

SRNS-MS-2008-00017

Revision 28

December 29, 2021

**GENERAL TERMS AND
CONDITIONS FOR
COMMERCIAL PURCHASES**

UNDER

**U. S. DEPARTMENT OF ENERGY
PRIME CONTRACT NO. DE-AC09-08SR22470**

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

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GENERAL NOTE:

- A. Subcontractors/Suppliers are required to register and maintain an active DUNS number and a current registration in the System for Award Management (SAM), formerly known as Central Contractor Registration (CCR), in compliance with FAR 52.204-7 and Subpart 42.12 of the FAR. In addition, a Subcontractor/Supplier Information Form (SIF) must be completed and submitted with the supplier's solicitation response.

- B. The fees for Site required training classes will be absorbed by SRNS and the subcontractor's attendance time will be compensated for the initial attendance. If a subcontract employee does not successfully pass the course, the subcontractor's attendance time for a second pass and beyond will not be reimbursed; however, the class fees will continue to be absorbed by SRNS. The same scenario applies for substance abuse testing.
- C. When Subcontractor/Supplier shall perform any part of the Work on the premises of SRS or other premises owned and/or operated by the Government during the performance of this Order, the Subcontractor/Supplier shall demonstrate a culture of respect, including having a written policy on Respect in the Workplace; and shall be made available upon request.

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.

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 Agreements/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 electronic 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 electronic 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.
- C. 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 subcontract further its parts of this SRNS Contract.

- D. 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 an SRNS procurement.
- E. The SRNS Procurement Representative is to be notified in writing, within five working days of any changes within your company as identified below:
- (1) Key quality personnel to include as a minimum:
 - a. Quality Assurance/Quality Control Manager
 - b. Assistant Quality Assurance/Quality Control Manager
 - c. Other critical Quality Assurance/Quality Control personnel
 - (2) Quality Assurance Program Revisions
 - (3) Company ownership transfers/buyouts, and
 - (4) All identified Nonconformance or Corrective Action Reports associated with SRNS contracts including those issued concerning Subtier Subcontractors/Suppliers.

6. WARRANTY

- A. Subcontractor/Supplier warrants that items delivered under this Agreement/Subcontract shall be in accordance with Subcontractor/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/Supplier's election. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Subcontractor/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/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;
 - (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.

- 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 fraudulent 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 Subcontractor/Supplier 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 Subcontractor/Supplier.
 - (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 Purchase 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/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. If there are invoice discrepancies, SRNS will relay to the subcontractor/supplier the deficiencies in their

invoice within ten (10) days of receipt of the invoice. The invoice will not be acted upon. Receipt of a corrected invoice will re-initiate the aging of the invoice for payment purposes.

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 determined 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. The Subcontractor/Supplier shall include on the invoice the Subcontractor/Supplier name; invoice date; subcontract/purchase order number; vendor invoice number, account number, and/or any other identifying number agreed to by subcontract; description (including, for example, subcontract line/subline number), unit price and quantity of goods and services rendered per specific line item and line item sub-total cost; subcontract name (where practicable), title and telephone number; other substantiating documentation or information required by the subcontract.

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 determined 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

Non-resident Subcontractors/Suppliers conducting a business or performing personal services of a temporary nature within South Carolina are required to register with the South Carolina Department of Revenue in accordance with Title 12 of the Code of Laws of South Carolina, sections 12-8-540 & 12-8-550. Proof of registration must be submitted to ASG@srs.gov and the SRNS Procurement Representative prior to award.

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. This Subcontractor/Supplier shall abide by the requirements of 41 CFR 60-741.5 (a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime Subcontractors/Suppliers to employ and advance in employment qualified individuals with disabilities.
- C. This Subcontractor/Supplier shall abide by the requirements of 41 CFR 60-300.5 (a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime Subcontractors/Suppliers to employ and advance in employment qualified protected veterans.

- D. Subcontractor/Supplier – Staff Augmentation Services (Paragraphs D – J applies to Staff Augmentation Services).
- E. 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.
- F. 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.
- G. Upon assignment, SRNS will be responsible to provide Staff Augmentation employees 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.

H. Medical results will be provided to the staff augmentation employees.

I. The on-site Medical Surveillance program will be provided by SRNS Medical or a 3rd 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.

