

**GENERAL PROVISIONS  
FOR FIXED-PRICE ORDERS  
UNDER  
U. S. DEPARTMENT OF ENERGY PRIME  
CONTRACT NO. DE-ACO9-09SR22505  
SAVANNAH RIVER REMEDIATION LLC  
SAVANNAH RIVER SITE  
AIKEN, SOUTH CAROLINA 29808**

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

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**SECTION A**

**SECTION A ARTICLES APPLY REGARDLESS OF ORDER PRICE**

**A.1 DEFINITIONS**

Whenever used in this document with initial capitalization, the following definitions shall be applicable unless the context indicates otherwise:

- A. "Contracting Officer" shall mean the Government official executing the Prime Contract No. DE-AC09-09SR22505 between SRR and DOE. The Contracting Officer is the Government Official who is authorized to execute, administer, and terminate the contract, and includes the authorized representatives thereof, when such individuals are acting within the limits of their authority as delegated by the Contracting Officer.
- B. "DOE" shall mean the United States Department of Energy or any duly authorized representative thereof, including any successor or predecessor

agency thereof, including the Contracting Officer.

- C. "Government" shall mean the United States of America.
- D. "Head of the agency" or "Secretary" shall mean the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency.
- E. "Services" shall mean labor, direction of labor, production of technical information, consulting services or any other services furnished by Subcontractor and its lower tier subcontractors under this Order.
- F. "Subcontract" shall mean any Purchase Order entered into by the Subcontractor or lower tier subcontractor calling for supplies and/or services required for performance, order modification, or subcontract.
- G. "Lower tier subcontractor" shall mean any subcontractor or supplier of any tier that supplies goods and/or services to Subcontractor in connection with Subcontractor's obligations under this Order.
- H. "Subcontractor" shall mean the person or organization entering into this Order with SRR.
- I. "Supplies" shall mean equipment, components, parts and materials to be provided by Subcontractor and its lower tier subcontractors pursuant to this Order.
- J. "Vendor Data" shall mean any and all information, data, and documentation to be provided by Subcontractor and its lower tier subcontractors under this Order.
- K. "Work" shall mean Supplies, Services, and Vendor Data provided by Subcontractor and its lower tier subcontractors and all work performed with respect thereto, pursuant to this Order.
- L. "SRR" shall mean Savannah River Remediation LLC.
- M. "SRR Procurement Representative" shall mean a person with the authority to execute, administer, and terminate the Order, and make related determinations and findings. The term includes certain authorized representatives of the SRR Procurement Representative acting within the limits of their authority as delegated by the SRR Procurement Representative. May also be called the "Buyer".

**A.2 GENERAL**

The terms and conditions of these General Provisions and those set forth in the SRR Purchase Order/ Subcontract apply notwithstanding any different or additional terms and conditions which may be submitted or proposed by Subcontractor, and SRR

objects to and shall not be bound by any such additional or different terms and conditions.

- A. This Order, which term shall be deemed to include related plans, drawings, specifications, and other documents, contains the entire agreement and understanding between the parties as to the subject matter of this Order, and merges and supersedes all prior agreements, understandings commitments, representations, writings, and discussions between them. Neither of the parties will be bound by any prior obligations, conditions, warranties, or representations with respect to the subject matter of this Order not set forth herein. The parties agree that recourse may not be had to alleged prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of this Order.
- B. The failure of either party to enforce at any time any of the provisions of this Order or to require at any time performance by the other party of any of such provisions shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Order or any parts thereof, or the right of either party thereafter to enforce each and every provision.
- C. The headings used in this Order are not to be construed as modifying, limiting or expanding in any way the scope or extent of the provisions in this Order.
- D. All references herein to the Department of Energy Acquisition Regulations (DEAR) or Federal Acquisition Regulations (FAR) are those in effect on the date of this Order.
- E. In the event of an inconsistency between provisions of this Order, the inconsistency shall be resolved by giving precedence as follows:
  - (1) Purchase Order.
  - (2) These General Provisions.
  - (3) Statement of Work.
  - (4) Other provisions of this Order, whether incorporated by reference or otherwise.
- F. 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.
- G. Subcontractor shall perform all Work pursuant to this Order as an independent contractor. If any part of the Work is subcontracted, Subcontractor is responsible for having that subcontracted Work comply with the terms of this Order. No

act or order of SRR shall be deemed to be an exercise of supervision or control of performance hereunder. No provision of this Order and no action taken by SRR under this Order shall be construed to make or constitute SRR the employer or joint employer of any of the employees of Subcontractor or any lower tier subcontractor or agent of Subcontractor or its subcontractors.

### **A.3 SUBCONTRACTING**

- A. Subcontractor shall not subcontract all or substantially all of the Work without the prior written approval of SRR. This provision shall not apply to purchases of standard commercial articles or raw materials on which Subcontractor shall perform further work.
- B. Subcontractor shall select lower tier subcontractors on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Order.
- C. When the use of a lower tier Subcontractor(s) is deemed necessary, Subcontractor is responsible to flow down those Technical and Quality requirements deemed applicable for the activities within its defined scope of work, in accordance with referenced Codes, Standards and Material Specifications, or other requirements identified within the procurement documents included with this Purchase Order/Subcontract package. The Subcontractor is furthermore responsible to flow down all commercial Terms and Conditions, including articles incorporated by reference, to all lower tier Subcontractors, which includes verification that the lower tier subcontractor has been appropriately qualified to perform the activities required to satisfy this procurement. Subcontractor must maintain objective evidence of the successful flow down of the referenced requirements and provide such evidence to SRR upon request. This flow down is also required at all levels if the lower tier subcontractor to the Prime Subcontractor deems it necessary to further subcontract its parts of this SRR contract.
- D. When NQA-1 is invoked as the governing standard, Subcontractor and applicable lower tier subcontractor(s) shall be required to meet the Part 1 Basic Requirements (Section 100). Additional Sections of NQA-1 Part 1, (Sections 200 and above), and NQA-1 Part II, may be invoked at the discretion of SRR via the procurement documents, and if invoked, must be flowed down from Subcontractor to its applicable lower tier subcontractor(s) at all levels. If the Prime Subcontractor or its lower tier subcontractor(s) intends to upgrade materials

by way of a Commercial Grade Dedication Process, SRR must be notified of this intent and the Subcontractor's process verified and approved prior to dedicating any material associated with an SRR procurement.

- E. The SRR Buyer is to be notified in writing, within five working days, of any changes within the Subcontractor's company, as identified below:

- (1) Key quality personnel, to include as a minimum:
  - (i) Quality Assurance/Quality Control Manager,
  - (ii) Assistant Quality Assurance/Quality Control Manager, and
  - (iii) Other critical Quality Assurance/Quality Control personnel.
- (2) Quality Assurance Program Revisions.
- (3) Company ownership transfers/buy-outs.

- F. The SRR Buyer is to be notified in writing, within five working days, of all Nonconformance or Corrective Action Reports associated with SRR contracts, including those issued concerning lower tier subcontractors.

#### **A.4 CHANGES, EXTRAS AND SUBSTITUTIONS**

- A. SRR may at any time, by a written change notice from the SRR Procurement and Materials Management Department, and without notice to the sureties, if any, make changes, within the general scope of this Order. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Order, whether changed or not changed by the order, SRR shall make an equitable adjustment in (1) the contract price, (2) the time of performance or delivery schedule or both; and (3) other affected terms of this Order, and shall modify this Order accordingly. Any proposal by Subcontractor for adjustment of the cost or time of performance under this article, together with such supporting information as SRR may require, must be submitted in writing within thirty days from the date of receipt by the Subcontractor of the notification of change; provided however, that SRR, if it decides that the facts justify such action, may receive and act upon any such proposal for adjustment at any time prior to final payment under this Order. Where the cost of property made obsolete or excess as a result of a change is included in Subcontractor's proposal for adjustment, SRR shall have the right to prescribe the manner of disposition of such property. Failure to agree to

any adjustment shall be a dispute within the meaning of the article of this Order entitled "Disputes". However, nothing herein shall excuse Subcontractor from proceeding with this Order as changed.

- B. Any changes, extras or additional work made or performed by Subcontractor without the prior written approval of the SRR Procurement and Materials Management Department shall be at the sole risk and expense of Subcontractor, there being no financial recourse against SRR or the Government whatsoever.
- C. Subcontractor shall not substitute other equipment or materials for those specified in this Order, or vary the quantity of the Work, or otherwise make any changes in the Work, without prior written consent of SRR.

#### **A.5 APPROVALS**

The approval by SRR of designs, work drawings, specifications, reports, or any other data submitted by Subcontractor hereunder shall not affect or relieve Subcontractor from any responsibility to furnish said items in full conformance with the requirements of this Order.

#### **A.6 DELIVERY AND PAYMENT**

- A. Subcontractor shall work such hours as may be necessary to meet the Order delivery date(s), or any duly authorized extensions thereof, at no increase in the price of this Order.
- B. Unless otherwise provided in this Order, delivery shall not be made more than 15 days prior to the delivery dates specified herein and SRR may return earlier deliveries at Subcontractor's risk and expense. Subcontractor shall comply with the delivery schedule provided in this Order.
- C. Unless otherwise specified in this Order, a separate invoice shall be issued upon each delivery of Supplies or completion of Services, and shall be payable by SRR upon receipt and acceptance of Supplies or completion of Services and receipt by SRR of a correct invoice therefore. Credit and discount periods shall be computed from the date such invoice is so payable to the date SRR's check is mailed or, for Electronic Funds Transfer (EFT), the specified payment date. Unless freight and other charges are itemized, the discount will be taken on the full amount of invoice.
- D. Payment Withheld - Vendor Data. If this Order requires the submittal of Vendor Data, and if such Vendor Data, or any part thereof, is not delivered within the time specified by this Order, or is deficient upon delivery, SRR may, until such Vendor Data is delivered or deficiencies are

corrected, without limiting any of its other rights or remedies, withhold payments not to exceed 20% of the Order price to the Subcontractor.

- E. Notwithstanding anything herein, SRR shall be entitled at any and all times to set off against any amounts payable at any time by SRR hereunder any amount owing from Subcontractor to SRR under this Order or other orders with Subcontractor.
- F. Overpayments. If Subcontractor becomes aware of a duplicate invoice payment or that SRR has otherwise overpaid on an invoice payment, the Subcontractor shall immediately notify SRR and request instructions for disposition of the overpayment.

#### **A.7 PAYMENT BY ELECTRONIC FUNDS TRANSFER**

##### **A. Methods of Payment**

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

##### **B. Mandatory Submission of Subcontractor's EFT Information**

Subcontractor is required to provide SRR with the information required to make payment by EFT. Subcontractor shall provide this information directly to the office designated in this Order, on forms provided by SRR, 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 EFT information. In the event that the EFT information changes, Subcontractor shall be responsible for providing the updated information to the designated office.

##### **C. Mechanisms for EFT Payment**

SRR 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) SRR 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. Until receipt of the correct EFT information, any invoice or subcontract financing request shall be deemed not to be a proper invoice for the purpose of payment under this Order.
- (2) If the EFT information changes after submission of correct EFT information, SRR shall begin using the changed EFT information no later than 30 days after its receipt by the designated office. However, Subcontractor 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 invoice is due, SRR will issue instructions to its bank to transfer payment to Subcontractor, and will also send a FAX to Subcontractor explaining the details to support the payment.

##### **F. Liability for Uncompleted or Erroneous Transfers**

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

#### **A.8 PASSAGE OF TITLE AND LIENS**

- A. Title to the Supplies shall pass to the Government at the place of delivery to SRR. If purchased F.O.B. shipping point, delivery to the carrier shall be deemed to be delivery to SRR.
- B. Subcontractor agrees to furnish the Work free and clear of all liens, claims, and encumbrances.

In the event that a lien of any nature shall at any time be filed against the Work or Subcontractor's or a Subcontractor's facility by any person, firm, or corporation which has supplied equipment, material, services or data, Subcontractor agrees promptly, on demand of SRR and at Subcontractor's expense, to take any and all action necessary to cause any such lien to be released or discharged therefrom. Subcontractor agrees to save SRR harmless from all liens, claims, or demands in connection with the Work.

- C. Except as otherwise provided in this Order,
- (1) Subcontractor shall be responsible for the loss or destruction of, or damage to, the Supplies until delivered at the designated delivery point, regardless of the point of inspection;
  - (2) After delivery to SRR at the designated point and prior to acceptance or rejection by SRR, Subcontractor shall be responsible for the loss or destruction of or damage to the Supplies unless such loss, destruction, or damage results from negligence of the officers, agents, or employees of SRR or the Government acting within the scope of their employment; and
  - (3) Subcontractor shall bear all risks as to rejected Supplies after rejection.

#### **A.9 ASSIGNMENT**

SRR may assign this Order to the DOE or to such party as DOE may designate to perform SRR's obligations hereunder. Upon receipt by Subcontractor of written notice that the DOE or a party so designated by the DOE has accepted an assignment of this Order, SRR shall be relieved of all responsibility hereunder and Subcontractor shall thereafter look solely to such assignee for performance of SRR's obligations. Subcontractor shall not assign or transfer this Order or any interest herein, or claims hereunder, without the prior written consent of SRR or SRR's assignee.

#### **A.10 WORKMANSHIP AND MATERIALS**

A. Unless this Order specifies otherwise, the Subcontractor represents that all workmanship will be first class and the supplies and components, including any former Government property identified in this Order are new, including recycled (not used or reconditioned) in conformance with industry standards and are not of such age or so deteriorated as to impair their usefulness or safety. The Subcontractor shall not provide material or equipment that contains material that is known to be suspect or counterfeit (see paragraph E below). If the

Subcontractor believes that furnishing used or reconditioned supplies or components will be in the Government's interest, the Subcontractor shall so notify the SRR Procurement Representative in writing. The Subcontractor's notice shall include a proposal for consideration by SRR that states the reason for the request to use reconditioned or used supplies or components.

- B. Where items are referred to in the specifications as "equal to" any particular standard, SRR shall decide the question of equality.
- C. If required elsewhere in this Order, Subcontractor shall submit for approval samples of, or test results on, any materials proposed to be incorporated in the Work before making any commitment for the purchase of such materials. Such approval shall not relieve Subcontractor of any of its obligations hereunder.
- D. All work under this Order shall be performed in a skillful and workmanlike manner. The Subcontractor agrees to utilize only experienced, responsible and capable employees, to include Subcontractors, in the performance of the work. SRR may require that the Subcontractor remove from the job employees, to include lower tier subcontractors, who endanger persons or property, or whose continued employment under this Order is inconsistent with the interests of security or safety at the Savannah River Site.
- E. **Suspect or Counterfeit Parts.**
  - (1) Subcontractor 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 to document material substitution or identify that an item has been refurbished or remanufactured is considered to be fraud, and the item then becomes suspect/counterfeit.
  - (2) If it is determined that a suspect/counterfeit part has been supplied, SRR will impound the items pending a decision on disposition. The Subcontractor may be required to replace such items with items acceptable to

SRR and Subcontractor shall be liable for all costs relating to the impoundment, removal, and replacement. SRR 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.

