

**GENERAL PROVISIONS FOR USE
 WITH INDIVIDUAL CONSULTANTS
 UNDER
 U. S. DEPARTMENT OF ENERGY
 PRIME CONTRACT NO. DE-AC09-
 96SR18500**

**WESTINGHOUSE SAVANNAH RIVER CO.,
 LLC
 SAVANNAH RIVER SITE
 AIKEN, SC 29808**

TABLE OF CONTENTS

This Revision 13 was a major rewrite. Article Numbers may have changed from the previous revision. Change Bar indicates new article, a change in application, or that text of Article has changed from Revision 12

** Incorporated by reference to appropriate FAR clause (see <http://www.arnet.gov/far>) and DEAR (<http://professionals.pr.doe.gov>)*

<u>Article</u>	<u>Page No.</u>
A.1 REPORTS.....	2
A.2 TRAVEL.....	2
A.3 INDEPENDENT CONTRACTOR.....	2
A.4 CONFIDENTIALITY OF INFORMATION.....	3
A.5 REPORTING OF ROYALTIES.....	3
A.6 TAXES.....	4
A.7 TERMINATION.....	4
A.8 ASSIGNMENT.....	4
A.9 DISPUTES.....	4
A.10 INSURANCE.....	4
A.11 RELEASE OF LIABILITY.....	5
A.12 GENERAL.....	5
A.13 TAX WITHHOLDING FOR NONRESIDENTS.....	5
A.14 WORKPLACE SUBSTANCE ABUSE PROGRAM.....	6
A.15 GENERAL EMPLOYEE TRAINING AND ANNUAL REFRESHER TRAINING FOR SUBCONTRACT EMPLOYEES.....	7

A.16 SECURITY EDUCATION REQUIREMENTS FOR SUBCONTRACTORS.....	8
A.17 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI) ..	8
A.18 LIMITATION OF FUNDS.....	9
A.19 RIGHT OF FIRST REFUSAL OF EMPLOYMENT.....	10
A.20 COPYRIGHTS FOR WSRC DIRECTED TECHNICAL PERFORMANCE.....	10
A.21 SECURITY.....	10
A.22 CONSULTANT'S LIABILITY FOR FINES AND PENALTIES.....	12
A.23 FOREIGN NATIONALS.....	12
A.24 PAYMENT BY ELECTRONIC FUNDS TRANSFER.....	12
A.25 JOINT INTELLECTUAL PROPERTY RIGHTS.....	13
A.26 SCIENTIFIC AND TECHNICAL INFORMATION.....	13
A.27 PRICE-ANDERSON AMENDMENTS ACT.....	13
A.28 SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE	14
*A.29 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996).....	14
*A.30 RIGHTS IN DATA – GENERAL (JUN 1987).....	14
*A.31 RIGHTS IN DATA - ALTERNATE II (JUN 1987).....	14
*A.32 ADDITIONAL DATA REQUIREMENTS (JUN 1987).....	14
*A.33 PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995).....	14
*A.34 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997).....	14
*A.35 CONVICT LABOR (AUG 1996).....	14
*A.36 PREFERENCE FOR U.S. - FLAG AIR CARRIERS (APR 1984).....	14
*A.37 PROTECTION OF GOVERNMENT'S INTEREST IN SUBCONTRACTING (JUL 1995).....	14
*A.38 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997).....	14
*A.39 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000).....	14
*A.40 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000)	15
*A.41 ACCOUNTS, RECORDS AND INSPECTIONS (DEC 2000).....	15
*A.42 CLASSIFICATION/ DECLASSIFICATION (SEP 1997)....	15

*A.43 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000)	15
*A.44 AUTHORIZATION AND CONSENT (JUL 1995	15

A.1 REPORTS

As a part of the work and services to be performed, the Consultant will furnish intermediate reports to WSRC from time to time, when requested, in such form and number as may be required by WSRC, and will make such final reports as may be required by WSRC concerning the work and services performed under the Subcontract.

A.2 TRAVEL

- A. Allowable costs for air travel will be limited to the lowest available airfare. To the extent reasonable, the Consultant will make use of commercial discount airfares, Government contract airfares, and customary standard airfares. First class air travel will only be used when other less expensive accommodations are not reasonably available to meet the necessary duty requirements. Such accommodations are considered "not reasonably available" when they would:
- Require circuitous routing;
 - Require travel during unreasonable hours;
 - Greatly increase the duration of the flight;
 - Result in additional costs which would offset the transportation saving; or
 - Offer accommodations which are not reasonably adequate for the medical needs of the traveler.
- B. (1) The allowance for the use of personal automobile on official business shall not be higher than the rate authorized in FPMR 101.7.1. Such allowance shall be based on the mileage between the authorized points of travel as listed in Rand-McNally standard distance charts. A variation of ten percent, if reasonable under the circumstances, is allowable, except when a longer route is necessitated by road or weather conditions.
- (2) Additional allowances shall be made for daytime and overnight parking and for ferry, toll road, tunnel, or toll bridge charges. In the event two or more

persons travel in one automobile, only one mileage allowance will be paid.

- (3) The allowance for an employee on official travel who uses a privately owned automobile for the employee's own convenience in lieu of commercial transportation will be air coach fare plus a reasonable allowance for other normal travel costs, such as for taxi fare, required to get to the airport and to the point of destination and origin, or the applicable mileage rate, whichever is less. In such instances, reimbursement for living allowance will be limited to the time required as if the employee had used air transportation.