J. Site Reporting Requirements the Subcontractor/Supplier (staff augmentation) personnel shall immediately notify the STR/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/Tagout 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.

K. 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 electronic 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's/Supplier's Subcontractors/Suppliers at any tier. However, the delays of Subcontractor's/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 electronic 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 electronic 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, and/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. For any change, whether directed or constructive, Subcontractor/Supplier must assert any request for equitable adjustment under this article in writing, together with such supporting information as SRNS may require, electronically and within thirty days from the date of Subcontractor/Supplier's first knowledge of the change, or Subcontractor/Supplier's right to assert such request for equitable adjustment shall be waived.

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 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, and Part B. C.

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.

As used in this Article, the term "Dual Citizen" is defined as an individual who is a citizen of more than one country.

- A. The Subcontractor/Supplier shall obtain the approval of SRNS, in writing, electronically, prior to any visit to a DOE or SRNS facility by any Foreign National or Dual Citizen 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 "access" 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/Suppliers should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the SRNS Procurement Representative at least four (4) to six (6) weeks prior to the visit. Forms can be obtained from the SRNS Procurement Representative.
- B. In addition, the Subcontractor/Supplier shall obtain the approval of the SRNS Procurement Representative, in writing, electronically, prior to the employment of, or participation by, any Foreign National or Dual Citizen in the performance of work

under this Subcontract or any Lower-tier Subcontract at off-site locations.

- 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.
- D. If the statement of work is accompanied by an approved Exception from Foreign National Information Requirements form, this Subcontract does not require the Subcontractor to provide foreign national information that would otherwise be required.
- E. In the performance of work, Country of Risk foreign nationals/dual citizen may be restricted from accessing technology, information, or certain areas.

(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 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. Substance Testing

- (1) SRNS will collect oral swab specimens or urine specimens when Subcontractor/Supplier employees are processed for badging. The specimen collection will be performed at SRS or one of the third party collection facilities contracted by SRNS to perform collections. SRNS will send these specimens to a certified laboratory 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/Supplier will be notified and shall arrange for an "Exit Conference". The Subcontractor/Supplier then agrees to promptly remove such individual from the Savannah River Site (SRS) and return the badge to the SRNS Badge Office.

- (2) A Breath Alcohol Test will be given during the initial badging process and the results will be available immediately. The Breath Alcohol Test will be performed at SRS or one of the third party testing facilities contracted by SRNS to perform Breath Alcohol Tests. In the event of "positive" findings, the Subcontractor/Supplier will be notified and shall arrange for an "Exit Conference". The Subcontractor/Supplier

then agrees to promptly remove such individual from the Savannah River Site (SRS) and return the badge to the SRNS Badge Office.

- (3) 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.

The Subcontractor/Supplier agrees to secure the written consent of employees to release results of substance abuse tests (breath alcohol and urine) to the designated SRNS representative.

- (4) The Subcontractor/Supplier agrees to comply with and secure the compliance of its employees and Subtier Subcontractors/Suppliers of random, occurrence and/or for cause substance abuse testing. In the event of "positive" findings, the Subcontractor/Supplier will be notified and shall arrange for an "Exit Conference". The Subcontractor/Supplier then agrees to promptly remove such individual from the Savannah River Site (SRS) and return the badge to the SRNS Badge 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 employees drug and alcohol tested on the day of the injury, illness or incident.

- (5) 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 complete successfully the background investigation, the Subcontractor/Supplier agrees to remove promptly 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. The Subcontractor shall ensure that any/all SRS-issued site security badges are returned to the Badge Office (703-46A) within 10 calendar days after badge expiration date (or subcontract/subcontractor employee termination date, whichever occurs first). Failure to do so may result in withholding of invoice payments until such time that the badge(s) is returned.

(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.

(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 available on-line and should be scheduled through the STR or End-user well in advance of the desired date in order to assure placement. GET and the exam are to be completed by the employee who is being badged and without the use or help from others, study materials, or notes.

(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
 - Subcontractor/Supplier Employee name
 - Subcontractor/Supplier Employee address
 - Subcontractor/Supplier Employee Social Security Number
 - Subcontractor/Supplier Employee Date of Birth
 - Subcontractor/Supplier's Phone Number
- (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/Suppliers 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 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 Centerra Group, LLC assigned escorts, or by Assigned Competent Persons (SRNS or Subcontractor/Supplier).
- (3) 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 electronic notification of the employee's name and reason(s) for such suspension or removal.

