

# IDAHO ENVIRONMENTAL COALITION, LLC

## GENERAL PROVISIONS

### 1. DEFINITIONS

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

- 1.1 "Article" means a specific numbered clause within these General Provisions.
- 1.2 "Company" means Idaho Environmental Coalition, LLC, the party issuing this Order.
- 1.3 "DEAR" means Department of Energy Acquisition Regulation
- 1.4 "DOE" means the United States Department of Energy.
- 1.5 "FAR" means Federal Acquisition Regulation
- 1.6 "Goods" means item(s), material, and equipment specified and any associated Work necessary to complete this Order.
- 1.7 "Government" means the United States of America or any duly authorized representative thereof.
- 1.8 "ICP" or "Project" means the Idaho Cleanup Project.
- 1.9 "INL" means the Idaho National Laboratory located approximately 50 miles west of Idaho Falls, Idaho, exclusive of the Naval Reactors Facility.
- 1.10 "Lower-tier Subcontractor" or "Lower-tier Supplier" 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 Order.
- 1.11 "Main Guard Post" means building B-27-603 at the INL main entrance.
- 1.12 "Order" means the Subcontract or Purchase Order awarded to the Subcontractor.
- 1.13 "Prime Contract Flowdown Clauses" means the Prime Contract Flowdown Clauses for Orders and Procurement located on <https://idahoenvironmental.com/Procurement/>.
- 1.14 "Parties" means Company and Subcontractor collectively and each of Company and Subcontractor is a "Party."
- 1.15 "Prime Contract" means the Company's Contract No. 89303321DEM000061, dated 27-May-2020 with the United States Department of Energy.
- 1.16 "Site" means any area that the Subcontractor is authorized to perform the Work.
- 1.17 "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 Order.
- 1.18 "Subcontractor" means the party to whom this Order is awarded.
- 1.19 "Subcontract Administrator" or "SA" means the authorized representative of Company who will administer this Order.
- 1.20 "Subcontract Technical Representative" or "STR" means the individuals identified in this Order 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 Order 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 discrepancies or inconsistencies in shall be resolved by giving precedence in the following order:

- i. Amendments (e.g., Modifications/Changes)
- ii. Contract Agreement (e.g., Order, Purchase Order, and Release or Task Orders)
- iii. Statement of Work, Technical Specifications, and Drawings
- iv. Prime Contract Flowdown Clauses
- v. Supplemental Provisions for Material and Equipment
- vi. Supplemental Provisions for On-Site Services
- vii. Supplemental Provisions for Management of Government Property
- viii. Supplemental Provisions for Contract Type (e.g., Commercial, Construction, Firm Fixed Price, Time and Material/Labor-Hour, or Cost Reimbursement)
- ix. General Provisions
- x. Other forms, documents, exhibits, and attachments

## 4. SUBMITTALS AND DELIVERABLES

The Subcontractor is responsible for reviewing all submittals and deliverables in this Order, required to submit to the Company. The Subcontractor shall review each submittal and deliverables section to ensure compliance and applicability. The Subcontractor shall contact the Company's SA with any questions.

## 5. PAYMENT TERMS

- 5.1 Unless otherwise stated on the Order, payment will be made Net 30 upon receipt of an acceptable invoice and verification of amounts billed and upon completion of all Order requirements unless progress, milestone or other payment authorization is required by the Order.
- 5.2 **Release and Certificate of Final Payment Form:** If the Order Price is over \$250,000, the Subcontractor will submit their final invoice and a Release and Certificate of Final Payment Form to the Company's SA, upon completion of Work and Company's acceptance. The Subcontractor can obtain this Form from the Company's SA.
- 5.3 **Interest Payment:** No interest is payable to the Subcontractor for any claim it may have, except that specifically imposed by a court of competent jurisdiction on any judgment, and then only in accordance with the terms of the judgment.
- 5.4 **Discounts:** For any discount offered for early payment, the time shall be computed from the date of the Company's receipt of an acceptable invoice and all prerequisite conditions for payment have been met. For computing the discount earned, the 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.
- 5.5 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 Order requirements; that all payments to Subcontractor and Lower-tier Subcontractors under this Order have been paid or will be paid 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. Falsely invoicing costs may result in civil or criminal penalties as a violation of the Federal False Claims Act (31 USC 37296).

## 6. INVOICE REQUIREMENTS

### 6.1 Invoice Content Requirements

Each Order, Order Release, or Purchase Order shall be invoiced separately. All invoices must include the following:

- (a) Subcontract Number, Purchase Order Number, and/or Release Number
- (b) Unique invoice number
- (c) Invoice date
- (d) Remit name and address of the Subcontractor
- (e) Line-item numbers and Descriptions
- (f) Time-Period during which the Work was performed
- (g) Terms of any prompt payment discount offered
- (h) Name, title, and phone number of the person to be notified in event of defective invoice

If applicable, for material and equipment, invoices must include the following:

- (a) Quantity for each item
- (b) Material description / Material tag number, if applicable
- (c) Net price per item
- (d) Extended total value for the quantity invoiced

### 6.2 Contract Type Specific Invoice Backup Documentation

**6.2.1 For Firm-Fixed Price:** A brief progress report shall be submitted with an invoice documenting claimed percent complete if compensation is not tied to the submittal of a deliverable.

