

CONSTRUCTION SUBCONTRACT

EXHIBIT "A"

GENERAL PROVISIONS

UNDER

U.S. DEPARTMENT OF ENERGY

CONTRACT NO. DE-AC09-09SR22505

SAVANNAH RIVER REMEDIATION LLC

SAVANNAH RIVER SITE

AIKEN, SOUTH CAROLINA 29808

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1. ENTIRE AGREEMENT

This Subcontract embodies the entire agreement between CONTRACTOR and SUBCONTRACTOR and supersedes all other writings. The parties shall not be bound by, or be liable for, any statement, representation, promise, inducement, or understanding not set forth in this Subcontract.

2. INDEPENDENT CONTRACTOR

SUBCONTRACTOR represents that it is fully experienced, properly qualified, registered, licensed (in its home state and place where Work is being performed, if different), equipped, organized, and financed to perform the Work under this Subcontract. SUBCONTRACTOR shall act as an independent contractor and not as the agent of CONTRACTOR or the GOVERNMENT in performing this Subcontract. SUBCONTRACTOR shall maintain complete control over its employees and all of its lower tier suppliers, agents, and subcontractors (collectively "subcontractors"). Nothing contained in this Subcontract or any lower tier purchase order or subcontract awarded by SUBCONTRACTOR shall create any contractual relationship between any lower tier subcontractor(s) and either CONTRACTOR or the GOVERNMENT.

3. AUTHORIZED REPRESENTATIVES

Before starting Work, SUBCONTRACTOR shall designate in writing an authorized representative acceptable to CONTRACTOR to represent and act for SUBCONTRACTOR and shall specify any and all limitations of such representative's authority. Such representative shall be present or be represented at the Jobsite at all times when Work is in progress and shall be empowered to receive communications in accordance with this Subcontract on behalf of SUBCONTRACTOR. During periods when Work is suspended (if any), arrangements shall be made for an authorized representative acceptable to CONTRACTOR to supervise any emergency Work that may be required. All communications given to the authorized representative by CONTRACTOR in accordance with this Subcontract shall be binding upon SUBCONTRACTOR. CONTRACTOR shall designate in writing one or more representatives to represent and act for CONTRACTOR and to receive communications from SUBCONTRACTOR. Notification of changes of authorized representatives for either CONTRACTOR or SUBCONTRACTOR shall be provided in advance, in writing, to the other party.

4. NOTICES

Any notices provided for under this Subcontract shall be in writing and may be served either (i) personally on the authorized representative of the receiving party at the Jobsite, or (ii) by mail to the address of that party as shown on the face of the Subcontract Agreement Form or at such address as may have been changed by written notice.

5. SUBCONTRACT INTERPRETATION

All questions concerning interpretation or clarification of this Subcontract, including the discovery of conflicts, errors, or omissions, or the acceptable performance of Work by SUBCONTRACTOR, shall be immediately submitted in writing to CONTRACTOR for resolution. All determinations, instructions and clarifications of CONTRACTOR shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. At all times SUBCONTRACTOR shall proceed with the Work in accordance with the determinations, instructions and clarifications of CONTRACTOR. SUBCONTRACTOR shall be solely responsible for requesting instructions or interpretations and shall be solely liable for any costs and expenses arising from its failure to do so.

6. ORDER OF PRECEDENCE

The Subcontract shall consist of all the documents listed below and subsequently issued Change Notices and amendments ("Modification Agreements"). All of these documents are essential parts of this Subcontract, and a

requirement appearing in one document is binding as though occurring in all. In resolving conflicts, discrepancies, errors, or omissions pursuant to Article 5 titled "SUBCONTRACT INTERPRETATION" below, the following order of precedence shall be used:

1. Subcontract Change Notices and Modification Agreement(s), if any
2. Subcontract Agreement Form
3. Exhibit "G" - Project Agreement
4. Exhibit "C" - Quantities, Prices and Data
5. Exhibit "B" - Special Provisions
6. Exhibit "A" - General Provisions
7. Exhibit "F" - SUBCONTRACTOR Safety and Health Requirements
8. Exhibit "E" - Scope of Work & Technical Specifications
9. Exhibit "D" - Drawings

7. STANDARDS AND CODES

Wherever references are made in this Subcontract to standards or codes in accordance with which the Work under this Subcontract is to be performed, the edition or revision of the standards or codes current on the effective date of this Subcontract shall apply unless otherwise expressly stated in the specifications and drawings. In case of conflicts between (i) any reference standards and codes, and (ii) any Subcontract document noted above, the latter shall govern.