C. Promotional Materials (Received in Conjunction with Official Travel From Common Carriers, Rental Car Companies or Other Commercial Sources)

All promotional materials (e.g., bonus flights, reduced-fare coupons, cash, merchandise, gifts, credits toward future free or reduced costs, etc.) received by Consultants in conjunction with official travel or applicable to the purchase of travel tickets or other services such as car rental, are due the Consultant and may not be retained by the Consultant(s). If a Consultant(s) receives such promotional materials from any commercial source incident to official travel, the Consultant(s) shall accept the material on behalf of the Federal Government and relinquish it to WSRC.

- D. Foreign travel, when charged directly, shall be subject to the prior approval of WSRC for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. Request for approval shall be submitted at least 60 days prior to the planned departure date, on a Request for Approval of Foreign Travel form, and, when applicable include a notification of proposed sensitive foreign nation travel.

A.3 INDEPENDENT CONTRACTOR

In the performance of the work and services under the terms of the Subcontract, the Consultant will act solely as an independent contractor, and nothing contained herein or implied will at any time be so construed as to create the relationship of employer and employee, partnership, principal and agent, or joint adventurer as between WSRC

and Consultant. The manner and method of implementing and completing any work to be performed under the terms of the Subcontract will be left to Consultant's control and professional judgment. It is understood that WSRC has no obligation under local, state, or federal laws regarding the Consultant or any employees, agents or subcontractors employed by the Consultant and that the total commitment and liability of WSRC in regard to any arrangement or work performed under the Subcontract is to pay the fees and expenses pursuant to the provisions hereof.

A.4 CONFIDENTIALITY OF INFORMATION

A. To the extent that the work under the Subcontract requires that the Consultant be given access to confidential or proprietary business, technical or financial information belonging to the Government, WSRC or other companies, the Consultant shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by WSRC or the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

- Information which, at the time of receipt by the Consultant, is in public domain;
- Information which is published after receipt thereof by the Consultant or otherwise becomes part of the public domain through no fault of the Consultant;
- Information which the Consultant can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the government or other companies;
- Information which the Consultant can demonstrate was received by it from a third party who did not require the Consultant to hold it in confidence.

B. The Consultant shall obtain the written agreement, in a form satisfactory to WSRC, of each employee permitted access, whereby the employee agrees not to discuss, divulge or disclose any such information or data to any person or entity except those persons within the Consultant's organization directly concerned with the performance of the contract.

C. The Consultant agrees, if requested by the WSRC or the Government, to sign an

agreement identical, in all material respects, to the provisions of this article, with each company supplying information to the Consultant under the Subcontract, and to supply a copy of such agreement to WSRC. From time to time upon request of WSRC, the Consultant shall supply WSRC with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Consultant received such information.

- D. (1) The Consultant agrees that upon request by DOE or WSRC, it will execute a DOE-approved agreement, with any party whose facilities or proprietary data it is given access to or is furnished, restricting the use and disclosure of the data or the information obtained from the facilities. Upon request by DOE or WSRC such an agreement shall also be signed by Consultant personnel.
- (2) Consultants will indemnify and hold WSRC harmless from any and all liabilities, claims, demands, actions, costs, damages and any expenses relating thereto (including but not limited to reasonable attorney's fees) arising from any nonauthorized disclosure of information, protected by Paragraph 7 above, by Consultant or any of its directors, officers, employees, agents, subcontractors or permitted assigns.

A.5 REPORTING OF ROYALTIES

Note: This Article applies if the Subcontract is in excess of \$25,000.

If any royalty payments are directly involved in the Subcontract or are reflected in the Agreement price, the Consultant agrees to report in writing to WSRC during the performance of the Subcontract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of the Subcontract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of DOE or WSRC of any individual payments or royalties shall not stop the Government or WSRC at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

A.6 TAXES

- A. All taxes applicable to any amounts paid by WSRC to the Consultant under the Subcontract will be the Consultant's liability and WSRC shall not withhold nor pay any amounts for federal, state or municipal income tax, social security, unemployment or worker's compensation. Upon request by WSRC, the Consultant will provide documentation evidencing compliance with all applicable federal, state and municipal income tax and/or self-employment tax laws in regard to amounts received under the Subcontract.
- B. In accordance with current law, WSRC shall annually file with the Internal Revenue Service a Form 1099-MSIC., U.S. Information Return for Recipients of Miscellaneous Income, reflecting the gross annual payments by WSRC to the Consultant, net of any reimbursed expenses incurred by the Consultant on behalf of WSRC, pursuant to the Subcontract. The Consultant hereby acknowledges personal income tax liability for the self-employment tax imposed by Section 1401 of the Internal Code, and the payment when applicable, or estimated quarterly Internal Revenue Service Forms 1040-ES, declaration of estimated tax by individuals.

A.7 TERMINATION

WSRC has the right to terminate the Subcontract or any work being performed under any schedule executed pursuant thereto at any time by a written notice to the Consultant. In such event, notwithstanding any other provisions of the Subcontract, all work and services being performed under the Subcontract or any schedule being terminated will automatically and instantly terminate and WSRC will have no liability or obligation for any performance by Consultant after the Consultant received or should have received such notice.