#### 6.2.2 For T&M/Labor-Hour, Cost-Reimbursement or Construction:

The following backup and source documentation shall be submitted, with each invoice to support amounts invoiced, as applicable.

<input checked="" type="checkbox"/> Employee time sheet(s)	<input checked="" type="checkbox"/> Certified payroll	<input checked="" type="checkbox"/> Lower-tier Subcontractors invoices
<input checked="" type="checkbox"/> Employee expense sheet(s) with receipts for amounts >\$25	<input checked="" type="checkbox"/> Applicable wage determinations	<input checked="" type="checkbox"/> Vendor invoices
<input checked="" type="checkbox"/> Actual airfare or other public conveyance expenses	<input checked="" type="checkbox"/> Car rental expenses for each rental day	<input checked="" type="checkbox"/> Lodging expenses

*Note 1: Employee timesheets reflect actual hours worked, be signed by the Subcontractor's employee, and be certified by the Order employees' supervisor prior to the Company obtaining them. No payment will be made to the Subcontractor for time spent conducting personal business, Subcontractor business, or travel time to or from the workplace assignment. NOTE: Time sheets shall only be required upon request by the Company's SA.*

*Note 2: If this Order authorizes "other direct costs" (ODCs), such costs will be allowable in accordance with FAR Subpart 31.2. ODC costs shall not include any costs arising for the letting, administration, or supervision of the performance of this Order. ODCs invoiced must have backup documentation that is substantiated by certified paid invoices, receipts, or by such documentation as may be required by the Company.*

*Note 3: If this Order authorizes travel, travel expenses incurred in the performance of this Order may be reimbursed in accordance with the GSA rates in effect at the time of travel. To be reimbursable, the Subcontractor must (1) obtain prior written approval for all travel, and (2) the travel expenses must be: (a) allowable under the GSA Federal Travel Regulation and this Order, (b) reasonable, and (c) allowable and necessary to performance of the Order. Travel reimbursement requests must be submitted in a timely*

manner, and must identify the name of the traveler, destination, purpose of the travel and days worked under the Order as well as document any required Company pre-approval. Maximum reimbursement for travel:

- Lodging: Reimbursed up to GSA Rate
- Per Diem: GSA Rate
- Car: Mid-size or smaller
- Airfare: Lowest priced airfare available during normal business hours
- Mileage: GSA Rate

## 7. INVOICE SUBMISSION

Subcontractor shall submit timely invoices to Accounts Payable by:

- Email to:  
[IECAP@icp.doe.gov](mailto:IECAP@icp.doe.gov) and copy the Company's SA.

**SUBMIT ONLY ONE (1) INVOICE PER EMAIL IN PDF FORMAT**

OR

- Mail hardcopies to:  
Idaho Environmental Coalition, LLC  
Attn: Accounts Payable  
1580 Sawtelle Street  
Idaho Falls, Idaho 83402

### 7.1 Taxes\*

- 7.1.1 Except as may be otherwise provided in this Order, the Order price, and rates include all applicable federal, state, and local taxes, duties, and fees.
- 7.1.2 The Subcontractor shall not include Idaho Sales Tax for any Goods or services under this Order as the Company has been granted Direct Pay Authority for such taxes by the Idaho Tax Commission.
- 7.1.3 The Subcontractor shall be responsible for maintaining and furnishing the necessary records and documentation required by government authorities and the Company to apply for and obtain tax and duty refunds.

### 7.2 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.

### 7.3 Rejection of Invoices

Any invoice submitted which fails to comply with the terms of this Order, including the requirements of form and documentation, may be returned to the Subcontractor. In addition, unauthorized billing for component parts will not be accepted. Any costs associated with the resubmission of an invoice to meet these requirements shall not be reimbursed by the Company.

### 7.4 Right to Withhold Payment

The 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 Order.
- (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 Order.

- (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 Order.
- (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. The Company shall have the right to withhold the amount of any such overpayment from any payment that is otherwise due or becomes payable to the Subcontractor under this Order.
- (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 Order, Company will request Subcontractor to repay the costs that were overpaid, or the costs not allowable or approved.

## **7.5 Right to Offset**

The 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 Order (or any other subcontract with Company), any and all amounts owed by Subcontractor to Company or DOE in connection with this Order.

## **8. PRIME CONTRACT\***

This Order is subject to the Prime Contract Flowdown Clauses. Subcontractor understands the documents forming the Prime Contract Flowdown Clauses and assumes towards the 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 applies to this Order. The 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 Flowdown Clauses.

