FAR 52.202-1	Definitions (JUL 2004)	Applies over \$150,000.00
FAR 52.203-3	Gratuities (APR 1984)	Applies over \$150,000.00
FAR 52.203-5	Covenant Against Contingent Fees (APR 1984)	Applies over \$150,000.00, except for commercial items
FAR 52.203-6	Restrictions On Subcontractor Sales To The Government (SEP 2006)	Applies over \$150,000.00, except commercial items
FAR 52.203-7	Anti-Kickback Procedures (OCT 2010)	Applies over \$150,000.00, except for commercial items as defined in FAR Part 12
FAR 52.203-8	Cancellation, Rescission, And Recovery Of Funds For Illegal Or Improper Activity (JAN 1997)	Applies over \$150,000.00, except for commercial items
FAR 52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity (JAN 1997)	Applies over \$150,000.00, except for commercial items
FAR 52.203-12	Limitation On Payments To Influence Certain Federal Transactions (OCT 2010)	Applies over \$150,000.00
FAR 52.204-4	Printed or Copied Double-Sided on Recycled Paper (AUG 2000)	Applies over \$150,000.00
FAR 52.204-9	Personal Identity Verification of Contractor Personnel (SEP 2007)	Applies when subcontractor will have routine access to federal facilities and/or federal computer systems.
FAR 52.209-6	Protecting The Government's Interest When Subcontracting With Contractors Debarred, Suspended, Or Proposed For Debarment (DEC 2010)	Applies over \$30,000.00
FAR 52.204-11	American Recovery and Reinvestment Act – Reporting Requirements (JUL 2010)	For all contracts funded in whole or part with Recovery Act funds.
FAR 52.215-2	Audits and Records -	Applies over \$150,000.00, except



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	Negotiation (OCT 2010)	commercial items per FAR 15.403-1
FAR 52.215- 10	Price Reduction For Defective Cost Or Pricing Data (OCT 2010)	Applies over \$700,000.00.
FAR 52.215- 12	Subcontractor Cost Or Pricing Data (OCT 2010)	Applies over \$700,000.00
FAR 52.215- 14	Integrity Of Unit Prices (OCT 2010)	Applies over \$150,000.00, except commercial item or service contracts where supplies are not required.
FAR 52.215-15	Pension Adjustments and Asset Reversions (OCT 2010)	Applies over \$700,000.00
FAR 52.215-18	Reversion of Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions (JUL 2005)	Applies over \$700,000.00
FAR 52.215-19	Notification Of Ownership Changes (OCT 1997)	Applies over \$700,000.00
FAR 52-215-21	Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data Modifications (Oct 2010)	
FAR 52.217-8	Option to Extend Services (NOV 1999)	When inclusion of an option is appropriate.
FAR 52-217-9	Option to Extend the Term of the Contract (MAR 2000)	When inclusion of an option is appropriate.
FAR 52.219-8	Utilization Of Small Business Concerns (MAY 2004)	Applies over \$150,000.00
FAR 52.222-1	Notice To The Government Of Labor Disputes (FEB 1997)	Applies when both \$650,000.00 and contract is Cost-Reimbursable.
FAR 52.222-3	Convict Labor (JUN 2003)	
FAR 52.222-20	Walsh-Healey Public Contracts Act (OCT 2010)	
FAR 52.222-21	Prohibition Of Segregated Facilities (FEB 1999)	
FAR 52.222-26	Equal Opportunity (MAR 2007)	Applies over \$10,000.00
FAR 52.222-35	Equal Opportunity for Veterans (SEP 2010)	Applies over \$100,000.00
FAR 52.222-36	Affirmative Action For Workers With Disabilities (OCT 2010)	Applies over \$15,000.00
FAR 52.222-37	Employment Reports Veterans (SEP 2010)	Applies over \$100,000.00
FAR 52.222-41	Service Contract Act Of 1965, As Amended (NOV 2007)	Applies over \$2,500.00
FAR 52.222.42	Statement of Equivalent Rates for Federal Hires (MAY 1989)	Applies over \$2,500.00



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FAR 52.222-50	Combating Trafficking in Persons (FEB 2009)	
FAR 52.222-54	Employment Eligibility Verification (JAN 2009)	Applies over \$150,000.00
FAR 52.223-5	Pollution Prevention and Right-to-Know Information (AUG 2003)	
FAR 52.223-10	Waste Reduction Program (AUG 2000)	
FAR 52.223-12	Refrigeration Equipment And Air Conditioners (MAY 1995)	
FAR 52.223-14	Toxic Chemical Release Reporting (AUG 2003)	
FAR 52.224-1	Privacy Act Notification (APR 1984)	
FAR 52.224-2	Privacy Act (APR 1984)	
FAR 52.225-1	Buy American Act—Supplies (FEB 2009)	
FAR 52.225-13	Restrictions On Certain Foreign Purchases (JUN 2008)	
FAR 52.226-1	Utilization Of Indian Organizations And Indian-Owned Economic Enterprises (JUN 2000)	
FAR 52.227-9	Refunds of Royalties (APR 1984)	
FAR 52.227-23	Rights To Proposal Data (Technical) (JUN 1987)	
FAR 52.232-17	Interest (OCT 2010)	Applies over \$150,000.00
FAR 52.233-4	Applicable Law for Breach of Contract Claim (OCT 2004)	
FAR 52.237-3	Continuity of Services (JAN 1991)	
FAR 52.242-13	Bankruptcy (JUL 1995)	
FAR 52.243-7	Notification of Changes (APR 1984)	
FAR 52.244-2	Subcontracts (JUN 2007) Alt I (JUN 2007)	Applies over \$150,000.00
FAR 52.244-5	Competition In Subcontracting (DEC 1996)	Applies over \$150,000.00
FAR 52.244-6	Subcontracts For Commercial Items (OCT 2010)	
FAR 52.247-63	Preference For U.S. - Flag Air Carriers (JUN 2003)	
FAR 52.247-64	Preference For Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)	



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DEAR 952.203-70	Whistleblower Protection for Contractor Employees (DEC 2000)	
DEAR 952.204-2	Security (AUG 2009)	
DEAR 952.204-71	Sensitive Foreign Nations Controls (APR 1994)	
DEAR 952.208-70	Printing (APR 1984)	
DEAR 952.217-70	Acquisition Of Real Property (APR 1984)	
DEAR 952.226-74	Displaced Employee Hiring Preference (JUN 1997)	Applies over \$500,000.00, except for commercial items
DEAR 952.250-70	Nuclear Hazards Indemnity Agreement (JUN 1996)	
DEAR 970-5227-4	Authorization And Consent (AUG 2002)	
DEAR 970.5227-6	Patent Indemnity - Subcontracts (DEC 2000)	
DEAR 970.5232-3	Accounts, Records, And Inspection (AUG 2009) ALTERNATE I (DEC 2000)	
DEAR 970.5236-1	Government Facility Subcontract Approval (DEC 2000)	