

SRNS-MS-2009-00070  
Revision 6  
April 2, 2012

**GENERAL TERMS AND CONDITIONS FOR  
AMERICAN RECOVERY AND  
REINVESTMENT ACT OF 2009, Pub. L 111-5,  
(Recovery Act or Act)**

**COMMERCIAL PURCHASES  
UNDER  
U. S. DEPARTMENT OF ENERGY  
PRIME CONTRACT NO. DE-ACO9-08SR22470**

SAVANNAH RIVER NUCLEAR SOLUTIONS, LLC  
SAVANNAH RIVER SITE  
AIKEN, SC 29808

*For this revision, no change bars are used, as changes made were primarily administrative in nature and global language changes, except as noted.*

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**1. DEFINITIONS**

The following terms shall have the meanings below:

- A. Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- B. Company means Savannah River Nuclear Solutions, LLC (SRNS), under its Prime Contract with DOE. SRNS may also be referred to herein as the “Licensee”
- C. Seller means the person or organization that has entered into this Agreement/Subcontract. Seller may also be referred to herein as “Licensor” or Subcontractor/Supplier.
- D. Item includes “commercial item”, “commercial component”, and “service” as defined in FAR 2.101.
- E. “Software” means the specified software and/or source code licensed by the Licensor to the Licensee under this Agreement/Subcontract.
- F. “Covered Funds” means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the Contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.
- G. “Non-Federal Employer” means any employer with respect to Covered Funds – the Contractor or Subcontractor/Supplier, as the case may be, if the contractor or Subcontractor/Supplier is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any

contractor or Subcontractor/Supplier receiving the funds and any contractor or Subcontractor/Supplier of the State or local government; and does not mean any department, agency, or other entity of the federal government.

- H. "First-tier Subcontract" means a subcontract awarded directly by a Federal government prime contractor funded by the Recovery Act.
- I. "Jobs Created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act (ARRA). This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as "full-time equivalent" which shall include full-time, part-time, temporary, permanent, positions as expressed as a "person-year," consistent with the contractor's existing personnel procedures. This includes positions at the prime level, and the Prime Contractor's estimate of positions at the First-tier Subcontract.
- J. "Jobs retained" means an estimate of those previously existing unfilled positions that are filled as a result of funding by the American Recovery and Reinvestment Act (ARRA)- jobs that would have been eliminated but were retained or saved because of funding provided by the Recovery Act. This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as "full-time equivalent" which shall include full-time, part-time, temporary, permanent, positions as expressed as a "person-year," consistent with the contractor's existing personnel procedures. This includes positions at the prime level, and the prime contractor's estimate of positions at the first subcontract tier.
- K. "Total Compensation" means the complete pay package of Subcontractor/Supplier employees, including all forms of money, benefits, services, and in-kind payments, consistent with the regulations of the Securities and Exchanges Commission at 17 CCR 229.402.

## 2. RESOLUTION OF DISPUTES

- A. Subcontractor/Supplier shall not be entitled to and neither the Company nor the Government shall be liable to the Subcontractor/Supplier or its Subtier Subcontractors/Suppliers for damages in tort (including negligence), or Contract, or otherwise, except as specifically provided in this Agreement/Subcontract.

- B. The Subcontractor/Supplier and the Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement/Subcontract through discussion and negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of Alternative Disputes Resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Aiken, South Carolina. The mediator or arbitrator shall allocate cost, except that there shall be no pre-decisional interest costs, and each party shall bear its discretionary costs. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows:
  - (1) Any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States District Court for the District of South Carolina, Aiken Division
  - (2) Provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in State Court in Aiken County, South Carolina.
- C. The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of South Carolina.
- D. There shall be no interruption in the prosecution of the work, and the Subcontractor/Supplier shall proceed diligently with the performance of this Agreement/Subcontract pending final resolution of any dispute arising under this Agreement/Subcontract between the parties hereto or between the Subcontractor/Supplier, and its Lower-tier Agreement/Subcontracts.

## 3. ORDER OF PRECEDENCE

- A. Any inconsistencies shall be resolved in accordance with the following descending order of precedence:
  - (1) Face of the Agreement/Subcontract
  - (2) Special terms and conditions
  - (3) Item description
  - (4) General terms and conditions
- B. Wherever references are made in this Order to standards or codes in accordance with which the Work under this Order is to be performed, the edition or revision of the standards or codes current on the effective date of this Order shall apply unless otherwise expressly stated in the specifications and drawings. In case of conflict

between any reference standards and codes and any Order Document, the latter shall govern.

- C. Subcontractor/Supplier shall perform all Work pursuant to this Order as an independent contractor. If any part of the Work is subcontracted, Subcontractor/Supplier is responsible for having that subcontracted Work comply with the terms of this Order. No act or Order of SRNS shall be construed to be an exercise of supervision or control of performance hereunder. No provision of this Order and no action taken by SRNS under this Order shall be construed to make or constitute SRNS the employer or joint employer of any of the employees of Subcontractor/Supplier or any Subtier Subcontractor/Supplier.

#### **4. ADMINISTRATION AND ASSIGNMENT**

The Company shall make payments under this Agreement/Subcontract from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. This Agreement/Subcontract may be assigned by the Company to DOE or its designee, and in case of such transfer and notice thereof to the Subcontractor/Supplier, the Company shall have no further responsibilities hereunder. The Subcontractor/Supplier shall not assign rights or obligations to third parties without the prior written consent of the Company. However, the Subcontractor/Supplier may assign rights to be paid amounts due or to become due to a financing institution if the Company is promptly furnished written notice. Payments to an assignee shall be subject to set off or recoupment for any present or future claims of the Company against the Subcontractor/Supplier.

#### **5. ACCEPTANCE OF TERMS AND CONDITIONS**

- A. Subcontractor/Supplier, by signing this Agreement/Subcontract or delivering the items identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement/Subcontract incorporated by reference or attachment. The Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement/Subcontract that are different from or in addition to those mentioned in this document. Failure of the Company to enforce any of the provisions of this Agreement/Subcontract shall not be construed as evidence to interpret the requirements of this Agreement/Subcontract, nor a waiver of any requirement, nor of the right of the Company to enforce each and every

provision. All rights and obligations shall survive final performance of this Agreement/Subcontract.