**A.11 WARRANTY**

- A. Subcontractor warrants that the Supplies shall be free from defects in material and workmanship, are of the most suitable grade of their respective kinds for the purpose, and comply with all requirements set forth in this Order, until one year after first placed into service by SRR, or three years after acceptance, whichever first occurs. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by SRR, by promptly: (i) repairing or replacing the nonconforming Supplies specified (and correcting any plans, specifications, or drawings affected); (ii) furnishing SRR any materials, parts, and instructions necessary to correct or have corrected the nonconformity, or (iii) paying to SRR a portion of the Order price as is equitable under the circumstances.
- B. Subcontractor warrants that the Services shall reflect the industry standards of professional knowledge and judgment, shall be free from defects in workmanship, and shall be in compliance with all requirements of this Order, until one (1) year from the completion of the Services. Subcontractor shall correct any nonconformity with this warranty at its sole expense, as directed by SRR, by promptly (i) re-performing the nonconforming Services or (ii) paying to SRR a portion of the Order price as is equitable under the circumstances.
- C. If Subcontractor fails to perform its obligations promptly under this article, SRR may perform, or have performed; such obligations and Subcontractor shall pay SRR all charges occasioned thereby.
- D. The warranty with respect to corrected Supplies or Services shall be subject to the same terms as the warranty provided for in paragraphs A and B of this article. The warranty for other than corrected or replaced Supplies or Services shall continue until the expiration of such period plus a period equal to the time elapsed between the discovery of the nonconformity and its correction.
- E. Unless installation is an element of the Work, Subcontractor shall not be obligated under this article for the costs of removal or reinstallation

of any Supplies furnished or items Serviced hereunder from the location of their installation, or for the costs of removal or reinstallation of structural parts or items not furnished by Subcontractor hereunder. Subcontractor shall in any event bear all packing, packaging, and shipping costs from the place of delivery to the Subcontractor's plant and return to the place of delivery, and shall bear all risk of loss or damage for the items upon which Services have been performed or Supplies while in transit.

- F. Unless decontamination is an element of the Work, in the event that Subcontractor's costs in correcting any nonconformity under this article are increased solely because the Supplies furnished or items Serviced hereunder must be decontaminated to the level specified in the definition of "radiation area" in 10 CFR 20.202, this Order price shall be equitably adjusted to reflect such additional costs after prompt written notification thereof by Subcontractor to SRR.
- G. This provision of this article shall apply notwithstanding inspection, acceptance, or any other provision of this Order, and shall not limit any other of SRR's rights and remedies.
- H. Latent Defects. In the event the Subcontractor becomes aware of any latent defect(s) in any item(s) furnished under this Order, the Subcontractor shall promptly notify the SRR 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 SRR relative to return, re-fit, repair, etc.;
  - (6) date of purchase by SRR; and,
  - (7) applicable SRR Order number.

**A.12 SUBCONTRACTOR'S INSPECTION REQUIREMENTS**

Subcontractor is responsible for performing, or having performed, all inspections and tests necessary to substantiate that the Supplies or Services furnished under this Order conform to Order requirements, including any applicable technical requirements for specified manufacturers' parts. This article takes precedence over any SRR inspection and testing required in the specifications, except for specialized inspections or tests specified to be performed solely by SRR.

**A.13 RESERVED**

**A.14 PUBLIC RELEASE OF INFORMATION**

Information, data, photographs, sketches, advertising, announcements, denial, or confirmation of same, or items of a similar nature, relating to this Order, which Subcontractor desires to release or publish, shall be submitted to SRR for approval eight weeks prior to the desired release date. As part of the approval request, Subcontractor shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases by Subcontractors must have the prior approval of SRR. Subcontractor shall include all provisions of this article including this sentence in all subcontracts or purchase orders under this Order. SRR's approval shall not be unreasonably withheld.

**A.15 FEDERAL, STATE, AND LOCAL TAXES**

- A. (1) "After-imposed Federal tax" as used in this article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the Order date but whose exemption was later revoked or reduced during this Order period, on the transactions or property covered by this Order that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Order date. It does not include social security tax or other employment taxes.
- (2) "After-relieved Federal tax" as used in this article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this Order, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the Order date.
- (3) "All applicable Federal, State, and local taxes and duties" as used in this article, means all taxes and duties, in effect on the Order date, that the taxing authority is imposing and collecting on the transactions or property covered by this Order.
- (4) "Order date" as used in this article means the date set for bid opening or, if this is a negotiated order or modification, the effective date of this Order or modification.
- B. Subcontractor shall not collect an increment for South Carolina sales or use tax from SRR for the materials and/or services provided under this Order beyond such taxes paid by the Subcontractor to its subcontractors.

- C. The Order price includes all applicable Federal, State, and local taxes and duties. (See paragraph B. above.)
- D. The Order price shall be increased by the amount of any after-imposed Federal tax, provided Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Order price, as a contingency, reserve or otherwise.
- E. The Order price shall be decreased by the amount of any after-relieved Federal tax.
- F. The Order price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that Subcontractor is required to pay or bear, or does not obtain a refund of, through Subcontractor's fault, negligence, or failure to follow instructions of SRR.
- G. No adjustment shall be made in the Order price under this article unless the amount of the adjustment exceeds \$100.
- H. Subcontractor shall promptly notify SRR of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Order price and shall take appropriate action as SRR directs.

**A.16 TERMINATION FOR CONVENIENCE OF SRR**

SRR may, by written notice, terminate this Order, in whole or in part, when it is in SRR's interest to do so. If this Order is so terminated, the rights, duties, and obligation of the parties, including compensation to Subcontractor, shall be in accordance with Part 49 of the FAR, as supplemented or modified by Part 949 of the DEAR in effect on the date of this Order.

**A.17 DISPUTES**

- A. Subcontractor shall not be entitled to and neither SRR nor the Government shall be liable to the Subcontractor or its lower tier subcontractors or suppliers for damages in tort (including negligence), or contract, or otherwise, except as specifically provided in this Order.
- B. The Parties shall attempt to settle any claim or controversy arising from this Order through consultation and negotiations in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator chosen by the Parties within thirty (30) days after written notice by one party demanding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, and the Parties will share the costs of the mediation equally. Any dispute which cannot be resolved

between the Parties through negotiation or mediation shall be resolved by litigation in a court of competent jurisdiction located in the State of South Carolina. Determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government; if there is no applicable Federal Government contract law, the law of the State of South Carolina shall apply in the determination of such issues.

- C. While a dispute is pending, the Subcontractor shall proceed diligently with performance of all terms of this Order. The Subcontractor's consent to so proceed shall not restrict or otherwise affect the Subcontractor's right to contest any claim.

**A.18 PRICING OF ADJUSTMENTS**

When costs are a factor in any determination of an Order price adjustment pursuant to the "Changes, Extras, and Substitutions" article or any other provisions of this Order, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the FAR, as supplemented or modified by DEAR Part 931, in effect on the date of this Order.

**A.19 COMPLIANCE**

- A. Subcontractor 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 Part 851 relating to Health and Safety. Compliance shall be a material requirement of this Order. Except as otherwise directed by SRR, Subcontractor shall procure without additional expense to SRR, all necessary permits or licenses.
- B. Subcontractor warrants that any and all Work performed and/or supplies furnished shall comply with all requirements of the Occupational Safety and Health Act of 1970, as the same may be amended from time to time and including all regulations adopted pursuant to such Act, and shall comply with all requirements of any applicable health or safety statute or regulation of any state or local government agency having jurisdiction in the location to which Supplies are to be shipped or Work is to be performed pursuant to this Order.
- C. Subcontractor warrants that each and every chemical substance delivered under this Order shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to

Section 8(b) of the Toxic Substances Control Act (Public Law 94-469).

**A.20 RIGHTS TO PROPOSAL DATA (TECHNICAL)**

Except for the technical data contained on those pages of Subcontractor's proposal which are specifically identified in the Order with specific reference to this article and asserted by Subcontractor as being proprietary data, it is agreed that, as a condition of the award of this Order and notwithstanding the provisions of any notice appearing on the proposal or elsewhere, SRR and the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this Order is based.

**A.21 SRR POLICY ON OPPORTUNITY**

All Subcontractors and their lower tier subcontractors, vendors and agents (collectively "Subcontractors") are notified that it is the policy of the SRR to provide equal employment opportunity and to adhere to federal, state and local laws pertaining thereto. Appropriate action will be taken on the part of all SRR Subcontractors and to their Subcontractors to insure adherence to such laws.

**A.22 DEFAULT**

- A. (1) SRR may, subject to paragraphs C and D below, by written notice of default to Subcontractor, terminate this Order in whole or in part if Subcontractor fails to:
  - (i) deliver the Supplies or to successfully perform the Services within the time specified in this Order or any extension;
  - (ii) make progress, so as to endanger successful performance of this Order (but see subparagraph A (2) below); or
  - (iii) perform any of the other provisions of this Order (but see subparagraph A (2) below);
  - (iv) engages in behavior that either is dishonest or fraudulent or constitutes a conflict of interest with Subcontractor's obligations under this Order; or
  - (v) Subcontractor becomes insolvent or makes a general assignment for the benefit of creditors or reasonable grounds for financial insecurity arise with respect to Subcontractor's performance.
- (2) SRR's right to terminate this Order under subdivisions (1)(ii) and (1)(iii) above, may be exercised if Subcontractor does not cure such failure within 10 days (or more if

authorized in writing by SRR) after receipt of the notice from SRR specifying the failure.

- B. If SRR terminates this Order in whole or in part, it may acquire, under the terms and in the manner SRR considers appropriate, supplies or services similar to those terminated, and Subcontractor will be liable to SRR for any excess costs for those supplies or services. However, Subcontractor shall continue the Work not terminated.
- C. Except for defaults of Subcontractors, Subcontractor shall not be liable for any excess costs if the failure to perform this Order arises from causes beyond the control and without the fault or negligence of Subcontractor. Examples of such causes include
  - (1) acts of God or of the public enemy,
  - (2) acts of the Government in either its sovereign or contractual capacity,
  - (3) fires,
  - (4) floods,
  - (5) epidemics,
  - (6) quarantine restrictions
  - (7) strikes,
  - (8) freight embargoes, and
  - (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of lower tier subcontractor.
- D. If the failure to perform is caused by the default of a Subcontractor, and if the cause of the default is beyond the control of both Subcontractor and the Subcontractor and without the fault or negligence of either, Subcontractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Subcontractor to meet the required delivery schedule.
- E. If this Order is terminated for default, SRR may require Subcontractor to transfer title to the Government and deliver to SRR, as directed by SRR, any (1) completed Supplies, and (2) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this article) that Subcontractor has specifically produced or acquired for the terminated portion of this Order. Upon direction of SRR, Subcontractor shall also protect and preserve property in its possession in which SRR or the Government has an interest.
- F. SRR shall pay the Order price for completed Supplies delivered and accepted. Subcontractor

and SRR shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes article. SRR may withhold from these amounts any sum it determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.

- G. If, after termination, it is determined that Subcontractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SRR.
- H. The rights and remedies of SRR in this article are in addition to any other rights and remedies provided by law or under this Order.

**A.23 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

- A. Subcontractor agrees to submit a Material Safety Data Sheet (for all hazardous materials/chemicals) to the SRR Procurement Representative (typically called the Subcontract Technical Representative "STR") for approval before the chemical is brought onto SRS. This obligation applies to all materials delivered under this Subcontract which will involve exposure to hazardous materials/chemicals or items containing these materials/chemicals.
- B. All chemical containers shall be clearly labeled per OSHA standards. Chemicals not in an original container shall also be properly labeled with the product name and hazard markings per the Material Safety Data Sheet on file. Immediate use containers such as painter's pail, etc., are exempt from labeling requirements.
- C. Neither the requirements of this article nor any act or failure to act by SRR or the Government shall relieve Subcontractor of any responsibility or liability for the safety of SRR, Government, Subcontractor, or Subcontractor personnel or property.
- D. Subcontractor shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the acquisition of licenses and permits) in connection with hazardous materials/chemicals.
- E. The Government's and SRR's rights in data furnished under this Order with respect to hazardous materials/chemicals are as follows:
  - (1) To use, duplicate, and disclose any data to which this article is applicable. The purposes of this right are to (i) apprise

personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials/chemicals; (ii) obtain medical treatment for those affected by the material/chemical; and (iii) have others use, duplicate, and disclose the data for SRR and the Government for these purposes.

- (2) To use, duplicate, and disclose data furnished under this article, in accordance with subparagraph E (1) above, in precedence over any other article of this Order providing for rights in data.
- (3) That SRR and the Government are not precluded from using similar or identical data acquired from other sources.
- (4) That the data shall not be duplicated, disclosed, or released outside of SRR or the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this article applies: "This is furnished under United States Government Contract No. DE-AC09-09SR22505 and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of SRR. This legend shall be marked on any reproduction of this data."
- (5) That Subcontractor shall not place the legend or any other restrictive legend on any data which
  - (i) Subcontractor or any lower tier subcontractor previously delivered to SRR or the Government without limitations, or
  - (ii) should otherwise be delivered without limitations.

F. Subcontractor shall insert this article, including this paragraph F, with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase designations or purchase orders) under this Order involving hazardous materials/chemicals.

#### **A.24 PATENTS AND COPYRIGHTS INDEMNITY AND DEFENSE**

A. Subcontractor hereby indemnifies, and shall, at its own expense, defend and hold SRR harmless in any suit or proceeding brought against SRR and/or its vendors, based on any allegation that any goods, material, equipment, device, item, method, or article (hereinafter referred to as "Product") or any part thereof furnished hereunder constitutes an infringement of any claim of any patent or violation of any copyright.

- B. In case the product or any part thereof furnished hereunder is held, in any suit or proceeding so defended to constitute infringement and its use is enjoined, Subcontractor shall, at its option and its own expense, in a timely manner either (i) procure for SRR and its vendors the right to continue using product or part thereof, or (ii) replace it with a substantially equivalent noninfringing product, or (iii) modify it so it becomes noninfringing but is substantially functionally equivalent.
- C. Any substituted, modified or replacement product or part thereof described in B(ii) or B(iii) above shall not modify or relieve the Subcontractor of its obligations under this Subcontract.

#### **A.25 JOINT INTELLECTUAL PROPERTY RIGHTS**

- A. "Joint Intellectual Property Rights" shall mean any work under the Subcontract, which
  - (1) results from the involvement of at least one employee/participant from each of SRR and the Subcontractor; and
  - (2) the subject matter of which is capable of protection under domestic or foreign law, including but not limited to, patents, copyrights, trademarks, or mask works.
- B. As to Joint Intellectual Property Rights, in which SRR has a joint ownership interest, the Subcontractor agrees to negotiate in good faith with SRR a Memorandum of Agreement to resolve issues of participation in protection and commercialization.