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/Subcontract 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/Subcontract and for a period of one year following termination of this Agreement/Subcontract, 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/Subcontract, 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 electronic 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)
Note: Include this clause in any subcontract which may involve the risk of public liability, as that term is defined in the Atomic Energy Act of 1954 (Act) and further described in paragraph DEAR 952.247-70 (d)(2). However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act, as amended, or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the subcontract.
- (5) DEAR 952.250-70, Nuclear Hazards Indemnity Agreement (OCT 2005)
- (6) 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.)
- (7) 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)*
- (8) FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts
- (9) FAR 52.223-15, Energy Efficiency in Energy-Consuming Products
- (10) FAR 52.223-16, IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products
- (11) FAR 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts
- (12) FAR 52.223-19, Compliance with Environmental Management Systems
- (13) FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower rights
- (14) FAR 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001)
- (15) FAR 52.222-37, Employment Reports on Special Disabled Vets, Vets of the Vietnam Era, and Other Eligible Veterans
- (16) FAR 52.242-15, Stop Work (AUG 1989)
- (17) FAR 52.225-1. Buy American (JUN 2003) (Deviation)
- (18) FAR 52.222-21, Prohibition of Segregated Facilities (FEB 1999)
- (19) DEAR 970.5227-6 Patent Indemnity-Subcontracts (DEC 2000)
- (20) DEAR 970.5227-4 Authorization and Consent (AUG 2002) *(This Clause is applicable if Order exceeds \$100,000)*

- (21) FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995) *(This Clause is applicable if Order exceeds \$100,000)*
- (22) FAR 52.203-6 Restrictions on Subcontractor Sales to the Government (JUL 1995) *(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 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/Suppliers and Subtier Subcontractors/Suppliers 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/Subcontract will be published on the Internet and linked to the website 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/Suppliers shall register and maintain an active DUNS number and a current registration in the System for Award Management (SAM), formerly known as Central Contractor Registration (CCR), in compliance with FAR 52.204-7 and Subpart 42.12 of the FAR. In addition, a Subcontractor/Supplier Information Form (SIF) must be completed and submitted with the supplier's solicitation response.

F. Utilization of Small Business

Subcontractor/Supplier shall to the maximum extent practicable give a preference to small business in the award of Lower-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, LLC (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 (≤ 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.

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 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.

33. DOE O 442.2 -DIFFERING PROFESSIONAL OPINIONS FOR TECHNICAL ISSUES INVOLVING ENVIRONMENT, SAFETY AND HEALTH

Subcontractors/Suppliers and any Subtier Subcontractor/ Supplier are responsible for flowing down the requirements of the Contractor Requirements Document (CRD) identified in DOE O 442.2 to the extent necessary to ensure compliance with this requirement. The Subcontractors/ Suppliers and any Subtier must:

- (1) Ensure that all Subcontractor/Supplier and any Subtier Subcontractor/ Supplier employees are notified quarterly that they have the right to report environment, safety and health technical concerns that have not been resolved through routine work processes through the Department of Energy Differing Professional Opinion (DPO) process (the DOE DPO process can be found in Attachment 2 to DOE O 442.2 and at <http://www.hss.doe.gov/nuclearsafety/qa/dpo.html>). The notification must provide points of contact (name, phone number and email addresses of DPO Managers) as listed on the DOE DPO web page, as well as the DOE DPO web page address.
- (2) Protect Subcontractor/Supplier and any Subtier Subcontractor/ Supplier employees from reprisal or retaliation for reporting a DPO.
- (3) Provide Subcontractor/Supplier and any Subtier Subcontractor/ Supplier employees' reasonable time and resources to use the DPO Process.
- (4) Assist DOE as requested in the resolution of DPOs.
- (5) *Report to DOE when requested on the status of assigned implementation actions resulting from the DPO resolution and on the closure of these implementations actions.*

34. EXPORT CONTROL

The Parties agree to adhere to all applicable U. S. export laws and regulations. Each Party

acknowledges that it is responsible for its own compliance with all U. S. export control laws and regulations.

35. BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (REFERENCE FAR 52.204-21 JUN 2016)

A. *Definitions.* As used in this clause—

“Covered subcontractor information system” means an information system that is owned or operated by a subcontractor that processes, stores, or transmits Federal contract information.