- B. When the use of a Subtier Subcontractor/Supplier is determined to be necessary, the Prime Subcontractor/Supplier is responsible to flow down those Technical and Quality requirements determined to be applicable for the activities within its defined scope of work, in accordance with referenced Codes/Standards/Material Specifications, or other requirements identified within the Procurement documents included with this Order/Subcontract package. The Prime Subcontractor/Supplier is furthermore responsible to flow down all commercial Terms and Conditions, including articles incorporated by reference, to all Subtier Subcontractors/Suppliers, which includes verification that the Subtier Subcontractor/Supplier has been appropriately qualified to perform the activities required to satisfy this procurement. The Prime Subcontractor/Supplier must maintain objective evidence of the successful flow down of the referenced requirements and provide such evidence to SRNS upon request. This flow down is also required at all levels if the Subtier Subcontractor/Supplier to the Prime Subcontractor/Supplier deems it necessary to further subcontract its parts of this SRNS Contract.
- C. When NQA-1 is invoked as the governing quality standard, the Prime Subcontractor/Supplier and applicable Subtier Subcontractors/Suppliers shall be required to meet the Part 1 Requirements (Sections 100 through 900, as determined to be applicable) in the Procurement document. NQA-1 Part II will be invoked at the discretion of SRNS and will be detailed via the Procurement documents, and if invoked, must be flowed down from the Prime Subcontractor/Supplier to its applicable Subtier Subcontractors/Suppliers at all levels. If the Prime Subcontractor/Supplier or its Subtier Subcontractors/Suppliers intends to upgrade materials by way of a Commercial Grade Dedication Process, SRNS must be notified of this intent and the Subcontractor's/Supplier's process verified and approved prior to dedicating any material associated with SRNS procurement.
- D. The SRNS **Procurement Representative** is to be notified in writing, within five working days of any changes within your company as identified below:
  - Key quality personnel to include as a minimum:
  - Quality Assurance/Quality Control Manager
  - Assistant Quality Assurance/Quality Control Manager

- Other critical Quality Assurance/Quality Control personnel
- Quality Assurance Program Revisions
- Company ownership transfers/buy-outs, and
- All identified Nonconformance or Corrective Action Reports associated with SRNS contracts including those issued concerning Subtier Subcontractors/Suppliers.

- (3) complete description of the latent defect;
- (4) impact of the defect on the operation of the item(s);
- (5) action(s) to be taken by the Company relative to return, re-fit, repair, etc.;
- (6) date of purchase by the Company; and,
- (7) applicable Company Agreement-Subcontract number.

**6. WARRANTY**

A. Subcontractor/Supplier warrants that items delivered under this Agreement/Subcontract shall be in accordance with Subcontractor's/Supplier's affirmation, description, sample, or model and compliant with all requirements of this Agreement/Subcontract. The warranty shall begin upon receipt of conforming items and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if the Subcontractor/Supplier is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if the Subcontractor/Supplier is the manufacturer of the item or has modified it. If any nonconformity with item appears within that time, Subcontractor/Supplier shall promptly repair or replace such items or re-perform services at Subcontractor's/Supplier's election. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Subcontractor's/Supplier's expense. Company shall notify Subcontractor/Supplier of such nonconformity within a reasonable time after discovery, and Subcontractor/Supplier shall notify Company of whether it chooses to make repairs or replacements within three (3) working days after Company's notice of nonconformity. If repair or replacement or re-performance of services is not timely, Company may elect to return the nonconforming items or repair or replace them or re-procure the services at Subcontractor's/Supplier's expense.

B. Latent Defects. In the event the Subcontractor/Supplier becomes aware of any latent defect(s) in any item(s) furnished under this Agreement/Subcontract, the Subcontractor/Supplier shall promptly notify the Company **Procurement Representative**. This notice shall provide at a minimum the following information:

- (1) full description of the item(s);
- (2) manufacturer, model and/or part number;

C. In the case of software furnished under this Agreement/Subcontract, Licensor of such software warrants for a period of one (1) year following the date of this agreement/subcontract that the Software is free of defects and is fit for the purposes intended by SRNS and the Licensor shall provide SRNS with correction of errors found in the original software. Such corrections shall be provided at no cost to the Licensee. If Licensor is called upon by SRNS to undertake error exploration or correction, and such error is found to be caused by SRNS supplied data, modification of Software by SRNS, compiler or operating system characteristics, or any other cause not inherent in the original Software, Licensor may submit a proposal for adjustment in the order price for such services at the Licensor's standard rate then in effect.

**7. NEW MATERIALS**

Unless otherwise specified in this Agreement/Subcontract, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property

**8. SUSPECT/COUNTERFEIT PARTS**

A. Subcontractors/Suppliers shall supply products at Savannah River Site that are not and do not contain suspect/counterfeit parts. A suspect item is an item in which there is an indication by visual inspection, testing, or other information that it may not conform to established government or industry accepted specifications or national consensus standards. A suspect/counterfeit item is any item that is a copy or substitute without legal right or authority to do so, or one whose material, performance, characteristics or identity does not appear to be authentic and is verified to be either counterfeit or fraudulent. Failure by the Subcontractor/Supplier to document material substitution or identify that an item has been refurbished or remanufactured is considered to be fraud, and the item then becomes suspect/counterfeit.

B. If it is determined that a suspect/counterfeit part has been supplied, SRNS will impound the items

pending a decision on disposition. The Subcontractor/Supplier may be required to replace such items with items acceptable to SRNS and shall be liable for all costs relating to the impoundment, removal, and replacement. SRNS may also notify the local Department of Energy Office of Inspector General and reserves the right to withhold payment for the items pending results of the investigation.

#### **9. TITLE AND RISK OF LOSS**

- A. Unless otherwise provided in the Agreement/Subcontract, title to the items purchased under this Agreement/Subcontract shall pass directly to the Government upon, and the risk of loss or damage to the items shall remain with the Seller until and shall pass to the Company upon:
- (1) If F.O.B. Shipping point Completion of delivery to the carrier and any loading by the Seller.
  - (2) If F.O.B. Destination: Completion of delivery or commencement of unloading by the Company at the delivery point.
- B. However; (1) if the Order provides for formal acceptance of any items by the Company, then title to such items shall pass directly to the Government upon such formal acceptance; and (2) the title and risk of loss or damage to items that are nonconforming shall remain with the Subcontractor/Supplier until acceptance of the items by the Company as conforming.