A.8 ASSIGNMENT

The Consultant may not assign the Subcontract or any schedule executed pursuant thereto, nor may the Consultant delegate or subcontract the performance and obligations imposed hereunder without the consent of WSRC.

A.9 DISPUTES

- A. Subcontractor shall not be entitled to and neither WSRC nor the Government shall be liable to the Subcontractor or its lower-tier

suppliers or subcontractors in tort (including negligence), or contract, or otherwise, except as specifically provided in this order.

- B. The Parties shall attempt to settle any claim or controversy arising from this Order through consultation and negotiations in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator chosen by the Parties within thirty (30) days after written notice by one party demanding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, and the Parties will share the costs of the mediation equally. Any dispute which cannot be resolved between the Parties through negotiation or mediation shall be resolved by litigation in a court of competent jurisdiction located in the State of South Carolina. Determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government; if there is no applicable Federal Government contract law, the law of the State of South Carolina shall apply in the determination of such issues.
- C. During the pendency of a dispute, the Contractor shall proceed diligently with performance of all terms of this Order. The Contractor's consent to so proceed shall not restrict or otherwise affect the Contractor's right to contest any claim.

A.10 INSURANCE

A. Professional Liability

The Consultant shall, when directed by WSRC, maintain professional liability insurance insuring against act of omission and commission by the Consultant in amounts satisfactory to WSRC and issued by insurance carriers approved by WSRC. Upon request, the Consultant shall provide a certificate of insurance to WSRC meeting the requirements of this article.

B. Automobile Liability Insurance

In the event that the Consultant is required to perform work or services on WSRC owned or controlled premises including but not limited to the Savannah River Site, and in the performance thereof the Consultant uses a Consultant owned, leased or rented automobile; the Consultant shall provide a certificate of insurance to WSRC upon request, for automobile liability insurance

including bodily injury and property damage with limits of at least \$500,000 per person and \$1,000,000 per accident issued by an insurance carrier satisfactory to WSRC. Nothing in this article shall be construed as requiring the Consultant to provide insurance coverage in excess of the statutory minimum when the use of the automobile is solely for transportation to and from the WSRC owned or controlled premises.

C. Workers/Workman Compensation

The Consultant shall at all times maintain satisfactory coverage to meet the minimum statutory requirements for worker/workman's compensation as determined by the laws of the state(s) where the Work or Services are to be performed.

A.11 RELEASE OF LIABILITY

The Consultant hereby releases WSRC from any and all liability for damage to property or loss thereof, personal injury or death during the term of the Subcontract (and any extensions thereof) or thereafter, sustained by the Consultant, and any employee, agent or subcontractor employed by the Consultant as a result of performing the services under the Subcontract or arising out of the performance of such services, and the Consultant will indemnify and save WSRC harmless from any and all claims arising from or by reason of such property damage or loss, personal injury or death, except where such damage, loss, injury or death is caused by or results from the sole negligence of WSRC, its agents or employees.

A.12 GENERAL

- A. The Consultant has no authority whatever, expressed or implied, by virtue of the Subcontract to commit WSRC in any way to perform in any manner or to pay money for services or material.
- B. The Subcontract will be void and without any binding effect on WSRC if the Consultant or any Consultant employee utilized in the performance of the Subcontract is a candidate for federal, state or local political office or holds any such office, unless and until it has been approved by the General Counsel of WSRC or his/her designee.
- C. The whole and entire agreement of the parties is set forth in the Subcontract and the schedules executed pursuant thereto (which are hereby incorporated and made a part of the Subcontract as executed) and the parties are not bound by any agreements, understanding or conditions otherwise than as

expressly set forth therein or in any schedule incorporated into the Subcontract.

- D. The terms of the Subcontract and of any of the schedule executed pursuant hereto and incorporated herein are to be read and interpreted, if possible, so that there is no conflict between them. To the extent there is such conflict, the terms of the applicable schedule will prevail.
- E. Neither the Subcontract nor any schedule incorporated therein may be changed or modified in any manner except by a writing mutually signed by the parties or their respective successors and permitted assigns.
- F. The Subcontract and all schedules incorporated therein will inure to the benefit of the parties and their respective successors and permitted assigns.
- G. In the event of an inconsistency between provisions of this Order, the inconsistency shall be resolved by giving precedence as follows:
 - (1) Purchase order;
 - (2) These General Provisions;
 - (3) Statement of work; and
 - (4) Other provisions of this Order, whether incorporated by reference or otherwise.

A.13 TAX WITHHOLDING FOR NONRESIDENTS

- A. Withholdings required by section 12-8-550 do not apply to payments on orders for tangible personal property when those payments are not accompanied by services to be performed within the state of South Carolina.
- B. Under Title 12 of the Code of Laws of South Carolina, section 12-8-550, two (2) percent of each and every payment made to Suppliers and Subcontractors who are nonresidents of the State of South Carolina and are conducting a business or performing personal services of a temporary nature carried on within South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where an order or a subcontract exceeds or could reasonably be expected to exceed ten thousand dollars (\$10,000.00) WSRC will withhold as required by law.
- C. Under Title 12 of the Code of Laws of South Carolina, section 12-8-540, seven (7) percent (five (5) percent for corporations) of each and every payment of rentals or royalties to subcontractors who are nonresidents of the State of South Carolina must be withheld and

forwarded to the South Carolina Tax Commission in cases where the payments amount to twelve hundred dollars (\$1,200.00) or more a year. WSRC will withhold as required by law.