“Federal subcontract information” means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

“Information” means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

“Safeguarding” means measures or controls that are prescribed to protect information systems.

B. Safeguarding requirements and procedures.

(1) The Subcontractor shall apply the following basic safeguarding requirements and procedures to protect covered subcontractor information systems. Requirements and procedures for basic safeguarding of covered subcontractor information systems shall include, at a minimum, the following security controls:

- (i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
- (ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
- (iii) Verify and control/limit connections to and use of external information systems.
- (iv) Control information posted or processed on publicly accessible information systems.
- (v) Identify information system users, processes acting on behalf of users, or devices.
- (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
- (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
- (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
- (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
- (x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
- (xi) Implement subnetworks for publicly accessible system components that are

physically or logically separated from internal networks.

- (xii) Identify, report, and correct information and information system flaws in a timely manner.
- (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
- (xiv) Update malicious code protection mechanisms when new releases are available.
- (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Subcontractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered subcontractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

39. CONFIDENTIALITY OF INFORMATION

A. To the extent that work under this Subcontract requires that the Subcontractor/Supplier and Subtier Subcontractors/Suppliers be granted access to confidential or proprietary business, technical or financial information belonging to the Government, SRNS or other companies, the Subcontractor/Supplier shall, maintain such information in confidence and agrees not to further disseminate such information to any third parties unless specifically authorized by SRNS or the Purchasing Representative in writing. The foregoing obligations, however, shall not apply to:

- Information which is or becomes available to the public through no fault of the Subcontractor/Supplier;
- Information which the Subcontractor/Supplier can demonstrate by written record was previously known

to them and was not acquired directly or indirectly from the government or other companies subject to any obligations of confidentiality;

- Information which the Subcontractor/Supplier can demonstrate by written record was independently developed by the Subcontractor/Supplier independent of any disclosure under this Subcontract
- B. The Subcontractor/Supplier shall obtain the written electronic agreement, in a form satisfactory to SRNS, of each Subcontractor/Supplier employee or Subtier Subcontractor/Supplier permitted access to such confidential information, whereby the Subcontractor/Supplier employee or Subtier Subcontractor/Supplier agrees they will not discuss, or disclose any such information or data to any person or entity except those within their organization having a need to know to accomplish the purpose of this Subcontract. C.
- C. Upon request of SRNS or the Government, the Subcontractor/Supplier agrees to sign an agreement identical, in all material respects and in a form satisfactory to SRNS and/or the Government, with each company supplying information and/or access to particular facilities to the Subcontractor/Supplier or Subtier Subcontractor/Supplier under this Subcontract, and to supply a copy of such agreement to SRNS. Upon request of SRNS, the Subcontractor/Supplier shall supply SRNS with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Subcontractor/Supplier received such information.
- D. Subcontractor/Supplier will indemnify and hold SRNS 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 unauthorized disclosure of information, by any of its directors, officers, employees, agents, Subcontractors/Suppliers, Subtier Subcontractors/Suppliers or permitted assigns.

40. CONTRACTOR REQUIREMENTS **DOCUMENT DOE O 221.1B, REPORTING**

**FRAUD, WASTE AND ABUSE TO THE
OFFICE OF INSPECTOR GENERAL**

Regardless of the performer of the work, the Subcontractor/Supplier is responsible for complying with the requirements of this Contractor Requirements Document (CRD). This flowed down applies to subcontracts with a value of \$5.5 million or more and with a period of performance of 120 days or longer.

SUBCONTRACTOR/SUPPLIER AND ITS
SUBTIER SUBCONTRACTORS/SUPPLIERS
MUST MEET THE FOLLOWING
REQUIREMENTS.

1. GENERAL REQUIREMENTS. Subcontractor/Supplier, and its Subtier Subcontractors/Suppliers, must not deter or dissuade employees from notifying an appropriate authority of actual or suspected violations of law, rule or regulation (including criminal acts under Title 18 of the United States Code, Crimes and Criminal Procedure); gross mismanagement; a gross waste of funds; serious threats to environment, safety, and health; and abuse of authority relating to DOE programs, operations, facilities, contracts, or information technology systems. Appropriate authorities include but are not limited to the Office of Inspector General (OIG), a supervisor, an Employee Concerns office, general counsel, security officials, the U.S. Government Accountability Office, outside law enforcement agency such as the Federal Bureau of Investigation (FBI) or State/local police. Subcontractor's/Supplier's, and its Subtier Subcontractors'/Suppliers', employees are not expected to report allegations based on mere suspicion or speculation. When in doubt, officials are encouraged to contact a local OIG representative to determine whether reporting is necessary.