## **9. INDEMNIFICATION**

- 9.1 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: (1) 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; (2) Subcontractor's failure to comply with any law, ordinance, regulation, rule or order; (3) violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use or sale of goods, materials, equipment, methods, processes, designs or information, including construction methods, construction equipment and temporary construction facilities, furnished by the Subcontractor or its Lower-tier Subcontractors in performance of the Work; (4) Subcontractor's negligence or acts or omissions which results in injury to or death of persons (including employees of the Company, the Government, the Subcontractor's negligence or acts or omissions which results in injury to or death of persons (including employees of the Company, the Government, the Subcontractor, and the Subcontractor's Lower-tier Subcontractors) or results in damage to or loss of property (including the property of the

Company or the Government); (5) any act or omission by the Subcontractor that results in contamination, pollution, or public or private nuisance.

9.2 To the greatest extent permitted by law, for purposes of the indemnity provided under this Order, 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 Order 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.

## **10. INSURANCE\***

10.1 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 Order and for a minimum of two (2) years after the expiration of this Order 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): \$1 Million
- ii. 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
- v. If any employees are located in a monopolistic state (ND, OH, WA, WY) or U. S. territory, Stop Gap coverage must be provided.

### **(4) Excess / Umbrella (for Orders over \$1M)**

- i. \$5 Million

### **(5) Professional / Errors and Omissions Liability (for Orders performing professional services of any kind, whether engineering, design, research, development)**

- i. Each Claim: \$1 Million
- ii. Annual Aggregate: \$2 Million

### **(6) Contractor Pollution Liability (for Orders 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 Orders 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
- (8) **Builder's Risk Liability** (for applicable construction subcontracts)
- i. "All Risk" Builders' Risk (includes the perils of earthquake and flood) for physical loss or damage to work performed under the materials and equipment on and off site and in transit if intended to become part of the work. Acceptable coverage includes (1) builders' all risk and (2) all risk installation floater. Not applicable to a Contract that does not exceed \$50,000 but otherwise in the following amount of the Order amount.

10.2 Subcontractor's insurance policies shall be endorsed to include:

- (1) Idaho Environmental Coalition, LLC and its successors in interest and the U.S. Department of Energy named as additional insured parties for Commercial General Liability, Automobile Liability and Excess / Umbrella policies, as applicable.
- (2) Waiver of subrogation in favor of Idaho Environmental Coalition, LLC and its successors in interest and the U.S. Department of Energy for Commercial General Liability, Automobile Liability, Worker's Compensation and Employer's Liability and Contractor Pollution Liability policies, as applicable.
- (3) Subcontractor's insurance is primary and non-contributory coverage for Commercial General Liability, Automobile Liability and Excess / Umbrella policies, as applicable.
- (4) Thirty (30) days prior written notice to the Company in the event of any coverage cancellation.

10.3 Should Subcontractor use any Lower-tier Subcontractors, Subcontractor shall require the same insurance requirements of their Lower-tier Subcontractors indicated in this Article. The 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.

10.4 A certificate of insurance shall be furnished to the Company's SA earlier of either ten (10) calendar days after award of this Order or before Subcontractor begins any work under this Order.

10.5 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 Order.

10.6 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 Order.

## 11. SUBCONTRACTOR OBLIGATIONS

### 11.1 Periodic Meetings

As needed, the Subcontractor shall attend periodic meetings with the Company's SA, Company's STR, and other Company personnel, as appropriate, to review the Subcontractor's performance. At these meetings, the Company's SA 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.

### **11.2 Accruals (Submittal)**

This Article applies to all Orders unless the Order is for one-time Work which will be billed during the month the Work was performed. The Subcontractor shall provide monthly accrual information of the total billable cost (invoiced plus billable) from inception of the Order through the current calendar month end. Submission must be made by the 15<sup>th</sup> of each month. Subcontractor can obtain the “Monthly Order-to-Date Form” at <https://idahoenvironmental.com/Procurement>. Subcontractor shall submit by email to the Company’s SA.

### **11.3 Vendor Data Schedule (Submittal)**

If the Order requires Form 431.14 Vendor Data Schedule, the Subcontractor shall submit the data items identified. In submitting the required data:

- Each item of data must be identified to the item number of the data requirement set forth on Form 431.14.
- Each submittal must be submitted as a separate file, **DO NOT COMBINE SUBMITTALS INTO ONE FILE.**
- Subcontractor documents requiring submittal for review by Company shall be logged, reviewed, dispositioned, and returned to the Subcontractor within five (5) working days of receipt unless otherwise specified in this Order or applicable documents hereto.
- Email is the *preferred* method of mailing submittals.