8. LAWS AND REGULATIONS

SUBCONTRACTOR and its employees and lower tier subcontractors shall at all times comply with all applicable laws, ordinances, statues, rules, and regulations, including new provisions of 10 CFR 851 relating to Health and Safety, in effect at the time Work under this Subcontract is performed. Compliance shall be a material requirement of this Subcontract. SUBCONTRACTOR agrees to indemnify and save harmless CONTRACTOR and the GOVERNMENT, and their officers, employees, servants, and agents from and against any and all claims or expenses caused or occasioned directly or indirectly by its failure to so comply.

If during the term of this Subcontract there are any changed or new laws, ordinances, or regulations not known or foreseeable at the time of signing this Subcontract that affect the cost or time of performance of the Subcontract, SUBCONTRACTOR shall immediately notify in writing and submit detailed documentation of such effect in terms of both time and cost of performing the Subcontract. Upon concurrence by CONTRACTOR as to the effect of such changes, an equitable adjustment in the compensation, scope, or time of performance will be made.

SUBCONTRACTOR is liable to CONTRACTOR and the GOVERNMENT for all fines and penalties assessed by any governmental entity against CONTRACTOR or the GOVERNMENT resulting from SUBCONTRACTOR'S failure to perform its Work under the Subcontract in compliance with the requirements of the Subcontract.

If any discrepancy or inconsistency should be discovered between the Subcontract and any law, ordinance, regulation, order, or decree, SUBCONTRACTOR shall immediately report same in writing to CONTRACTOR, which will issue such instructions as may be necessary.

9. PERMITS AND LICENSES

Except as otherwise specified, SUBCONTRACTOR shall procure and pay for all permits, licenses, and inspections, other than inspections performed by CONTRACTOR, and shall furnish any bonds, security, or deposits required by the GOVERNMENT, state, territory, municipality, or other political subdivisions to permit performance of the Work. This includes but is not necessarily limited to identifying if such permits and licenses are required, compiling the information and data required for applications to obtain permits and licenses, filing of necessary applications for such permits and licenses, and providing any additional information or data required by the governmental entity.

Where permits and licenses are furnished by the CONTRACTOR or the GOVERNMENT, SUBCONTRACTOR shall provide all reasonable assistance requested, including providing any necessary information or data.

10. TAXES

SUBCONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with the Work under this Subcontract and shall make any and all payroll deductions required by law. SUBCONTRACTOR hereby indemnifies and holds the CONTRACTOR and the GOVERNMENT harmless from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

11. LABOR, PERSONNEL AND WORK RULES

SUBCONTRACTOR shall employ only competent and skilled personnel to perform the Work and shall remove from the Job site any SUBCONTRACTOR personnel determined to be unfit for duty (*see* Article 48 below) or to be acting in violation of any provision of this Subcontract. [For information regarding CONTRACTOR work rules and disciplinary action applied to CONTRACTOR personnel in violation of work rules (with particular emphasis on Safety violations), SUBCONTRACTOR may contact CONTRACTOR'S designated Subcontract Labor Relations Representative.] SUBCONTRACTOR is responsible for maintaining labor relations in such a manner that there is harmony among workers and shall comply with and enforce Project and Jobsite procedures, regulations, work rules, and work hours established by the CONTRACTOR and the GOVERNMENT.

SUBCONTRACTOR shall advise its employees and lower tier subcontractors whose employees are performing work at SRS that they shall inform SUBCONTRACTOR of any arrest or indictment by any law enforcement agency as soon as practicable; and SUBCONTRACTOR shall inform CONTRACTOR within 24 hours in writing (Email is acceptable) of its or its lower tier subcontractor's employee's name and the alleged facts of the arrest or indictment. CONTRACTOR shall make a determination of the employee's continued suitability for employment at SRS.

CONTRACTOR may at its sole discretion deny access to the Jobsite to any individual by written notice to SUBCONTRACTOR. In the event an employee is excluded from the Jobsite, SUBCONTRACTOR shall promptly replace such individual with another who is fully competent and skilled to perform the Work.

SUBCONTRACTOR shall, to the extent permissible under applicable law, comply with the provisions of all labor agreement(s), inclusive of the Savannah River Site Project Agreement, that apply to the Work performed under this Subcontract.