#### **A.26 COMPLIANCE WITH EMPLOYEE CONCERNS**

- A. Subcontractor shall ensure its employees are aware of the respective U.S. Department of Energy Savannah River Operations Office (DOE-SRS) and SRR Employee Concerns Programs (ECP) and how to use the two programs by performing the following:
  - (1) Ensure employees are provided with information on the DOE-SRS ECP and SRR ECP during initial orientation and annual training.
  - (2) Ensure that posters identifying the DOE-SRS ECP and SRR ECP telephone "hotline" numbers are displayed in conspicuous locations throughout the worksite. SRR will provide posters, as necessary.
  - (3) Inform Subcontractor employees of the availability of the DOE-SRS ECP in case of dissatisfaction or lack of confidence with other reporting systems.

- (4) Ensure Subcontractor and Subcontractor managers and supervisors are aware of the prohibition of any reprisal against employees who have or are believed to have raised or reported concerns.
- B. Subcontractor must immediately notify the STR or Procurement Representative of any employee concern involving:
  - (1) A condition which constitutes an imminent threat to the health and safety of site personnel or to the general public.
  - (2) Circumstances which would cause adverse public reaction or receive local media attention.
  - (3) Allegations of reprisal.
- C. Subcontractor shall investigate any employee concern referred by the STR and inform the STR of investigation results within 7 days of receipt of concern. Subcontractor shall inform the STR in writing if an extension to this 7-day timeframe is required, along with status of the investigation to date and actions pending to closure. The investigation shall be conducted to the satisfaction of the SRR STR,

**A.27 CONFIDENTIALITY OF INFORMATION**

- A. To the extent that the work under this Order requires that the Subcontractor be given access to confidential or proprietary business, technical or financial information belonging to the Government, SRR or other companies, the Subcontractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by SRR or the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
  - (1) Information which, at the time of receipt by the Subcontractor, is in public domain;
  - (2) Information which is published after receipt thereof by the Subcontractor or otherwise becomes part of the public domain through no fault of the Subcontractor;
  - (3) Information for which the Subcontractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the government or other companies;
  - (4) Information which the Subcontractor can demonstrate was received by it from a third party that did not require the Subcontractor to hold it in confidence.

- B. Subcontractor shall obtain the written agreement, in a form satisfactory to SRR, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Subcontractor's organization directly concerned with the performance of the contract.
- C. Subcontractor agrees, if requested by the SRR or the Government, to sign an agreement identical, in all material respects, to the provisions of this article, with each company supplying information to the Subcontractor under this Order, and to supply a copy of such agreement to SRR. From time to time upon request of SRR, the Subcontractor shall supply SRR with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Subcontractor received such information.
- D. Subcontractor agrees that upon request by DOE or SRR, it will execute a DOE-approved agreement, with any party whose facilities or proprietary data it is given access to or is furnished, restricting the use and disclosure of the data or the information obtained from the facilities. Upon request by DOE or SRR such an agreement shall also be signed by Subcontractor personnel.

**A.28 FITNESS FOR DUTY AND WORKPLACE SUBSTANCE ABUSE PROGRAMS**

SRR expects that Subcontractor and lower tier subcontractor employees who will perform work on-site will be physically and mentally fit to meet the requirements of the job descriptions for labor under this Purchase Order/Subcontract. SRR has absolute authority to reject said employees who are not fit for duty or manifest their unfitness after performing work, and Subcontractor and its lower tier subcontractors will immediately replace said employees as a condition of this Purchase Order/Subcontract.

- A. Fitness for Duty.
  - (1) (i) Subcontractor shall advise its employees and the employees of lower tier subcontractors that it is the policy of SRR 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 offsite facilities, and to prohibit the presence of individuals who have such substances in their body for non-medical reasons. Any

Subcontractor or lower tier subcontractor employee who is found in violation of the policy may be removed or barred from the site.

- (ii) Subcontractor agrees to advise its employees and the employees of lower tier subcontractors of the above policy prior to assignment to the Savannah River Site and to maintain documentation that such advice has been given.
  - (2) SRR will collect urine specimens when Subcontractor and lower tier subcontractor employees are processed for badging. SRR will send these specimens to a consultant for testing and verification. The testing process may take up to five (5) days to obtain results. In the event of "positive" findings, Subcontractor will be notified and shall bring the individual to the Badge Office for an "Exit Conference." Subcontractor then agrees to promptly remove such individual from the Savannah River Site and return the badge to the SRR Subcontractor Badge Office.
  - (3) Subcontractor agrees to secure the written consent of employees to release results of urine tests to the designated SRR representative. SRR agrees to use such results solely in connection with its decision as to whether to permit a Subcontractor or lower tier subcontractor employee to access Savannah River Site property.
  - (4) SRR will also conduct for-cause and random drug and alcohol testing on all employees badged by SRR. The Subcontractor and lower tier subcontractors agree to comply with and secure the compliance of its employees with this testing. In the event of "positive" findings, Subcontractor agrees to promptly remove such individual from the Savannah River Site and return the badge to the SRR Subcontractor Badging Office.
  - (5) A Breath Alcohol Test will be given during the initial badging process and the results will be available immediately. In the event of "positive" findings, a Subcontractor or lower tier subcontractor employee will not be badged, shall be issued a temporary pass, and will be escorted offsite by a Subcontractor or Subcontractor Representative.
- B. Suitability for Employment.
- (1) Subcontractor employees, including employees of subcontractors, who are to be badged to permit Savannah River Site

access, must successfully complete a Suitability for Employment process. As part of this process, the Subcontractor and lower tier subcontractors agree to advise their employees that they will be required to complete certain forms that authorize background investigations. These forms shall be submitted during the badging process.

- (2) Subcontractor and lower tier subcontractor employees will be issued a photo badge and allowed site access on the first reporting day. In the event an employee subsequently fails to successfully complete the background investigation, the Subcontractor agrees to promptly remove such individual from the Savannah River Site and to return the badge to the SRR Subcontractor Badging Office.
- (3) Subcontractor agrees to advise its employees and the lower tier subcontractor employees of the above requirement prior to assignment to the Savannah River Site and to maintain documentation that such advice has been given.
- (4) Subcontractor also shall advise its employees and lower tier subcontractors whose employees are performing work at SRS that they shall inform Subcontractor of any arrest or indictment by any law enforcement agency as soon as practicable; and Subcontractor shall inform SRR, within 24 hours in writing (Email is acceptable) of its or its lower tier subcontractor's employee's name and the alleged facts of the arrest or indictment. SRR shall make a determination of the employee's continued suitability for employment at SRS.

#### **A.29 BADGING REQUIREMENTS**

##### **A. Photo Badge.**

- (1) Subcontractor and lower tier subcontractor employees may be issued a Savannah River Site access photo badge for a period not to exceed one year. To obtain a Photo Badge, Subcontractor and lower tier subcontractor employees must be processed through SRR'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 employees must be at least 18 years old.
- (2) Subcontractor and Slower tier subcontractor employees shall complete the Subcontractor 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 form SF 85, "Questionnaire for Non-Sensitive Positions", and form OF 306, "Declaration for Federal Employment". These forms are required for the Government's use in conducting background investigations per Homeland Security Presidential Directive HSPD-12. Copies of these forms are available on the SRR Internet Home Page at [http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)

- (3) Subcontractor will observe the following badging procedure for processing employees through employment and security orientation:
  - (i) A minimum of two working days prior to the start of the badging and orientation process, Subcontractor shall transmit the following information to the STR (or the End User if an STR is not appointed for this Order):
    - Subcontract Number
    - Employee name
    - Employee address
    - Employee Social Security Number
    - Employee Date of Birth
  - (ii) Subcontractor and lower tier subcontractor employees shall report to SRS Building 703-46A at SRS Road 1, approximately two miles east of SC Highway 125 in Jackson, South Carolina. Employees shall be given a temporary badge for travel to SRS Central Shops Area for Substance Abuse Program (SAP) Testing. (See Article titled "Workplace Substance Abuse Programs.")
  - (iii) Each Subcontractor and lower tier subcontractor employee must successfully pass General Employee Training (GET) prior to undergoing the Photo Badging procedure. See Article titled "General Employee Training and Annual Refresher Training for Subcontract Employees". GET is given on Monday of each week in the Jackson, South Carolina municipal building, and should be scheduled well in advance of the desired date in order to assure placement.
  - (iv) The orientation and badging process will take approximately four (4) hours.
- (4) The maximum duration that Subcontractor and lower tier subcontractor employees will be issued a site access badge is one (1) year.

Subcontractor and lower tier 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 shall transmit the following information to the STR/End User:
    - Subcontract Number
    - Employee name
    - Employee address
    - Employee Social Security Number
    - Employee Date of Birth
  - (3) The Assigned Competent Person (ACP) (Subcontractor or SRR employee) shall perform Task Analysis of scope to be performed and identify any applicable contractual task specific checklist(s) from the Subcontractor's accepted Worker Protection Plan or SRR's Focused Observation Database if a WPP is not required by the terms of this Order.
  - (4) ACP shall provide an advance copy of any task specific safety checklist(s) to personnel seeking temporary badges.
  - (5) The Badge Office provides initial security briefing, issues registration card and obtains acknowledgement signature, and 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 the badge to the Badge Office upon exiting SRS.
- C. Identity Verification.
- (1) In order to receive a photo or temporary badge for entry to SRS, Subcontractor and lower tier subcontractor 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 SRR 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 Wackenhut Services, Inc. assigned escorts, or by Assigned Competent Persons (SRR or Subcontractor).

- D. If the Subcontractor or lower tier subcontractor should independently suspend or remove an employee from work at the Savannah River Site for unsafe acts or behavior, the Subcontractor shall immediately notify the STR/End User, return the employee's badge to the STR/End User, and provide the STR/End User with written notification of the employee's name and reason(s) for such suspension or removal.

### **A.30 TAX WITHHOLDING FOR NONRESIDENTS**

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

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

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

### **A.31 OZONE DEPLETING SUBSTANCE**

Without limiting any of the other Articles herein, Subcontractor warrants that all of the supplies furnished under this Order have been completely and accurately labeled pursuant to the requirements of 40 CFR Part 82, "Protection of Stratospheric Ozone," or that such supplies do not require such labeling.

### **A.32 REPORTING OF ROYALTIES**

If any royalty payments are directly involved in this Order or are reflected in the Order price, Subcontractor agrees to report in writing to SRR during the performance of this Order and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this Order together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of DOE or SRR of any individual payments or royalties shall not preclude the Government or SRR at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payment is made. The provision of this article shall be included in all Subcontracts that are expected to exceed \$25,000.

### **A.33 SECURITY**

*(Applicable if under the terms of this Purchase Order Subcontractor's employees will be required to possess access authorizations (L or Q Security Clearance).)*

- A. Responsibility.

It is the Subcontractor's duty to safeguard all classified information, special nuclear material, and other DOE/SRR property in its possession. The Subcontractor shall, in accordance with DOE/SRR security and counterintelligence regulations and requirements, be responsible for safeguarding all classified, unclassified sensitive and proprietary information and protecting against sabotage, espionage, loss and theft of the

classified, unclassified sensitive and proprietary matter in the Subcontractor's possession in connection with the performance of work under this Order. Except as otherwise expressly provided in this Order, the Subcontractor shall, upon completion or termination of this Order, transmit to SRR any classified, unclassified sensitive, and proprietary matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of this Order. If retention by the Subcontractor of any classified, unclassified sensitive, and proprietary matter in the Subcontractor's possession is required after the completion or termination of the Order and such retention is approved by the SRR Procurement Representative, the Subcontractor shall complete a certificate of possession to be furnished to SRR specifying the classified, unclassified sensitive, and proprietary matter in the Subcontractor's possession are to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the SRR Procurement Representative, the security provisions of this Order shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of this Order.

B. Regulations.

The Subcontractor agrees to comply with all security and counterintelligence regulations and requirements of DOE/SRR in effect on the date of award of this Order.

C. Definition of Classified Information.

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

D. Definition of Restricted Data.

The term "Restricted Data" means all data concerning

- (1) design, manufacture, or utilization of atomic weapons;
- (2) the production of special nuclear material; or
- (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

E. Definition of Formerly Restricted Data.

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

F. Definition of National Security Information.

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

G. Definition of Special Nuclear Material (SNM).

SNM means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

H. Security Clearance of Personnel.

The Subcontractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and DOE/SRR regulations or requirements applicable to the particular level and category of classified information to which access is required.

I. Criminal Liability.

It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under this Order, may subject the Subcontractor or lower tier subcontractor or employee of either to criminal liability under the laws of the United States. (*See* Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794; and Executive Order 12356).

J. Foreign Ownership, Control or Influence ("FOCI").

- (1) The Subcontractor shall immediately provide SRR written notice of any changes in the extent and nature of FOCI over the Subcontractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade

Commission, or the Department of Justice shall also be furnished concurrently to SRR.

- (2) In those cases where a Subcontractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Department of Energy shall consider proposals made by the Subcontractor to avoid or mitigate foreign influences.
  - (3) If the cognizant security office at any time determines that the Subcontractor is, or is potentially, subject to FOCI, the Subcontractor shall comply with such instructions as the Contracting Officer/SRR shall provide in writing to safeguard any classified information or special nuclear material.
  - (4) Information submitted by the Subcontractor or any affected Subcontractor as required pursuant to this clause shall be treated by SRR/DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
  - (5) SRR may terminate this Order for default either if the Subcontractor fails to meet obligations imposed by this article, e.g., provide the information required by this article, comply with SRR/DOE instructions about safeguarding classified information, or make this article applicable to Subcontractors or if, in SRR's judgment, the Subcontractor creates a FOCI situation in order to avoid performance or a termination for default. SRR may terminate this Order for convenience if the Subcontractor becomes subject to FOCI and for reasons other than avoidance of performance of the Order, cannot, or chooses not to, avoid or mitigate the FOCI problem.
- K. Subcontractor agrees to insert terms that conform substantially to the language of this article including this paragraph in all subcontracts under this Order that will require Subcontractor employees to possess access authorizations for access to classified information or special nuclear material. Additionally, the Subcontractor shall require such lower tier subcontractors to have an existing DOE or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 to the DOE Office of Safeguards and Security (marked to identify the applicable prime contract) prior to award of a subcontract. Such

subcontracts shall not be awarded until the Subcontractor is notified that the proposed lower tier subcontractors have been cleared. Information to be provided by a Subcontractor pursuant to this clause may be submitted directly to the DOE Contracting Officer. When this article is included in a lower tier subcontract the term "Subcontractor" shall mean lower tier subcontractor and the term "Order" shall mean lower tier subcontract.