#### **10. PAYMENT**

- A. Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Subcontractor's/Supplier's proper invoice, if required, or (2) delivery of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Subcontractor/Supplier indicates. Credit and discount periods shall be computed from the date such invoice is so payable to the date SRNS's check is mailed or, for Electronic Funds Transfer (EFT), the specified payment date. Notwithstanding anything herein, SRNS shall be entitled at any and all times to set off against any amounts payable at any time by SRNS hereunder any amount owing from Subcontractor/Supplier to SRNS under this Order or other Orders with Subcontractor/Supplier.
- B. Overpayments. If Subcontractor/Supplier becomes aware of a duplicate invoice payment or that SRNS has otherwise overpaid on an invoice payment, the Subcontractor/Supplier shall

immediately notify SRNS and request instructions for disposition of the overpayment.

#### **11. PAYMENT BY ELECTRONIC FUNDS TRANSFER**

- A. Methods of Payment:
- (1) All payments by SRNS under this Order shall be made by Electronic Funds Transfer (EFT) except as provided in Paragraph A.2 of this Provision. As used in this provision, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
  - (2) In the event SRNS is unable to release one or more payments by EFT, Subcontractor/Supplier agrees to either:
    - (i) Accept payment by check or some other mutually agreeable method of payment; or
    - (ii) Request SRNS to extend payment due dates until such time as SRNS makes payment by EFT.
- B. Mandatory Submission of Subcontractor's/Supplier's EFT Information. Subcontractor/Supplier is required to provide SRNS with the information required to make payment by EFT. Subcontractor/Supplier shall provide this information directly to the office designated in this Order, on forms provided by SRNS, no later than 15 days after award. If not otherwise specified in this Order, the payment office is the designated office for receipt of Subcontractor's/Supplier's EFT information. In the event that the EFT information changes, Subcontractor/Supplier shall be responsible for providing the updated information to the designated office.
- C. Mechanisms for EFT Payment. SRNS 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) SRNS is not required to make any payment under this Order until after receipt, by the designated office, of the correct EFT payment information from Subcontractor/Supplier. 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 Order.
  - (2) If the EFT information changes after submission of correct EFT information, SRNS shall begin using the changed EFT information no later than 30 days after its

receipt by the designated office. However, Subcontractor/Supplier 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 Subcontractor's/Supplier's invoice is due, SRNS will issue instructions to its bank to transfer payment to Subcontractor/Supplier, and will also send a FAX to Subcontractor/Supplier explaining the details to support the payment. Subcontractor/Supplier shall issue electronically all invoices directly to Accounts Payable via the **SRNS-ACCTSPAY@srs.gov** email account. Subcontractor/Supplier shall include banking information on each invoice submitted to facilitate proper EFT. Subcontractor/Supplier shall provide the correct Subcontract or Purchase Order and line item with dollar value per specific line item referenced on all invoices.

F. Liability for Uncompleted or Erroneous Transfers.

- (1) If an uncompleted or erroneous transfer occurs because SRNS used the Subcontractor's/Supplier's EFT information incorrectly, SRNS remains responsible for --
  - (i) Making a correct payment; and
  - (ii) Recovering any erroneously directed funds.
- (2) If an uncompleted or erroneous transfer occurs because Subcontractor's/Supplier's EFT information was incorrect, or was revised within 30 days of SRNS 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, SRNS is considered to have made payment and the Subcontractor/Supplier is responsible for recovery of any erroneously directed funds; or
  - (ii) If the funds remain under the control of the payment office, SRNS shall not make payment and the provisions of paragraph D shall apply.

**12. SOUTH CAROLINA TAX REQUIREMENTS 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 Subcontractors/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 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) 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 forwarded to the South Carolina Tax Commission in cases where the payments amount to twelve hundred dollars (\$1,200.00) or more a year.

D. (For applicable Subcontracts and Purchase Orders)

Registration with the South Carolina Department of Revenue will be the responsibility of the Subcontractor/Supplier. Proof of such registration shall be provided to [ASG@srs.gov](mailto:ASG@srs.gov) and SRNS Procurement Representative by providing a copy of the I-312 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

**13. COMPLIANCE WITH LAWS**

- A. Subcontractor/Supplier shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations, including new provisions of 10 CFR 851 relating to Health and Safety. Compliance shall be a material requirement of this Agreement/Subcontract.

B. Subcontractor/Supplier - Staff Augmentation Services

*(Paragraphs B – H applies to Staff Augmentation Services)*

Subcontractors/Suppliers shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations, including provisions of 10 CFR 851. Compliance shall be a material requirement of this Agreement/Subcontract. Except as otherwise directed by SRNS, Subcontractor/Supplier shall procure without additional expense to SRNS, all necessary permits or licenses. DEAR Clause

970.5223-1 Integration of Environment, Safety, and Health into Work Planning and Execution (DEC 2000) is incorporated into the subcontract by reference. Compliance by Subcontractor/Supplier to SRNS's Worker Safety and Health Program (WSHP) [as implemented by Integrated Safety Management System (ISMS)] shall satisfy the requirements of this DEAR clause and 10 CFR 851.

- E. The Subcontractor/Supplier employees shall take all reasonable precautions in the performance of work under this subcontract to protect the environment, safety and health of themselves, site employees and members of the public. SRNS procedures provide authority to call a time-out/stop work when unsafe conditions are observed and/or employee actions are likely to cause injury to them, other personnel, or cause damage to SRS property or the environment. Subcontractor/Supplier shall ensure that its employees are aware of this authority and understand they have the same authority as SRNS employees to call a timeout/ stop work while working at SRS. SRNS purchasing representative shall notify the Subcontractor/Supplier in writing of any noncompliance with the provisions of this article and corrective action to be taken.
- F. Upon assignment, SRNS will be responsible to provide Staff Augmentation employee's with a medical evaluation. In addition, SRNS will be responsible for an exit medical evaluation, when required, on employees with known occupational illnesses or injuries and/or documented or presumed exposure and when required by OSHA regulations. All diagnostic /monitoring exams and return to work (after an absence of 24 work hours) exams are to be provided through the Subcontractor/Supplier.
- G. Medical results will be provided to the staff augmentation employees.
- H. The on-site Medical Surveillance program will be provided by SRNS Medical, or **3<sup>rd</sup> party designee** based on the work scope hazards. The Subcontractor's/Supplier's corporate occupational medicine program must be in compliance with all other 10 CFR 851 requirements.
- I. Site Reporting Requirements  
The Subcontractor/Supplier (staff augmentation) personnel shall immediately notify the /End User or the SRNS **Procurement Representative** of any event or condition that may require reporting to DOE. Further, the Subcontractor/Supplier shall cooperate with any SRNS or DOE critique, analysis, or

investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 and can include, but not limited to:

