

IDAHO ENVIRONMENTAL COALITION, LLC

GENERAL PROVISIONS IEC-GP-001

1. DEFINITIONS

As used throughout this Subcontract, except in articles incorporated by reference and where otherwise indicated, the following terms will apply:

- (a) "Article" means a specific numbered clause within these General Provisions.
- (b) "Company" means Idaho Environmental Coalition, LLC, the party issuing this Subcontract.
- (c) "DOE" means the United States Department of Energy.
- (d) "Goods" means item(s) specified and any associated Work necessary to complete this Subcontract.
- (e) "Government" means the United States of America or any duly authorized representative thereof.
- (f) "ICP" means the Idaho Cleanup Project.
- (g) "Lower-tier Subcontractor" means any party entering into an agreement with Subcontractor for the furnishing of material, equipment, supplies, or services required to complete a portion of this Subcontract.
- (h) "Parties" means Company and Subcontractor collectively and each of Company and Subcontractor is a "Party".
- (i) "Prime Contract" means the Company's Contract No. 89303321DEM000061, dated 27-May-2020 with the United States Department of Energy.
- (j) "Statement of Work" or "Work" means all labor, material, tools, engineering, documentation, supplies, equipment, data, plans, surveys, specifications, reports, analyses, policies, procedures, manuals, machinery, and transportation, necessary to perform under this Subcontract.
- (k) "Subcontractor" means the party to whom this Subcontract is awarded.
- (l) "Subcontract Administrator or "SA" means the duly authorized representative of Company who will administer this Subcontract.
- (m) "Subcontract Technical Representative" or "STR" means the individuals identified in this Subcontract as the duly authorized representative of Company for overseeing Subcontractor work activities.

2. DISCLAIMER

Many of the Articles contained herein are similar to provisions used by federal agencies. However, the Company is not a federal agency or instrumentality and is not awarding this Subcontract as an agent of the DOE; the use of similar provisions is only for the administrative convenience of the Company.

3. ORDER OF PRECEDENCE

Any inconsistency in shall be resolved by giving precedence in the following order:

- Mandatory Flowdowns Clauses for Subcontracts and Procurement Subcontract
- Special Provisions for On-Site Services
- General Provisions
- Statement of Work (excluding the specifications) Service Contract Act Wage Determination
- Representations and other instructions
- Other documents, exhibits, and attachments

4. PAYMENT TERMS

- (a) The payment terms of this Subcontract are Net 30 upon Company's receipt of an acceptable invoice and verification of amounts billed.

- (b) By submittal of invoices for Work, Subcontractor is certifying that each invoice has been verified relative to the accuracy and appropriateness of all amounts; that the invoice conforms to all Subcontract requirements; that all payments to Subcontractor and Lower-tier Subcontractors under this Subcontract have been paid, or will be paid, currently, when due in the ordinary course of business; that there are no encumbrances against the property of Company or DOE which would affect or impair clear title thereto; and Company may rely on such certification when processing for payment.
- (c) For any discount offered for early payment, time shall be computed from the date of Company's receipt of an acceptable invoice and all prerequisite conditions for payment have been met. For the purpose of computing the discount earned, Company's payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made to Subcontractor.

5. PRIME CONTRACT

Subcontractor understands the documents forming the Prime Contract flowdown clauses and assumes towards Company all the obligations, liabilities, responsibilities, conditions, requirements, all representations and certifications, and duties that Company assumes toward DOE to the full extent that the Prime Contract's flowdowns applies to the Work. Company may exercise the same rights, powers, privileges, and remedies toward Subcontractor as DOE may exercise, directly or indirectly, toward Company under the Prime Contract flowdowns.

6. INDEMNIFICATION

To the maximum extent permitted by law, Subcontractor agrees to defend, indemnify, and hold harmless Company and DOE, the affiliated companies of each, subcontractors of each, and their members, managers, directors, officers, employees, agents, and representatives from all claims, damages, losses, and costs, including litigation expenses and reasonable attorney's fees, arising out of or resulting from, or alleged to have resulted from, the performance or non-performance of the Work, including any act or omission of Subcontractor, any Lower-Tier Subcontractors, any anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The foregoing will not apply in the event that the claim, damages, losses, or expenses are caused by the sole negligence of Company or DOE but will apply to losses caused by the concurrent fault or negligence of Company or DOE and Subcontractor.

To the greatest extent permitted by law, for purposes of the indemnity provided under this Subcontract, Subcontractor specifically and expressly waives any immunity that may be granted it under the industrial insurance/worker's compensation acts or their equivalent under applicable law. The indemnification obligations under this Subcontract shall not be limited in any way by any limitations on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefits acts, or other employee benefit acts. The Parties certify that the waiver of immunity contained in this Article was mutually negotiated.

7. INSURANCE*

- (a) Before commencing Work and a condition of payment, Subcontractor shall, at its sole expense, maintain without lapse the minimum insurance limits as outlined in this Article. Insurance shall be in force for the duration of this Subcontract and for a minimum of two (2) years after the expiration of this Subcontract or such period thereafter as may be necessary under the circumstances, whichever is longer. Such insurance shall be written on an "occurrence" basis and shall be provided by an insurance company or companies with an A.M. Best Company Financial Strength Rating of "A-" or higher and a Financial Size Category of "VII" or higher.

(1) Commercial General Liability

- i. Each Occurrence: \$2 Million
- ii. Damage to Rented Premises (each occurrence): \$100,000
- iii. Medical Expense (any one person): \$5,000
- iv. Personal and Advertising Injury: \$1 Million
- v. General Aggregate: \$2 Million

- vi. Products/Completed Operations Aggregate: \$2 Million
- (2) **Automobile Liability**
 - i. Combined Single Limit (each accident): \$2 Million
 - ii. Property damage of all owned, non-owned, and hired vehicles
- (3) **Worker Compensation and Employer Liability**
 - i. Worker Compensation: Statutory Limits
 - ii. Employer Liability – Each Accident: \$500,000
 - iii. Employer Liability – Disease, Each Employee: \$500,000
 - iv. Employer Liability – Disease, Policy Limit: \$500,000
- (4) **Excess Liability** (for Subcontracts over \$1M): \$5,000,000
- (5) **Professional / Errors and Omissions Liability** (for Subcontracts performing professional services of any kind, whether engineering, design, research, development)
 - i. Per occurrence: \$1 Million
- (6) **Contractor Pollution Liability** (for Subcontracts performing work that may result in pollution discharge, asbestos related work – i.e., inspection, handling, removal, or construction work)
 - i. Each Claim or Occurrence: \$5 Million
 - ii. Annual Aggregate: \$5 Million
 - iii. Transportation Coverage: Included
 - iv. Non-Owned Disposal Site Coverage: Included
 - v. Asbestos and Lead Coverage: Included
 - vi. Unexploded Ordinance (UXO) Coverage: If applicable
- (7) **Cyber/Network/Technology E&O Liability** (for subcontracts performing services related to technology services, managing personal data, network security, manage or installing SCADA board, hardware work, or software design)
 - i. Each Claim or Wrongful Act: \$1 Million
 - ii. Annual Aggregate: \$1 Million
- (b) Subcontractor’s insurance policies shall be endorsed to include:
 - (1) Idaho Environmental Coalition, LLC and its successors in interest and the US Department of Energy named as additional insured parties for all specified in this Article, except for Worker Compensation and Employer Liability, Professional/Errors and Omissions Liability, Contractor Pollution Liability, and Builder’s Risk Liability.
 - (2) Waiver of subrogation in favor of Idaho Environmental Coalition, LLC and its successors in interest and the US Department of Energy for Commercial General Liability, Automobile Liability, Contractor Pollution Liability, and Builder’s Risk Liability.
 - (3) Subcontractor’s insurance is primary and non-contributory coverage.
 - (4) Thirty (30) days prior written notice to the Company in the event of any coverage cancellation.
- (c) Should Subcontractor use any Lower-tier Subcontractors, Subcontractor shall require the same insurance requirements of their Lower-tier Subcontractors indicated in this Article. Subcontractor shall obtain appropriate certificates of insurance for their Lower-tier Subcontractors, maintain the certificates on file, and make the certificates available to the Company upon request.
- (d) A certificate of insurance shall be furnished to the Company’s Subcontract Administrator earlier of either ten (10) calendar days after award of this Subcontract or before Subcontractor begins any work under this Subcontract.