#### **A.34 SUBCONTRACTOR'S LIABILITY FOR FINES AND PENALTIES**

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

#### **A.35 FOREIGN NATIONALS**

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

- A. The Subcontractor shall obtain the approval of SRR, in writing, prior to any visit to a DOE or SRR facility by any Foreign National in connection with work being performed under this Order, in accordance with the requirements of DOE Order 142.3, Unclassified Foreign Visits and Assignments Program. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontract service work, including delivery of materials, or for courtesy purposes. The term "visit" also includes officially-sponsored attendance at a DOE or SRR event offsite from the DOE/SRR facility, but does not include offsite events and activities open to the general public. Subcontractors and lower tier subcontractors should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the SRR Procurement Representative at least four (4) to six (6) weeks prior to the visit, depending on the nationality of

the individual and the areas to be visited. Forms can be obtained from the SRR Procurement Representative.

- B. In addition, the Subcontractor shall obtain the approval of the SRR Procurement Representative, in writing, prior to the employment of, or participation by, any Foreign National in the performance of work under this Subcontract or any Subcontract at offsite locations. Such approvals will be processed in accordance with the requirements of DOE Order 142.3.
- C. In the performance of offsite work, Foreign Nationals only incidentally involved with a SRR Subcontract, and who have no knowledge that their activities are associated with SRR Subcontract work, are exempt from the above.

**A.36 WORK ON SRR, GOVERNMENT OR OTHER PREMISES**

- A. As to the Work to be done or performed by Subcontractor on premises owned or controlled by SRR, the Government, or the premises of other SRR subcontractors, Subcontractor assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury including death, or damage to property, sustained in connection with or to have arisen out of the negligent acts or omissions of Subcontractor or its subcontractors or employees of either. Subcontractor shall indemnify and hold harmless the Government and SRR from and against any and all claims, demands, actions, causes of action including those brought by an employee of the Subcontractor or lower tier subcontractor or a State Industrial Insurance subcontractor under a Workers'/ Workmen's Compensation Act or statute, suits, damages, expenses including attorney fees and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property attributable directly or indirectly to the negligent acts or omissions of Subcontractor or its lower tier subcontractors or employees of either arising out of, or in any way connected with the performance of this Order, whether or not caused in any way by some act or omission, negligence or otherwise, of SRR or the Government; provided however, that the Subcontractor's duty to indemnify shall not arise if such injury, death, destruction or loss is caused by the negligence of SRR or the Government. Nothing in the foregoing shall be construed to require Subcontractor to indemnify and save

harmless the Government and SRR from any liability arising out of or resulting from a nuclear incident. To the extent necessary to execute the foregoing indemnification and as permitted by law, Subcontractor specifically waives any and all immunity provided by any industrial insurance or Workers'/ Workmen's Compensation Act or statute.

- B. When Subcontractor shall perform any part of the Work on the premises of the SRR or the Government during the performance of this Order, the Subcontractor shall have in force and effect, policies of insurance conforming to the terms set forth in Paragraph C of this Article.
- C. (1) The Subcontractor shall procure and thereafter maintain at its own expense, the following insurance:
  - (i) Workers' Compensation and Employer's Liability.  
Limits of Liability: Workers' Compensation: Statutory limits in the jurisdiction wherein the Work is to be performed.  
Employer's Liability: A minimum of \$1,000,000.
  - (ii) Comprehensive general liability including Bodily Injury and Property Damage.  
Limits of Liability: A minimum of \$1,000,000 Combined Single Limit.  
Endorsements: SRR and the Government to be endorsed as Additional Insured.  
Contractual Liability: Shall include all coverage endorsed on the basic policy.
  - (iii) Automobile Liability including Bodily Injury and Property Damage including All Owned, Non-Owned and Hired.  
Limits of Liability: \$1,000,000 Combined Single Limit.  
Note: All personnel operating motor vehicles at SRS must have a valid driver's license, vehicle registration and proof of insurance (regardless of state of origin). Anyone not having these documents is subject to being denied access to SRS and, if in violation of a law, being cited for the violation.
- (2) Certificates of insurance evidencing that the requirements of this Article have been met shall be furnished to SRR before work is commenced with respect to performance under this Order. In addition, a copy of the policy endorsement for Comprehensive General Liability insurance (Ref. paragraph C.(1)(ii) above), naming SRR and the

Government as “Additional Insured”, shall be submitted with the certificate of insurance. Provisions shall be made for thirty days advance notice by mail to SRR of change in or cancellation of such insurance. Certificates shall be issued by insurance carriers satisfactory to SRR.

- (3) In the event the Subcontractor fails to furnish such Certifications of Insurance, as required in Paragraph 2 hereinabove, prior to commencement of work or to continue to maintain such insurance during the performance of the Order, SRR shall have the right to stop work and/or to withhold any payments or partial payments required to be made under this Order; and shall have the right to continue withholding any or all of said payments so long as the Subcontractor has not complied with the requirements of this Article.
  - (4) On orders involving blasting or other hazardous operations, the Subcontractor's insurance shall specifically state that all blasting or such other hazardous operations are fully covered.
- D. Subcontractor agrees to comply with and require its Subcontractors to comply with all applicable laws, rules, and regulations with respect to state industrial insurance or Workers'/Workmen's Compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal and state income taxes. Subcontractor further agrees to indemnify SRR and the Government against, and to save and hold harmless SRR and the Government from, any and all liability and expense with respect to claims against SRR or the Government which may result from the failure or alleged failure of Subcontractor or of any of its Subcontractors to comply therewith.

#### **A.37 BANKRUPTCY**

If the Subcontractor enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the SRR Procurement Representative within five (5) days of initiating 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 SRR Subcontract/Order Numbers for which final payment has not been made.

#### **A.38 ACCESS TO DOE-OWNED OR LEASED FACILITIES**

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

- A. The performance of this Order requires that employees of the Subcontractor have physical access to DOE-owned or leased facilities. The Subcontractor understands and agrees that DOE has a prescribed process with which the Subcontractor and its employees must comply in order to receive a security badge that allows such physical access. The Subcontractor 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 shall assure
  - (1) compliance with procedures established by DOE and SRR in providing its employees with any forms directed by DOE or SRR;
  - (2) employees properly complete any forms;
  - (3) employees submit the forms to the person designated by the SRR Procurement Representative;
  - (4) employees cooperate with DOE and SRR officials responsible for granting access to DOE-owned or leased facilities; and
  - (5) employees provide additional information requested by those DOE/SRR officials.
- C. The Subcontractor 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 SRR that an employee's application for a security badge is or will be denied, the Subcontractor 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 claim against DOE or SRR.
- D. The Subcontractor shall return to the SRR Procurement Representative, or designee, the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE-owned or leased facilities by the Subcontractor's employee(s) upon:
  - (1) Termination of this Order.
  - (2) Expiration of this Order.
  - (3) Termination of employment on this Order by an individual employee.
  - (4) Demand by DOE/SRR for return of the badge.
- E. The Subcontractor shall include this clause, including this paragraph E in any subcontract, awarded in the performance of this Order, in which an employee(s) of the lower tier

subcontractor will require physical access to DOE-owned or leased facilities.

**A.39 RESERVED**

**A.40 SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE**

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

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

**\*A.41 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005)**

DEAR 952.250-70

**\*A.42 EQUAL OPPORTUNITY (MAR 2007)**

FAR 52.222-26

**\*A.43 STOP WORK ORDER (AUG 1989)**

FAR 52.242-15

**\*A.44 CONVICT LABOR (JUN 2003)**

FAR 52.222-3

**\*A.45 NOTICE OF LABOR DISPUTES (FEB 1997)**

FAR 52.222-1

**\*A.46 INTEREST (JUN 1996)**

FAR 52.232-17, with the addition of a paragraph (d) to read as follows: "(d) No interest is payable to the Subcontractor for any claim or voucher the Subcontractor may submit for payment except as specifically imposed by a Court on any judgment obtained by the Subcontractor or as otherwise provided herein."

**\*A.47 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)**

*(This Article applies only with respect to work to be performed on the Savannah River Site.)*

DEAR 952.203-70

**\*A.48 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2007)**

FAR 52.244-6

**\*A.49 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006)**

FAR 52.225-13

**\*A.50 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (NOV 2006)**

FAR 52.204-9

*(Applies if Subcontractor requires routine access to a federally controlled facility and/or routine access to a Federally-controlled information system.)*

**\*A.51 COMBATING TRAFFICKING IN PERSONS (AUG 2007)**

FAR 52.222-50

**SECTION B**

**SECTION B ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$3,000.**

*(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRR will make their full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*B.1 BUY AMERICAN ACT—SUPPLIES (JUN 2003)**

FAR 52.225-1

**\*B.2 EMPLOYMENT ELIGIBILITY VERIFICATION (JAN 2009)**

FAR 52.222-54

**SECTION C**

**SECTION C ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$10,000.**

*(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRR will make their full text available. Reference Article A.40, "Supplemental Definitions*

*for FAR and DEAR Clauses Incorporated by Reference”.)*

**\*C.1 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

FAR 52.222-36

**\*C.2 PATENT INDEMNITY (APR 1984)**

FAR 52.227-3

**\*C.3 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

FAR 52.222-21

**SECTION D**

**SECTION D ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$25,000.**

**D.1 INSPECTION OF SUPPLIES AND SERVICES**

**A. Definitions.**

(1) "Services" as used in this article includes services performed, workmanship, and material furnished or utilized in the performance of services.

(2) "Supplies" as used in this article, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

B. Subcontractor shall provide and maintain an inspection system acceptable to SRR covering Services and/or Supplies and shall tender to SRR for acceptance only Supplies that have been inspected in accordance with the inspection system and have been found by Subcontractor to be in conformity with Order requirements. As part of the system, Subcontractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to SRR and the Government during Order performance and for as long afterwards as this Order requires. SRR and the Government may perform reviews and evaluations reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the Work. The right of review, whether exercised or not, does not relieve Subcontractor of its obligations under this Order.

C. SRR and the Government has the right to inspect and test all Supplies and Services called for by this Order, to the extent practicable, at all places and times, including the period of manufacture,

and in any event before acceptance. SRR and the Government shall perform inspections and tests in a manner that will not unduly delay the Work. SRR and the Government assume no contractual obligation to perform any inspection and test for the benefit of Subcontractor, unless specifically set forth elsewhere in this Order.

D. If SRR or the Government performs an inspection or test on the premises of Subcontractor or a lower tier subcontractor, Subcontractor shall furnish, and shall require lower tier subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in this Order, SRR shall bear the expense of SRR and Government inspections or tests made at other than the Subcontractor's or Subcontractor's premises; provided, that in case of rejection, SRR and the Government shall not be liable for any reduction in the value of inspection or test samples.

E. (1) When Supplies or Services are not ready at the time specified by Subcontractor for inspection or test, SRR may charge to Subcontractor the additional cost to SRR related to the inspection or test.

(2) SRR may also charge Subcontractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

F. SRR has the right either to reject or to require correction of nonconforming Supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Order requirements. SRR may reject nonconforming Supplies with or without disposition instructions.

G. Subcontractor shall remove supplies rejected or required to be corrected. However, SRR may require correction in place, promptly after notice, by and at the expense of Subcontractor. Subcontractor shall not tender for acceptance corrected or rejected Supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

H. If any of the Services do not conform with Order requirements, SRR may require Subcontractor to perform the Services again in conformity with Order requirements, at no increase in Order amount. When the defects in Services cannot be corrected by reperformance, SRR may

(1) Require Subcontractor to take necessary action to ensure that future performance conforms to Order requirements and

- (2) Reduce the Order price to reflect the reduced value of the Services performed.
- I. If Subcontractor fails to remove, replace, or correct rejected Supplies promptly, that are required to be removed or to be replaced or corrected, or to reperform nonconforming Services promptly in conformance with Order requirements or to take the necessary action to ensure future performance of Services in conformity with Order requirements, SRR may
  - (1) by Order or otherwise, remove, replace, or correct the Supplies and perform the Services and charge the cost to Subcontractor;
  - (2) terminate this Order for default; or
  - (3) require delivery and make an equitable price reduction.
- J. (1) If this Order provides for the performance of quality assurance at source, and if requested by SRR, the Subcontractor shall furnish advance notification of the time
  - (i) when Subcontractor inspection or tests will be performed in accordance with the terms and conditions of this Order, and
  - (ii) when the supplies will be ready for SRR inspection.
- (2) The SRR request shall specify the period and method of the advance notification and the SRR representative to whom it shall be furnished. Requests shall not require more than two workdays of advance notification if the SRR representative is in residence in the Subcontractor's plant, nor more than seven workdays in other instances.
- K. SRR shall accept or reject Supplies as promptly as practicable after delivery, unless otherwise provided in this Order. SRR's failure to inspect and accept or reject the Supplies shall not relieve Subcontractor from responsibility, nor impose liability on SRR, for nonconforming Supplies.
- L. Inspections and tests by SRR and the Government do not relieve Subcontractor of responsibility for defects or other failures to meet Order requirements. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in this Order.
- M. If acceptance is not conclusive for any reason, SRR, in addition to any other rights and remedies provided by law, or under other provisions of this Order, shall have the right to require the Subcontractor
  - (1) at no increase in Order price, to correct or replace the defective or nonconforming

- Supplies at the original point of delivery or at Subcontractor's plant, at SRR's election and in accordance with a reasonable delivery schedule as may be agreed upon between Subcontractor and SRR; provided, that SRR may require a reduction in Order price if Subcontractor fails to meet such delivery schedule, or
  - (2) within a reasonable time after receipt by Subcontractor of notice of defects or nonconformance, to repay such portion of this Order as is equitable under the circumstances if SRR elects not to require correction or replacement. When Supplies are returned to Subcontractor, Subcontractor shall bear the transportation cost from the original point of delivery to Subcontractor's plant and return to the original point when that point is not the Subcontractor's plant. If Subcontractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of ten days (or such longer period as SRR may authorize in writing) after receipt of notice from SRR specifying such failure, SRR shall have the right by contract or otherwise to replace or correct such Supplies and charge to Subcontractor the cost occasioned thereby.

*(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRR will make their full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*D.2 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JAN 2005)**

FAR 52.209-6

**SECTION E**

**SECTION E ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$100,000.**

**E.1 TERMINATION FOR CONVENIENCE OF SRR**

Article A.16 is hereby deleted.

- A. SRR may terminate performance of the Work, in whole or, from time to time, in part if SRR

determines that a termination is in SRR's interest. SRR shall terminate by delivering to Subcontractor a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in Subcontractor under this Order, it shall revert to the Government regardless of any other article of this Order, except for property that Subcontractor disposed of by bona fide sale or removed from the Savannah River Site.