- D. The above withholdings will not be made provided the Supplier presents the affidavit of registration with the South Carolina Department of Revenue or the South Carolina Secretary of State's Office, or proof of having posted the appropriate bond with the South Carolina Tax Commission.

A.14 WORKPLACE SUBSTANCE ABUSE PROGRAM

A. Fitness for Duty

(1) (i) The Consultant shall advise employees and the employees of his lower tier subcontractors and agents that it is the policy of WSRC to prohibit the use, possession, sale and distribution of alcohol, drugs or other controlled substance within the limits of the Savannah River Site (SRS), and/or any off-Site facilities, and to prohibit the presence of individuals who have such substances in the body for non-medical reasons. Any Consultant employee, including Consultant, who is found in violation of the policy may be removed or barred from the site.

(ii) The Consultant agrees to advise its employees and the employees of lower-tier Subcontracts of the above policy prior to assignment to the Site and to maintain documentation that such advice has been given.

(2) WSRC will collect urine specimens when Subcontractor employees are processed for badging. WSRC will send these specimens to a consultant for testing and verification. The testing process may take up to five (5) days to obtain results. In the event of "positive" findings, the Subcontractor will be notified and shall bring the individual to the Badge Office for an "Exit Conference". The Subcontractor then agrees to promptly remove such individual from the Savannah River Site and return the badge to the WSRC Subcontractor Badge Office.

(3) The Consultant agrees to secure the written consent of employees, and to

provide consent to release results of urine tests to the designated WSRC representative. WSRC agrees to use such results solely in connection with its decision as to whether to permit a Consultant or Consultant's employee, lower-tier subcontractor employee or agent to access Savannah River Site property.

(4) WSRC will also conduct for-cause and random drug and alcohol testing on all employees badged by WSRC. The Consultant agrees to comply with and secure the compliance of employees and employees of lower-tier subcontractors with this testing. In the event of "positive" findings, the Consultant agrees to promptly remove such individual employee(s) from the Savannah River Site and return his or her badge to the WSRC Subcontractor Badging Office.

(5) A Breath Alcohol Test will be given during the initial badging process and the results will be available immediately. In the event of "positive" findings, the Subcontractor's employee will not be badged, shall be issued a temporary pass, and will be escorted offsite by a Subcontractor's Representative.

B. Suitability for Employment

(1) Consultant or Consultant's employees, including employees of lower-tier subcontractors, who are to be badged to permit Savannah River Site access, must successfully complete Suitability for Employment process. As part of this process, the Consultant agrees to advise its employees and employees of lower-tier subcontractors that they will be required to complete certain forms, which authorize background investigations. These forms shall be submitted during the badging process. Consultant will also be required these forms.

(2) Consultant and Consultant's employees will be issued a photo badge and allowed site access on the first reporting day. In the event a Consultant and Consultant's employee subsequently fails to successfully complete the background investigation, the Subcontractor agrees to promptly remove himself or such individual employee(s) from the site and to return the badge to the WSRC Subcontractor Badging Office.

- (3) Consultant agrees to advise employees of the above requirement prior to assignment to the Savannah River Site and to maintain documentation that such advise has been given.

A.15 GENERAL EMPLOYEE TRAINING AND ANNUAL REFRESHER TRAINING FOR SUBCONTRACT EMPLOYEES

The following terms are applicable if performance of this Order will require the Supplier/Subcontractor's employee(s) to perform work on SRS premises for more than ten (10) working days.

A. General Employee Training (GET)

- (1) The Subcontractor shall inform his employees and the employees of his lower tier subcontractors and agents that it is the policy of Westinghouse Savannah River Company to adhere to the requirements contained in the DOE Order entitled "Personnel Selection, Qualification and Training Requirements," which requires any individual, employed either full or part-time at any DOE reactor or non-reactor facility to receive selected general training.
- (2) Successful Completion Required
Said employees, referred to in the remainder of this document as "individual", must successfully complete the training known as "General Employee Training" (GET) as offered by the SRS. The GET sessions are given by a Savannah River Site authorized GET instructor. There are three categories of GET.
- (i) Category 1 consists of viewing a video that lasts for one hour. This category is limited to delivery personnel, visitors, and other temporary personnel that require badged access to the general site and property protection areas and are typically on site greater than 10 days, but not consecutively, in a calendar year.
- (ii) Category 2 consists of viewing a video and a written examination, and lasts for approximately two hours. This category would apply to visitors or other temporary personnel that require badged access to the general site and property protection

areas and are on site greater than 10 days consecutively in a calendar year, and additional training is not required as determined by WSRC.

- iii) Category 3 consists of eight hours of training and includes instructor lecture along with audio and visual aids and a written examination. This category applies to individuals who require badged access to the general site, property protection areas, or security controlled areas and additional training is required, as determined by WSRC.

- (3) Successful Completion Defined: Successful completion occurs when the individual

- (i) Is scheduled for GET,
(ii) Attends the GET session,
(iii) Obtains a test score of 70% or greater on the written examination, if required, (100% is the highest obtainable score), and
(iv) Properly completes all documents (rosters, exam answer sheet, etc.).