- (e) Subcontractor's procurement, maintenance, limits, or coverage of any insurance policies, whether or not approved by Company, shall not relieve Subcontractor from any liability assumed under this Subcontract.
- (f) Failure by Subcontractor to comply with the insurance requirements of this Article, including timely submittal of properly executed certificates, is a basis for termination of this Subcontract.

8. SUBCONTRACTOR OBLIGATIONS

(a) Post Award Orientation

Subcontractor agrees to attend any post award conference in accordance with Federal Acquisition Regulation Subpart 42.5.

(b) Periodic Meetings

As needed, Subcontractor shall attend periodic meetings with Company's Subcontract Administrator, Company's Technical Representative, and other Company personnel, as appropriate, to review Subcontractor's performance. At these meetings the Company's Subcontract Administrator will apprise the Subcontractor of how the Company views the Subcontractor's performance and the Subcontractor will apprise the Company of problems, if any, being experienced. Appropriate action shall be taken to resolve outstanding issues. These meetings shall be at no additional cost to the Company.

(c) Permits, Applications, and Licenses*

Except as otherwise directed by the Company, Subcontractor shall procure all permits, licenses, and fees required by law that are associated with the Subcontractor's performance of the Work.

(d) Codes, Laws, and Regulations*

- (1) Subcontractor shall comply strictly with all local, municipal, state, federal, and governmental laws, orders, codes, standards, ordinances, and regulations (including DOE regulations and directives) applicable to Subcontractor's performance of the Work.
- (2) Subcontractor shall not under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health or air, water, or noise pollution, laws or regulations relating to this Subcontract without Company's and DOE's prior written approval.

(e) Publicity*

Subcontractor and its Lower-tier Subcontractors shall not disclose to any third parties or engage in any public media or other publicity disclosures with respect to this Subcontract and Prime Contract without prior written consent of Company and/or DOE. Subcontractor, its Lower-tier Subcontractors, or other parties related to this Subcontract shall not issue any news releases, statements to media, interviews, articles for publication, publicize, or issue advertising related to this Subcontract without written consent of Company and/or DOE.

(f) Quality Assurance

Subcontractor shall comply with portions of the Company's Quality Assurance Program as outlined in the Statement of Work, specifications, or any other parts of this Subcontract, unless Company provides prior written approval of the Subcontractor's own Quality Assurance Program.

(g) Quality of Work*

- (1) Subcontractor warrants the Work will be completed by personnel who are careful, skilled, experienced, and competent in their respective trades or professions. Subcontractor warrants the Work will be completed to the degree of skill and diligence normally employed by others performing the same or similar services on this type of DOE site and standard specified in the Prime Contract flowdowns.

- (2) Subcontractor will re-perform any Work not meeting this standard without additional compensation. If such deficiencies are not corrected in a timely manner, Company may cause the same to be corrected and deduct costs incurred from Subcontractor's compensation.

(h) **Warranties***

- (1) When the Work includes goods, material, and/or equipment, Subcontractor warrants that all workmanship and materials will be new and in accordance with industry standards.
- (2) Subcontractor further warrants that the goods shall meet or exceed the requirements of this Subcontract, be free of any defects, workmanship, and material, be free and clear of all liens, claims, security interests, or encumbrances and be merchantable and fit for the intended purpose. Further, Subcontractor has secured Company's right to own, sell, or use such goods.
- (3) Any defective workmanship or nonconforming materials or equipment will be immediately removed and replaced by Subcontractor at its expense. Failure on the part of Company to reject inferior workmanship or to note nonconforming materials or equipment will not be construed to imply acceptance by Company. Nothing in this Subcontract will be construed as a waiver of any rights or remedies of Company for patent or latent defects.

Subcontractor further warrants that goods or services delivered or sold to Company contain no counterfeit items. Counterfeit item means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise represented to be an authentic, unmodified item, from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. "Suspect counterfeit item" means an item for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the item is authentic. If it is determined that a suspect/counterfeit part has been supplied, Company will impound the items pending a decision on disposition. Subcontractor may be required to replace such items with items acceptable under the terms of this Subcontract and shall be liable for all costs relating to the impoundment, removal, and replacement. Company may also notify the cognizant Department of Energy contracting officer and Office of Inspector.

- (4) This warranty shall continue for one (1) year from the date of final acceptance of the Work. If Company takes possession of any part of the Work before final acceptance, this warranty shall continue for one (1) year from the date Company takes possession.
- (5) Subcontractor shall transfer all manufacturer, distributor, or vendor warranties associated with the goods supplied to Company and/or entity designated by Company.
- (6) **This warranty supersedes any lesser warranty, whether stated or implied, that may be contained in submittals or other documentation delivered to Company by Subcontractor, regardless of whether the submittals or other documentation is accepted or otherwise approved by Company, unless a lesser warranty is specifically identified and agreed to in writing as part of this Subcontract.**
- (7) Warranties shall inure to the benefit of and be actionable by Company or DOE or their successors, assigns and survive inspection, test, acceptance, and payment by Company.

(i) **Nonconforming Work***

- (1) If Company deems the Work incomplete, Subcontractor has failed to conform to Subcontract requirement, or any defect in Work and/or Goods, Subcontractor will take remedial action until the Work and/or Goods are accepted. Subcontractor shall be required for prompt modification, repair, adjustment, correction, or replacement ("Corrections") of any portion of the nonconforming Work and/or Goods at Subcontractor's cost. Further, Subcontractor shall reimburse Company for all expense associated with all additional inspection necessitated by the non-conformance and perform satisfactory reconstruction and or restoration at no cost to Company.

- (2) If Subcontractor fails to commence Correction within ten (10) calendar days of notice by Company, Company may, at its sole discretion, perform any such correction. Subcontractor is liable to Company for all cost (including shipping, travel, removal, and installation), damage or loss caused by the deficiency or arising from the correction. Subcontractor is not relieved of any obligations due to Company's actions under this Article.
- (3) In the event the nonconforming work poses an immediate and serious threat to the safety of others or to the environment, then Company shall cause correction of the nonconformance by the most expedient means available, and Subcontractor shall be liable and responsible for all costs and expenses related thereto.
- (4) Corrections are subject for one (1) year from the date of acceptance of Corrections.

(j) Design Services and Standard of Care*

- (1) If Subcontractor is providing design services, all design services shall be procured from licensed, independent design professionals retained by Subcontractor or furnished by licensed employees of Subcontractor, as required by applicable laws. All design documents shall be stamped and signed by Subcontractor's design professionals.
- (2) Subcontractor shall be responsible for coordinating its design with Company.
- (3) The standard of care for all such design services performed under this Subcontract will be the care and skill ordinarily used by members of the profession practicing under similar conditions at the same time and locality.

(k) Review of Information

Subcontractor has thoroughly examined all Subcontract documents. Subcontractor shall give Company prompt notice if Subcontractor observes any discrepancy in or between any of the Subcontract documents.

(l) Access to Records and Audit*

Subcontractor shall maintain all books, documents, calculations, assumptions, interpretations of regulations, sources of information, raw data, papers, and accounting records (including unpriced copies of Lower-tier Subcontracts and shall make such materials available for inspection and copying, by Company and/or DOE, at its offices at all reasonable times, for seven (7) years after completion of this Subcontract or for a longer period as required by the DOE or applicable law. Further, unless the Subcontract Type is Firm-Fixed Price, the Subcontractor's timekeeping system will be audited as required by the Prime Contract.

(m) Subcontractor's Personnel

Subcontractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees. If Company deems Subcontractor's employee incompetent, careless, insubordinate, or the employee's work is contrary to public interest, Company reserves the right to require Subcontractor to remove the employee at no cost to the Company. Further, if Company's removal request is due solely to security or misconduct on the part of the employee, replacement shall be at the Subcontractor's expense and not chargeable to the Company.

(n) Subcontractor's Personnel Requirements

- (1) Subcontractor's personnel shall perform Work in accordance with all IEC, DOE, and ICP core safety, quality, security, technical, cost allowability, business, and other facility/project specific and general policies, requirements, and procedures.
- (2) ICP is a national security site, where only United States citizens or permanent alien residents are permitted to work. Only individuals who meet these requirements may provide services under this Subcontract. Personnel shall comply with the security requirements in Prime Contract flowdowns and within Company's policies and procedures.