- (1) Operational emergencies,
  - (2) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,
  - (3) Any on-the-job injury where a Subcontractor/Supplier employee is taken offsite for something other than observation. The notification requirement applies to any person who goes offsite for prompt medical treatment of any type. The mode of transportation (ambulance, personal vehicle, etc.) is not pertinent – any offsite transfers must be reported immediately,
  - (4) Any violation of Lockout/Tag out controls where there are no credible barriers left between the worker, and the energy source regardless of whether or not there was an injury,
  - (5) Fires/explosions,
  - (6) Hazardous energy control failures,
  - (7) Operations shutdown directed by management for safety reasons,
  - (8) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.,
  - (9) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,
  - (10) Loss damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),
  - (11) Spread of radioactive contamination or loss of control of radioactive materials,
  - (12) Personnel radioactive contamination's or exposures, and
  - (13) Violations of procedures.
- J. Immediate notification is required of such events to ensure SRNS meets its commitment for 30 minute notification to appropriate DOE authorities. The Subcontractor/Supplier employee shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor's/Supplier's employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this subcontract.

#### **14. TERMINATION FOR CONVENIENCE**

The Company may, in its sole discretion, terminate the Agreement/Subcontract, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Subcontractor/Supplier a written notice of termination. Upon receipt of a notice of termination, the Subcontractor/Supplier shall, unless the notice requires otherwise, discontinue all performance on the date and to the extent specified in the notice, and shall otherwise minimize costs to the Company. Payment for items already completed or in the process of completion, shall be adjusted between the Subcontractor/Supplier and the Company in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the items, or any anticipated profits thereon. Such payment for items already completed or in the process of completion shall be the total compensation due to the Subcontractor/Supplier for termination at will by the Company. If this is an order for Software, SRNS shall pay to Licensor any fees due under the terms of this Order licensed up to the date of termination, but shall have no further liability.

#### **15. TERMINATION FOR CAUSE**

- A. The Company may terminate this Agreement/Subcontract for cause, in whole or in part, if the Subcontractor/Supplier fails to comply with any of the terms of this Agreement/Subcontract, or fails to provide adequate assurance of future performance. In that event, the Company shall not be liable for any amount for items not accepted.
- B. If this Agreement/Subcontract is terminated for cause, the Company may require Subcontractor/Supplier to deliver to the Company any supplies and materials, manufacturing materials, and manufacturing drawings that Subcontractor/Supplier has specifically produced or acquired for the terminated portion of this Agreement/Subcontract. The Company shall pay the agreed-upon price for completed items delivered and accepted. The Company and Subcontractor/Supplier shall agree on the amount of payment for all other deliverables.
- C. Subcontractor/Supplier shall not be liable to Company for delays in performance occasioned by causes beyond Subcontractor/Supplier's reasonable control and without its fault or negligence, including but not limited to acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of

Subcontractor/Supplier's Subcontractors/Suppliers at any tier. However, the delays of Subcontractor/Supplier's Subcontractors/Suppliers at any tier must be proved to be beyond the control of both Subcontractor/Supplier and its Subcontractors/Suppliers and without fault or negligence of either

- D. If this Agreement/Subcontract is for Software, as defined herein, either party may, by written notice, terminate this Order, in whole or in part without liability therefore if such other party fails to perform in accordance with any provision hereof; provided, however, that in the event of a termination under this paragraph D, the terminating party shall first have given the other party a written notice specifying the failure complained of and thirty (30) days to cure such failure. In the event of termination of the Order in whole or in part, SRNS will destroy or return to Licensor all affected Software and documentation and all copies thereof.
- E. The rights and remedies of the Company in this clause are in addition to any other rights and remedies provided by law or under this Agreement/Subcontract.

#### **16. BANKRUPTCY**

If the Subcontractor/Supplier enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the SRNS Procurement Representative responsible for administering this Agreement/Subcontract within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the SRNS Subcontract/Order numbers for which final payment has not been made.

#### **17. TAXES**

Subcontractor/Supplier shall not collect an increment for South Carolina sales or use tax from the Company for the items provided under this Agreement/Subcontract beyond such taxes paid by the Subcontractor/Supplier to its Subcontractors/Suppliers. The Agreement/Subcontract price includes all applicable federal, state, and local taxes and duties.

#### **18. CHANGES**

The Company reserves the right to make changes within the general scope of this Agreement/Subcontract by issuance of a unilateral change order, or by a bilateral modification to this Agreement/Subcontract. Such changes may include, without limitation, changes in (1) the description of the items; (2) the quantities of items ordered; (3) the

method of shipment or packaging, and (4) the time or place of delivery, inspection, or acceptance. The Subcontractor/Supplier shall promptly comply with any such change made by the Company. If any change affects the cost of or the time required for performance, an equitable adjustment to the price and/or delivery requirements and other affected provisions of the Agreement/Subcontract shall be made by the parties in a bilateral modification to this Agreement/Subcontract.

#### **19. SUSPENSION**

The Company may, for any reason, direct the Subcontractor/Supplier to suspend performance of any part of or all of the performance of this Agreement/Subcontract for an indefinite period of time. If any such suspension significantly delays the progress of or causes the Subcontractor/Supplier additional direct expenses in the performance of the Agreement/Subcontract, not due to the fault or negligence of the Subcontractor/Supplier, the compensation to the Subcontractor/Supplier shall be adjusted by a modification to this Agreement/Subcontract on the basis of the additional direct expenses of the Subcontractor/Supplier to perform the Agreement/Subcontract and the time of performance of the Agreement/Subcontract shall be extended by the actual duration of the suspension. Any claim by the Subcontractor/Supplier for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to the Subcontractor/Supplier to resume the performance of the Agreement/Subcontract.