Submission of data items:

- **Email to:**  
Company’s SA
- OR**
- **Mail hardcopies to:**  
Idaho Environmental Coalition, LLC  
Attention: SA, MSIN [insert no.]  
1580 Sawtelle Street  
Idaho Falls, Idaho 83402  
Vendor Data Schedule No. [insert no. or TBD]

### **11.4 Subcontractor Training Requirements**

If the Order requires Form 540.40, Subcontractor Training Requirements, the Form is hereby incorporated into this Order. The Subcontractor is responsible to complete and complying with all the Training Requirements as outlined in the Form.

### **11.5 Subcontractor Requirements Manual**

If the Order requires Form 540.10, Order Requirements Manual, those who work on this Project at any tier shall perform their Work in accordance with the Subcontractor Requirements Manual, as set forth in the Order and available at <https://idahoenvironmental.com/Procurement/>.

### **11.6 Supplier Code of Conduct**

Those who work on this Project at any tier shall conduct business legally, ethically and in compliance with the principles set forth in IEC’s Supplier Code of Conduct available at <https://idahoenvironmental.com/Procurement/>.

## **11.7 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 Order and Prime Contract without prior written consent of Company and/or DOE. Subcontractor, its Lower-tier Subcontractors, or other parties related to this Order shall not issue any news releases, statements to media, interviews, articles for publication, publicize, or issue advertising related to this Order without written consent of Company and/or DOE.

## **11.8 Communications with DOE\***

To the extent permitted by law, all Subcontractor's written or verbal communication with or to DOE or with federal, state, or local agencies relative to Work under this Order must be through or with the knowledge of Company.

## **11.9 Gifts and Gratuities\***

In addition to the Prime Contract Flowdown Clauses and regardless of Order Price, the Subcontractor, its employees, agents, or representatives shall not offer or give to an officer, official or employee of the Company or the Government, gifts, entertainment, payments, loans, or other gratuities to influence the award of an order or obtain favorable treatment under a Order. Violation of this provision may be deemed by the Company to be a material breach of this Order and any other Order with the Company and subject all Orders with the Subcontractor to termination for default, as well as any other remedies by law or in equity.

## **11.10 Permits, Applications, and Licenses\***

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

## **11.11 Codes, Laws, and Regulations\***

11.1.1 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.

11.1.2 The Subcontractor shall provide to Company all documentation as required by code, regulation, or Order requirement.

11.1.3 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 Order without Company's and DOE's prior written approval.

## **11.12 Access to Records and Audit\***

In addition to the Prime Contracts Flowdown Clauses, 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 Orders and shall make such materials available for inspection and copying, by Company and/or DOE, at its offices at all reasonable times, for three (3) years after completion or termination of this Order or for a longer period as required by the DOE or applicable law.

# **12. SUBCONTRACTOR QUALITY AND STANDARD OF CARE**

## **12.1 Quality Assurance and Quality Clauses**

12.1.1 The 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 Order, unless

Company provides prior written approval of the Subcontractor's own Quality Assurance Program. However, neither review nor acceptance of the Subcontractor's quality control program or inspection procedures shall relieve the Subcontractor of its obligation to conduct comprehensive inspections of the Work, to furnish conforming materials, to perform acceptable Work, and to provide adequate safety precautions in conformance with this Order.

12.1.2 The Subcontractor agrees and is responsible to comply with all Quality Clauses as outlined in the Order.

## **12.2 Quality of Work\***

12.2.1 The Subcontractor is responsible for the quality of Work under the term of this Order, even if performance is completed by a Lower-tier Order. 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 for this type of DOE project and standard specified in the Prime Contract Flowdown Clauses.

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

## **12.3 Design Services and Standard of Care\***

12.3.1 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.

12.3.2 The Subcontractor shall be responsible for coordinating its design with the Company.

12.3.3 The standard of care for all such design services performed under this Order will be the care and skill ordinarily used by members of the profession practicing under similar conditions at the same time and locality.

## **13. SUBCONTRACTOR WARRANTIES\***

13.1 When the Work includes Goods, the Subcontractor warrants that Goods shall meet or exceed the specifications, drawings, requirements, and other documentation of this Order. Further, Subcontractor warrants all Goods will be new, free of any defects (latent or otherwise) in workmanship, material, installation, or design furnished, be free and clear of all liens, claims, security interests, or encumbrances and be merchantable and fit for the intended purpose.

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

13.3 This warranty will be for a period of twelve (12) months from the date of operational start-up or the Company's final acceptance of the Work.

13.4 The Subcontractor shall transfer all manufacturer, distributor, or vendor warranties associated with the Goods supplied to Company and/or entity designated by Company.

13.5 This warranty shall be in addition to and not in limitation of any other warranty or remedy required as may expressed or implied at law or equity. Further, 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 Order.

- 13.6 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.