- (3) **Badges:** If Subcontractor's personnel require a badge to perform work, personnel shall cooperate with all required procedures and training in order to obtain any required DOE site access badges. All such badges issued by DOE remain the property of the Government. Subcontractor shall ensure that all such badges are returned to the ICP Core Badging Office immediately prior to the conclusion of their work assignment.
- (4) Subcontractor may be charged the following amounts for badges lost during a personnel work assignment at the ICP or not returned. These charges, which may change, shall be deducted from payments otherwise due or becomes due to the Subcontractor for:
 - Access/security badges: \$250.00 each or
 - Dosimeter (TLD) badges: \$550.00 each

(o) Independent Contractor

Subcontractor is an independent contractor and not an employee or agent of Company or DOE. Subcontractor will maintain complete control and responsibility for its employees, Lower-tier Subcontractors, and agents. Subcontractor shall be solely responsible for the means and methods for carrying out the Statement of Work.

(p) Gifts and Gratuities*

Subcontractor warrants that it has complied with the Anti-Kickback Act of 1986 and has not offered or given and will not offer or give to any employee, agent, or representative of Company any gratuity or any kickback within the meaning of the Anti-Kickback Act of 1986. Any breach of this warranty shall be a material breach of each and every contract between Company and Subcontractor.

(q) Liens*

Subcontractor will promptly pay for all services, labor, materials, and equipment used or employed by Subcontractor in the Statement of Work and will maintain all materials, equipment, structures, buildings, and premises free and clear of mechanic's or other liens.

(r) Taxes*

- (1) Except as may be otherwise provided in this Subcontract, the Subcontract prices, pricing for changes, and all other prices and rates set forth herein include all applicable federal, state, and local taxes, duties and fees, and other assessments of whatever nature imposed by governmental authorities and applicable to the performance of the Work and this Subcontract. Taxes shall also be shown separately on bills or invoices submitted.
- (2) Company is exempt under Idaho law from the payment of certain Idaho sales or use taxes and is authorized by agreement with the state of Idaho State Tax Commission to pay directly to the state of Idaho any sales and use taxes owing on purchases of tangible personal property. Therefore, the Subcontract price shall not include Idaho sales or use tax for any tangible personal property purchased hereunder. Company shall not have any obligation to reimburse Subcontractor for personal property taxes on construction equipment and other property owned by Subcontractor, and taxes on net income of Subcontractor.
- (3) Subcontractor shall be responsible for maintaining and furnishing the necessary records and documentation required by government authorities and Company to apply for and obtain tax and duty refunds.
- (4) If this Subcontract is for work on real property that is owned or will be accepted at time of completion by the United States Government, the Company has determined that the project is exempt from state sales/use tax.

(s) Communications with DOE*

All of Subcontractor's written or verbal communication with or to DOE or with federal, state, or local agencies relative to Work under this Subcontract must be through or with the knowledge of Company.

(t) Covid Mitigation

If applicable, Subcontractor agrees to and understands all Company, Government, and DOE policies, protocols, and controls. Subcontractor shall comply with any and all requirements while performing Work under this Subcontract. Failure to comply may result in termination.

9. MATERIAL AND EQUIPMENT

(a) Subcontractor's Equipment and Materials

Unless otherwise stipulated, Subcontractor will provide and pay for all materials, labor, tools, equipment, heat, utilities, temporary facilities, and incidentals necessary for the execution and completion of the Work. Further, all equipment shall be in good operating condition, materials will be new, and both workmanship and of good quality.

In selecting equipment and material for installation, Subcontractor assumes all responsibility for injury or claims resulting from failure of the equipment and material to comply with applicable laws, safety codes or requirements, or Subcontractor's defective workmanship or materials.

(b) Inspection of Material

Prior to use, all products, material, or equipment shall require receipt and final inspection at the cognizant receiving area as outlined in the Subcontract.

(c) Rejected Material

Any material rejected by Company because of nonconformity under this Subcontract will be removed at once from the vicinity of the site by Subcontractor, at its own expense.

(d) Passage of Title and Liens

- (1) Title to the products, material, or equipment shall pass to the Government upon delivery or installation. Subcontractor's delivery to the carrier shall be deemed to be delivery to Company.
- (2) Subcontractor agrees to furnish all deliverables free and clear of liens, claims, security interests, and encumbrances. Subcontractor agrees to hold Company and the Government harmless from all liens, claims, or demands in connection with the Work.

(e) Electrical Material, Component, and Material Requirements

- (1) Electrical material, components, and material shall have a mark indicating acceptance by a UL or other Nationally Recognized Testing Laboratory (NRTL) as recognized by OSHA.
- (2) Electrical items and equipment received under this Subcontract shall exhibit legible amperage and voltage ratings, operating parameters, and the product manufacturer's label and identification. Items shall be supplied in the manufacturer's original packaging, and as applicable to the item, exhibit a Nationally Recognized Testing Laboratory (NRTL) label [e.g., Underwriters Laboratory (UL), Factory Mutual (FM), Canadian Safety Association for use in the U.S. (CSA for U.S.)] Any questions will be directed to ICP Electrical Authority Having Jurisdiction (AHJ). The ICP Electrical AHJ is still required to initiate the required AHJ determination when accepting other than an NRTL listed item. (Note: Conforming to European (CE) is not an acceptable NRTL within the DOE complex (QC-45).

(f) **Hazardous Materials**

- (1) Subcontractor shall notify Company, in writing, if goods furnished are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or to any other health, safety, and/or environmental regulations. Subcontractor shall furnish: all appropriate shipping certification; labeling in compliance with the Workplace Hazardous Materials Information System; Material Safety Data Sheets in compliance with the Workplace Hazardous Materials Information System; and instructions for shipping, safety, handling, exposure, and disposal in a form sufficiently clear for use by Company's non-technical personnel and sufficiently specific to identify all action which the user must take concerning the material. The following certification must be made on the bill of lading: "This is to certify that the above-named articles are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to any applicable transportation regulations."
- (2) Company shall have the right to use, duplicate, and disclose any data to which this Article is applicable. The purpose of this right is to: apprise personnel of the hazards to which they may be exposed; obtain medical treatment for those affected by the material; and other uses in connection with these same purposes.

(g) **Supplier Quality Surveillance ("SQS") Inspection and Expediting**

- (1) Subcontractor shall be responsible for the performance of all activities affecting quality and schedule including those of its suppliers. Company shall have the right to reject any and all goods which fail to conform to the specifications under which they were purchased or to proper standards of workmanship. Company reserves the right to review Subcontractor's Quality Assurance and Quality Control Procedures. Subcontractor's Quality Plan submittal requirements, if applicable, are defined in the "Supplier Drawing and Data Commitment Form" section of this Subcontract.
- (2) Any Goods provided under this Subcontract are subject to SQS inspection, expediting, audit of Quality Plan implementation and witnessing of Subcontractor testing by the Company's representative and/or the DOE, who shall be granted access to all parts of the Subcontractor's plant(s) or Subcontractor's supplier's plant(s) engaged in the manufacturing or processing of this Subcontract. The representative's inspection and witnessing of testing, or lack of inspection and, witnessing of testing or response, shall in no way release the Subcontractor from any obligations related to this Subcontract. Subcontractor shall further ensure that these terms and conditions become a part of its Subcontracts to its suppliers for all goods or services which are used in the products purchased under this Subcontract. Subcontractor is further responsible for obtaining and submitting Quality Plans as required from its suppliers.
- (3) Subcontractor and/or Subcontractor's suppliers will notify Company at least five (5) calendar days in advance of the date inspection or test can be made. If for any reason the date should be set back, Subcontractor shall telephone, wire, or facsimile Company immediately. **NOTE: THE SUBCONTRACTOR SHALL NOT SHIP THE GOODS ON THIS SUBCONTRACT WITHOUT EITHER COMPANY'S FINAL INSPECTION OR A WRITTEN WAIVER OF INSPECTION FROM COMPANY. VIOLATION OF THIS REQUIREMENT SHALL CONSTITUTE A REJECTION OF THE GOODS, WITH SUBSEQUENT RETURN OR OTHER ACTION AT SUBCONTRACTOR'S COST.**
- (4) Complete and accurate information is required to maintain the overall schedule. Unless otherwise stated, Subcontractor shall at a minimum furnish every fourteen (14) days, status of engineering, material procurement, production, and shipping information.