- B. After receipt of a Notice of Termination, and except as directed by SRR, Subcontractor shall immediately proceed with the following obligations, regardless of delay in determining or adjusting any amounts due under this article:
- (1) Stop Work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this article) for materials, services, or facilities, except as necessary to complete the continued portion of this Order.
  - (3) Terminate all subcontracts to the extent they relate to the Work terminated.
  - (4) Assign to the Government, as directed by SRR, all right, title, and interest of Subcontractor under the subcontracts terminated, in which case SRR shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by SRR, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this article.
  - (6) As directed by SRR, transfer title to the Government and deliver to SRR
    - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the Work terminated, and
    - (ii) the completed or partially completed plans, drawings, information, and other property that, if this Order had been completed, would be required to be furnished to SRR.
  - (7) Complete performance of the Work not terminated.
  - (8) Take any action that may be necessary, or that SRR may direct, for the protection and preservation of the property related to this Order that is in the possession of Subcontractor and in which SRR has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by SRR, any property of the types referred to in subparagraph (6) above; provided, however, that Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, SRR. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by SRR under this Order, credited to the price or cost of the Work, or paid in any other manner directed by SRR.
- C. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, Subcontractor may submit to SRR a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by SRR. Subcontractor may request SRR to remove those items or enter into an agreement for their storage. Within fifteen days, SRR will accept title to those items and remove them or enter into a storage agreement. SRR may verify the list upon removal of the items, or if stored, within forty-five days from submission of the list, and shall correct the list, as necessary, before final settlement.
- D. After termination, Subcontractor shall submit a final termination settlement proposal to SRR in the form and with the certification prescribed by SRR. Subcontractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by SRR upon written request of Subcontractor within this one-year period. However, if SRR determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If Subcontractor fails to submit the proposal within the time allowed, SRR may determine, on the basis of information available, the amount, if any, due Subcontractor because of the termination and shall pay the amount determined.
- E. Subject to paragraph D above, Subcontractor and SRR may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E or paragraph F below, exclusive of settlement costs, may not exceed the total Order price as reduced by
  - (1) the amount of payments previously made, and

- (2) the Order price of Work not terminated. This Order shall be amended and Subcontractor paid the agreed amount. Paragraph F below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- F. If Subcontractor and SRR fail to agree on the whole amount to be paid because of the termination of Work, SRR shall pay Subcontractor the amounts determined by SRR as follows, but without duplication of any amounts agreed on under paragraph E of this article:
- (1) For Work performed before the effective date of termination, the total (without duplication of any items) of
    - (i) the cost of the Work;
    - (ii) the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this Order, if not included in subdivision (i) above; and
    - (iii) a sum, as profit on subdivision (i) above, determined by SRR under section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Order, to be fair and reasonable; however, if it appears that Subcontractor would have sustained a loss on the entire Order had it been completed, SRR shall allow no profit under this subdivision (iii) and shall reduce the amount of the settlement to reflect the indicated rate of loss.
  - (2) The reasonable costs of settlement of the work terminated, including
    - (i) accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (ii) the termination and settlement of Subcontracts (excluding the amounts of such settlements); and
    - (iii) preservation and protection of property under subparagraph B (8) of this article.
- G. Except for normal spoilage, and except to the extent that SRR expressly assumed the risk of loss, SRR shall exclude from the amounts payable to Subcontractor under paragraph F above, the fair value, as determined by SRR, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to SRR.
- H. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation as supplemented or modified by Part 931 of the Department of Energy Acquisition Regulation, in effect on the date of this Order, shall govern all costs claimed, agreed to, or determined under this article.
- I. If Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph D or K and failed to request a time extension, the decision of SRR is final and not subject to the Disputes article. If SRR has made a determination of the amount due under paragraph D, F, or K, SRR shall pay Subcontractor
  - (1) the amount determined by SRR, if there is no right of appeal or if no timely appeal has been taken, or
  - (2) the amount finally determined on an appeal.
- J. In arriving at the amount due Subcontractor under this article, there shall be deducted
  - (1) all unliquidated advance or other payments to Subcontractor under the terminated portion of this Order;
  - (2) any claim which SRR or the Government has against Subcontractor under this Order; and
  - (3) the agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Subcontractor or sold under the provisions of this article and not recovered by or credited to SRR.
- K. If the termination is partial, Subcontractor may file a proposal with SRR for an equitable adjustment of the price(s) of the continued portion of this Order. SRR shall make any equitable adjustment agreed upon. Any proposal by Subcontractor for an equitable adjustment under this article shall be requested within ninety days from the effective date of termination unless extended in writing by SRR.
- L.
  - (1) SRR may, under the terms and conditions it prescribes, make partial payments and payments against cost incurred by Subcontractor for the terminated portion of this Order, if SRR believes the total of these payments will not exceed the amount to which Subcontractor will be entitled.
  - (2) If the total payments exceed the amount finally determined to be due, Subcontractor shall repay the excess to SRR upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in

Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date determined by SRR because of the circumstances.

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

*(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRR will make their full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*E.2 AUDIT AND RECORDS – NEGOTIATIONS (JUN 1999)**

FAR 52.215-2

**\*E.3 AUTHORIZATION AND CONSENT (JUL 1995)**

FAR 52.227-1

**\*E.4 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)**

DEAR 970.5227-5

**\*E.5 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005)**

FAR 52.203-12

**\*E.6 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2004)**

FAR 52.219-8

**\*E.7 INTEGRITY OF UNIT PRICES (OCT 1997)**

FAR 52.215-14

**\*E.8 ANTI-KICKBACK PROCEDURES (JUL 1995)**

FAR 52.203-7

**\*E.9 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)**

FAR 52.203-6

**\*E.10 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION –(JUL 2005)**

FAR 52.222-4

**\*E.11 PREFERENCE FOR PRIVATELY-OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)**

FAR 52.247-64

**\*E.12 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)**

FAR 52.223-1

**\*E.13 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)**

FAR 52.222-39

**\*E.14 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)**

FAR 52.222-35

**\*E.15 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006)**

FAR 52.222-37

## SECTION F

### **SECTION F ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$500,000.**

*(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRR will make their full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*F.1 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)**

DEAR 952.226.74

*(Applies if Purchase Order exceeds \$500,000.)*

**\*F.2 SMALL BUSINESS SUBCONTRACTING PLAN (SEP 2006)**

FAR 52.219-9

*(Applies if Purchase Order exceeds \$550,000.)*

**SECTION G**

**SECTION G ARTICLES APPLY AS SPECIFIED IN THE ORDER, REGARDLESS OF ORDER PRICE.**

For the purpose of this Section

- (1) safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
- (2) employees include Subcontractor and lower tier subcontractor employees.

**G.1 INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO WORK PLANNING AND EXECUTION**

A. For the purpose of this Article,

- (1) safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
- (2) employees include Subcontractor and lower tier subcontractor employees.
- (3) Subcontractor shall track and expect any lower tier subcontractors to track their Experience Modification Rate (EMR) and Total Recordable Case (TRC) rate and submit a properly executed Environmental Safety and Health Worksheet (obtainable from the SRR ES&H Department) in addition to letters from their workers' compensation carriers verifying their EMRs. If a three-year average interstate EMR exceeds 1.0, Subcontractor and lower tier subcontractors no longer are in compliance to continue the performance of work under this Order.

B. In performing work under this Subcontract, the Subcontractor and any lower tier subcontractor(s), shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. All work shall be performed, to include subcontracted work, in compliance with all applicable SRR/DOE environmental, safety, and health requirements, including DOE Regulation 10 CFR Part 851, "Worker Safety and Health Program", and orders, and procedures including related reporting requirements. Occupational

medicine screenings and tests applicable to employees of Subcontractor and any lower tier subcontractor(s) shall be the responsibility of Subcontractor and are not reimbursable under this Subcontract. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral, but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:

- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and Subcontractor employees managing or supervising employees performing work.
- (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
- (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
- (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
- (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
- (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
- (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by SRR and the Subcontractor. These agreed-upon conditions and requirements of the Subcontract are binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards

associated with the work and shall be established as an Integrated Safety Management System (ISMS). At a minimum and as required by Subcontract, elements of the safety management system shall include: the Subcontract; Subcontractor's worker protection plan and task specific plan; and Subcontractor's internal procedures, policies and practices.

- C. The Subcontractor and any lower tier subcontractor(s) shall manage and perform work in accordance with (i) Article G.2 or a documented Worker Protection Plan (WPP) that fulfills all conditions in paragraph A. of this Article to the degree specified in Article G.3 or G.4., as indicated applicable to this Subcontract; and (ii) the Safety Management System. Documentation in the Subcontract shall describe how the Subcontractor will
- (1) define the Work to be performed;
  - (2) identify and analyze hazards associated with the work;
  - (3) develop and implement hazard controls;
  - (4) perform work within controls; and
  - (5) provide feedback on adequacy of controls and continue to improve safety management.
- D. The Subcontract shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to Subcontract requirements and funding limits while maintaining the integrity of the WPP. The Subcontract shall also describe how the Subcontractor will measure WPP effectiveness.
- E. The Subcontractor shall submit to the Procurement Representative documentation of its WPP for review and acceptance. The Procurement Representative will establish dates for submittal, discussions, and revisions to the WPP. The Procurement Representative will provide guidance on preparation, content, review, and acceptance of the WPP. On an annual basis, the Subcontractor shall review and update, for SRR acceptance, its safety performance objectives, performance measures, and commitments consistent with, and in response to, Subcontract requirements, funding limits and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire WPP. Accordingly, the Subcontract shall be integrated with the Subcontractor's business processes, as applicable to the Scope of Work contained in this

Subcontract, for work planning, budgeting, authorization, execution, and change control.

- F. The Subcontractor and any lower tier subcontractor(s), shall comply with, and assist SRR in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the Article of this Subcontract on Laws, Regulations, and DOE Directives. The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this Subcontract.
- G. The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements including those specified in the Subcontract. If the Subcontractor fails to provide resolution or, if at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Procurement Representative may issue an order stopping work in whole or in part. Any stop work order issued by the Procurement Representative under this Article (or issued by the Subcontractor to a Subcontractor), shall be without prejudice to any other legal or contractual rights of SRR. In the event that the Procurement Representative issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Procurement Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.
- H. SRR shall hold the Subcontractor responsible for compliance with the ES&H requirements applicable to this Subcontract, including performance of work by any Subcontractor(s).

**G.2 ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE - ALTERNATIVE I**

*(Compliance by the Subcontractor with the requirements of this Article G.2 shall satisfy any/all requirements of Article G.1, "Integration of Environment, Safety and Health into Work Planning and Execution", applicable to the scope of work contained in this Purchase Order.)*

- A. The Subcontractor, and any lower tier subcontractor(s), shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety, and health of employees and members of the public. All work shall be performed, to include subcontracted work, in compliance with

all applicable SRR/DOE environmental, safety, and health requirements, including DOE Regulation 10 CFR Part 851, "Worker Safety and Health Program", and orders, and procedures including related reporting requirements. Such procedures provide authority to SRR employees to call a "time out/stop work" when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property. The Subcontractor shall ensure that its employees, including lower tier subcontractor employees, are aware of this authority, and also have similar "time out/stop work" authority when performing work under this Subcontract. The SRR Procurement Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said SRR/DOE regulations, requirements and procedures the SRR Procurement Representative may, without prejudice to any other legal or contractual rights of SRR, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the Procurement Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

- B. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the SRR Procurement Representative a letter acknowledging a Corporate Safety and Health Policy and confirmation of compliance with SRR procedures. In addition, for any tasks identified in the Statement of Work as outside the scope of SRR procedures, the Subcontractor shall provide to the SRR Procurement Representative for SRR review and acceptance any appropriate documentation, procedures or manuals containing task hazard reviews and safeguards to be implemented. Whenever a significant change or addition is made to such documentation, procedures or manuals, the Subcontractor shall re-submit the revised document to SRR for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor must submit annually to SRR either an update to the

documentation, procedures or manuals for acceptance or a letter stating that no changes are necessary in the current accepted documents.

C. Equipment Safety.

The Subcontractor shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, (copy available on the SRR Internet Home Page) and provide one (1) copy to the Subcontract Technical Representative (STR), prior to placing any such equipment in service on the Savannah River Site. Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy duty equipment on the Savannah River Site, the Subcontractor shall complete the "Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist", copy available on the SRR Home Page at ([http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)), and provide a copy to the STR.

D. Assigned Competent Person.

The Subcontractor shall designate in writing an Assigned Competent Person (ACP), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged Subcontractor personnel seeking temporary badges in support of the Subcontractor's work scope. The ACP shall be a responsible employee, cognizant of the Subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of applicable focused observation safety checklists to any non-badged temporary personnel anticipating entry onto SRS, and shall meet entering personnel at the SRR Badging Office, Building 703-46A when they report for temporary badging. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA.

E. Safety and Health Representative.

The Subcontractor shall designate a safety and health professional or representative, as specified in the Subcontract. The designation must include the person's qualifications and duties. A designated Safety Representative shall have a minimum of thirty (30) hours formal Safety and Health training in OSHA standards or pre-approved equivalent, having other safety related training certificates and/or job experience in General Industry/Construction safety with an understanding of the requirements in 29 CFR Part 1910/1926. The Safety Representative shall solicit worker feedback during hazard review meetings, field safety inspections, incident investigations and document same when appropriate, e.g., new hazard requiring additional controls, defective equipment, observation of unsafe condition or behavior.

F. Site Reporting Requirements.

The Subcontractor shall immediately notify the STR or SRR Procurement Representative of any event/condition that may require reporting to DOE. Further, the Subcontractor shall cooperate with any SRR 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 (DOE M 231.1-2) and can include (but are 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 an 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 response.
- (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 contaminations or exposures.
- (13) Violations of procedures.

Immediate notification is required of such events to ensure SRR meets its commitment for 30 minute notification to appropriate DOE authorities. The Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor and its employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

**G.3 ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE – ALTERNATIVE II**

*(Compliance by the Subcontractor with the requirements of this Article G.3 shall satisfy any/all requirements of Article G.1, "Integration of Environment, Safety and Health into Work Planning and Execution", applicable to the scope of work contained in this Purchase Order.)*

A. The Subcontractor and any lower tier subcontractor(s) shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements, including new DOE Regulation 10 CFR Part 851, "Worker Safety and Health Program" which will apply to any work performed on the Savannah River Site effective February 9, 2007. The Subcontractor and any lower tier subcontractor shall comply with site-specific ES&H requirements when specified in the Subcontract. The SRR Procurement Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said regulations and requirements, the SRR Procurement Representative may, without prejudice to any other legal or contractual rights of SRR, issue an

order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the Procurement Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

B. Corporate Worker Protection Plan (WPP).

The Subcontractor shall possess and maintain a corporate Worker Protection Plan (WPP) which implements the OSHA requirements applicable to the normal course of the Subcontractor's business. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the SRR Procurement Representative a copy of the WPP and sample Task Specific Plans (TSP) (based on a minimum of three tasks in the scope of work), for review and acceptance by the appropriate SRR organization(s). NOTE: Subcontractor is responsible for conducting hazard analysis and documenting additional TSPs. Work under this Subcontract shall not commence until the WPP and TSPs have been accepted by SRR. The Subcontractor shall provide a copy of the accepted WPP and TSP to any Subcontractor(s) and shall ensure Subcontractor employee's performing work at the site have access to the WPP document accepted by SRR, and other standards, controls and procedures including DOE worker protection publications applicable to the workplace. The Subcontractor's employees and the employees of any Subcontractor(s) shall comply with the WPP and TSPs in the performance of the work under this Subcontract. The WPP shall meet the following minimum requirements:

- (1) Shall include management policies that provide for clear goals, responsibilities, authority, and accountability for meeting loss control objectives.
- (2) Shall include the implementation of applicable local, state, federal, environment, safety and health requirements that are relevant to the scope of work, including applicable elements in 10 CFR Part 851, "Worker Safety and Health Program".
- (3) Shall provide employee guidance on internal engineering controls, precautions, and requirements on personal protective equipment (PPE) to minimize, control and/or prevent employee exposure to include equipment/property loss.
- (4) shall include management policies for incorporating and implementing the use of American Conference of Governmental

Industrial Hygienist (ACGIH) threshold limit values (TLVs). The ACGIH guidelines shall be used when the TLV(s) exposure limits are more restrictive than OSHA permissible exposure limits (PELs).