- (4) Unsuccessful Completion Defined: If the individual fails to successfully complete GET, the individual is given a failure notice and is to notify the Subcontract Technical Representative (STR) for rescheduling for remedial training or for a re-test. The individual will be allowed several chances to successfully complete the GET. Continued failure to successfully complete GET will result in resolution by the STR.

- (5) Scheduling for GET

The STR shall direct the individual to the appropriate training center to attend the GET session. GET training is scheduled subject to demand.

- (6) Records

GET records will be maintained by WSRC.

B. Annual Refresher Training

Refresher Training is required after an individual's initial successful completion of all categories of GET, regardless of the individual's present employer. Category 1 and Category 2 GET training must be repeated annually. For Category 3, successful completion of Consolidated Annual Training (CAT) is required. The subcontractor is responsible for scheduling its

employees for this training. The STR may be contacted for assistance.

- C. Upon providing proof of successful completion of GET either at another DOE facility, or while employed by a firm other than the Supplier under this Order, the employee will not be required to repeat this training.

A.16 SECURITY EDUCATION REQUIREMENTS FOR SUBCONTRACTORS

The following items are applicable if performance of the Subcontract will require the Subcontractor/Subcontractor's employee(s) to receive a security badge.

A. Subcontractor Security Education Coordinator

- (1) If this Order will require a force of more than thirty (30) subcontract employees receive a badge, then the Subcontractor shall provide to the WSRC Security Education Office, the name of representative appointed to administer Security Education Program. This representative shall be referred to as the Subcontractor Security Education Coordinator (SSEC).
- (2) If the Subcontract will require that less than thirty (30) subcontract employees receive a badge, then the WSRC Subcontract Technical Representative (STR) will perform the activities discussed in this Supplement.

B. Company Roster

The SSEC will be responsible for providing the STR with a roster of all subcontract personnel receiving a badge. At a minimum the data shall include name, social security number, work telephone number, clearance level and place where work is generally performed. This list shall be kept current and updated every sixty (60) days.

C. Initial Briefing

The SSEC will ensure that all subcontract personnel, regardless of clearance level, receive an Initial Security Briefing. This briefing is shown during General Employee Training. This briefing consists of a videotape shown during GET, or at the time of badging for those individuals not required to attend GET.

D. Comprehensive Briefing

If subcontract personnel have a clearance at the inception of this Order, or receive a clearance at any time during the course of the

Order, the SSEC/STR will ensure that those subcontract employees receive a Comprehensive Briefing from WSRC.

E. Annual Refresher Briefing

The SSEC/STR shall ensure that all subcontract employees receive, at least once in a twelve (12) month period, an Annual Security Refresher briefing from WSRC. This briefing is provided during GET Refresher Training.

F. Foreign Travel Briefing

If a subcontract employee plans a trip to a sensitive country, whether on official business or for pleasure, the SSEC/STR is responsible for ensuring that the individual receives a Foreign Travel Briefing from WSRC before departing and a Debriefing upon return. The OPSEC Officer is responsible for these Briefings.

G. Badge Retrieval at Termination

The Consultant is responsible for ensuring that badges are returned or accounted for when a subcontract employee terminates employment or when an Order is completed. The employee must report to Employment Processing Center, for proper completion of out-processing and badge return. This effort should be coordinated with the WSRC STR.

H. Termination Briefing

When a subcontract employee terminates employment or is reassigned, the SSEC/STR will ensure that a Termination Briefing by WSRC is given and the appropriate forms are executed. Briefing materials and appropriate forms are provided by WSRC.

A.17 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

In the performance of this order, the Supplier is responsible for complying with the following requirements and for flowing down all requirements to lower-tier suppliers.

- A. The Supplier ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE M 471.1-1, Chapter II). Supplier may provide access to material or data containing Unclassified Controlled Nuclear Information (UCNI) utilized in the performance of this Order only to employees who are citizens of the United States.

- B. The Supplier ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE M 471.1-1, Chapter II. Any material or data containing UCNI which is stored on computer systems

must be protected, and the protective measures and/or policies must be specified in a Computer Protection Plan approved by the WSRC Computer Security organization. Adherence to the Plan is required during the performance of this Order.

- C. Material or data containing UCNI shall be disposed of in a manner as described in DOE M 471.1-1, Chapter II. At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than 1/4-inch wide strips. Documents containing UCNI may also be disposed of in the same manner that is authorized for Supplier disposition of other classified material or data. If the above disposal methods are not available to the Supplier, the Supplier may return the UCNI matter to the STR for disposition, with the prior approval of the STR.
- D. The supplier shall report to the WSRC Security Office or the WSRC Purchasing Representative any incidents involving the unauthorized disclosure of UCNI.
- E. If performance of work under this order results in the generation of unclassified documents that contain UCNI, the Supplier shall have a sufficient number of trained UCNI review personnel to ensure the prompt and proper review of generated material or data to provide for the identification, marking, and proper handling of material or data determined to contain UCNI. The suppliers Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part C.
- F. If the supplier has a formally designated Classification Officer, the Classification Officer-
 - (1) Serves as a Reviewing Official for information under his/her cognizance;
 - (2) Trains and designates other Reviewing Officials in his/her organization, subordinate organizations, and lower-tier suppliers and maintains a current list of all Reviewing Officials; and
 - (3) May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.
- G. If the supplier has no formally designated Classification Officer, the supplier submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions

contained in DOE M 471.1-1, Chapter I, Part B.