Individuals who contact the OIG are not required to reveal their identity to the OIG. However, persons who report allegations are encouraged to identify themselves in the event additional questions arise as the OIG evaluates or pursues their allegations. Confidentiality for DOE Federal employees is established by the Inspector General Act of 1978, section 7(b), which prevents the OIG from disclosing the identity of a DOE Federal employee who reports

an allegation or provides information, without the individual's consent, unless the OIG determines that disclosure is unavoidable during the course of the investigation. Because of their unique role within DOE, the OIG also applies this provision to DOE facility management contractor employees. All others who report allegations are not automatically entitled to confidentiality. Such individuals may request confidentiality, which will be evaluated on a case-by-case basis.

Individuals who contact the OIG are encouraged to provide relevant and specific details of the issue, including the identity of the person, company, or organization alleged to have engaged in wrongdoing; a description of the alleged impropriety; the DOE facility and program affected by the alleged misconduct; Contract/Subcontract numbers; date(s) of alleged wrongdoing; how the complainant is aware of the alleged impropriety; the identity of potential witnesses; and the identity and location of supporting documentation.

a. The following issues are exempt from reporting to the OIG:

(1) Threats of actual or imminent bodily injury or death (such as assault, arson, etc.). However, threats of actual or imminent bodily injury or death must be reported immediately to SRNS, site security, and Federal, State, or local law enforcement authorities in accordance with DOE or local site guidance.

(2) Information about espionage. Information regarding espionage, including approaches made by representatives of other Governments for the commission of espionage or the collection of information, must be reported to the Department's Deputy Director of Counterintelligence and SRNS Counterintelligence.

b. The following issues may be reported to the OIG, but are routinely referred to other appropriate authorities:

(1) Regulatory violations already submitted to or discovered by the Office of Enterprise Assessments;

(2) Professional disagreements of opinion;

- (3) Non-compliance with internal office policies and procedures; policy disagreements;
- (4) Security infractions;
- (5) Employee grievances and disputes among employees;
- (6) Prohibited personnel practices;
- (7) Employee performance concerns, and minor conduct issues such as tardiness and other minor leave issues, insubordinate behavior and failure to follow instructions, and discourteous and unprofessional behavior;
- (8) Failure to pay legitimate debts;
- (9) Equal employment opportunity complaints (including sexual harassment complaints);
- (10) Classification appeals (related to both documents and personnel positions);
- (11) Theft of personal property; and
- (12) Off-duty conduct that does not involve DOE funds, programs, operations, facilities, subcontracts, or information technology systems.

2. SPECIFIC CONTRACTOR REQUIREMENTS.

a. In accordance with Federal Acquisition Regulation (FAR) clause 52.203-13, the Contractor/Subcontractor/Supplier shall timely disclose, in writing, to the OIG whenever, in connection with the award, performance, or closeout of a DOE contract or any subcontract thereunder, the Contractor/Subcontractor/Supplier has credible evidence that a principal, employee, agent, or subtier subcontractor/supplier of the Contractor/Subcontractor/Supplier has committed:

- (1) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the U.S. Code; or
- (2) A violation of the civil False Claims Act, found in Title 31 of the U.S. Code.

b. Notify Subcontractor's/Supplier's and its Subtier Subcontractors'/Suppliers' employees annually of

their duty to report actual or suspected violations of law, rule, or regulation outlined above.

c. Prominently display DOE OIG hotline posters within business segments performing work under a DOE Subcontract and at DOE work sites.

d. Subcontractor/Supplier and its Subtier Subcontractors'/Suppliers' personnel with appropriate authority may gather additional information prior to reporting the matter to the OIG, provided:

(1) relevant information and documents are not altered, destroyed or hidden, and

(2) personnel are not influenced in their recollection of events or discouraged or prohibited from contacting, or cooperating with, the OIG.