#### **20. SUBCONTRACTOR'S/SUPPLIER'S LIABILITY FOR FINES AND PENALTIES**

- A. Subcontractor/Supplier is liable to SRNS for all fines and penalties assessed by any governmental entity against SRNS or DOE as a result of Subcontractor/Supplier's failure to perform its work under this Agreement/Subcontract in compliance with the requirements of this Agreement/Subcontract.
- B. Subcontractor/Supplier shall indemnify, defend and hold harmless SRNS 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 SRNS or DOE.

#### **21. UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)**

In the performance of this order, the Subcontractor/Supplier is responsible for complying with the following requirements and for flowing down all requirements to Subtier Subcontractors/Suppliers.

- A. The Subcontractor/Supplier ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE O 471.1B). Subcontractor/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 Subcontractor/Supplier ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE O 471.1B. 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 SRNS 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 O 471.1B. 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 Subcontractor/Supplier disposition of other classified material or data. If the above disposal methods are not available to the Supplier, the Subcontractor/Supplier may return the UCNI matter to the STR/End User for disposition, with the prior approval of the STR/End-user.
- D. The Subcontractor/Supplier shall report to the SRNS Security Office or the SRNS 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 Subcontractor/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 Subcontractors/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 Subcontractor/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 Subtier Subcontractors/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 Subcontractor/Supplier has no formally designated Classification Officer, the Subcontractor/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.

## **22. FOREIGN NATIONALS**

*As used in this Article, the term "Foreign National" is defined to be a person who was born outside the jurisdiction of the United States, is a citizen of a foreign government and has not been naturalized under U.S. law.*

- A. The Subcontractor/Supplier shall obtain the approval of SRNS, in writing, prior to any visit to a DOE or SRNS facility by any Foreign National in connection with work being performed under this Order, in accordance with the requirements of DOE Order 142.3, Unclassified Foreign Visits and Assignments Program. 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 SRNS event off-site from the DOE/SRNS facility, but does not include off-site events and activities open to the general public. Subcontractors should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the SRNS Purchasing Representative 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 SRNS Purchasing Representative.
- B. In addition, the Subcontractor/Supplier shall obtain the approval of the SRNS Purchasing Representative, in writing, prior to the employment of, or participation by any Foreign

National in the performance of work under this Subcontract or any Subtier Subcontract at off-site locations. Such approvals will be processed in accordance with the requirements of DOE Order 142.3

- C. In the performance of off-site work, Foreign Nationals only incidentally involved with a SRNS Subcontract, and who have no knowledge that their activities are associated with SRNS Subcontract work, are exempt from the above.

*(The following Article applies if employees of Subcontractor/Supplier will require physical access to DOE-owned or leased facilities)*

## **23. ACCESS TO DOE-OWNED OR LEASED FACILITIES**

- A. The performance of this Order requires that employees of the Subcontractor/Supplier have physical access to DOE-owned or leased facilities. The Subcontractor/Supplier understands and agrees that DOE has a prescribed process with which the Subcontractor/Supplier and its employees must comply in order to receive a security badge that allows such physical access. The Subcontractor/Supplier shall propose employees whose background offers the best prospect of obtaining a security badge approval for access. This clause does not control requirements for an employee obtaining a security clearance.
- B. The Subcontractor/Supplier shall assure:
  - (1) Compliance with procedures established by DOE and SRNS in providing its employees with any forms directed by DOE or SRNS;
  - (2) Employees properly complete any forms;
  - (3) Employees submit the forms to the person designated by the SRNS Procurement Representative;
  - (4) Employees cooperate with DOE and SRNS officials responsible for granting access to DOE-owned or leased facilities; and
  - (5) Employees provide additional information requested by those DOE/SRNS officials.
- C. The Subcontractor/Supplier understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE or SRNS that an employee's application for a security badge is or will be denied, the Subcontractor/Supplier shall promptly identify and submit the appropriate forms for the substitute employee. The denial of a security badge to individual employees by DOE

shall not be cause for extension of the period of performance of this Order or any Subcontractor/Supplier claim against DOE or SRNS.

- D. The Subcontractor/Supplier shall return to the SRNS Procurement Representative, or designee, the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE-owned or leased facilities by the Subcontractor's/Supplier's employee(s) upon:
- (1) Termination of this Order;
  - (2) Expiration of this Order;
  - (3) Termination of employment on this Order by an individual employee; or
  - (4) Demand by DOE/SRNS for return of the badge
- E. The Subcontractor/Supplier shall include this clause, including this paragraph E. in any Lower-tier Subcontract, awarded in the performance of this Order, in which an employee(s) of the Subtier Subcontractor/Supplier will require physical access to DOE-owned or leased facilities

**24. WORKPLACE SUBSTANCE ABUSE PROGRAMS**

**A. Fitness for Duty**

- (1) Subcontractor/Supplier and its Subtier Subcontractors/Suppliers are required to comply with this Workplace Substance Abuse Program article, which addresses the subcontractor/supplier portion of SRNS "Workplace Substance Abuse Program Plan." The Subcontractor/Supplier shall advise employees and Subtier Subcontractors/Suppliers that it is the policy of SRNS 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 SRS off-site facilities, and to prohibit the presence of individuals who have such substances in the body for non-medical reasons. In order to ensure that SRNS work sites are free of illegal drugs and alcohol, all personnel and Subcontractor/Supplier employees shall be tested in accordance with the requirements of DEAR 970.5223-4 and 10 CFR 707, "Workplace Substance Abuse Program at DOE Sites". Testing includes initial "Pre-Access" testing and "Random" testing for the presence of illegal drugs and alcohol. Any Subcontractor/Supplier employee who is found in violation of the policy may be removed or barred from the site.
- (2) The Subcontractor/Supplier agrees to advise its employees and Subtier Subcontractors/Suppliers of the above policy prior to assignment to the

Site and to maintain documentation that such advice has been given.

**B. Pre-Access Testing**

- (1) Subcontractor's/Supplier's employees who perform work on SRS premises for more than 10 calendar days per year, shall successfully pass an alcohol and drug screen within 21 calendar days prior to obtaining a SRS access badge. The Subcontractor/Supplier is responsible for all costs expended.