#### **14. NONCONFORMING WORK\***

- 14.1 If the Company deems the Work incomplete, Subcontractor has failed to conform to Order requirements, 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 (including without limitation costs of removal, packing, travel, transportation, and reinstallation). 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.
- 14.2 Corrections are subject to a warranty period of twelve (12) months from the date of acceptance of Corrections.
- 14.3 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 or cancel this Order. The Subcontractor is liable to the Company for all costs (including removal, packing, travel, transportation, shipping, and installation), damage or loss caused by the deficiency or arising from the Correction. The Subcontractor is not relieved of any obligations due to the Company’s actions under this Article.
- 14.4 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.
- 14.5 Failure on the part of the Company to reject inferior workmanship, to note nonconforming Goods, make any inspection of, or payment for, the Goods or services covered by this Order 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 Order 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. Nothing in this Order will be construed as a waiver of any rights or remedies of Company for latent or other defects.

#### **15. SUSPECT AND COUNTERFEIT ITEMS\***

- 15.1 In addition to the Prime Contract Flowdown Clause FAR 52.246-26 Reporting Nonconforming Items, the Subcontractor warrants that all Goods provided, delivered, or sold to Company or used in the performance of this Order contain no counterfeit or suspect counterfeit items. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.
- 15.2 The Company reserves the right to question and/or require the Subcontractor to certify and/or furnish proof regarding the quality, authenticity, application, or fitness for use of the items supplied by the Subcontractor under this Order.

15.3 If it is determined that a suspect/counterfeit part has been supplied, the 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 Order and Subcontractor shall be liable for all costs relating to the impoundment, removal, and replacement. The Company may also notify the cognizant DOE contracting officer and Office of Inspector, as required by law. Company reserves the right to withhold payment for the items pending results of the investigation.

## **16. SUBCONTRACTOR PERSONNEL**

### **16.1 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 Order, Subcontractor shall comply with the requirements of the wage determinations. If revised by DOE, Subcontractor and Lower-tier Subcontractors shall comply with the revised wage determinations for covered employees. For Wage Rate Requirements (Construction), formerly known as Davis-Bacon Act, see additional details in Supplemental Provisions - Construction.

### **16.2 Independent Contractor**

The Subcontractor is an independent contractor and not an employee or agent of the Company or DOE. The Subcontractor will maintain complete control and responsibility for its employees, Lower-tier Subcontractors, and agents. The Subcontractor shall be solely responsible for the means and methods for carrying out the Statement of Work and for the safety of its employees. Nothing contained in this Order shall be construed to create any employer-employee relationship between the Subcontractor's employees and the Company or to create a contractual relationship between the Government and the Subcontractor.

### **16.3 Subcontractor's Personnel Responsibility**

The 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 the Company deems Subcontractor's employee incompetent, careless, insubordinate, or the employee's work is contrary to public or Government interest, Company reserves the right to require Subcontractor to remove the employee at no cost to the Company. Further, if the 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.

### **16.4 Subcontractor's Personnel Requirements**

16.4.1 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.

16.4.2 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 Order. Personnel shall comply with the security requirements in Prime Contract Flowdown Clauses and within the Company's policies and procedures.

16.4.3 The Subcontractor is responsible for maintaining satisfactory standards for employee qualifications, performance, conduct, and business ethics under its own personnel policies. If the Work to be performed under this Order requires Subcontractor personnel to obtain a DOE security badge, then the Subcontractor will perform background checks and U.S. citizenship verification checks in accordance with DOE Order 473.3, Protection Program Operations (Chg 1-MinChg) and other applicable policies.

16.4.4 **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. The Subcontractor shall ensure that all such badges are returned to the ICP Core Badging Office immediately prior to the conclusion of their work assignment.

16.4.5 The Subcontractor may be charged the following amounts for badges lost during a personnel work assignment at the ICP or not returned to Company. 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

#### **16.5 Subcontractor Personnel Security Requirements\***

The Subcontractor agrees to safeguard all Company equipment, information, and property provided for the Subcontractor's use to complete their Work. The Subcontractor and its employees must comply with all safeguard and security requirements established, including Company's PRD-1002, Safeguard and Security Requirements, to ensure that appropriate measures are in place to provide protection and accountability for personnel. Failure to comply may result in termination.

### **17. LOWER-TIER SUBCONTRACTORS**

17.1 Subcontractor shall not sublet performance of all or any portion of the Work under this Order, except as disclosed in the Subcontractor's proposal, absent Company's prior written approval. The Subcontractor shall not make any changes to the approved Lower-tier Subcontractors without the prior written approval of the Company.

17.2 Company reserves the right to direct Subcontractor to assign any Lower-tier subcontract to the Company, the Government, or another Subcontractor.

17.3 Subcontractor shall not be relieved of its responsibility for the Work by virtue of any Lower-tier Subcontractor, regardless of Company's approval.

17.4 Subcontractor warrants that any Lower-tier Subcontractor will comply fully with the terms of this Order. The Subcontractor shall bind all Lower-tier Subcontractors, regardless of tier level, to the provisions of this Order indicated with an asterisk (\*) or Sections of this Order's Attachments as applicable to the portion of the Work performed by them.