(h) **Sustainable Acquisition Program***

- (1) Pursuant to Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance, the DOE is committed to managing its facilities in an environmentally preferable and sustainable manner that will promote the natural environment and protect the health and wellbeing of its federal employees and contractor service providers. In the

performance of work under this Subcontract, the Subcontractor shall provide its services in a manner that promotes the natural environment, reduces greenhouse gas emissions, and protects the health and wellbeing of Federal employees, contract service providers and visitors using the facility.

- (2) Green purchasing or sustainable acquisition has several interacting initiatives. The Subcontractor must comply with initiatives that are current as of the contract award date. DOE may require compliance with revised initiatives from time to time. The initiatives important to these Executive Orders are explained on the following Government or Industry Internet Sites:
 - i. Recycled Content Products are described at <http://epa.gov/cpg>.
 - ii. Biobased Products are described at <http://www.biopreferred.gov/>
 - iii. Energy efficient products are at <http://energystar.gov/products> for Energy Star products.
 - iv. Energy efficient products are at <http://www.femp.energy.gov/procurement> for FEMP designated products.
 - v. Environmentally preferable and energy efficient electronics including desktop computers, laptops and monitors are at <http://www.epeat.net> the Electronic Products Environmental Assessment Tool (EPEAT) the Green Electronics Council site.
 - vi. Greenhouse gas emission inventories are required, including Scope 3 emissions which include contractor emissions. These are discussed at Section 13 of Executive Order 13514 which can be found at <http://www.archives.gov/federal-register/executive-orders/disposition.html>.
 - vii. Non-Ozone Depleting Alternative Products are at <http://www.epa.gov/ozone/strathome.html>.
 - viii. Water efficient plumbing products are at <http://epa.gov/watersense>.
- (3) The clauses at FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts, 52.223-15, Energy Efficiency in Energy Consuming Products, and 52.223-17 Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts, require the use of products that have biobased content, are energy efficient, or have recycled content. To the extent that the services provided by the Subcontractor require provision of any of the above types of products, the Subcontractor must provide the energy efficient and environmentally sustainable type of product unless that type of product:
 - i. Is not available.
 - ii. Is not life cycle cost effective or does not exceed 110% of the price of alternative items if life cycle cost data is unavailable (EPEAT is an example of lifecycle costs that have been analyzed by DOE and found to be acceptable at the silver and gold level);
 - iii. Does not meet performance needs; or,
 - iv. Cannot be delivered in time to meet a critical need.
- (4) In the performance of this Subcontract, Subcontractor shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, (<http://www.epa.gov/greeningepa/practices/eo13423.htm>) and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance (<http://www.archives.gov/federal-register/executive-orders/disposition.html>). Subcontractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance. This guide includes information concerning recycled content products, biobased products, energy efficient products, water efficient products, alternative fuels and vehicles, non-ozone depleting substances, and other environmentally preferable products and services. This guide is available on the Internet at: <http://management.energy.gov/documents/AcqGuide23pt0Rev1.pdf>.

When developing the Bill of Materials for approval by the Company's Subcontract Administrator or Company's Technical Representative, Subcontractor shall specify energy efficient and environmentally sustainable materials to the extent possible within the constraints of the general design specifications. Compliance with the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings (Guiding Principles) shall be achieved through certification to the Leadership in Energy and Environmental Design (LEED) Gold level under the LEED rating system most suited to the building type.

(5) [Reserved]

(6) In complying with the requirements of this Article, Subcontractor shall coordinate its activities with and submit required reports through the Company's Subcontract Administrator. Reporting under this Article is only required if the Subcontract offers subcontracting opportunities for energy efficient and environmentally sustainable products or services exceeding \$100,000 in any contract year, except for reporting on high performance sustainable buildings which may be required elsewhere in this Subcontract.

(7) Failure to provide this information may be considered a failure that endangers performance of this contract and may result in termination for default.

(8) Subcontractor will notify Company if it is unable to procure energy efficient and environmentally sustainable items and cite which of the reasons in this Article apply. The reports may be submitted at the conclusion of the Subcontract term provided that the Subcontract delivery term is not multi-year in nature. If the delivery term is multi-year, the Subcontractor shall report its accomplishments for each Federal fiscal year in a manner and at a time or times acceptable to both Parties. Failure to comply with these reporting requirements may be considered a breach of contract with attendant consequences.

(i) Affirmative Procurement of Biobased Products Under Service and Construction Contracts

(1) In the performance of this Subcontract, Subcontractor shall meet the requirements of FAR 52.223-2, in which Subcontractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA) designated items unless, the product cannot be acquired:

- i. Competitively within a time frame providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

- i. Spacecraft system and launch support equipment.
- ii. Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

Information about this requirement and these products is available at: <http://www.biopreferred.gov>.

10. PROPERTY

(a) Protection of the Work and Property*

(1) Subcontractor shall take all reasonable precautions, and such other actions as may be directed by Company, or in the absence of such direction, in accordance with voluntary consensus standards and/or industry leading practices, to safeguard and properly protect the Work, the work of others, and the Company's, DOE's, government's, and adjacent property from damage caused by Subcontractor's operations or in Subcontractor's possession or custody.

- (2) All loss or damages arising out of the nature of the Work will be the responsibility of Subcontractor. Should Subcontractor cause damage to the property of DOE, government, Company, or others, Subcontractor shall promptly notify Company and shall remedy such damage to the satisfaction of Company, or Company may remedy the damage and deduct its cost from any amounts due or to become due Subcontractor, unless such costs are fully recovered under applicable insurance.

(b) Control of Company Furnished Materials and Equipment*

- (1) Materials and equipment furnished by Company shall be received by Subcontractor in the presence of Company authorized representative and quantities thereof shall be checked jointly by Subcontractor and Company. The delivery and acceptance of all such materials and equipment shall be recorded in writing, and Subcontractor shall evidence receipt and acceptance of such materials and equipment by signing forms satisfactory to Company. Subcontractor shall carefully note any visible damage to Company furnished materials and equipment prior to Subcontractor's acceptance of delivery.
- (2) After Subcontractor has accepted delivery of such materials and equipment, Subcontractor shall assume full responsibility for any loss of or damage to such materials and equipment. Subcontractor shall notify Company of any materials and equipment supplied to Subcontractor by Company which are surplus and, without additional compensation, shall cooperate with Company and DOE in the disposition of such surplus as directed by Company.
- (3) Subcontractor shall notify Company of any lack of, or requirement for, materials and equipment required under this Subcontract to be supplied by Company in sufficient time for Company to furnish said materials or equipment in advance of Subcontractor's need.

In the event of misfit of Company furnished materials or equipment, Subcontractor shall promptly notify Company of such misfit. Subcontractor shall take all reasonable steps to avoid standby time due to such misfit or lack of Company furnished materials or equipment and to continue progress of other portions of Work pending correction of such misfit and/or the furnishing of materials or equipment.

(c) Control of Government Furnished Property*

If government furnished property is assigned or acquired under this Subcontract, Subcontractor shall abide to FAR 52.245-1.

(d) Use of Company-Operated Government Owned Property

- (1) If not identified elsewhere in the Subcontract, Subcontractor shall submit to Company STR a written request for usage of Company-operated government-owned facilities, utilities, and equipment, which shall include a description of the proposed usage and any pertinent information or explanation, such as the type of operation, maximum loading, and anticipated period of use.
- (2) Operations of equipment shall be in accordance with the manufacturer's instructions and all pre-operational checks, adjustments and maintenance requirements shall have been completed prior to operation.
- (3) All operational features such as overload protection automatic controls safety devices and all other permanent features shall be installed and operable.
- (4) After using any Government-owned items or facilities, Subcontractor shall restore them to the original condition (like-for-like) the items or facilities were in when Subcontractor received them, including painting, cleaning, and lubrication.
- (5) Acceptance of the return of a government-owned item or facility by Company is subject to Subcontractor's observance and compliance with the foregoing.
- (6) Cold Weather Activities/Maintaining Conditions: Temporary heat and cold weather protection (e.g., enclosures) shall be provided by Subcontractor as necessary to establish minimum conditions for freeze protection. Failure to maintain minimum conditions shall be cause for correction or

replacement by Subcontractor of government-owned facilities, utilities, and equipment.

(e) Property Management and Classified Materials*

Subcontractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control, and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices, and procedures for property management contained in Company's Personal Property Management System, Prime Contract flowdowns, the Federal Property Management Regulations (41 CFR chapter 101), the DOE Property Management Regulations (41 CFR chapter 109), and other applicable regulations.