The Subcontractor /Supplier is responsible for:

1. Ensuring Subcontractor/Supplier employees receive drug and alcohol testing within 21 days prior to reporting to SRS.
2. Ensuring the drug testing is performed by a medical facility or laboratory that meets the following criteria:
  - The testing facility is a certified laboratory (refer to the following website: [http://workplace.samhsa.gov/DrugTesting/Level\\_1\\_Pages/LstClab101106.html](http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/LstClab101106.html)) and meets the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11970);
  - The testing facility uses the cutoff concentrations for drug tests as established in Subpart C, Section 3.4 of the HHS guideline and is listed as an approved laboratory facility as per the guideline;
  - The laboratory analysis of urine drug samples is performed in accordance with established HHS standards. INSTANT OR RAPID DRUG SCREENS are not acceptable.
3. Maintaining the original copy of all substance abuse testing results of all personnel who perform work on SRS premises.
4. Submitting documentation from the Subcontractor's/Supplier's Medical Review Officer (MRO) of pre-access drug and alcohol testing results to the following email address: [Badgeoffice@srs.gov](mailto:Badgeoffice@srs.gov) prior to subcontractor employee's

access to SRS premises. The documentation must include the following information:

- i. Name and Social Security number of the individual tested;
- ii. Confirmation statement from the Subcontractor's/Supplier's MRO that the results show Negative for drugs (i.e.: below the cut off levels in accordance HHS (53FR11970) Mandatory Guidelines for Workplace Drug Testing Programs);
- iii. Confirmation statement from the Subcontractor's/Supplier's MRO of a Negative alcohol screening that is less than 0.02 Breath Alcohol Content (BAC) (i.e.: below the cut off levels in accordance with Department of Transportation (DOT) Guidelines for Breath Alcohol Testing 49 CFR 40);
- iv. Name and Address of Certified Laboratory;
- v. Name and Contact Information for the Subcontractor's/Supplier's MRO.

- (2) The Subcontractor/Supplier agrees to advise its employees and Subtier Subcontractors/Suppliers that it is the policy of SRNS that: (1) the manufacture, dispensation or sale, offer for sale, purchase, use, transfer, or possession of alcohol and illegal drugs on SRS or US Department of Energy (Owner) premises is prohibited; (2) employees, while on the SRS premises, are prohibited from being under the influence of alcohol ("Under the Influence" means the employee is affected by alcohol in any detectable manner) or impaired by drugs; (3) entry onto the SRS premises constitutes consent to an inspection of the employee and his or her vehicle as well as their personal effects while entering, on, or leaving premises; (4) any employee who is found in violation of this policy

or who refuses to permit an inspection may be removed or barred from the SRS premises at the discretion of SRNS. As used herein, "SRS premises" means the property, leased or otherwise, including owned project site locations in which SRNS business is being conducted, and owned or rented vehicles and/or equipment is being operated.

For quality assurance purposes, SRNS may request and review any/all records associated with the Subcontractor/Supplier or employee drug and alcohol testing. The Subcontractor/Supplier agrees to secure the written electronic consent of employees to release results of substance abuse tests (breath alcohol and urine) to the designated SRNS representative.

- (3) The Subcontractor/Supplier agrees to comply with and secure the compliance of its employees and Subtier Subcontractors/Suppliers with random, occurrence and/or for cause substance abuse testing. In the event of a "positive" finding (above cut off threshold) for drugs or alcohol, the Subcontractor/Supplier agrees to promptly remove such individual from the SRS and return his or her badge to the SRNS Badging Office. Any positive finding will result in denial of site access for 12 months for the subcontract/supplier employee. In the event of a refusal, the Subcontractor's employee may be terminated for cause and the individual will be refused access to the site.

Occurrence testing additionally requires the following:

If an injury /illness is the result of an occupational incident that requires recordable medical treatment, as defined by OSHA, then drug and alcohol testing is required. In addition, if an occupational incident involves damage to government vehicle or property or subcontractor equipment then drug and alcohol testing is required. SRNS will require the Subcontractor/Supplier to have their employee's drug and alcohol tested on the day of the injury, illness or incident. Subcontractor /Supplier shall submit testing results, via a secure fax machine to 803.557.4076, SRS Medical – Drug and Alcohol Testing (DAT) department. The cost of testing shall be at the subcontractor/supplier's expense.

- (4) Subcontractor's/Supplier's employees who are required to obtain a security clearance may be required to successfully pass an additional alcohol and drug screening as required in the Security Requirements article of this order.

C. Suitability for Employment

- (1) Subcontractor/Supplier employees, including Subtier Subcontractors/Suppliers, who are to be badged to permit SRS access, must successfully complete the Suitability for Employment process. As part of this process, the Subcontractor/Supplier agrees to advise its employees and Subtier Subcontractors/Suppliers that they will be required to complete certain forms, which authorize background investigations. These forms shall be submitted during the badging process.
- (2) Subcontractor/Supplier employees will be issued a photo badge and allowed site access on the first reporting day. In the event a Subcontractor/Supplier employee subsequently fails to successfully complete the background investigation, the Subcontractor/Supplier agrees to promptly remove such individual from the site and to return the badge to the SRNS Badging Office.
- (3) Subcontractor/Supplier agrees to advise its employees of the above requirement prior to assignment to the SRS and to maintain documentation that such advice has been given.

**25. BADGING REQUIREMENTS**

A. Photo Badge

- (1) Subcontractor/Supplier employees may be issued a site access photo badge for a period not to exceed one year. To obtain a Photo Badge, Subcontractor/Supplier employees and any Subtier Subcontractor/Supplier employees must be processed through SRNS's Subcontract Badging Procedure and are subject to investigation by Governmental authorities. All badges must be returned or accounted for prior to final payment. All Subcontractor/ Supplier employees must be at least 18 years old.
- (2) Subcontractor/Supplier employees and any Subtier Subcontractor/Supplier employees shall complete Subcontractor/Supplier Employee Data Sheet and Fingerprint Cards. If a long term badge is required (period greater than six (6) months) the employee will also be required to complete Standard Form (SF) 85, "Questionnaire for Non-Sensitive Positions", and form Optional Form 306, "Declaration for Federal Employment". These forms are required for the Governments use

in conducting background investigations per Homeland Security Presidential Directive HSPD-12. Copies of these forms are available on the SRNS Internet Home Page at [http://www.srs.gov/general/busiops/PMMD/SRNS\\_general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm).