- (5) Shall include Task Specific Plans that include hazard identification and control measures that provide for safe work practices and employee training (i.e., 1) define Scope of Work, 2) identify and analyze hazards, 3) develop and implement controls, 4) perform work within controls, 5) provide feedback, and continuous improvement data.)
- (6) Shall include Focused Observation Checklists, as applicable. The Subcontractor shall (i) thoroughly assess the work scope, (ii) identify the associated hazards, and (iii) apply elements of corresponding Checklists within the Worker Protection Plan (WPP) or utilize applicable Checklists as attachments to the WPP. Subcontract scope performed by the Subcontractor and its lower tier subcontractors will typically be covered by the WPP and appropriate Checklists. Such Checklists are available on the Savannah River Site Internet Home Page ([http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)) for review and down loading.
- (7) Shall include a process that provides authority to Subcontractor and lower tier subcontractor employees to call for a "time out/stop work" when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property. The Subcontractor shall provide mechanisms to involve workers in the development of WPP goals, objectives, and performance measures and in the identification and control of workplace hazards. Whenever a significant change or addition is made to the WPP, it shall be re-submitted to SRR for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor must submit annually to SRR either an updated WPP for acceptance or a letter stating that no changes are necessary in the current accepted WPP.

C. Equipment Safety.

The Subcontractor shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and

maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, (copy available on the SRR Internet Home Page) and provide one (1) copy to the Subcontract Technical Representative (STR), prior to placing any such equipment in service on the Savannah River Site. Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy duty equipment on the Savannah River Site, the Subcontractor shall complete the "Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist", copy available on the SRR Home Page at ([http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)), and provide a copy to the STR.

D. Assigned Competent Person.

The Subcontractor shall designate in writing an Assigned Competent Person (ACP), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged Subcontractor personnel seeking temporary badges in support of the Subcontractor's work scope. The ACP shall be a responsible employee, cognizant of the Subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of applicable focused observation safety checklists to any non-badged temporary personnel anticipating entry onto SRS, and shall meet entering personnel at the SRR Badging Office, Building 703-46A when they report for temporary badging. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA and the WPP.

E. Safety and Health Representative.

The Subcontractor shall designate a safety and health professional or representative, as specified in the Subcontract. The designation must include the person's qualifications and duties and be documented in the Subcontractor's Worker Protection Plan. A designated Safety

Representative shall have a minimum of thirty (30) hours formal Safety and Health training in OSHA standards or pre-approved equivalent, having other safety related training certificates and/or job experience in General Industry/Construction safety with an understanding of 29 CFR Part 1910/1926 requirements. The Safety Representative shall solicit worker feedback during hazard review meetings, field safety inspections, incident investigations and document same when appropriate, e.g., new hazard requiring additional controls, defective equipment, observation of unsafe condition or behavior.

F. Material Safety Data Sheets.

The Subcontractor shall provide the STR copies of Material Safety Data Sheets for all chemicals brought to SRS prior to the initial use of such chemicals. In addition, the Subcontractor shall provide the STR with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow NFPA storage guidelines.

G. Environmental Compliance.

The Subcontractor and any lower tier subcontractor(s) shall comply with all applicable environmental protection laws, Executive Orders, ordinances, regulations, directives, and codes. Upon request, the Subcontractor shall submit an Environmental Compliance Plan (ECP) outlining the methods proposed to address the environmental requirements specified in the scope of work. The ECP shall specify the person responsible for ensuring the requirements are met.

H. Site Reporting Requirements.

The Subcontractor shall immediately notify the STR or SRR Procurement Representative of any event/condition that may require reporting to the DOE. Further, the Subcontractor shall cooperate with any SRR 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 (DOE M 231.1-1-2) and can include (but are 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 an 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 contaminations or exposures.
- (13) Violations of procedures.

Immediate notification is required of such events to ensure SRR meets its commitment for 30 minute notification to appropriate DOE authorities. The Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor and its employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

**G.4 ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE – ALTERNATIVE III**

*(Compliance by the Subcontractor with the requirements of this Article G.4 shall satisfy any/all requirements of Article G.1, "Integration of Environment, Safety and Health into Work Planning and Execution", applicable to the scope of work contained in this Purchase Order.)*

- A. The Subcontractor and any Subcontractor(s) shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements,

including new DOE Regulation 10 CFR Part 851, "Worker Safety and Health Program" which will apply to any work performed on the Savannah River Site effective February 9, 2007. The Subcontractor and any lower tier subcontractor shall comply with site-specific ES&H requirements when specified in the Subcontract. The SRR Procurement Representative shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said regulations and requirements, the SRR Procurement Representative may, without prejudice to any other legal or contractual rights of SRR, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the Procurement Representative. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

**B. Corporate Worker Protection Plan (WPP)**

The Subcontractor shall possess and maintain a corporate Worker Protection Plan (WPP) which implements the OSHA requirements applicable to the normal course of the Subcontractor's business. Prior to the start of work under this Subcontract, the Subcontractor shall provide to the SRR Procurement Representative a copy of the WPP for review and acceptance by the appropriate SRR organizations. The Subcontractor's employees and the employees of any Subcontractor(s) shall comply with the WPP in the performance of the work under this Subcontract. Work under the Subcontract shall not commence until the WPP has been received and accepted by SRR. The Subcontractor shall provide a copy of the WPP to any lower tier subcontractor(s) and shall ensure the subcontractor employees performing work at the site have access to the WPP document accepted by SRR, and other standards, controls and procedures including DOE worker protection publications applicable to the workplace. The WPP shall meet the following minimum requirements:

- (1) Shall include management policies that provide for clear goals, responsibilities, authority, and accountability for meeting loss control objectives.
- (2) Shall include the implementation of

applicable local, state, federal, environment, safety and health requirements that are relevant to the scope of work, including applicable elements in 10 CFR Part 851, "Worker Safety and Health Program".

- (3) Shall provide employee guidance on task hazards, engineering controls, precautions, and requirements on personal protective equipment (PPE) to minimize, control and/or prevent employee exposure to include equipment/property loss.
- (4) Shall include management policies for incorporating and implementing the use of American Conference of Governmental Industrial Hygienist (ACGIH) threshold limit values (TLVs). The ACGIH guidelines shall be used when the TLV(s) exposure limits are more restrictive than OSHA permissible exposure limits (PELs).
- (5) Shall include Focused Observation Checklists, as applicable. The Subcontractor shall (i) thoroughly assess the work scope, (ii) identify the associated hazards, and (iii) apply elements of corresponding Checklists within the Worker Protection Plan (WPP) or utilize applicable Checklists as attachments to the WPP. Subcontract scope performed by the Subcontractor and its lower tier subcontractors will typically be covered by the WPP and appropriate Checklists. Such Checklists are available on the Savannah River Site Internet Home Page ([http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)) for review and down loading.
- (6) Shall include a process that provides authority to Subcontractor and lower tier subcontractor employees to call for a "time out/ stop work" when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property.

The Subcontractor shall provide mechanisms to involve workers in the development of WPP goals, objectives, and performance measures and in the identification and control of workplace hazards. Whenever a significant change or addition is made to the WPP, it shall be re-submitted to SRR for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor must submit annually to SRR either an updated WPP for acceptance or a letter stating that no changes are necessary in the

current accepted WPP.

C. Equipment Safety.

The Subcontractor shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor shall complete Form PF-44, Major Equipment Declaration, (copy available on the SRR Internet Home Page) and provide one (1) copy to the Subcontract Technical Representative (STR), prior to placing any such equipment in service on the Savannah River Site. Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy duty equipment on the Savannah River Site, the Subcontractor shall complete the "Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist", copy available on the SRR Home Page at ([http://www.srs.gov/general/busiops/PMMD/general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/general_provisions.htm)), and provide a copy to the STR.

D. Assigned Competent Person.

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E. Safety and Health Representative.

The Subcontractor shall designate a safety and

health professional or representative, as specified in the Subcontract. The designation must include the person's qualifications and duties and be documented in the Subcontractor's Worker Protection Plan. A designated Safety Representative shall have a minimum of thirty (30) hours formal Safety and Health training in OSHA standards or pre-approved equivalent, having other safety related training certificates and/or job experience in General Industry/Construction safety with an understanding of 29 CFR Part 1910/1926 requirements. The Safety Representative shall solicit worker feedback during hazard review meetings, field safety inspections, incident investigations and document same when appropriate, e.g., new hazard requiring additional controls, defective equipment, observation of unsafe condition or behavior.

F. Material Safety Data Sheets.

The Subcontractor shall provide the STR copies of Material Safety Data Sheets for all chemicals brought to SRS prior to the initial use of such chemicals. In addition, the Subcontractor shall provide the STR with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow NFPA storage guidelines.

G. Environmental Compliance.

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H. Site Reporting Requirements.

The Subcontractor shall immediately notify the STR or SRR Procurement Representative of any event/condition that may require reporting to the DOE. Further, the Subcontractor shall cooperate with any SRR 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 (DOE M 231.1-1-2) and can include (but are 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 an 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 contaminations or exposures.
- (13) Violations of procedures.

Immediate notification is required of such events to ensure SRR meets its commitment for 30 minute notification to appropriate DOE authorities. The Subcontractor shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor and its employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

## **G.5 GENERAL CONDITIONS OF EQUIPMENT RENTAL**

A. Rental Payments.

Upon the submission of proper invoices or vouchers, Savannah River Remediation (SRR) shall pay, as full compensation for use of the Equipment, rent at rates set forth in the Order to which these General Conditions are attached. Payments will be made at the end of each month or at the end of the rental, whichever occurs first,

for rental accrued during the previous rental period.

**B. Rental Rates.**

- (1) The actual length of the rental period will establish the Base Rental rate (for example, if the Lessor's proposal included a daily, weekly, and monthly rate, and the actual rental period was three days - the daily rate would apply; if the actual rental period was ten days - the weekly rate would apply; and if the actual rental period was 40 days - the monthly rate would apply). The Base Rental Period shall be as in column 1 below. For portions of a rental period beyond one or more full Base Periods, rental shall be calculated by the fractional period multiplied by the Base Rental rate. The Fractional Periods are specified in Column 2 below. Base Rental rates contemplate the following maximum use: Day - 8 hrs. (or as stipulated at time of rental); Week - 40 hrs; and Month - 176 hrs. For each hour that the Equipment is in use in excess of the applicable contemplated operation, there shall be paid as rental a sum equal to the Base Rental rate multiplied by the overtime rate in Column 3 below.
- (2) Should the total rental calculated on the applicable Base Rental rate, exclusive of overtime, exceed the proposed rate for the next longer rental term the lesser rental shall be paid.

	Column 1	Column 2	Column 3
<b>Rental Term</b>	<b>Base Rent Period</b>	<b>Fractional Period</b>	<b>Overtime Rate</b>
Mnthly	1 cal mth	.0455xmnthy = rt/day	.0057x mnthy = rt/hr
Wkly	7 cons dys	.20 x wkly = rt/day	.025 x wkly = rt/hr
Daily	24 cons hrs	.125 x dly = rt/hr	.125 x dly = rt/hr
Hourly	1 oper hr	1 hour	1 hour

**C. Condition of Equipment.**

- (1) When delivered to job site, the Equipment shall be in condition to render efficient, economical, and continuous service and its condition shall comply fully with all applicable Federal and State statutes and any regulations issued thereunder. Each item of Equipment shall be inspected, tested, and inventoried by Lessor and SRR at job site upon arrival and immediately prior to return shipment. A joint written report shall be

made and copies filed with each of the parties. Lessor shall accept SRR's report in the event the Lessor fails to participate in such inspections. Such inspections and reports shall fix and determine the rights and obligations of the parties with reference to the condition of the Equipment.

- (2) If SRR determines that any equipment furnished does not comply with this purchase order, SRR shall promptly inform the Lessor in writing. If the Lessor fails to replace the equipment or correct the defects as required by SRR, SRR may
  - (i) by contract or otherwise, correct the defect or arrange for the lease of similar equipment and shall charge or set off against the Lessor any excess costs occasioned thereby, or
  - (ii) terminate the purchase order under the Default article of this Order.
- (3) SRR shall make repairs or, at its option, shall reimburse Lessor for repairs due to damage caused by exceeding manufacturer's rated capacities. All other repairs attributable to equipment failure shall be Lessor's responsibility. Should Equipment become inoperative because of necessary repairs which are the Lessor's responsibility, rental period will discontinue upon SRR's notification to the Lessor of such conditions, and rental period will resume only when Equipment is placed in a condition as required under this Section 3. SRR will notify Lessor prior to making repairs for the account of the Lessor. Unless otherwise specified in the Order, SRR will furnish all fuel and lubricants and all operators and mechanics for necessary operation, use, and servicing of the Equipment.
- (4) Equipment, when returned to Lessor, shall be in as good condition as when delivered at job site, usual and ordinary wear and tear excepted.

**D. Rental Period.**

- (1) The period for which rental is payable for an item of Equipment shall begin on the date Equipment is delivered to the job site, except that if SRR gives a definite required delivery date to the Lessor prior to shipment, the Rental Period shall not start until such date. However, rent shall accrue only for the period that the equipment is in the possession of SRR. The Rental Period shall end when the equipment is delivered for shipment to the point of origin or such other return point as may be designated by Lessor,

such delivery to be evidenced by a Bill of Lading or other similar evidence covering shipment. If Lessor fails to notify SRR of destination prior to time Equipment is ready for return shipment, no rental time shall accrue until such notification is given SRR and Equipment is loaded for Shipment.