e. With the exceptions of traffic violations and thefts of personal property, ensure that criminal allegations or offenses involving DOE funds, programs, operations, facilities, subcontracts, or information technology systems that are reported to an outside law enforcement agency such as the FBI or state/local police are reported to the OIG within 3 business days of making or becoming aware of such a report to ensure timely and appropriate coordination among law enforcement agencies with DOE jurisdiction.

f. Ensure that no nondisclosure policy, directive, form, or agreement is implemented or enforced that restricts Subcontractor's/Supplier's and its Subtier Subcontractors'/Suppliers' employees from reporting information about actual or suspected violations of law, statute, or regulation involving fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement to the OIG.

g. Ensure that no Subcontractor/Supplier and its Subtier Subcontractor/Supplier employee with authority takes or threatens to take any action against any Subcontractor/Supplier and its Subtier Subcontractor/Supplier employee as a reprisal for making a whistleblower complaint or disclosing information in support of a whistleblower complaint to a supervisor, management official, the OIG or other appropriate authority.

h. Report to the OIG any credible evidence, including a credible statement from the alleged victim, that reprisal action is being or has been taken, or is threatened to be taken, against a Subcontractor/Supplier and its Subtier Subcontractor/Supplier employee for making a complaint or disclosing information to a supervisor, management official, the OIG, or other appropriate authority.

41. CONTRACTOR REQUIREMENTS **DOCUMENT DOE O 221.2A, COOPERATION** **WITH THE OFFICE OF INSPECTOR** **GENERAL**

The subcontractor/supplier and their subtier subcontractors must meet the following requirements.

1. GENERAL REQUIREMENTS.

Subcontractors/suppliers must ensure that their employees and subtier subcontractors cooperate fully and promptly with requests from the Office of Inspector General (OIG) for information and data relating to DOE programs and operations.

2. SPECIFIC REQUIREMENTS.

Subcontractors/suppliers must ensure that all their employees and subtier subcontractors understand that they must:

- a. comply with requests for interviews and briefings and must provide affidavits or sworn statements, if so requested by an employee of the OIG so designated to take affidavits or sworn statements.
- b. not impede or hinder another employee's or subtier subcontractor's cooperation with the OIG.
- c. ensure that reprisals are not taken against DOE contractor or SRNS employees who cooperate with or disclose information to the OIG or other lawful appropriate authority.

42. DOE O 486.1A, FOREIGN GOVERNMENT **SPONSORED OR AFFILIATED ACTIVITIES**

Note: This article applies to Research & Development or Demonstration subcontracts, at any tier, to the extent necessary to ensure the subcontractor's/supplier's or subtier subcontractors' compliance with the requirements, where the subcontractor's/supplier's or subtier subcontractors' work within the scope of the Subcontract is performed on or at a Department of Energy of Energy (DOE)/National Nuclear Security Administration (NNSA) site/facility, including DOE/NNSA/contractor leased space.

Regardless of the performer of the work, the subcontractor/supplier is responsible for complying with the requirements of this article. The definitions found in Attachment 2 to DOE O 486.1A, referenced in and made a part of this article, provide information applicable to subcontracts in which this article is inserted. The Subcontractor/supplier is responsible for flowing down the requirements of this DOE Order and article to subtier subcontractors, at any tier, to the extent necessary to ensure compliance.

Subcontractor personnel participation in any Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk is prohibited. Subcontractor Employee participation in any Other Foreign Government Sponsored or Affiliated Activity is restricted.

1. The Subcontractor shall be required to complete a PF-249 Certification form prior to execution of a subcontract, including any subsequent modifications; and on a recurring annual basis.
2. In addition to the PF-249 Certification Form the Subcontractor shall immediately notify SRNS upon identification or notification it or any of its personnel/subtiers are involved with A Foreign Government Sponsored Talent Program or Other Government Sponsored or Affiliated Activity.
3. The Subcontractor shall cooperate with SRNS/DOE to determine if any disclosed or otherwise identified activity falls within the boundaries of prohibited and/or restricted activities.
4. Upon notification to SRNS of potential activity the Subcontractor recognizes it may be required to stop performance of work under the subcontract during the investigatory period until a final determination is made and/or approval is granted by DOE, including a decision on any exemption request. The Subcontractor specifically acknowledges that in the event it is required to delay performance of work as a result of compliance with this clause this may qualify as grounds for termination for cause in accordance with this agreement.