A.18 LIMITATION OF FUNDS

NOTE: This article is applicable only if the Subcontract is partially funded.

- A. Of the total price of the Subcontract, the sum of \$_____ is presently available for payment and allotted to the Subcontract. It is anticipated that additional funds will be allocated to the Agreement in accordance with the following schedule until the total price of the Subcontract is funded:
- B. The Consultant agrees to perform or have performed work on the Subcontract up to the point at which, if the Subcontract is terminated pursuant to the Termination For Convenience of WSRC article of the Subcontract, the total amount payable by WSRC (including amounts payable for subcontracts and settlement costs) pursuant to the Termination For Convenience of WSRC article would, in the exercise of reasonable judgment by the Consultant, approximate the total amount at the time allotted to the Subcontract. The Consultant is not obligated to continue performance of the work beyond that point. WSRC is not obligated in any event to pay or reimburse the Consultant more than the amount from time to time allotted to the Agreement, anything to the contrary in the Termination For Convenience of WSRC article notwithstanding.
- C. (1) It is contemplated that funds presently allotted to the Subcontract will cover the work to be performed until_____.
(2) If funds allotted are considered by the Consultant to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Consultant shall notify WSRC in writing when within the next 60 days the work will reach a point at which, if the Subcontract is terminated pursuant to the Termination For Convenience of WSRC article of the Subcontract, the total amount payable by WSRC (including amounts payable for subcontracts and settlement costs) pursuant to the Termination For Convenience of WSRC article will approximate 75 percent of the total amount then allotted to the Subcontract.
- (3) (i) The notice shall state the estimated date when the point referred to in subparagraph C.(2) of this clause

will be reached and the estimated amount of additional funds required to continue performance to the date specified in subparagraph C.(1) of this clause, or an agreed date substituted for it.

- (ii) The Consultant shall, sixty days in advance of the date specified in subparagraph C.(1) of this clause, or an agreed date substituted for it, advise WSRC in writing as to the estimated amount of additional funds required for the timely performance of the Subcontract for a further period as may be specified in the Subcontract or otherwise agreed to by the parties.
- (4) If, after the notification referred to in subdivision C.(3)(ii) of this clause, additional funds are not allotted by the date specified in subparagraph C.(1) of this clause, or an agreed date substituted for it, WSRC shall, upon the Consultant's written request, terminate the Subcontract on that date or on the date set forth in the request, whichever is later, pursuant to the Termination For Convenience of WSRC article.
- D. When additional funds are allotted from time to time for continued performance of the work under the Subcontract, the parties shall agree on the applicable period of Subcontract performance to be covered by these funds. The provisions of paragraphs B and C of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the Subcontract shall be modified accordingly.
- E. If, solely by reason of WSRC's failure to allot additional funds in amounts sufficient for the timely performance of the Subcontract, the Consultant incurs additional costs or is delayed in the performance of the work under the Subcontract, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the work to be performed.
- F. WSRC may at any time before termination, and, with the consent of the Consultant, after notice of termination, allot additional funds for the Subcontract.
- G. The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of WSRC under the default

article of the Subcontract. This clause shall become inoperative upon the allotment of funds for the total price of the work under the Subcontract except for rights and obligations then existing under this clause.

- H. Nothing in this clause shall affect the right of WSRC to terminate the Subcontract pursuant to the Termination For Convenience of WSRC article of the Subcontract.

A.19 RIGHT OF FIRST REFUSAL OF EMPLOYMENT

The scope of work described herein as currently being performed by Buyer (WSRC/BSRI) employees and award of an order may displace these workers. Consistent with section 3161 of the National Defense Authorization Act (PL 102-484), if the Consultant needs to hire additional employees beyond those already part of its existing work force as of the date of this Subcontract in order to satisfy the performance requirements set forth by the scope of work in this Subcontract, the Consultant must first consider the employment of qualified displaced DOE contractor employees who meet the 3161 Job Attachment Test prior to using other avenues to fill that employment need. At the time of award of the Subcontract, the Buyer shall make available to the Consultant a list of displaced employees with sufficient information to allow for contact. This requirement shall be included in the resultant Subcontract and be in effect from the date of award of the Subcontract.

A.20 COPYRIGHTS FOR WSRC DIRECTED TECHNICAL PERFORMANCE

This Article applies only if specifically so stated in this Subcontract.

Consultant shall cause its employee(s) to assign to WSRC all rights under the copyright in all works of authorship prepared at the direction of WSRC during the term of this Subcontract. Consultant shall include terms in its arrangements with its employee(s) to require such assignments to WSRC. To the extent that such works of authorship are considered to be works made for hire for Consultant, Consultant agrees to assign and does hereby assign all of its rights under the copyrights in such works to WSRC or the U. S. Government.

A.21 SECURITY

A. Responsibility

It is the Consultant's duty to safeguard all classified information, special nuclear

material, and other DOE/WSRC property in their possession. The Consultant shall, in accordance with DOE/WSRC security and counterintelligence regulations and requirements, be responsible for safeguarding all classified, unclassified sensitive and proprietary information and protecting against sabotage, espionage, loss and theft of the classified, unclassified sensitive and proprietary matter in the Consultant's possession in connection with the performance of work under this Subcontract. Except as otherwise expressly provided in this Subcontract, the Consultant shall, upon completion or termination of this Subcontract, transmit to WSRC any classified, unclassified sensitive, and proprietary matter in the possession of the Consultant or any person under the Consultant's control in connection with performance of this Subcontract. If retention by the Consultant of any classified, unclassified sensitive, and proprietary matter in the Consultant's possession is required after the completion or termination of the Subcontract and such retention is approved by the WSRC Purchasing Representative, the Consultant shall complete a certificate of possession to be furnished to WSRC specifying the classified, unclassified sensitive, and proprietary matter in the Consultant's possession are 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 WSRC Purchasing Representative, the security provisions of this Subcontract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of this Subcontract.