- (2) If Equipment is not in required condition, as determined by SRR, when it arrives at the job site, the Rental Period shall not begin until it shall, at the expense of Lessor, have been placed in proper condition.
- (3) If the inspection report made immediately prior to return shipment establishes that the Equipment is not in condition required of SRR under the fourth paragraph of Section C of these conditions, SRR shall do all things necessary to place it in such condition and the Rental Period shall not terminate prior to placing the Equipment in such condition.
- (4) Unless otherwise stated in the Order, SRR makes no representation or guarantee as to the length of the Rental Period or the amount of rental, which will accrue, for any Equipment, it being the intent that the Equipment may be rented for as long as SRR requires. The rental of any Equipment which does not perform to SRR's satisfaction may be terminated upon notice by SRR to Lessor.

E. Transportation Costs.

If so stated in the Order, transportation will be paid by SRR F.O.B. original point of shipment and return transportation F.O.B. to original point of shipment or equivalent mileage. Transportation of Equipment shall be accomplished by the most economical means and there shall be paid the actual cost of such transportation. No transportation charges will be paid by SRR for any Equipment which SRR determines is not in the condition required by Section C.

F. Loading, Unloading & Transport of Self-Propelled Medium or Heavy Construction Equipment.

Lessor shall ensure that any activity involving the loading, unloading, and transport of self-propelled medium or heavy construction equipment on the Savannah River Site (i.e., upon delivery and pickup by the Lessor) is performed in a manner that provides for the safety of all personnel involved in the process. Prior to performing any such activities the Lessor shall read and complete the SRR "Self Propelled Equipment Loading, Unloading and Transport

Safety Review Checklist", and provide a copy to the SRR Portable Equipment Commodity Management Center (PECMC) representative on delivery of the equipment to SRS and also before equipment is loaded for return to the Lessor. A Copy of the checklist can be found on the SRS Home Page or can be provided by the SRR Procurement Representative on request.

G. Liability Provisions.

By acceptance of the order to which these Conditions apply, Lessor agrees that

- (1) lessor assumes and hereby relieves SRR of any and all liability for any loss or damage to the Equipment rented to SRR occurring during the period from the date of shipment to SRR to the date of return to Lessor as the result of any cause other than the sole fault or negligence of SRR; and
- (2) SRR's liability under this provision shall be limited to the fair market value of the Equipment taking into consideration its age and condition immediately prior to said loss or damage.

H. Recapture Provisions.

*(Optional and in effect only if so stated in the terms and conditions of the Purchase Order.)*

- (1) If this provision is applicable,
  - (i) a recapture valuation mutually agreeable to SRR and Lessor shall be established and stated in the Order, and
  - (ii) Lessor certifies that there are no encumbrances of any nature, legal or equitable, held by any person against the Equipment rented hereunder, unless so stated in the Order.
- (2) At any time during or at the end of the rental period of the Equipment, SRR may purchase the Equipment by paying to Lessor the difference between such valuation and total rental paid, plus a charge to cover interest at a rate specified in this Order for the unpaid balance of the equipment valuation for each month or fraction thereof that such Equipment has been under rental to SRR. Title to such Equipment shall then vest in SRR and Lessor shall deliver to SRR such instruments of title as SRR may require, free of any and all liens and encumbrances.

I. Equipment Operated and Maintained.

The following provisions shall be applicable if Equipment is rented on the basis of operation and maintenance by the Lessor:

- (1) All rental rates stipulated in this Order include all charges for operation and maintenance of the Equipment by Lessor.

- (2) Lessor has qualified or will promptly qualify and will make all payments under the terms of the unemployment compensation laws of the state in which the Equipment will be operated. In addition, Lessor will, at Lessor's expense, carry insurance in minimum limits as specified in the Article titled "Work on SRR, Government or other Premises", included in these General Provisions.
- (3) Lessor shall obtain SRR's prior approval before employing any subcontractors. Each Subcontractor must also carry insurance as specified in subparagraph (2), supra. Lessor shall carry Contractor's Protective Public Liability, Bodily Injury, and Protective Property Damage insurance of the same minimum limits.
- (4) Lessor shall be responsible for all persons engaged to operate or maintain the Equipment or to perform any other work Lessor is obligated to perform under this purchase order. None of said persons shall constitute employees of SRR.
- (5) In the operation of the Equipment, Lessor shall comply with all Federal, State, and local regulations and with all safety regulations in effect on the SRR site. In addition, Lessor shall
  - (i) comply with recognized safety practices for the type of work being performed including the furnishing of necessary safety equipment, and
  - (ii) conduct and protect operations in such a manner as to avoid exposing others to injury.
- (6) Lessor shall ensure that all equipment operators have appropriate qualifications and experience for operating the specified equipment, to include any applicable State, Federal or local licenses or certifications.

J. Notices

Any notice to be given hereunder shall be mailed to the party to be notified, at the address set forth in the Order, by registered mail, and shall be deemed given when so mailed.

**G.6 GENERAL EMPLOYEE TRAINING AND ANNUAL REFRESHER TRAINING FOR SUBCONTRACT EMPLOYEES**

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

A. General Employee Training (GET).

- (1) The Subcontractor shall inform his employees and the employees of his Subcontractors that it is the policy of Savannah River Remediation to adhere to the requirements contained in the DOE Order entitled "Personnel Selection, Qualification and Training Requirements," which requires any individual, employed either full or part-time at any DOE reactor or non-reactor facility to receive selected general training.
- (2) Successful Completion Required  
Said employees, referred to in the remainder of this document as "individual", must successfully complete the training known as "General Employee Training" (GET) as offered by the SRS. The GET sessions are given by a Savannah River Site authorized GET instructor. There are three categories of GET.
  - (i) Category 1 consists of viewing a video that lasts for one hour. This category is limited to delivery personnel, visitors, and other temporary personnel that require badged access to the general site and property protection areas and are typically on site greater than 10 days, but not consecutively, in a calendar year.
  - (ii) Category 2 consists of viewing a video and a written examination, and lasts for approximately two hours. This category would apply to visitors or other temporary personnel that require badged access to the general site and property protection areas and are on site greater than 10 days consecutively in a calendar year, and additional training is not required as determined by SRR.
  - (iii) Category 3 consists of eight hours of training and includes instructor lecture along with audio and visual aids and a written examination. This category applies to individuals who require badged access to the general site, property protection areas, or security controlled areas and additional training is required, as determined by SRR.
- (3) Successful Completion Defined: Successful completion occurs when the individual
  - (i) is scheduled for GET,
  - (ii) attends the GET session,
  - (iii) obtains a test score of 70% or greater on the written examination, if required, (100% is the highest obtainable score), and

(iv) properly completes all documents (rosters, exam answer sheet, etc.).

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

(5) Scheduling for GET  
The STR shall direct the individual to the appropriate training center to attend the GET session. GET training is scheduled subject to demand.

(6) Records  
GET records will be maintained by SRR.

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

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

#### **G.7 SECURITY EDUCATION REQUIREMENTS FOR SUBCONTRACTORS**

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

- A. Subcontractor Security Education Coordinator.
- (1) If this Order will require a force of more than thirty (30) Subcontractor employees to receive badges, then the Subcontractor or Subcontractor shall provide to the SRR Security Education Office, the name of its representative appointed to administer its Security Education Program. This representative shall be referred to as the Subcontractor Security Education Coordinator (SSEC).
  - (2) If this Order will require that less than thirty (30) Subcontractor employees receive

badges, then the SRR Subcontract Technical Representative (STR) will perform the activities discussed in this Supplement.

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

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

D. Comprehensive Briefing.  
If Subcontractor personnel have a clearance at the inception of this Order, or receive a clearance at any time during the course of the Order, the SSEC/STR will ensure that those Subcontractor employees receive a Comprehensive Briefing from SRR.

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

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

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

H. Termination Briefing.  
When a Subcontract employee terminates employment or is reassigned, the SSEC/STR will ensure that a Termination Briefing by SRR is given and the appropriate forms are executed.

Briefing materials and appropriate forms are provided by SRR.

**G.8 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)**

In the performance of this Order, the Subcontractor is responsible for complying with the following requirements and for flowing down all requirements to Subcontractor.

- A. The Subcontractor ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE M 471.1-1, Chapter II). Subcontractor 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 ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE M 471.1-1, Chapter II. Any material or data containing UCNI which is stored on computer systems must be protected, and the protective measures and/or policies must be specified in a Computer Protection Plan approved by the SRR Computer Security organization. Adherence to the Plan is required during the performance of this Order.
- C. Material or data containing UCNI shall be disposed of in a manner as described in DOE M 471.1-1, Chapter II. At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than 1/4-inch wide strips. Documents containing UCNI may also be disposed of in the same manner that is authorized for Subcontractor disposition of other classified material or data. If the above disposal methods are not available to the Supplier, the Subcontractor may return the UCNI matter to the STR for disposition, with the prior approval of the STR.
- D. The Subcontractor shall report to the SRR Security Office or the SRR Procurement 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 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' 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 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 Subcontractors 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 has no formally designated Classification Officer, the Subcontractor submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part B.

**G.9 SCIENTIFIC AND TECHNICAL INFORMATION**

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

**G.10 RESERVED**

**G.11 COUNTERINTELLIGENCE**

- A. The Subcontractor shall take all reasonable precautions in the work under this Subcontract to protect SRR/DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 475-1, Counterintelligence Program; Executive Order

12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.

- B. The Subcontractor is responsible for compliance with counterintelligence (CI) requirements as detailed in the Contractor Requirements Documents (CRD), DOE Order 475.1. The DOE Office of Counterintelligence, Southeast Region (OCI-SER) is the servicing CI office for the Liquid Waste Contract, Savannah River Site. The Subcontractor will provide OCI-SER personnel direct access to senior management. The Subcontractor will ensure OCI\_SER has appropriate access to all records, facilities, operational activities, security information, Information Technology systems, and databases necessary to perform CI official duties. The Subcontractor shall immediately report targeting, suspicious activity and other CI concerns to the OCI-SER and support the conduct of investigations about incidents of CI concern.

#### **G.12 NON-PROLIFERATION**

If any item(s) provided under this Order are foreign made and will require importation into the United States to fulfill the requirements under this Order, the Subcontractor represents that delivery of such items will not violate any non-proliferation laws, rules or regulations of the country or countries from which the materials are to be exported.

#### **G.13 LIMITATION OF FUNDS**

*(This article is applicable only if this Purchase Order is partially funded.)*

- A. Of the total price of this Order, the sum of \$ \_\_\_\_\_ is presently available for payment and allotted to this Order. It is anticipated that additional funds will be allocated to the Order in accordance with the following schedule until the total price of the Order is funded:
- B. The Subcontractor agrees to perform or have performed work on this Order up to the point at which, if this Order is terminated pursuant to the Termination For Convenience of SRR article of this Order, the total amount payable by SRR (including amounts payable for Subcontracts and settlement costs) pursuant to the Termination For Convenience of SRR article would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount at the time allotted to the Order. The Subcontractor is not obligated to continue performance of the work beyond that point. SRR is not obligated in any event to pay or reimburse the Subcontractor more than the amount from time to time allotted to the Order, anything to the contrary in the

Termination For Convenience of SRR article notwithstanding.

- C. (1) It is contemplated that funds presently allotted to this Order will cover the work to be performed until \_\_\_\_\_.
- (2) If funds allotted are considered by the Subcontractor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Subcontractor shall notify SRR in writing when within the next 60 days the work will reach a point at which, if the Order is terminated pursuant to the Termination For Convenience of SRR article of the Order, the total amount payable by SRR (including amounts payable for subcontracts and settlement costs) pursuant to the Termination For Convenience of SRR article will approximate 75 percent of the total amount then allotted to the Order.
- (3) (i) The notice shall state the estimated date when the point referred to in subparagraph C 2 of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it.
- (ii) The Subcontractor shall, sixty days in advance of the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it, advise SRR in writing as to the estimated amount of additional funds required for the timely performance of the Order for a further period as may be specified in the Order or otherwise agreed to by the parties.
- (4) If, after the notification referred to in subdivision C 3 (ii) of this clause, additional funds are not allotted by the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it, SRR shall, upon the Subcontractor's written request, terminate this Order on that date or on the date set forth in the request, whichever is later, pursuant to the Termination For Convenience of SRR article.
- D. When additional funds are allotted from time to time for continued performance of the work under this Order, the parties shall agree on the applicable period of Order performance to be covered by these funds. The provisions of paragraphs B and C of this clause shall apply to these additional allotted funds and the substituted

date pertaining to them, and the Order shall be modified accordingly.

- E. If, solely by reason of SRR's failure to allot additional funds in amounts sufficient for the timely performance of this Order, the Subcontractor incurs additional costs or is delayed in the performance of the work under this Order, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the work to be performed.
- F. SRR may at any time before termination, and, with the consent of the Subcontractor, after notice of termination, allot additional funds for this Order.
- G. The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of SRR under the default article of this Order. This clause shall become inoperative upon the allotment of funds for the total price of the work under this Order except for rights and obligations then existing under this clause.
- H. Nothing in this clause shall affect the right of SRR to terminate this Order pursuant to the Termination For Convenience of SRR article of the Order.

#### **G.14 PROGRESS PAYMENTS**

*(If applied, this article consists of additional paragraphs to Article A.6. In the event of an inconsistency between these additional paragraphs and Article A.6, paragraphs A-E, these additional paragraphs take precedence.)*

- A. SRR shall make progress payments monthly as the work proceeds or at more frequent intervals as determined by SRR, on estimates of work accomplished which meet the standards of quality established under the Order, as approved by SRR. If requested by SRR, the Subcontractor shall furnish a breakdown of the total Order price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates SRR may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Subcontractor at locations other than the site may also be taken into consideration if:
  - (1) Consideration is specifically authorized by this Order; and
  - (2) The Subcontractor furnished satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Order.

- B. All materials and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as:
  - (1) Relieving the Subcontractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
  - (2) Waiving the right to SRR to require the fulfillment of all the terms of the Order.
- C. In making progress payments, SRR shall retain, until completion and acceptance of all work, ten (10) percent of the estimated value of work accomplished as of the date of the current application for payment. After the estimated value of Work accomplished exceeds fifty (50) percent of the Order amount, and provided the Subcontractor is proceeding with the Work in the manner and time satisfactory to SRR, SRR may reduce the amount to be retained to five (5) percent of the estimated value of Work accomplished as of the date of the current application for payment, or to such lesser amount, including none, as may be decided upon by SRR.
- D. Notwithstanding any provision of this Order, progress payments shall not exceed 80 percent on work accomplished on undefinitized Order actions. An Order action is any action resulting in an Order, as defined as "Contract" in FAR Subpart 2.1, including Order modifications for additional supplies or services, but not including Order modifications that are within the scope and under the terms of the Order, such as Order modifications issued pursuant to the "Changes, Extras and Substitution" Article, or funding and other administrative changes.