17.5 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.

17.6 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.

17.7 Company shall have the right from time to time to contact any Lower-tier Subcontractor to discuss their progress.

17.8 Failure of Subcontractor to comply with this Article may be deemed by Company to be a material breach of this Order.

### **18. CHANGE MANAGEMENT AND SCHEDULE**

#### **18.1 Changes/Modifications**

The Work shall be subject to change by additions, deletions, or revisions thereto in accordance with the applicable Contract Type Supplemental Provision that governs the Order.

## **18.2 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 Order only to the extent that DOE adjusts the Company's schedule and compensation.

## **19. OWNERSHIP OF WORK PRODUCTS AND INTELLECTUAL PROPERTY**

All work products of the Subcontractor in executing this Order (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 Order 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. Subcontractor additionally transfers and assigns to Company all the Subcontractor's copyright interests (if any) in all the items to be developed by Subcontractor for Company. The Subcontractor further agrees to execute any additional documents which the Company may require to transfer the copyrights or other intellectual property to the Company.

## **20. COMPANY'S OBLIGATION AND RIGHTS**

### **20.1 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.

### **20.2 Technical Direction**

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

20.2.2 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 Order'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.

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

### **20.3 Observation of Work**

20.3.1 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 Order. If any inspection or evaluation is made by Company on the premises of Subcontractor or others completing services in relation to this Order, Subcontractor shall provide all reasonable facilities and assistance for Company's safety and convenience in the performance of the inspection. Such an inspection or evaluation shall not relieve Subcontractor of its obligations, responsibilities for damage or loss of material, quality assurance and control under this Order. Further, it does not constitute or imply acceptance or affect the rights/remedies of Company of the Government after acceptance of the Work.

20.3.2 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. The 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.

### **20.4 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 Order 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.

### **20.5 Back-charges**

20.5.1 A back-charge is a cost sustained by the Company and chargeable to Subcontractor for Company's performance of work and material or equipment deficiencies which create an expenditure of labor hours to correct. Upon identification by the Company of an actual or anticipated back charge, the Company will issue a back-charge notice to Subcontractor. This notice shall describe the back-charge work to be performed or such deficiencies, the scheduled period for performance, any inspection reports, nonconformance reports, or overage, shortage or damage reports, the cost to be charged by the Company to the Subcontractor for the back charge and any other terms.

20.5.2 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) Orders: at actual cost; and (5) all taxes, levies, duties, and assessments attributable to the back-charge work.

20.5.3 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.

20.5.4 In the event Subcontractor refuses to sign, Company shall, at its sole 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.

20.5.5 In the event of critical schedule impact, health and safety, or imminent harm, the Company may proceed with repair without prior notification to Subcontractor.

## **21. CONFIDENTIAL INFORMATION**

**21.1 Confidentiality of Information\*** - See Prime Contract Flowdown Clauses

### **21.2 Information Furnished by Company and/or DOE\***

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.

## **22. TERMINATION AND SUSPENSION**

### **22.1 Suspension of Work\***

22.1.1 The Company may, by written notice to Subcontractor, suspend all or any portion of this Order for the period of time that the Company determines appropriate. Upon receiving any such notice of suspension, the Subcontractor shall promptly suspend further performance of the Work to the extent specified, and during the period of such suspension shall properly care for and protect all Work, materials, supplies, and equipment that the Subcontractor has on hand for performance of this Order. Upon the request of the Company's SA, the Subcontractor shall promptly deliver to the Company's SA or STR copies of outstanding documents or deliverables.

22.1.2 The Company may at any time withdraw the suspension of Work as to all or any portion of this Order by written notice to the Subcontractor specifying the effective date and scope of withdrawal, and the Subcontractor shall resume diligent performance of the Order for which the suspension is withdrawn on the specified effective date of withdrawal.

22.1.3 If an extension of time and/or an equitable adjustment in compensation is appropriate, the Parties will mutually agree upon such change in writing. However, the Subcontractor shall not be entitled to any compensation, prospective profits, or any damages incurred during such a suspension.

22.1.4 A claim under this Article shall not be allowed for any costs incurred more than twenty (20) calendar days before the Subcontractor shall have notified the Company's SA in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Order.

### **22.2 Termination by DOE\***

This Order may be terminated at any time by the Company, with or without cause, as directed by DOE. In no event shall Subcontractor be entitled to anticipated profits because of termination by Company.

### **22.3 Termination for Convenience**

All or part of this Order 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. The termination process will be conducted based on the applicable principles in accordance with FAR Part 49 and the corresponding contract type, which is incorporated herein by reference and made part hereof.