11. LOWER-TIER SUBCONTRACTORS

- (a) Subcontractor shall not sublet performance of all or any portion of the Work absent Company's prior written approval. No changes will be allowed from the approved Lower-tier Subcontractors without the prior written approval of Company. Company reserves the right to direct Subcontractor to assign any Lower-tier subcontract to the Company, the Government, or another Subcontractor.
- (b) Subcontractor shall not be relieved of its responsibility for the Work by virtue of any Lower-tier Subcontract regardless of Company's approval.
- (c) Subcontractor warrants that any Lower-tier Subcontractor will comply fully with the terms of this Subcontract. Subcontractor shall bind all Lower-tier Subcontractors to: (1) Prime Contract's flowdowns, (2) Subcontract's General Provisions as indicated with an asterisk (*), and (3) Sections of this Subcontract's Attachments as applicable to the portion of the Work performed by them.
- (d) Subcontractor is as fully responsible for the acts and omissions of its Lower-tier Subcontractor(s) and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Subcontractor.
- (e) Upon Company's request, Subcontractor shall provide certification that Lower-tier Subcontractor(s) have the necessary permits and licenses for the portion of the work performed by them.
- (f) Company shall have the right from time to time to contact any Lower-tier Subcontractor to discuss their progress.
- (g) Failure of Subcontractor to comply with this Article may be deemed by Company to be a material breach of this Subcontract.

12. CHANGE MANAGEMENT AND SCHEDULE

(a) Schedule

- (1) Subcontractor shall provide all Work by the agreed upon date(s) outlined in this Subcontract or agreed upon by the Parties, in writing. No review or comment by Company or DOE relieves Subcontractor of the responsibility for compliance with this Subcontract.
- (2) Company may extend the schedule of this Subcontract by written notice anytime.
- (3) If Subcontractor falls behind schedule, Subcontractor shall give Company notice within five (5) days of such occurrence. Subcontractor's failure to so notify Company of such delay shall constitute a waiver of Subcontractor's right to a time adjustment unless Company is granted relief under the Prime Contract.
- (4) If no time adjustment is approved by the DOE, as applicable, Subcontractor shall expedite Work until Company determines progress conforms to the schedule. All costs associated with any such actions are borne solely by Subcontractor unless a written Modification is signed by Company.
- (5) If a time adjustment is approved by the DOE, Company shall approve a revised schedule if Subcontractor provides evidence satisfactory to Company of any such delay.

- (6) There shall be no Price Adjustment by virtue of any such time extension unless Company secures a corresponding Price adjustment from the DOE for Subcontractor's Work or Company otherwise signs a modification.
- (7) At all times, Subcontractor to take effective corrective action to eliminate any delay, including premium work time at Subcontractor's sole expense. In addition, Subcontractor shall cooperate with any Company and/or DOE expediting effort and inform Company regularly on the progress of the corrective action to meet delivery commitments. Any such expediting effort shall not relieve Subcontractor of its primary expediting responsibility and no liability shall be assumed by Company or DOE by reason of such action or inaction.
- (8) Any delay in Work or any approved milestone is a material breach of this Subcontract. In addition to any other remedies at law or equity, if Subcontractor fails to take effective corrective action, Company, may terminate this Subcontract for cause.

(b) Modification

- (1) The Company's Subcontract Administrator or the Company's Subcontract Manager are the only individuals authorized to bind the Company contractually in performance of work under this Subcontract.
- (2) Failure by Subcontractor to assess requirements described in the Statement of Work shall not be accepted as a basis for entitlements to an equitable adjustment pursuant under this Article.
- (3) If Subcontractor knows or should have known of a change, revision, addition, or deletion of the Work, Subcontractor shall give Company written notice within five (5) calendar days after the happening of any event which Subcontractor believes may give rise to an adjustment in Price and/or Schedule.
- (4) Company shall not be liable for, and Subcontractor hereby waives, any claim or potential claim in which Subcontractor did not report a modification in accordance with the provisions of this Article.
- (5) Within thirty (30) calendar days after such notice, Subcontractor shall supply Company with a completed Information Review/Change Order ("IRCO Form"), FRM-2210, to provide information regarding any modification supporting Subcontractor's request, including a detailed estimate of the adjustment in Statement of Work, Price, schedule, and/or Lower-tier Subcontractors. Subcontractor shall utilize the approved rates outlined in this Subcontract.
- (6) Upon receipt of the IRCO Form, Company shall review and submit to the DOE for approval, if applicable. Any Price or Schedule adjustment granted to Company by DOE relating to the Work, is a condition precedent to any obligation by Company to sign a modification.
- (7) If DOE approves the Modification request, Company shall issue a written Modification to this Subcontract which will be effective once signed by both Parties. If DOE does not approve the Modification Request, Company, at its sole discretion, may sign a written modification.
- (8) No Subcontractor claim is allowed after final payment under this Subcontract.
- (9) Subcontractor shall continue performing Work while any Subcontractor Modification request is pending. However, Subcontractor shall not start the additional Work until Company provides written approval.
- (10) If the Statement of Work is reduced by modification, such action will not constitute a claim for damages based on loss of anticipated profits. However, failure to agree to any adjustment shall be a dispute within the meaning of the Article of these General Provisions entitled "Disputes."
- (11) Nothing herein will be construed as relieving Subcontractor of its obligations to perform, including without limitation, the failure of the Parties to agree upon Subcontractor entitlement to, or the amount of, any adjustment in price or period of performance.

- (12) Except as may be expressly set forth in this Subcontract and with the government contracting officer's express consent, this Subcontractor shall not acquire any direct claim or direct course of action against the U.S. Government.

If Company approves Subcontractor's performance of additional Work, then a separate monthly invoice for the authorized additional Work shall be submitted to Company in no more than sixty (60) calendar days following the completion of the additional Work for which Subcontractor bases its claim. In case the claim is found to be just, it will be allowed and paid for as provided in this Subcontract.

(c) Material Changes

- (1) No substitutions shall be made in this Subcontract without the prior written consent of the Company. The Company shall have the right by written direction to make changes in the specification and drawings for goods or services covered by this Subcontract. If Subcontractor believes that such change affects the price or delivery date for such goods or services, Subcontractor shall so notify Company in writing (with adequate supporting documentation) within five (5) working days after receipt of said written direction. Subcontractor shall suspend performance of the change unless thereafter released in writing by Company to perform said change, and Company and Subcontractor shall mutually agree in writing upon an equitable adjustment in the Price and/or delivery date to reflect the effect of such change.
- (2) Subcontractor's request for any adjustments shall be deemed waived unless submitted in writing within such five (5) working days after Subcontractor receives direction to make such changes. Subcontractor shall not suspend performance of the unaffected portion of this Subcontract while Company and Subcontractor are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Company. If released in writing by Company, Subcontractor shall comply with and perform such change in accordance with the terms of this Subcontract during the time Subcontractor and Company require to mutually agree upon an equitable adjustment. No agreement or understanding modifying the conditions of terms of this Subcontract shall be binding upon Company nor will extra compensation be paid by Company unless the agreement or understanding is made in writing.

13. COMPANY'S OBLIGATION AND RIGHTS

(a) Availability of Funds

Company's obligations are contingent upon the availability of appropriated funds from the United States Congress from which payment can be made. No legal liability on the part of the Company or the Government for payment of any money shall arise unless and until the funds are made available to the Company.

(b) Technical Direction

In addition, Subcontractor agrees to assume the full liability arising out of the improper use of any information provided by Company.

- (1) Company may provide technical direction in order for Subcontractor to perform Work. The term "technical direction" is defined to include, without limitation:
- i. Directions to the Subcontractor that redirects the Subcontract's effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the Work.
 - ii. Provide written information to the Subcontractor to assist in the interpretations of drawings, specifications, or technical portions of the Work.
 - iii. Review and/or approve Subcontractor's technical reports, drawings, specifications, and technical information.

Technical direction will not constitute as Company's approval for changes in Work, Price, Period of Performance, or any provisions under this Subcontract. All such changes will only be processed through the Company's Subcontracts Administrator, in accordance with the provisions of this Subcontract.