- (3) Subcontractor/Supplier will observe the following badging procedure for processing their employees through security orientation:
- (i) A minimum of two (2) working days prior to the start of the badging and orientation process, Subcontractor/Supplier shall transmit the following information to the Subcontract Technical Representative (STR) (or the End User if an STR is not appointed for this order):
- Subcontract Number;
  - Subcontractor/Supplier Employee Name;
  - Subcontractor/Supplier Employee Address;
  - Subcontractor/Supplier Employee Social Security Number;
  - Subcontractor/Supplier Employee Date of Birth;
  - Subcontractor/Supplier Employee's Phone Number;
- (ii) Subcontractor/Supplier employees shall report to SRS Building 703-46A at SRS Road 1, approximately two miles east of SC Highway 125 in Jackson, SC.
- (iii) Each Subcontractor/Supplier employee must successfully pass General Employee Training (GET) prior to undergoing the Photo Badging procedure. See Article titled "General Employee Training and Annual Refresher Training for Subcontract Employees". GET is given on Monday of each week in the Jackson, SC municipal building, and should be scheduled through the STR or Enduser well in

advance of the desired date in order to assure placement.

- (iv) The orientation and badging process will take approximately four (4) hours.
  - (4) The maximum duration that Supplier/Subcontractor employees will be issued a site access badge is one (1) year. Supplier/Subcontractor employees requiring a new badge will report to the Badge Office and repeat the badging process.
  - (5) If Work under this Subcontract is to be performed in security areas, all personnel will be required to sign in and out at security gates and are subject to a search of their person and belongings at entrances to or exit from the area.
- B. **Temporary Badge** (typically for visitors and short term personnel).
- (1) Temporary badges are valid for a maximum of 10 calendar days per person in a calendar year. To avoid unnecessary expiration, these badges should be returned to the Badge Office immediately upon completion of need.
  - (2) Two working days prior to the need date, Subcontractor/Supplier shall transmit the following information to the STR/End User:
    - Subcontract Number
    - Employee name
    - Employee address and telephone number
    - Employee Social Security Number
    - Employee Date of Birth
  - (3) The Assigned Competent Person (ACP) (Subcontractor/Supplier or SRNS employee) shall perform Task Analysis of scope to be performed and identify any applicable contractual task specific checklist(s) from the subcontractors accepted Worker Protection Plan or SRNS's Focused Observation Database if a WPP is not required by the terms of this order.
  - (4) ACP shall provide advance copy of any task specific safety checklist(s) to personnel seeking temporary badges.
  - (5) Badge Office provides initial security briefing, issues registration card and obtains acknowledgement signature, issues "maroon" Visitors Badge for duration requested by STR/End User.
  - (6) ACP reviews any applicable checklist(s) and performs focused observations as directed by the STR/End User.
  - (7) Upon completion of scope, return badge to Badge Office upon exiting SRS.

C. **Identity Verification.**

- (1) In order to receive a photo or temporary badge for entry to SRS, Subcontractor/Supplier employees, except delivery personnel (see subparagraph (2) below), will be required to present two specific forms of identification from the "List of Acceptable Documents" (Department of Homeland Security Form I-9, copy available on the SRNS Internet Home Page at [http://www.srs.gov/general/busiops/PMMD/SRNS\\_general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm)). At least one of the documents selected from the list must be a valid State or Federal government-issued picture ID.
  - (2) **Vendor Delivery Personnel.** Unbadged personnel seeking a temporary badge for material/equipment deliveries will be required to present one form of picture identification that will verify their identity, such as a valid state driver's license that includes a photograph. Delivery personnel shall enter the site at the Aiken Barricade located approximately one (1) mile south of SC Highway 278, and will be escorted at all times to the delivery location and back to the entrance barricade by Wackenhut Services, Inc assigned escorts, or by Assigned Competent Persons (SRNS or Subcontractor/Supplier).
- D. If the Subcontractor/Supplier or any Subtier Subcontractor/Supplier should independently suspend or remove an employee from work at the Savannah River Site (SRS) for unsafe acts or behavior, the Subcontractor/Supplier shall immediately notify the STR/End User, return the employee's badge to the STR/End User, and provide the STR/End User with written notification of the employee's name and reason(s) for such suspension or removal.

*(The following Article is applicable only if Software is furnished under this order)*

**26. SOFTWARE LICENSE**

Licensor hereby grants to SRNS a nonexclusive, transferable license to use the Software subject to the following terms, conditions, and restrictions:

- A. The license granted under this agreement authorizes SRNS to unlimited use of the Software in any machine-readable form on the single central processing unit (hereinafter referred to as "CPU"), or multiple central processing units controlled by a single operating system (together referred to as "CPU") designated by type, serial number, and location as follows:

Type \_\_\_\_\_  
 \_\_\_\_\_  
 Serial No. \_\_\_\_\_  
 \_\_\_\_\_  
 Location \_\_\_\_\_  
 \_\_\_\_\_

- B. If the CPU designated in paragraph 1.1 becomes inoperative due to malfunction, preventive maintenance, or engineering changes, Software may be temporarily transferred to a backup CPU until the designated CPU is restored to operative status.
- C. The SRNS acknowledges that Licensor considers Software to contain proprietary data and as such SRNS agrees that, during the term of this agreement and for a period of one year following termination of this agreement, to treat Software with the same degree of caution, care, and confidentiality as it treats its own proprietary information and in accordance with the provisions of this agreement, except that such obligations shall not extend to any information or technical data relating to Software which is now available to the general public or which later becomes available to the general public by acts not attributable to SRNS and its employees. All such proprietary data shall be so identified and marked by Licensor at the time it is conveyed to SRNS. Except as may be required for Licensee's own archival purposes, SRNS shall not knowingly make or allow others to make copies or reproductions of the Software in any form without written consent of Licensor.
- D. Use of Software shall be limited to work under Licensee's Contract (#DE-AC09-08SR22470) with the Department of Energy (DOE), and any transfers are limited to DOE or successor contractors.

**27. INCORPORATION BY REFERENCE**

This Agreement/Subcontract incorporates certain clauses by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) provisions incorporated by reference, "Contractor" means Subcontractor/Supplier and "Contracting Officer" means the Company **Procurement Representative**. Government means the Company (except in instances when it is not applicable or appropriate).