B. Regulations

The Consultant agrees to comply with all security and counterintelligence regulations and requirements of DOE/WSRC in effect on the date of award of this order.

C. Definition of Classified Information

The term "Classified Information" means Restricted Data, Formerly Restricted Data, or National Security Information.

D. Definition of Restricted Data

The term "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.

E. Definition of Formerly Restricted Data

The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142d. of the Atomic Energy Act of 1954, as amended.

F. Definition of National Security Information

The term "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 12958 or prior Executive Orders to require protection against unauthorized disclosure, and which is so designated.

G. Definition of Special Nuclear Material (SNM)

SNM means (1) plutonium, uranium enriched in the isotope 233 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.

H. Security Clearance of Personnel

The Consultant 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 12958, and DOE/WSRC regulations or requirements applicable to the particular level and category of classified information to which access is required.

I. Criminal Liability

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

Subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12958).

J. Subcontracts and Purchase Orders

Except as otherwise authorized in writing by the WSRC Purchasing Representative, the Consultant shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this Subcontract.

A.22 CONSULTANT'S LIABILITY FOR FINES AND PENALTIES

- A. Consultant is liable to WSRC for fines and penalties assessed by any governmental entity against WSRC or DOE as a result of Consultant's failure to perform its work under the Subcontract in compliance with the requirements of the Subcontract.
- B. Consultant shall indemnify and hold harmless WSRC and DOE from and against any and all claims, demands, actions, causes of action, suits, damages, expenses, including attorney's fees, and liabilities whatsoever resulting from or arising in any manner on account of the assessment of said fines and penalties against WSRC or DOE.

A.23 FOREIGN NATIONALS

- A. Visits and assignments by foreign nationals to DOE/WSRC Facilities shall require approval in accordance with DOE Policy and Notice 142.1.
- A. The Supplier shall obtain the approval of WSRC, in writing, prior to any visit to a DOE or WSRC facility by any foreign national in connection with work being performed under this Order. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontract service work, including delivery of materials, or for courtesy purposes. The term "visit" also includes officially-sponsored attendance at a DOE or WSRC event off-site from the DOE/WSRC facility, but does not include off-site events and activities open to the general public. Suppliers should be aware that required forms and documents necessary for approval of visits by foreign nationals should be submitted at least four (4) to six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited.

Forms can be obtained from the WSRC Purchasing Representative.

A.24 PAYMENT BY ELECTRONIC FUNDS TRANSFER

A. Methods of Payment.

- (1) All payments by WSRC under this Subcontract shall be made by Electronic Funds Transfer (EFT) except as provided in paragraph A.2 of this Article. As used in this Article, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
- (2) In the event WSRC is unable to release one or more payments by EFT, Consultant agrees to either:
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request WSRC to extend payment due dates until such time as WSRC makes payment by EFT.

B. Mandatory Submission of Consultant's EFT Information.

Consultant is required to provide WSRC with the information required to make payment by EFT. Consultant shall provide this information directly to the office designated in this Subcontract, on forms provided by WSRC, no later than 15 days after award. If not otherwise specified in this Subcontract, the payment office is the designated office for receipt of Consultant's EFT information. In the event that the EFT information changes, Consultant shall be responsible for providing the updated information to the designated office.

C. Mechanisms for EFT Payment.

WSRC may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System.

D. Suspension of Payment.

- (1) WSRC is not required to make any payment under this Subcontract until after receipt, by the designated office, of the correct EFT payment information from Consultant. Until receipt of the correct EFT information, any invoice or subcontract financing request shall be deemed not to be a proper invoice for the purpose of payment under this Subcontract.
- (2) If the EFT information changes after submission of correct EFT information,

WSRC shall begin using the changed EFT information no later than 30 days after its receipt by the designated office. However, Consultant may request that no further payments be made until the updated EFT information is implemented by the payment office.

E. Payment Information.

On the day payment on Consultant's invoice is due, WSRC will issue instructions to its bank to transfer payment to Consultant, and will also send a FAX to Consultant explaining the details to support the payment.

F. Liability for Uncompleted or Erroneous Transfers.

(1) If an uncompleted or erroneous transfer occurs because WSRC used the Consultant's EFT information incorrectly, WSRC remains responsible for --

- (i) Making a correct payment; and
- (ii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because Consultant's EFT information was incorrect, or was revised within 30 days of WSRC release of the EFT payment transaction instructions to the bank, and --

- (i) If the funds are no longer under the control of the payment office, WSRC is deemed to have made payment and the Consultant is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, WSRC shall not make payment and the provisions of paragraph D shall apply.

G. Overpayments. If Consultant becomes aware of a duplicate invoice payment or that WSRC has otherwise overpaid on an invoice payment, the Consultant shall immediately notify WSRC and request instructions for disposition of the overpayment.