(c) Observation of Work

- (1) Company reserves the right, but not the obligation, at all reasonable times to audit, assess, inspect, witness, test or otherwise evaluate the Work performed or being performed by Subcontractor or others. Further, Company has the right to inspect and test all material and equipment furnished under this Subcontract. If any inspection or evaluation is made by Company on the premises of Subcontractor or others completing services in relation to this Subcontract, Subcontractor shall provide all reasonable facilities and assistance for Company's safety and convenience in the performance of the inspection. Such inspection or evaluation shall not relieve Subcontractor of its obligations, responsibilities for damage or loss of material, quality assurance and control under this Subcontract. Further, it does not constitute or imply acceptance or affect the rights/remedies of Company of the Government after acceptance of the Work.
- (2) Conditions observed by Company which are averse to quality, including unsatisfactory implementation of Subcontractor's quality assurance program or departure from the technical specification requirements, will be identified to Subcontractor for immediate resolution and corrective action. Subcontractor failure to resolve identified deficiencies may be cause for issuance of a Stop Work Order(s). Deficiency Reports and/or Stop Work Orders require a satisfactory evaluation from Subcontractor relative to the direct and root causes, the proposed remedy and delineation of measures taken to prevent recurrence.

(d) Right to do Work

If Subcontractor, in the opinion of Company, neglects to perform the Work properly or neglects or refuses at its own cost to take up and replace Work rejected by Company, then Company will, without prejudice to any other right which Company may have under this Subcontract, take over that portion of the Work which has been improperly executed and make good the deficiencies and deduct the cost thereof from the payments then or thereafter due Subcontractor.

(e) Right to Offset

Company, without waiver or limitation of any rights or remedies of Company or DOE, shall be entitled from time to time to deduct from any amounts due or owed by Company to Subcontractor, in connection with this Subcontract (or any other subcontract with Company), any and all amounts owed by Subcontractor to Company or DOE in connection with this Subcontract.

(f) Reservation of Rights

The making or failure to make any inspection of, or payment for, the goods or services covered by this Subcontract shall in no way impair Company's right to reject nonconforming or defective goods or services, nor be deemed to constitute acceptance by Company of the goods or services, nor affect in any way Subcontractor's obligations under this Subcontract notwithstanding Company's opportunity to inspect the goods or services, Company's knowledge of the non-conformity or defect, its substantiality or the ease of its discovery, nor Company's earlier failure to reject the goods or services.

(g) Right to Withhold Payment

Company retains all rights under applicable laws to withhold payments. In addition, Company shall have the right to withhold payments otherwise due to Subcontractor under the following circumstances:

- (1) If Subcontractor has not submitted all information and/or vendor data requested under this Subcontract.
- (2) If the Government questions or withholds payment, in whole or in part, of any amount invoiced, regardless of the Government's reasons or the time of the Government action, the Company shall have the right to withhold an equivalent amount from any payment that is otherwise due or becomes payable under this Subcontract.

- (3) If, as a result of a determination by the Government that costs invoiced are unallowable, whether through a final decision of a government contracting officer, an administrative decision, a judicial decision, or otherwise. Company shall be entitled to withhold an equivalent amount from any payment that is otherwise due or becomes payable under this Subcontract.
- (4) If it is determined that Subcontractor has been overpaid, whether as a result of an audit performed by the Company, an external auditor, or a government audit or review. Company shall have the right to withhold the amount of any such overpayment from any payment that is otherwise due or becomes payable to Subcontractor under this Subcontract.
- (5) If it is subsequently determined that any such costs questioned, withheld, or disallowed by the Government are in fact allowable and the Government pays such amounts to the Company shall promptly pay to Subcontractor any such amounts that have been paid by the Government that are otherwise due to Subcontractor.
- (6) If there is no payment that is otherwise due or becomes payable under this Subcontract, Company will request Subcontractor to repay the costs that were overpaid, or the costs not allowable or approved.

(h) Back-charges

- (1) A back-charge is a cost sustained by Company and chargeable to Subcontractor for Company's performance of work that is the responsibility of Subcontractor. Upon identification by Company of an actual or anticipated back charge, Company will issue a back-charge notice to Subcontractor. This notice shall describe the back-charge work to be performed, the schedule period for performance, the cost to be charged by Company to Subcontractor for the back charge and any other terms.
- (2) The back-charge cost shall consist of: (1) Labor: at actual cost; (2) Materials: at actual supplier and freight invoice cost delivered to jobsite; (3) Equipment: at actual third party rental cost or at Company's equipment rental rates, whichever may be applicable; (4) Subcontracts: at actual cost; and (5) all taxes, levies, duties, and assessments attributable to the back-charge work.
- (3) Within twenty-four (24) hours after receipt of the back-charge notice, Subcontractor shall e-mail a signed copy of the back-charge notice to Company, indicating either acceptance of the back-charge or agreement to perform the described back-charge work within the indicated schedule period for performance, utilizing Subcontractor supplied labor, material, and equipment, at no additional cost to Company.
- (4) In the event Subcontractor refuses to sign, Company shall, at its option, proceed with the back-charge work and charge the back-charge cost to Subcontractor's account. Thirty (30) calendar days after commencement of the back-charge work or on completion of the back-charge work, whichever occurs sooner, Company will invoice Subcontractor for the incurred back charge cost.

14. COMPANY WORKING DAYS

Standard work week is Monday through Thursday 7:00 am to 5:30 pm. Work during other hours must be coordinated in advance with the Company's STR.

(a) The following holidays are observed by the Company for all employees:

- New Year's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day
- Any other day designated by Federal statute, Executive order, or the President's proclamation.

- (b) When any holiday falls on a Saturday, the preceding Friday is observed. When any holiday falls on a Sunday, the following Monday is observed. Observance of such days by Government personnel shall not be cause for an additional period of performance or entitlement of compensation except as set forth within the Subcontract.

15. GENERAL LEGAL PROVISIONS

(a) Assignment

- (1) Subcontractor's responsibilities and obligations under this Subcontract are non-delegable Work. Subcontractor may not assign or transfer any of its rights, duties, or obligations under this Subcontract without Company's prior written consent. Any unauthorized assignment is void and unenforceable. These conditions and the entire Subcontract are binding on the heirs, successors, and assigns of the Parties hereto.
- (2) Company may assign or novate this Subcontract to DOE, successor, or to such party as DOE may designate. Further, Company may novate this Subcontract to an affiliate, subsidiary, or parent corporation in the case of normal corporate restructuring. Subcontractor shall not withhold its written consent, provided any such novation does not adversely affect Subcontractor's ability to perform Work. The Parties' respective heirs, successors, and assigns are bound by this Subcontract.
- (3) If novated, Subcontractor agrees to (1) furnish phase-in and phase-out services and training as agreed upon between the Parties; (2) exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor, if directed to do so by the Company; and (3) provide sufficient experience personnel during the phase-in, phase-out period to ensure that the services called for by this subcontract are maintained at the required level of proficiency.

(b) No Third-Party Beneficiaries

Except for those provisions that expressly operate for the benefit of DOE, nothing contained in this Subcontract shall create any rights, benefits, or third-party beneficiary to anyone other than Company and Subcontractor.

(c) Conflicts Of Interest*

- (1) Subcontractor warrants that, to the best of its knowledge and belief, there are no relevant facts or circumstances which could give rise to a potential or actual personal or organizational conflict of interest by Subcontractor, Subcontractor's employees, or Lower-tier Subcontractor or contingent staffing performing Work. A conflict of interest means that because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice in the performance of the Work, or the person's objectivity in performing the Work is or might be otherwise impaired.
- (2) Subcontractor shall comply with all parts of this Article, Subcontract, Prime Contract and DEAR 48 CFR part 13.
- (3) Subcontractor agrees to notify Company immediately, if to the best of its knowledge and belief, an actual or potential conflict of interest exists. Subcontractor shall make a full disclosure to Company. This disclosure shall include a description of actions which the Subcontractor has taken or proposes to take to avoid or neutralize the actual or potential conflict of interest. Company shall confirm of any contrary action to be taken and if this Subcontract shall continue performance.
- (4) Company may terminate this Subcontract, in whole or part, if it deems such termination necessary to avoid a personal or organizational conflict of interest.

(d) Nondisclosure Agreement*

To enable the Subcontractor and Lower-tier Subcontractors to conduct activities related to the Work, it may be necessary for Company to disclose proprietary or confidential information to Subcontractor. In that regard, Subcontractor agrees, from the date of disclosure of information, to treat the information in strictest

confidence, safeguard and protect such information, and will not appropriate such information for its own use or disclose such information to third parties unless Company specifically authorizes in writing.