Work assignments and the settlement of jurisdictional disputes shall conform with either the Rules, Regulations, and Procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry, and any successor agreement thereto, or any other mutually established method of determining work assignments and settling jurisdictional disputes.

12. COMMERCIAL ACTIVITIES

Neither SUBCONTRACTOR nor its employees shall establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on the Jobsite or any other lands managed, owned, or controlled by CONTRACTOR or the GOVERNMENT.

13. PUBLICITY AND ADVERTISING

SUBCONTRACTOR shall not make any announcement, take any photographs, or release any information concerning this Subcontract or the Savannah River Site to any member of the public, the press, another business entity, or any official body unless prior written consent is obtained from CONTRACTOR.

14. SITE CONDITIONS AND NATURAL RESOURCES

SUBCONTRACTOR shall have the sole responsibility for satisfying itself concerning the nature and location of the Work and the general and local conditions, including but not limited to the following:

- (a) transportation, access, disposal, handling, and storage of materials;
- (b) availability and quality of labor, water, electric power, and road conditions;
- (c) climatic conditions, tides, and seasons;

- (d) river hydrology and river stages;
- (e) physical conditions at the Jobsite and the project area as a whole;
- (f) topography and ground surface conditions; and
- (g) equipment and facilities needed preliminary to and during the performance of the Work.

The failure of SUBCONTRACTOR to acquaint itself with any applicable conditions will not relieve SUBCONTRACTOR of the responsibility for properly estimating either the difficulties or the costs of successfully performing SUBCONTRACTOR'S obligations under this Subcontract.

Where CONTRACTOR or the GOVERNMENT has investigated subsurface conditions in areas where Work is to be performed under this Subcontract, such investigations were made by CONTRACTOR or the GOVERNMENT for the purpose of study and design. If the records of such investigations are included in the Subcontract documents, the interpretation of such records shall be the sole responsibility of SUBCONTRACTOR. Neither CONTRACTOR nor the GOVERNMENT assumes any responsibility whatsoever respecting the sufficiency or accuracy of such investigations, records of the investigations, or of the interpretations set forth, and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records are representative of those existing throughout such areas or that unforeseen developments may not occur or that materials other than or in proportions different from those indicated may not be encountered.

15. DIFFERING SITE CONDITIONS

SUBCONTRACTOR shall promptly notify CONTRACTOR in writing before proceeding with any Work that SUBCONTRACTOR believes constitutes a differing site condition with respect to:

- (a) subsurface or latent physical conditions at the Jobsite differing materially from those indicated in this Subcontract, or
- (b) previously unknown physical conditions at the Jobsite, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Subcontract.

CONTRACTOR will, as promptly as practicable, investigate such conditions and make a determination. If CONTRACTOR determines that such conditions do materially differ and cause an increase or decrease in SUBCONTRACTOR'S cost of or the time required for performance of the Work under the Subcontract, an adjustment will be made and the Subcontract modified in writing. No claim of SUBCONTRACTOR under this clause will be allowed unless SUBCONTRACTOR has given the required notice.

16. TITLE TO MATERIALS FOUND

The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or excavated or other operations of SUBCONTRACTOR or any of its lower tier subcontractors and the right to use said materials or dispose of same is hereby expressly reserved by the GOVERNMENT. Neither SUBCONTRACTOR or its lower tier subcontractors, nor any of their representatives or employees shall have any right, title, or interest in said materials and shall not assert or make any claim to said materials. SUBCONTRACTOR, at the sole discretion of the GOVERNMENT, may be permitted, without charge, to use in the Work any such materials that meet the requirements of this Subcontract.

17. SURVEY CONTROL POINTS AND LAYOUTS

Survey control points as shown on the drawings will be established by CONTRACTOR.

SUBCONTRACTOR shall complete the layout of all Work and shall be responsible for all requirements necessary for the Work execution in accordance with the locations, lines and grades specified or shown on the drawings, subject to such modifications as CONTRACTOR may require as Work progresses.

If SUBCONTRACTOR or any of its lower tier subcontractors or any of their representatives or employees move or destroy or render inaccurate any survey control point, such control point shall be replaced by CONTRACTOR at SUBCONTRACTOR'S expense. No separate payment will be made for survey Work performed by SUBCONTRACTOR.

18. SUBCONTRACTOR'S WORK AREA

All SUBCONTRACTOR Work areas on the Jobsite will be assigned by CONTRACTOR. SUBCONTRACTOR shall confine its operations to the areas so assigned. Should SUBCONTRACTOR find it necessary or advantageous to use any additional offsite area for any purpose whatsoever, SUBCONTRACTOR shall, at its expense, provide and make its own arrangements for the use of such additional offsite areas.