A.25 JOINT INTELLECTUAL PROPERTY RIGHTS

A. "Joint Intellectual Property Rights" shall mean any work under the subcontract, which:

- (1) Results from the involvement of at least one employee/participant from each of WSRC and the Subcontractor; and
- (2) The subject matter of which is capable of protection under domestic or foreign law,

including but not limited to, patents, copyrights, trademarks, or mask works.

B. As to Joint Intellectual Property Rights, in which WSRC has a joint ownership interest, the Subcontractor agrees to negotiate in good faith with WSRC a Memorandum of Agreement to resolve issues of participation in protection and commercialization.

A.26 SCIENTIFIC AND TECHNICAL INFORMATION

A. Electronic submissions of technical reports will consist of two virus-free copies that are readable in the following formats:

- (1) Text will be submitted in native software (that is compatible with the suite of document creation software currently used at SRS) (fonts identified) or in RTF (rich text format).
- (2) Embedded objects and files that are linked to a document must be supplied as well, as follows:
 - (i) Raster images (for example, photographs) will be submitted as TIFF or EPS @ resolution > 100 dpi.
 - (ii) Vector art (for example, line art) will be submitted as EPS images.
 - (iii) Data-driven displays (e.g., spreadsheet charts) must be accompanied by data set used to generate them.

A.27 PRICE-ANDERSON AMENDMENTS ACT

A. The Department of Energy has promulgated Procedural Rules (10 CFR 820), Nuclear Safety Management Rules (10 CFR 830), and Radiation Protection Rules (10 CFR 835) in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules will provide a basis for the assessment of civil and criminal penalties under the PAAA.

B. This Order is subject to the requirements of the above rules if the performance of work involves conducting activities (including providing items and services), on or off the Savannah River Site, that affect, or may affect, the safety of DOE nuclear facilities.

C. Indemnification of WSRC

To the extent permitted by law, the Supplier assumes full responsibility and shall indemnify, save harmless, and defend WSRC and its principal subcontractors, their agents, officers, employees, and directors from any civil or criminal liability under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq., arising out of the activities of the Supplier, its lower-tier subcontractors, suppliers, agents, employees, officers, or directors. The Supplier's obligation to indemnify and hold harmless shall expressly include attorneys fees and other reasonable costs of defending any action or proceeding instituted under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq. A copy of the implementing regulations at 10 CFR Sections 820, et seq., will be made available to the Supplier upon request.

A.28 SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE

- A. "Contract" means this Subcontract or Purchase Order (except in instances when it is not applicable or appropriate), and includes changes and modifications to this Subcontract.
- B. "Contractor" means the party to whom this Subcontract or Purchase Order is awarded (except in instances when it is not applicable or appropriate).
- C. "Government" means WSRC (except in instances when it is not applicable or appropriate).
- D. "Contracting Officer" means the Procurement Representative of WSRC.
- E. "Lower-Tier Subcontractor" means any party entering into an agreement with the Subcontractor or any lower-tier Subcontractor for the furnishing of supplies or services required for performance of this Subcontract.

This Subcontract or Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available.

***A.29 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**

DEAR 952.250-70

***A.30 RIGHTS IN DATA – GENERAL (JUN 1987)**

FAR 52.227-14, as modified pursuant to DEAR 927.409(a) (1)

***A.31 RIGHTS IN DATA - ALTERNATE II (JUN 1987)**

FAR 52.227-14, as modified pursuant to DEAR 927.409(a) (1)

***A.32 ADDITIONAL DATA REQUIREMENTS (JUN 1987)**

FAR 52.227-16

***A.33 PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995)**

DEAR 952,227-11

***A.34 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)**

DEAR 952.209-72

NOTE: (This Article is applicable only if for Advisory & Assistance Services and the amount of the Subcontract Exceeds \$100,000.)

***A.35 CONVICT LABOR (AUG 1996)**

FAR 52.222-3

***A.36 PREFERENCE FOR U.S. - FLAG AIR CARRIERS (APR 1984)**

FAR 52.247-63

Note: Applies if the amount of the Subcontract exceeds \$25,000.

***A.37 PROTECTION OF GOVERNMENT'S INTEREST IN SUBCONTRACTING (JUL 1995)**

FAR 52.209-6

***A.38 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)**

FAR 52.203-12

NOTE: (Applies if the amount of the Subcontract exceeds \$100,000)

***A.39 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)**

NOTE: This Article applies only with respect to work to be performed on-Site.

DEAR 952.203-70

***A.40 RESTRICTIONS ON CERTAIN
FOREIGN PURCHASES (JULY 2000)**

FAR 52.225-13

***A.41 ACCOUNTS, RECORDS AND
INSPECTIONS (DEC 2000)**

DEAR 970.5232-3

***A.42 CLASSIFICATION/
DECLASSIFICATION (SEP 1997)**

DEAR 952.204-70

NOTE: Applies if the Subcontract involves access to classified matter.

***A.43 NOTICE AND ASSISTANCE
REGARDING PATENT AND
COPYRIGHT INFRINGEMENT (DEC
2000)**

DEAR 970.5227-5

Note: Applies if the amount of the Subcontract exceeds \$100,000.

***A.44 AUTHORIZATION AND CONSENT
(JUL 1995)**

FAR 52.227-1

Note: Applies if the amount of the Subcontract exceeds \$100,000.