The obligations do not apply to information which:

- (1) is in the public domain at the time of receipt by Subcontractor,
- (2) becomes part of the public domain through no fault or action of the Subcontractor after it was received by Subcontractor,
- (3) the Subcontractor can demonstrate was previously in its possession and not acquired directly or indirectly as a result of access obtained by performing Work,
- (4) the Subcontractor can demonstrate was received from a third party who has the lawful right to disclose the information, or
- (5) is subject to release under applicable law.

Subcontractor shall obtain a written nondisclosure agreement from each employee performing work under this Subcontract, prior to permitting the employee to access information covered by this Article. The nondisclosure agreement shall be in a format satisfactory to the Company.

(e) Confidential and Proprietary Information*

Except when otherwise authorized in writing by Company and/or DOE, all drawings, specifications, technical data, and other information furnished to Subcontractor either by Company or DOE are, and will remain, the property of Company or DOE, and may not be copied or otherwise reproduced or used in any way except in connection with the Statement of Work, disclosed to third parties, or used in any manner detrimental to the interest of Company or DOE.

(f) Ownership of Work Products and Intellectual Property

All of the work products of the Subcontractor in executing this Subcontract (including all the rights related to such work products) shall be the sole property of Company, subject to the rights of the DOE, as the case may be. All reports, data, information, documents, specifications, flow-charts, discoveries, know-how, inventions, processes, firmware, computer software, source and object code, and software documentation as well as any resulting intellectual property, including but not limited to, invention disclosures, provisional patent applications, regular patent applications, patents, trade secrets, proprietary information, copyrights, trademarks, service marks, domain names, trade dress, and moral rights developed during the course of, or as a result of, the project shall be the sole property of Company, subject to the rights of the DOE, as the case may be. Moral rights are expressly waived by Subcontractor. Subcontractor agrees that if the Subcontractor's Work under this Subcontract involves development of copyrightable items, then each such item is deemed to be a "work for hire" under United States Copyright Law so that all ownership interests, including copyrights and all other rights, are solely owned by Company, subject to the rights of the DOE, as the case may be. Subcontractor additionally transfers and assigns to Company all of the Subcontractor's copyright interests (if any) in all the items to be developed by Subcontractor for Company. Subcontractor further agrees to execute any additional documents which Company may require to transfer the copyrights or other intellectual property to Company.

(g) Force Majeure*

Neither Party is liable to the other Party or Lower-Tier Subcontractor(s) for delays in performing the Work or for the direct or indirect cost resulting from such delays, that may result from acts of God, acts of governmental authorities, acts of public enemy, acts of civil or military authority, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either Party. Each Party will take reasonable steps to mitigate the impact of any force majeure. The Parties may adjust the schedule and compensation under this Subcontract only to the extent that DOE adjusts Company's schedule and compensation.

(h) Waiver

- (1) Company's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Subcontract, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, and/or any right or privilege.
- (2) Company's acceptance of any Goods shall not operate as a waiver of rights hereunder or otherwise relieve Subcontractor from its responsibility for supplying and delivering Goods in accordance with the requirements of this Subcontract or any other obligation of Subcontractor under this Subcontract.

(i) Severability and Survival

If any provision of this Subcontract is determined to be invalid, illegal, void, or unenforceable for any reason, the enforceability of the other remaining provisions shall not be impaired. If a court of competent jurisdiction determines any provisions of this Subcontract is invalid, it shall be enforced to the full extent the court allows and this Subcontract shall be reformed accordingly. Indemnification and other express representations shall survive the termination, cancellation, completion, or expiration of this Subcontract.

16. TERMINATION AND SUSPENSION

(a) Suspension of Work

Company may, by written notice to Subcontractor, suspend all or a part of the Work. Subcontractor shall resume the Work, all or in part, upon written notice from Company, and an extension of time and/or an equitable adjustment in compensation, if appropriate, will be mutually agreed upon. Subcontractor shall not be entitled to any compensation, prospective profits, or any damages incurred during such a suspension.

(b) Termination for DOE

This Subcontract may be terminated at any time by Company, with or without cause, under the procedures set forth in the Prime Contract, or as directed by DOE. In no event shall Subcontractor be entitled to anticipated profits because of termination by Company. If Company should terminate this Subcontract for cause and it is later determined that cause did not exist for such termination, the termination will be deemed a termination for convenience.

(c) Termination for Convenience

All or part of this Subcontract may be terminated by Company for its convenience. In such event, Subcontractor will be entitled to compensation for Work competently performed up to the date of termination and reasonable termination expenses as determined at the discretion of Company. Subcontractor will not be entitled to compensation or profit on Work not performed.

Further, Company may terminate in accordance with FAR 52.249-2, FAR 52.249-3, or 52.249-6, which is incorporated herein by reference and made part hereof. Wherever necessary to make the context of the clause applicable to this Subcontract, the term "Company" shall mean Subcontractor, the term "Subcontractor" shall mean Lower-tier Subcontractor, the term "Contract" shall mean this Subcontract, the term "subcontract" shall mean Lower-tier Subcontract, and where noted or necessary to derive proper meaning, the terms "Government", "Contracting Officer", and equivalent phrases shall mean Company.

(d) Termination for Default

Company may, by written notice, terminate the whole or any part of this Subcontract for default if Subcontractor ceases its operations, is unable to meet its obligations, or fails to perform any of its obligations under this Subcontract, including failure to comply with any of Company's instructions, regulations or procedures, or failure to meet the specified schedule of performance, then Subcontractor shall be in default, upon notice from Company. If Subcontractor does not correct default to Company's satisfaction, Company may terminate this Subcontract, whole or in part for default. In the event of termination for default, Subcontractor will not be entitled to termination expenses. If it is determined for any reason that Subcontractor was not in default or that the default was excusable, such termination shall be deemed a termination for convenience.

17. DISPUTES

(a) Dispute Resolution

Consistent with the Prime Contract, Company and Subcontractor shall be bound by any provisions in the Prime Contract relating to the resolution of disputes. This shall include the choice of state law and any restrictions on jurisdiction and venue. However, if a dispute arises between Company and Subcontractor which does not involve a claim by or against the DOE and does not otherwise affect the rights of the DOE, the following procedures shall control.

- (1) If any claim or dispute cannot be resolved, within fourteen (14) business days after the dispute is submitted in writing or later date as may be agreed in writing by the Parties, between the senior management representatives of the Parties, or through good faith negotiations, then either Party may submit the dispute to a court of competent jurisdiction and attempt to resolve the dispute through litigation.
- (2) To the extent permitted by applicable law, the Parties waive any right they may have to a trial by jury. Notwithstanding the above, either Party may seek injunctive or other equitable relief in any court of competent jurisdiction at any time.
- (3) It is agreed that the non-prevailing party in litigation shall pay, in addition to any judgment, reasonable attorneys' fees, prejudgment interest and costs incurred by the prevailing party as a result of the court proceedings.
- (4) Pending resolution or settlement of any dispute arising under this Subcontract, Subcontractor will proceed diligently as directed by Company with the performance of this Subcontract.

(b) Governing Law

- (1) The governing law of this Subcontract and any litigation shall be brought and prosecuted exclusively in Federal District Court, with venue in the United States District Court for the District of Idaho in Pocatello, Idaho. However, in the event that the requirements for jurisdiction in the Federal District Court for the District of Idaho, in Pocatello, Idaho are not present, such litigation shall be brought exclusively in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, with venue in Idaho Falls, Idaho. Any substantive issue of law in dispute shall be determined in accordance with federal U.S. procurement law; provided, however, if there is no applicable federal U.S. procurement law, then Idaho law shall govern.
- (2) There shall be no interruption in the prosecution of the Work, and the Subcontractor shall proceed diligently with the performance of this Subcontract pending final resolution of any dispute, claim, or litigation, arising under, or related to, this Subcontract, between the Parties hereto or between the Subcontractor and Lower-tier Subcontractors.
- (3) The Contract Disputes Act of 1978 (41 U.S.C. Sections 601 613) shall not apply to this Subcontract; provided, however, nothing in this Article shall prohibit Company, at its sole discretion, from sponsoring a claim of the Subcontractor for resolution under the provisions of its prime contract with DOE. If Company sponsors a claim at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE contracting officer to the same extent and in the same manner as Company.

(c) Notice of Labor Disputes

If Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Subcontract, the Subcontractor shall immediately give notice with all relevant information to Company.