#### **22.4 Termination for Default**

Company may, by written notice, terminate the whole or any part of this Order for default if Subcontractor ceases its operations, is unable to meet or fails to perform any of its obligations, under this Order, including failure to comply with any of Company's instructions, regulations, or procedures, failure to meet the specified schedule of performance, or in the opinion of the Company, becomes financially or legally incapable of completing the Work and does not correct such to the Company's reasonable satisfaction within a period of seven (7) calendar days after receipt of notice from the Company specifying such failure. 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.

#### **22.5 Termination Terms**

- 22.5.1 Regardless of the cause of termination, the Subcontractor shall deliver to the Company legible copies of all completed or partially completed Work products and instruments of service and all materials and equipment previously paid for by the Company.
- 22.5.2 In no case shall termination for any cause constitute a claim for consequential damages or damages based on loss of anticipated profits.
- 22.5.3 The rights and remedies of the Company provided in this provision are not exclusive and are in addition to any other rights and remedies provided by law or equity under this Order.

### **23. DISPUTES**

#### **23.1 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 Order, Subcontractor will proceed diligently as directed by Company with the performance of this Order.

## **23.2 Governing Law**

- 23.2.1 The governing law of this Order 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.
- 23.2.2 There shall be no interruption in the prosecution of the Work, and the Subcontractor shall proceed diligently with the performance of this Order pending final resolution of any dispute, claim, or litigation, arising under, or related to, this Order, between the Parties hereto or between the Subcontractor and Lower-tier Subcontractors.
- 23.2.3 The Contract Disputes Act of 1978 (41 U.S.C. Sections 601 and 613) shall not apply to this Order; 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 the 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.

## **23.3 Notice of Labor Disputes**

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

## **23.4 Differing Professional Opinions for Technical Issues Involving Environment, Safety and Health (DOE Order 442.2)**

If there is a differing professional opinion, the Subcontractor agrees to follow the 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 the Company Differing Professional Opinion Process. If Subcontractor has any issues or concerns, the Subcontractor shall complete the Differing Professional Opinion Submittal Form to Company. The Subcontractor can obtain this form from the Company's SA or the Company's STR.

## **24. GENERAL LEGAL PROVISIONS**

### **24.1 Assignment**

- 24.1.1 Subcontractor's responsibilities and obligations under this Order are non-delegable Work. The Subcontractor may not assign or transfer any of its rights, duties, or obligations under this Order without the Company's prior written consent. Any unauthorized assignment is void and unenforceable. These conditions and the entire Order are binding on the heirs, successors, and assigns of the Parties hereto.
- 24.1.2 In alignment with the Prime Contract Flowdown Clauses, the Company may assign or novate this Order to DOE, successor, or to such party as DOE may designate. Further, the Company may novate this Order 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 Order.

24.1.3 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.

## **24.2 No Third-Party Beneficiaries**

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

## **24.3 Organizational and Personal Conflicts of Interest\***

24.3.1 Subcontractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to a potential, actual, or appearance of organizational or personal 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. Further, an appearance of a conflict of interest is a situation that could give rise to the perception that a conflict exists and may interfere with the ability to make objective decisions under this Order. Conflicts can arise through many situations including, outside employment, financial interest in an outside business, customer and supplier relations, family relationships, household members, friendships, dating relationships, gift giving, charitable activities, and even public service.

24.3.2 Subcontractor shall have a have adequate procedures in place to identify, avoid, neutralize, or mitigate potential or actual conflicts of interest that exist or may arise during this Order and otherwise comply with the requirements of the Prime Contract Flowdown Clauses.

24.3.3 The Subcontractor agrees to notify the Company immediately if to the best of its knowledge and belief, an actual, potential, or appearance of a conflict of interest exists. The Subcontractor shall make a full disclosure to the 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 Order shall continue performance.

24.3.4 Company may terminate this Order, in whole or part, if it deems such termination necessary to avoid a personal or organizational conflict of interest.

## **24.4 Waiver**

24.4.1 Company's failure to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Order, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, and/or any right or privilege.

24.4.2 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 Order or any other obligation of Subcontractor under this Order.

## **24.5 Severability and Survival**

If any provision of this Order 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 Order are invalid, it shall be enforced to the full extent the court allows and this Order shall be reformed accordingly. Indemnification and other express representations shall survive the termination, cancellation, completion, or expiration of this Order.

## **24.6 Prohibition On Bribery and Corruption\***

Subcontractor, Lower-tier Subcontractors, all employees, and agents, of any of them, must in compliance with all applicable laws dealing with anti-corruption and anti-bribery, United States Foreign Corrupt Practices Act, UK Bribery Act, the Canadian Corruption of Foreign Public Officials Act, and any other applicable laws dealing with bribery or corrupt practices.

## **24.7 Equal Employment Opportunity**

In addition to the Prime Contract Flowdown Clauses and regardless of Order Price, the Company is an equal opportunity employer that recognizes the value of a diverse workforce. The Company has established standards so that our project personnel are treated with respect and fairness and are free from all forms of discrimination. All project personnel decisions—such as hiring, promotion, pay, termination training opportunities, and job assignments—must be based on merit, not a person’s legally protected characteristics. Such characteristics may include gender, race, color, religion, national origin, sexual orientation, marital status, age, disability, pregnancy, veteran status, and other characteristics protected by law.