(This article applies to Advisory and Assistance services, and all other service and material subcontracts. Exceptions to this requirement are Strategic Agreement auto-sourced purchase orders and purchase orders placed through Vinimaya; however, Organizational Conflicts of Interest (OCI) determinations must be addressed for Strategic Agreements and at the Basic Ordering Agreement(BOA) and Task Order Authorization

(TOA) level for services. Peard orders and purchase orders equal to or less than the micro-purchase threshold are exempt from this requirement.)

43. ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)

DEAR 952.209-72

(a) Purpose. The purpose of this clause is to ensure that the subcontractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this subcontract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this subcontract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the subcontractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as “subcontractor”) in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

(1) Use of Subcontractor’s Work Product.

(i) The subcontractor shall be ineligible to participate in any capacity in SRNS, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the subcontractor’s performance of work under this subcontract for a period of (Subcontractor/Supplier see Request for Proposal/Request for Quote article and reference DEAR 909.507–2) years after the completion of this subcontract. Furthermore, unless so directed in writing by the Procurement Representative , the subcontractor shall not perform any advisory and assistance services, or all other services and materials, work under this subcontract on any of its products or services or the products or services of another firm if the subcontractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the subcontractor from competing for follow-on subcontracts for advisory and assistance services or all other services and materials.

(ii) If, under this subcontract, the subcontractor prepares a complete or essentially complete

statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the subcontractor from offering or selling its standard and commercial items to SRNS.

(2) Access to and use of information. (i) If the subcontractor, in the performance of this subcontract, obtains access to information, such as SRNS plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the subcontractor agrees that without prior written approval of the Procurement Representative it shall not: (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;

(B) compete for work for SRNS based on such information for a period of six (6) months after either the completion of this subcontract or until such information is released or otherwise made available to the public, whichever is first;

(C) submit an unsolicited proposal to SRNS which is based on such information until one year after such information is released or otherwise made available to the public; and

(D) release such information unless such information has previously been released or otherwise made available to the public by SRNS.

(ii) In addition, the subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this subcontract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The subcontractor may use technical data it first produces under this subcontract for its private purposes consistent with paragraphs (b)(2)(i) (A) and (D) of this clause and the patent, rights in data, and security provisions

of this subcontract.

(c) Disclosure after award. (1) The subcontractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this subcontract, occur during the performance of this subcontract, it shall make an immediate and full disclosure of such changes in writing to the Procurement Representative.

Such disclosure may include a description of any action which the subcontractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. SRNS may, however, terminate the subcontract for convenience if it deems such termination to be in the best interest of SRNS.

(2) In the event that the subcontractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Procurement Representative, SRNS may terminate this contract for default.

(d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this subcontract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Procurement Representative may terminate

the subcontract for default, disqualify the subcontractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this subcontract.

(e) Waiver. Requests for waiver under this clause shall be directed in writing to the Procurement Representative and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of SRNS, the Procurement Representative may grant such a waiver in writing.

(End of clause)

ALTERNATE I: In accordance with 909.507-2 and 970.0905, include the following alternate in the specified types of subcontracts.

(f) Subcontracts. (1) The Procurement Representative subcontractor shall

include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts in accordance with FAR part 13 and involving the performance of advisory and assistance

services as that term is defined at FAR

37.201. The terms “subcontract,” “subcontractor,” and “Procurement Representative” shall be appropriately modified to preserve SRNS’ rights.

(2) Prior to the award under this subcontract for advisory and assistance

services or all other service and material subcontracts, the Procurement Representative shall obtain

from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-

1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the subcontractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Procurement Representative. If the conflict cannot be avoided or neutralized, the Procurement Representative must obtain the approval of the DOE contracting officer prior to entering into the subcontract.

44. RESERVED

45. ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014)

DEAR 970.5204-3

Include the requirements of this clause in all subcontracts that contain the Integration of Environment, Safety and Health into Work Planning and Execution clause at 952.223-71 or, the Radiation Protection and Nuclear Criticality clause at 952.223-72.

(a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Subcontractor/Supplier in its performance of this subcontract, including records series described within the subcontract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 CFR, Chapter XII, Subchapter B, “Records Management.” The Subcontractor/Supplier shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 “Privacy Act.”