(d) Differing Professional Opinions

- (1) This Article is applicable when the Work involves professional, technical areas where there is more than one professional opinion, solution or direction significantly impacting programmatic missions, safety, health, or the environment. By accepting this Subcontract, the Subcontractor agrees to participation in Company Differing Professional Opinions program pursuant to DOE Order 442.2, *Differing Professional Opinions for Technical Issues Involving Environmental, Safety, and Health Technical Concerns*, issued on July 29, 2011. The Subcontractor will notify its employees quarterly of their right to utilize Company Differing Professional Opinion Process.
- (2) If Subcontractor has any issues or concerns, Subcontractor shall complete the Differing Professional Opinion Submittal Form to Company. Subcontractor can obtain this form from the Company's Subcontracts Administrator or the Company's Subcontract Technical Representative.

(e) Allocation of Liability for Fines and Penalties to Responsible Party

- (1) Liability and responsibility for civil fines or penalties arising from or related to violations of environmental, safety, health, or quality requirements shall be borne by the party that caused the violation. This Article resolves liability for fines and penalties, though the cognizant regulatory authority may assess such fine or penalty upon either party or both Parties without regard to the allocation of responsibility or liability under this Subcontract. The allocation of liability for such fine or penalty is effective regardless of which party signs permit applications, manifests, reports, or other required documents, is a permittee, or is named subject of an enforcement action or assessment of a fine or penalty.
- (2) Regardless of what party is the named subject (Subcontractor, Company, or DOE) of an enforcement action for noncompliance with the environmental, safety, health, or quality requirements by the cognizant regulatory authority, liability for payment of any fine or penalty as a result of Subcontractor's actions or inactions is the responsibility of the Subcontractor, as appropriate, and not reimbursable under this Subcontract. Further, the cost of fines and penalties resulting from violations of or failure of the Subcontractor to comply with federal, state, local, or foreign laws and regulations are unallowable.

(f) Notice of Civil Penalties for Violation of Security of DOE Classified or Sensitive Information or Data

Subcontractor and Lower-tier Subcontractors shall comply with PL 107-197 relating to the safeguarding and security of restricted data, 42 U.S.C.A. 2282b. Any person who violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary pursuant to this chapter relating to the safeguarding or security of Restricted Data or other classified or sensitive information shall be subject to a civil penalty of not to exceed \$100,000 for each such violation.

18. MISCELLANEOUS PROVISIONS

(a) Prohibition On Bribery and Corruption*

Subcontractor, Lower-tier Subcontractors, all employees, and agents, of any of them, shall be in compliance with all applicable laws dealing with anti-corruption and anti-bribery, including but not limited to the U.S. Foreign Corrupt Practices Act, as amended.

(b) Equal Employment Opportunity

Unless exempted by rules, regulations, or orders of the Secretary of Labor, Subcontractor shall comply with applicable laws, executive orders, and regulations concerning nondiscrimination in employment including but not limited to the Equal Opportunity - FAR 52.222-26, Equal Opportunity for Veteran - FAR 52.222-35, and Equal Opportunity for Workers with Disabilities - FAR 52.222-36, as amended.

(c) Human Trafficking and Worker Welfare

- (1) The Parties agree to comply with the applicable provisions of National Security Presidential Directive/NSPD-22, the applicable provisions of 22 U.S.C. 7104 as amended by the Trafficking Victims Protection Reauthorization Act of 2003 (Pub. L. 108-193), the Trafficking Victims Protection Reauthorization Act of 2005 (Public Law 109-164), the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110-457), the Trafficking Victims Protection Reauthorization Act of 2013 (Title XII of the Violence Against Women Reauthorization Act of 2013) (Public Law 113-4), and all applicable implementing regulations with regard to the U.S. Government's "zero tolerance" policy against human trafficking.
- (2) If the Subcontractor is not organized under the laws of the United States of America. Subcontractor agrees to strictly comply with all applicable laws, rules, and regulations to which compliance is required by any lawful jurisdiction governing the trafficking of persons including the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (3) Subcontractor shall immediately notify Company if there are any actual or reasonable suspicion of violation of this Article.

(d) Labor Standards

When the Service Contract Labor Standards, formerly known as Service Contract Act of 1965, or the Wage Rate Requirements (Construction), formerly known as Davis-Bacon Act, is applicable to the performance of this Subcontract, Subcontractor shall comply with the requirements of the Labor Standards Determination Form attachment in this Subcontract. If revised by DOE, Subcontractor and Lower-tier Subcontractors shall comply with the revised labor wage determinations for covered employees.

(e) Notice Regarding the Purchase of American-Made Equipment and Products - Sense of Congress

Subcontractor and Lower-tier Subcontractors shall comply with Section 1605 of the Recovery Act, PL 111-5, as amended. It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Subcontract should be American made.

(f) Waiver of Facilities Capital Cost of Money

The facilities capital cost of money is an unallowable cost under this Subcontract.

(g) Foreign Travel

Subcontractor and Lower-tier Subcontractors shall comply with Foreign Travel, DEAR 952.247-70, as amended. This regulation will apply when the Work requires travel outside the United States of America or its territories.

(h) Foreign Nationals

Subcontractor, Lower-tier Subcontractors, and subcontractors at any tier shall comply with the DOE Unclassified Foreign Visits and Assignments Program, DOE Order 142.3A, as amended. Subcontractor shall notify Company if any personnel, defined under this DOE Order, may have access to information, be involved, provide services, or visit sites (including deliveries) under this Subcontract. In addition, such personnel must complete required paperwork for processing. Subcontractor shall obtain the necessary information and forms from Company's Subcontract Administrator. Company and/or DOE must provide prior written approval for such personnel.

(i) Foreign Ownership, Control, or Influence ("FOCI")

Subcontractor shall comply with DEAR 952.204-2, Security Requirements (March 2011) and DEAR 952.204-70, Classification/Declassification (Sep 1997), as amended. (Replace "Contractor" with "Subcontractor", replace "Contracting Officer" with "IEC", and "Subcontractor" with "Lower-tier Subcontractor"). Subcontractors are responsible to make sure that all Lower-tier Subcontractors requiring

access authorizations under this Contract shall have a FOCI approval specific for this Subcontract before the Subcontractor can award any Lower-tier Subcontract. Subcontractor shall submit any Lower-tier Subcontract FOCI request for processing and approval.

(j) Reporting Fraud, Waste and Abuse

- (1) Subcontractor, Lower-tier Subcontractors, and their members, managers, directors, officers, employees, agents, and representatives of each, shall comply with Reporting Fraud, Waste and Abuse to the Office of Inspector General, DOE O 221.1B, FAR Contractor Code of Business Ethics and Conduct, 52.203-13, and Company's policies, as amended.
- (2) Subcontractor shall timely disclose, in writing, anytime they have information about actual or suspected violations of laws, regulations, or policies including fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, subcontracts, or information technology systems.
- (3) Subcontractor shall timely disclose, in writing, anytime there is a violation of (1) Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the U.S. Code or (2) the civil False Claims Act, found in Title 31 of the U.S. Code.

(k) Defense Nuclear Facilities Safety Board (DNFSB)*

Subcontractor shall cooperate with Company in preparation of responses to DNFSB. If directed by Company, Subcontractor shall fully cooperate with DNFSB and provide access to such work areas, personnel, and information as necessary. If such cooperation to support causes a change in Price or schedule under this Subcontract, Subcontractor may request and equitable adjustment as outlined.

(l) Lobbying Restriction

Subcontractor agrees that none of the funds obligated on this Subcontract shall be expended, directly or indirectly, to influence Congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

(m) Export Authorizations

- (1) Subcontractor agrees to comply with all applicable export and re-export control laws and regulations, including but not limited to United States Export Administration Regulations (EAR) administered by the Bureau of Industry and Security, U.S. Department of Commerce, trade and economic sanctions regulations administered by the Office of Foreign Assets Control (OFAC), U.S. Department of Treasury, the International Traffic in Arms Regulations (ITAR), Arms Control Export Act, and United States Munitions List (USML) administered by Directorate of Defense Trade Controls, Bureau of Political-Military Affairs of the U.S. Department of State, and any other export authorities identified in Supplement 3 to Part 730 of the EAR.
- (2) Subcontractor shall notify Company of goods, services, and technologies for which an export license or other regulatory approval is required and shall provide accurate export classification and licensing information necessary for supporting export documents. Accordingly, Subcontractor agrees to indemnify Company for any fines, penalties, claims, losses, damages, costs (including legal costs), expenses, and liabilities that may arise as a result of Subcontractor's breach of this Article.

END OF GENERAL PROVISIONS