*The following clauses are incorporated by reference:*

- (1) FAR 52.222-26, Equal Opportunity (APR 2002)
- (2) FAR 52.222-35, Equal Opportunity for Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
- (3) FAR 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998)
- (4) DEAR 952.250-70, Nuclear Hazards Indemnity Agreement (OCT 2005)
- (5) FAR 52.222-54, Employment Eligibility Verification (JAN 2009)  
*(NOTE: This Article applies only with respect to the following: (1) Is for – (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or (ii) Construction; (2) Has a value of more than \$3,000; and (3) Includes work performed in the United States.)*
- (6) FAR 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) (E.O. 13201)  
*(This Clause is applicable if Order exceeds \$100,000)*

*FAR clauses may be accessed electronically at <http://www.arnet.gov/far>. DEAR clauses can be found at <http://www.professionals.pr.doe.gov>.*

**28. AMERICAN RECOVERY and REINVESTMENT ACT OF 2009, Pub.L. 111-5, (Recovery Act or Act)**

*The following terms are applicable if performance of this Order will require the Subcontractor's/Supplier's employee(s) to perform work under the American Recovery and Reinvestment Act of 2009, Pub. L. 111- 5, (Recovery Act or Act.)*

**A. Segregation and Payment of Costs**

Subcontractor/Supplier must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

**B. Prohibition on Use of Funds**

None of the funds provided under this subcontract derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

**C. Wage Rates**

All laborers and mechanics employed by subcontractors and sub-tier subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See

<http://www.dol.gov/esa/whd/contracts/dbra.htm> .

**D. Publication**

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

**E. Registration requirements**

Subcontractors must have a DUNS number and be registered in the Central Contractor Registration (CCR). The information required for CCR Registration is to be provided on the SIF (Subcontractor/Supplier Information Form).

**F. Utilization of Small Business**

Subcontractor/Supplier shall to the maximum extent practicable give a preference to small business in the award of sub-tier subcontracts for projects funded by Recovery Act dollars.

**G. American Recovery and Reinvestment Act- Reporting Requirements**

**A. The following Federal Acquisition Regulation (FAR) clauses are incorporated into the Contract by reference:**

|                             |   |
|-----------------------------|---|
| FAR 52.225-21               | Required Use of American Iron, Steel, and Manufactured Goods-Buy American Act—Construction Materials (Mar 2009)                                       |
| FAR 52.225-22               | Notice of Required use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials (Mar 2009)                       |
| FAR 52.225-23               | Required Use of American Iron, Steel, and Other Manufactured Goods-Buy American Act—Construction Materials under Trade Agreement (Mar 2009)           |
| FAR 52.225-24               | Notice of Required use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials under Trade Agreement (Mar 2009) |
| FAR 52.203-15               | Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Mar 2009)   |
| FAR 52.204-11               | American Recovery and Reinvestment Act—Reporting Requirements (Mar 2009)  |
| FAR 52.212-5 (Alternate II) | Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (Mar 2009)  |

FAR 52.214-26 (Alternate I) Audit and Records—  
Sealed Bidding (Mar 2009)

FAR 52.215-2 (Alternate I) Audit and Records—  
Negotiation (Mar 2009)

**B. All other terms and conditions remain unchanged.**

**29. WAIVER OF BENEFITS  
(STAFF AUGMENTATION SUBCONTRACTS ONLY)**

Prior to performance, the Subcontractor/Supplier shall obtain from each Subcontractor/Supplier employee and submit to SRNS a signed acknowledgement and waiver of any SRNS salary and benefits programs in a form satisfactory to SRNS, whereby the Subcontractor/Supplier employee agrees and understands that (s)he is an employee of the Subcontractor/Supplier, and not of Savannah River Nuclear Solutions (SRNS) or the United States Department of Energy, that the employee will receive all compensation (salary and benefits) from Subcontractor/Supplier and will not be eligible for any salary or benefits programs provided by SRNS, including but not limited to base salary, health and welfare plans, pension plans, and 401(k) investment savings programs.

**30. COMPLIANCE WITH DIESEL EMISSION REDUCTION ACT (DERA)**

- A. All diesel powered equipment bought on-site for ARRA work is required to burn ultra-low sulfur diesel fuel ( $\leq 15$  ppm). Fuel certification will be available for inspection upon request.
- B. All pre-1996 model year non-road diesel engine equipment brought on-site for ARRA work shall be retrofitted with EPA verified control equipment. Equipment certification will be submitted prior to commencement of work.
- C. SRS is implementing South Carolina State Transport Police (SCSTP) maximum idling regulation SCCL§56-35-10. All “self-propelled diesel motor vehicles licensed for use on a public roadway to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating of ten thousand and one pounds or more” shall be shut down if the idling period will exceed 10 consecutive minutes. Additional guidance on maximum idling time can be obtained at [www.scstp.org](http://www.scstp.org).

**31. INSPECTION EXCEPTION FOR THORIATED TUNGSTEN ELECTRODES**

SRS has determined that thoriated tungsten electrodes will no longer be used in the manual gas tungsten arc welding (GTAW) process at SRS. This applies to the manual GTAW process only. For automatic GTAW the use of thoriated tungsten is allowed due to the dedicated grinding area and control of the process.

**32. DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS**

This is a rated Order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation. (15 CFR 700). Should any applicable DPAS regulations pertaining to acceptance and rejection of rated orders (see 15 CFR 700.13), preferential scheduling (see 15 CFR 700.14), extension of priority ratings (see 15 CFR 700.15) changes or cancellations of priority ratings and rated orders (see 15 CFR 700.16) use of rated orders (see 15 CFR 700.17), and limitations on placing rated orders (see 15 CFR 700.18) conflict with this Agreement, then the DPAS will control.

15 CFR 700.17 provides an exemption for all orders less than \$75,000, or one half of the Federal Acquisition Regulation (FAR) Simplified Acquisition Threshold, (see FAR 2.101) whichever amount is larger, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

This rating must be passed on to Subtier Subcontractors/Suppliers (Subcontractors/Suppliers in all cases to ensure delivery of the items required. The Subcontract is rated DO-E1 for Construction or DO-E2 for Operations. Reference FAR 52.211-15.