#### **G.15 VARIATION IN ESTIMATED QUANTITY**

*(If invoked in this Purchase Order, this article applies to services only.)*

If the quantity of a unit-priced item in this Order is an estimated quantity and the actual quantity of the unit-priced item varies more than fifteen percent above or below the estimated quantity, an equitable adjustment in the Order price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Subcontractor may request, in writing, an extension of time, to be received by SRR within 10 days from the beginning of the delay, or within such further period as may be granted by SRR

before the date of final settlement of the Order. Upon the receipt of a written request for an extension, SRR shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of SRR, is justified.

**G.16 CHANGES, EXTRAS AND SUBSTITUTIONS - (SUPPLEMENT)**

*(Inclusion of this article supplements Article A.4, Changes.)*

A. In the event of an emergency which SRR determines endangers life or property, SRR may use oral orders to Subcontractor for any work required by reason of such emergency. Subcontractor shall commence and complete such emergency work as directed by SRR. Such orders will be confirmed by Change Notice.

B. Pricing of Adjustments

When costs are a factor in any determination of an Order adjustment pursuant to the General Provision titled "Changes", or any other provision of this Order, such costs, upward or downward, shall be submitted by Subcontractor in the form of a lump sum proposal. The proposal shall include an itemized breakdown of all increases or decreases in at least the following detail:

(1) Direct Labor

(i) Charges for labor furnished and used by Subcontractor shall be allowable for all manual classifications up to and including foremen. Charges shall not be included for superintendents, assistant superintendents, general foreman, surveyors, office personnel, timekeepers, and maintenance mechanics; these cost are recovered in the overhead and profit rates established by this Article. Labor rates used to calculate the costs shall be those rates in effect during accomplishment of the changes.

(ii) Direct labor costs shall include, in addition to direct payroll costs, payroll taxes, insurance, vacation allowance, subsistence, travel time, overtime premium and any other payroll additives required to be paid by Subcontractor by law or labor agreement(s), e.g. Project Agreement, collective bargaining agreement(s), etc. Copies of certified pertinent payrolls shall be submitted to SRR.

(2) Equipment

(i) Charges shall be allowable for the rental and operation of all Subcontractor's

equipment furnished and used by Subcontractor, except for equipment or tools with a new cost at point of origin of Five Hundred Dollars or less each, which are deemed to be covered in the overhead and profit rates established by this Article.

(ii) For Subcontractor-owned equipment, reasonable equipment charges shall be allowed in accordance with the following:

(a) Rental rates as agreed upon in the Order; or

(b) Rental rates not greater than seventy percent (70%) of Data Quest Blue Book daily rental rates applicable for the period of performance of the change; and

(c) Appropriately discounted to stand-by rates for idle time reasonably required.

(iii) When the operated use of equipment is infrequent and, as determined by SRR, such equipment need not remain at the work site continuously, charges shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at SRR's direction shall be charged at the standby rate.

(iv) For Rental Equipment not owned by Subcontractor, charges will be computed on the basis of actual invoice cost.

(v) For the cost of both rented and owned to be allowable, Subcontractor must justify and SRR agree that the individual pieces of equipment are needed, are appropriate for the work, and that the mobilization costs are allocable to the change.

(3) Materials

Approved incurred costs for material incorporated into the changed Work or required for temporary facilities made necessary by the change shall be allowable at net cost delivered to the Jobsite.

(4) Overhead, Profit and All Other Costs

(i) Overhead, profit and markup percentages included in the proposal, shall include, but not be limited to, insurance, use of small tools, incidental job burdens, and general home and field office expense. No percentages for overhead, profit or any type of markup

will be allowed on employment taxes under FICA and FUTA.

- (ii) The percentages for overhead and profit will be negotiated and may vary according to the nature, extent and complexity of the Work involved. The maximum percentage for the overhead, profit and markup shall not exceed those shown below.
- (iii) For work subcontracted to a Subcontractor by Subcontractor, the proposal submitted to SRR shall only include one overhead percentage and one profit percentage in addition to Subcontractor's markup. No more than these three percentages will be allowed regardless of the number of tiers of subcontractors. The lower tier's percentage of overhead and profit shall not exceed those shown below.

<u>Subcontracted Work</u>	<u>Overhead</u>	<u>Profit</u>	<u>Markup</u>
\$1 to \$19,999	0%	0%	8.0%
\$20,000 to \$49,999	0%	0%	5.5%
\$50,000 and above	0%	0%	2.0%
<u>Direct Hire Work:</u>	<u>Overhead</u>	<u>Profit</u>	<u>Markup</u>
\$1 to \$19,999	10.0%	10.0%	0%
\$20,000 to \$49,999	7.5%	7.5%	0%
\$50,000 and above	6.75%	6.75%	0%

**G.17 RIGHT OF FIRST REFUSAL OF EMPLOYMENT**

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

**G.18 COPYRIGHTS FOR SRR DIRECTED TECHNICAL PERFORMANCE**

Subcontractor shall cause its employee(s) to assign to SRR all rights under the copyright in all works of authorship prepared at the direction of SRR during the

term of this Order. Supplier shall include terms in its arrangements with its employee(s) to require such assignments to SRR. To the extent that such works of authorship are considered to be works made for hire for Subcontractor, Subcontractor agrees to assign and does hereby assign all of its rights under the copyrights in such works to SRR or the U. S. Government.

**G.19 PERFORMANCE-BASED MILESTONE PAYMENTS**

A. Amount of payments and limitations on payments.

Subject to such other limitations and conditions as are specified in this Subcontract and this article, the amount of payments and limitations on payments shall be specified in the Subcontract's description of the basis for payment.

B. Subcontractor request for performance-based payment.

The Subcontractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to SRR. Unless otherwise authorized by SRR, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Subcontractor's request shall contain the information and certification detailed in paragraphs (L) and (M) of this article.

C. Approval and payment of requests.

(1) The Subcontractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The SRR Procurement Representative shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the Subcontract. SRR may, at any time, require the Subcontractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) The approval by SRR of a request for performance-based payment does not constitute an acceptance by SRR and does not excuse the Subcontractor from performance of obligations under this Subcontract.

D. Liquidation of performance-based payments.

(1) Performance-based finance amounts paid prior to payment for delivery of an item

shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole Subcontract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

- (2) If at any time the amount of payments under this Subcontract exceeds any limitation in this Subcontract, the Subcontractor shall repay to SRR the excess. Unless otherwise determined by SRR, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

E. Reduction or suspension of performance-based payments.

SRR may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the Subcontract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

- (1) The Subcontractor failed to comply with any material requirement of this Subcontract (which includes paragraphs (H) and (I) of this clause).
- (2) Performance of this contract is endangered by the Subcontractor's—
  - (i) Failure to make progress; or
  - (ii) Unsatisfactory financial condition.
- (3) The Subcontractor is delinquent in payment of any Subcontractor or lower tier subcontractor under this Subcontract in the ordinary course of business.

F. Title.

- (1) Title to the property described in this paragraph (F) shall vest in the Government. Investiture shall be immediately upon the date of the first performance-based payment under this Subcontract, for property acquired or produced before that date. Otherwise, investiture shall occur when the property is or should have been allocable or properly chargeable to this Subcontract.
- (2) "Property," as used in this clause, includes all of the following described items acquired

or produced by the Subcontractor that are or should be allocable or properly chargeable to this Subcontract under sound and generally accepted accounting principles and practices:

- (i) Parts, materials, inventories, and work in process;
  - (ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this Subcontract;
  - (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (F)(2)(ii) of this clause; and
  - (iv) Drawings and technical data, to the extent the Subcontractor or lower tier subcontractors are required to deliver them to SRR by other articles of this Subcontract.
- (3) Although title to property is in the Government under this article, other applicable articles of this Subcontract (e.g., the termination or special tooling articles) shall determine the handling and disposition of the property.
  - (4) The Subcontractor may sell any scrap resulting from production under this Subcontract, without requesting SRR's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to SRR.
  - (5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Subcontractor must obtain SRR's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the Subcontract and not payable (if the property is part of or needed for performance), and the Subcontractor shall refund the related performance-based payments in accordance with paragraph (D) of this clause.
  - (6) When the Subcontractor completes all of the obligations under this Subcontract, including liquidation of all performance-based payments, title shall vest in the Subcontractor for all property (or the proceeds thereof) not—

- (i) Delivered to, and accepted by, SRR under this Subcontract; or
  - (ii) Incorporated in supplies delivered to, and accepted by, SRR under this Subcontract and to which title is vested in the Government under this article.
- (7) The terms of this Subcontract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this article.
- G. Risk of loss.  
Before delivery to and acceptance by SRR, the Subcontractor shall bear the risk of loss for property, the title to which vests in the Government under this article, except to the extent SRR expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the Subcontract and not payable (if the property is part of or needed for performance), and the Subcontractor shall refund the related performance-based payments in accordance with paragraph (D) of this article.
- H. Records and controls.  
The Subcontractor shall maintain records and controls adequate for administration of this article. The Subcontractor shall have no entitlement to performance-based payments during any time the Subcontractor's records or controls are determined by SRR to be inadequate for administration of this article.
- I. Reports and SRR access.  
The Subcontractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by SRR for the administration of this article and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Subcontractor shall give SRR reasonable opportunity to examine and verify the Subcontractor's records and to examine and verify the Subcontractor's performance of this Subcontract for administration of this article.
- J. Special terms regarding default.  
If this Subcontract is terminated under the Default article,
- (1) Subcontractor shall, on demand, repay to SRR the amount of unliquidated performance-based payments, and
  - (2) Title shall vest in the Subcontractor, on full liquidation of all performance-based payments, for all property for which SRR elects not to require delivery under the
- Default article of this Subcontract. SRR shall be liable for no payment except as provided by the Default article.
- K. Reservation of rights.
- (1) No payment or vesting of title under this clause shall—
    - (i) Excuse the Subcontractor from performance of obligations under this Subcontract; or
    - (ii) Constitute a waiver of any of the rights or remedies of the parties under the Subcontract.
  - (2) SRR's rights and remedies under this article—
    - (i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this Subcontract; and
    - (ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this article or the exercise of any other right, power, or privilege of SRR.
- L. Content of Subcontractor's request for performance-based payment.  
The Subcontractor's request for performance-based payment shall contain the following:
- (1) The name and address of the Subcontractor;
  - (2) The date of the request for performance-based payment;
  - (3) The Subcontract number and/or other identifier of the Purchase Order/Subcontract under which the request is made;
  - (4) Such information and documentation as is required by the Subcontract's description of the basis for payment; and
  - (5) A certification by a Subcontractor official authorized to bind the Subcontractor, as specified in paragraph (M) of this clause.
- M. Content of Subcontractor's certification.  
As required in paragraph (L)(5) of this article, the Subcontractor shall make the following certification in each request for performance-based payment:  
I certify to the best of my knowledge and belief that—
- (1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Subcontractor, in accordance with the Subcontract and the instructions of SRR;
  - (2) (Except as reported in writing on \_\_\_\_\_), all payments to lower tier

subcontractors under this Subcontract have been paid, or will be paid, currently, when due in the ordinary course of business;

- (3) There are no encumbrances (except as reported in writing on \_\_\_\_\_) against the property acquired or produced for, and allocated or properly chargeable to, the Subcontract which would affect or impair the Government's title;
- (4) There has been no materially adverse change in the financial condition of the Subcontractor since the submission by the Subcontractor to SRR of the most recent written information dated \_\_\_\_\_; and
- (5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the Subcontract, and the amount of all payments under the Subcontract will not exceed any limitation in the Subcontract.

*(This Purchase Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRR will make their full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

\*G.20 CLASSIFICATION/DECLASSIFICATION (SEP 1997)  
DEAR 952.204-70

\*G.21 FILING OF PATENT APPLICATIONS-CLASSIFIED SUBJECT MATTER (APR 1984)  
FAR 52.227-10

\*G.22 PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (SEP 1997)  
DEAR 952.227-13

\*G.23 PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995)  
DEAR 952.227-11

\*G.24 RIGHTS IN DATA - GENERAL (JUN 1987)  
FAR 52.227-14, as modified pursuant to DEAR 927.409(a) (1)

\*G.25 RIGHTS IN DATA - ALTERNATE II (JUN 1987)  
FAR 52.227-14, as modified pursuant to DEAR 927.409(a) (1)

\*G.26 RIGHTS IN DATA - ALTERNATE III (JUN 1987)  
FAR 52.227-14, as modified pursuant to DEAR 927.409(a) (1)

\*G.27 ADDITIONAL DATA REQUIREMENTS (JUN 1987)  
FAR 52.227-16

\*G.28 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)  
DEAR 952.209-72

\*G.29 SERVICE CONTRACT ACT OF 1965 AS AMENDED (JULY 2005)  
FAR 52.222-41

\*G.30 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)  
FAR 52.222-42

\*G.31 RESERVED

\*G.32 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT -PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (NOV 2006)  
FAR 52.222-43

\*G.33 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (FEB 2002)  
FAR 52.222-44

\*G.34 COST ACCOUNTING STANDARDS (CAS) (APR 1998)  
FAR 52.230-2

\*G.35 ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 2005)  
FAR 52.230-6

\*G.36 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998)  
FAR 52.230-3

\*G.37 PRIVACY ACT (APR 1984)  
FAR 52.224-1 and 52.224-2

**\*G.38 DUTY FREE ENTRY (FEB 2000)**

FAR 52.225-8

**\*G.39 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)**

FAR 52.247-63

**\*G.40 ACQUISITION OF REAL PROPERTY (APR 1984)**

DEAR 952.217-70

**\*G.41 GOVERNMENT PROPERTY FURNISHED "AS IS" (APR 1984)**

FAR 52.245-19

**\*G.42 DIFFERING SITE CONDITIONS (APR 1984)**

FAR 52.236-2

**\*G.43 SUSPENSION OF WORK (APR 1984)**

FAR 52.242-14

**\*G.44 FIRST ARTICLE APPROVAL – TESTING (SEP 1989)**

FAR 52.209-4

**\*G.45 PRINTING (APR 1984)**

DEAR 952.208-70

**\*G.46 FOREIGN TRAVEL (DEC 2000)**

DEAR 952.247-70

**\*G.47 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)**

FAR 52.215-10

**\*G.48 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA— MODIFICATIONS (OCT 1997)**

FAR 52.215-11

**\*G.49 PENSION ADJUSTMENTS AND ASSET REVERSIONS (OCT 2004)**

FAR 52.215-15

**\*G.50 REVERSION OR ADJUSTMENT OF PLANS FOR POST RETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)**

FAR 52.215-18

**\*G.51 REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2002)**

FAR 52.208-8

**\*G.52 GOVERNMENT PROPERTY (JUN 2007)**

FAR 52.245-1

**SECTION H**

**SECTION H ARTICLE APPLIES IF THE PRICE OF THIS ORDER EXCEEDS \$5,000,000**

*(This Purchase Order incorporates the Clause identified below by reference, with the same force and effect as if given in full text. Upon request, SRR will make the full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*H.1 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2007)**

FAR 52.203-13

**\*H.2 DISPLAY OF HOTLINE POSTER(S) FAR 52.203-14 (DEC 2007)**