## **24.8 Human Trafficking and Worker Welfare**

24.8.1 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.

24.8.2 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.

24.8.3 The Subcontractor shall immediately notify the Company if there is any actual or reasonable suspicion of violation of this Article.

## **24.9 Foreign Nationals Access**

As required by Department of Energy (DOE) Order 142.3a entitled “Unclassified Foreign Visits and Assignment Program,” all Subcontractors doing business with the Company shall adhere to the following guidance related to Foreign Nationals in their employ:

The DOE Order states in part “Foreign National access to contractor managed/operated sites, programs, information and technologies will be approved, provided the access is needed to support DOE programs, objectives and/or U.S. national interests.”

The release of information, as described below, to Foreign Nationals requires an approved security plan and each Foreign National shall be processed and approved through the U.S. Government Foreign Access Central Tracking System (IFACTS). The term “Information” refers to the release of any information not readily available to the public. This would include sensitive, propriety, Official Use Only, business sensitive, Government use only, or any other such data, drawings, diagrams, electronic media, writings, or communications not open and readily available to the public. Disclosing of any such information to any Foreign National not processed and approved through IFACTS constitutes a serious security breach that must be investigated and reported to the DOE. Subcontractors who employ Foreign Nationals need to be familiar with DOE Order 142.3a, which can be found at Internet location of <https://www.directives.doe.gov>.

#### **24.10 Foreign Ownership, Control, or Influence (“FOCI”) \***

- 24.10.1 The Subcontractor shall maintain compliance with all FOCI requirements. The Subcontractor is responsible to make sure that all Lower-tier Subcontractors requiring access authorizations under this Order shall have a FOCI approval specific for this Order before the Subcontractor can award any Lower-tier Order. The Subcontractor shall submit any Lower-tier Order FOCI request for processing and approval.
- 24.10.2 The Subcontractor shall immediately provide the Company with written notice of any changes in the extent and nature of FOCI over the Subcontractor, which would affect the Subcontractor’s status. The Company has the right to request additional notices, reports, and documents.
- 24.10.3 If the Company at any time determines that the Subcontractor is, or is potentially, subject to FOCI, the Subcontractor shall comply with such instructions, as the Company shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.
- 24.10.4 Company may terminate this Order for default either if the Subcontractor fails to meet obligations imposed by this Article or if, in the Company’s judgment, the Subcontractor creates a FOCI situation in order to avoid performance or a termination for default. Company 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.

#### **24.11 Reporting Fraud, Waste and Abuse**

- 24.11.1 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.
- 24.11.2 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.
- 24.11.3 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.

#### **24.12 Defense Nuclear Facilities Safety Board (DNFSB)\***

The Subcontractor shall cooperate with the 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 Order, Subcontractor may request and equitable adjustment as outlined.

#### **24.13 Price Anderson Amendment Act (PAAA)\***

As a government Prime Contractor providing nuclear safety-related services to the Department of Energy, the Company is required to comply with the nuclear safety rules contained in the following regulations:

- CFR 820, *Procedural Rules for DOE Nuclear Activities*,
- CFR 830, *Nuclear Safety Management*,
- CFR 835, *Occupational Radiation Protection*, and
- 10 CFR 708, *Contractor Employee Protection*.

If compliance with this Article is invoked in the Order, the Nuclear Safety Regulations identified above have are applicable to this Work and therefore compliance by the Subcontractor is mandatory. The Subcontractor may be subject to enforcement actions under the Nuclear Safety Regulations.

The Subcontractor assumes full responsibility for and shall indemnify, hold harmless, and defend the Company, affiliated companies, and all of its directors, officers, employees, agents, and representatives, from and against any liability arising out of the activities of the Subcontractor that results in enforcement actions. The Subcontractor 's obligation to indemnify, hold harmless and defend includes attorneys' fees and other reasonable costs of defending any action or proceeding instituted under the nuclear safety rules.

#### **24.14 Export Authorizations**

- 24.14.1 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.
- 24.14.2 Subcontractor shall notify Company, within thirty (30) days after issuance of this Order, 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, including but not limited to (as applicable) the appropriate Export Control Classification Numbers (ECCN), an indication of the applicability or availability of license exceptions or exemptions, and all pertinent technical data, drawings, brochures, technical expertise, or other relevant information as deemed necessary by Company. Vendor acknowledges that Company shall undertake to obtain any required license or other regulatory approval required and shall rely upon the information provided by Vendor.
- 24.14.3 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.
- 24.14.4 Technical information provided under this Subcontract is subject to the Technology and Software under Restriction letter, if any, signed by an authorized Subcontractor/Vendor representative.

#### **END OF GENERAL PROVISIONS**