(b) Subcontractor/Supplier-owned records. The following records are considered the property of the Subcontractor/Supplier and are not within the scope of paragraph (a) of this clause. [The Contracting Officer shall identify which of the following

categories of records will be included in the clause, excluding records operated and maintained in DOE Privacy Act system of records].

The Contracting Officer has identified the following categories of records in the table below to be included in this article. They shall be submitted by the Subcontractor/Supplier to the Subcontractor Technical Representative (STR) who will submit to EDWS.

Record Type	Records Appropriate for Inclusion	Method of Storage
Subcontractor work related medical records (ref. DOE-33)	<p>A. Name, SSN/Employee ID</p> <p>B. Medical History on Subcontractor Employees-MSP evaluation results prior to working at SRS</p> <p>C. MSP evaluation results while working at SRS (based upon hazard assessment)</p> <p>D. Medical monitoring results as result of unplanned exposure events</p> <p>E. Subcontractor employee-completed health questionnaires not resulting from medical examination (e.g., Investigation)</p>	EDWS
Subcontractor occupational monitoring records associated with	<p>A. Name, Employee ID</p> <p>B. IH Monitoring results, Laboratory Analysis with</p>	EDWS

chemical, biological, and physical hazards	associated calibration data relevant to instruments used to collect and analyze sampling data	
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(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, excluding records operated and maintained by the Contractor in Privacy Act system of records. Employee-related systems of record may include, but are not limited to: Employee Relations Records (DOE-3), Personnel Records of Former Contractor Employees (DOE5), Payroll and Leave Records (DOE-13), Report of Compensation (DOE-14), Personnel Medical Records (DOE-33), Employee Assistance Program (EAP) Records (DOE-34) and Personnel Radiation Exposure Records (DOE-35).

(2) Confidential Subcontractor/Supplier financial information, internal corporate governance records and correspondence between the Subcontractor/Supplier and other segments of the Subcontractor/Supplier located away from the DOE facility (i.e. the Subcontractor's/Supplier's corporate headquarters);

(3) Records relating to any procurement action by the Subcontractor/Supplier, except for records that under 48 CFR 970.5232-3 are described as the property of the Government; and Part 970 - DOE Management and Operating Contracts [https://www.acquisition.gov/print/24896 83/177](https://www.acquisition.gov/print/24896%2083/177);

(4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and

(5) The following categories of records maintained pursuant to the technology transfer clause in the SRNS/DOE Contract:

(i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.

(ii) The subcontractor's/supplier's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.

(iii) Patent, copyright, mask work, and trademark application files and related Subcontractor/Supplier invention disclosures, documents, and correspondence, where the Subcontractor/Supplier has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

(c) Subcontract completion or termination. Upon subcontract completion or termination, the subcontractor/supplier shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor subcontractor/supplier, its designee, or other destinations, as directed by SRNS. Upon the request of the SRNS and/or Government, the subcontractor/supplier shall provide either the original subcontractor-owned records or copies of the records identified in paragraph (b) of this clause, to SRNS or its designees, including, but not limited to, DOE or a successor contractor to SRNS. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the Subcontractor/Supplier chooses to provide its original subcontractor-owned records to the Government or its designee, the Subcontractor/Supplier shall retain future rights to access and copy such records as needed.

(d) Inspection, copying, and audit of records. All records acquired or generated by the Subcontractor/Supplier under this subcontract in the possession of the Subcontractor/Supplier, including those described at paragraph (b) of this clause, shall

be subject to inspection, copying, and audit by the Government, SRNS, or their respective designees at all reasonable times, and the Subcontractor/Supplier shall afford the Government, SRNS, or their designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the DOE Contracting Officer or SRNS Procurement Representative, the Subcontractor/Supplier shall deliver such records to a location specified by the DOE Contracting Officer or SRNS Procurement Representative for inspection, copying, and audit. The Government, SRNS, and their respective designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

(e) Applicability. This clause applies to all records created, received and maintained by the Subcontractor/Supplier without regard to the date or origination of such records including all records acquired from a predecessor Subcontractor/Supplier.

(f) Records maintenance and retention. Subcontractor/Supplier shall create, maintain, safeguard, and disposition records in accordance with 36 CFR Chapter XII, Subchapter B, "Records Management" and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the Subcontractor/Supplier. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the subcontract, the Government, or SRNS, exercises rights under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.