19. CLEANING UP

SUBCONTRACTOR shall, at all times, keep its Work areas in a neat, clean, and safe condition.

Upon completion of any portion of the Work, SUBCONTRACTOR shall promptly remove from the Work area all its equipment, construction plant, temporary structures, and surplus materials that will not be used at or near the same location during later stages of the Work.

Upon completion of the Work and prior to final payment, SUBCONTRACTOR shall at its expense satisfactorily dispose of all rubbish, remove all plant, buildings, equipment and materials belonging to SUBCONTRACTOR; and return to CONTRACTOR'S warehouse or Jobsite storage area all salvageable CONTRACTOR or GOVERNMENT supplied materials. SUBCONTRACTOR shall leave the premises in a neat, clean, and safe condition.

In event of SUBCONTRACTOR'S failure to comply with the foregoing, CONTRACTOR will accomplish same at SUBCONTRACTOR'S expense.

20. COOPERATION WITH OTHERS

CONTRACTOR, the GOVERNMENT, other contractors, and other subcontractors may be working at the Jobsite during the performance of this Subcontract, and SUBCONTRACTOR Work or use of certain facilities may be interfered with as a result of such concurrent activities. Contractor reserves the right to require SUBCONTRACTOR to schedule the order of performance of the Work in such a manner as will minimize interference with Work of any of the parties involved. SUBCONTRACTOR shall fully cooperate with other contractors, subcontractors, CONTRACTOR, and the GOVERNMENT. SUBCONTRACTOR shall not commit any act that will interfere with the performance of work by any other contractor, subcontractor, CONTRACTOR, or the GOVERNMENT.

Should SUBCONTRACTOR incur any additional costs or sustain any damages through any act or omission of another contractor or subcontractor, SUBCONTRACTOR shall have no claim or cause of action against CONTRACTOR or the GOVERNMENT for such additional costs or damages and hereby waives any such claim. The phrase "act or omission" as used herein includes but is not limited to delays, interferences, hindrances, or disruptions on the part of another contractor or subcontractor.

21. RESPONSIBILITY FOR WORK, SECURITY, AND PROPERTY

A. Work in Progress, Materials and Equipment.

SUBCONTRACTOR shall be responsible for and shall bear any and all risk of loss of or damage to Work in progress, all materials, and equipment until final acceptance of the Work under this Subcontract.

B. Delivery, Unloading and Storage.

SUBCONTRACTOR'S responsibility for materials and plant equipment required for the performance of this Subcontract shall include:

1. receiving and unloading;

2. storing in a secure place and in a manner subject to CONTRACTOR'S review (outside storage of materials and equipment subject to degradation by the elements shall be in weather tight enclosures provided by SUBCONTRACTOR);
3. delivering from storage to construction site all materials and plant equipment as required; and
4. maintaining complete and accurate records for CONTRACTOR'S inspection of all materials and plant equipment received, stored and issued for use in the performance of the Subcontract.

C. Security.

SUBCONTRACTOR shall at all times perform all Work under this Subcontract in a manner to avoid the risk of loss, theft, or damage by vandalism, sabotage, or any other means to any Work, materials, equipment, or other property at the Jobsite. SUBCONTRACTOR shall continuously inspect all Work, materials, and equipment to discover and determine any conditions which might involve such risks and shall be solely responsible for discovery, determination, and correction of any such conditions.

SUBCONTRACTOR shall comply with CONTRACTOR'S security requirements for the Jobsite. SUBCONTRACTOR shall cooperate with CONTRACTOR on all security matters and shall promptly comply with any project security arrangements established by CONTRACTOR or the GOVERNMENT. Compliance with these security requirements shall not relieve SUBCONTRACTOR of its responsibility for maintaining proper security for the above noted items, nor shall it be construed as limiting in any manner SUBCONTRACTOR'S obligation to comply with all applicable laws and regulations and to undertake reasonable action to establish and maintain secure conditions at the Jobsite.

D. Property.

SUBCONTRACTOR shall plan and conduct its operations so as not to:

1. enter upon lands in their natural state unless authorized by CONTRACTOR;
2. damage, close, or obstruct any utility installation, highway, road, or other property until any necessary permits or permission have been obtained;
3. disrupt or otherwise interfere with the operation of any pipeline, telephone, electric or other utility transmission line, ditch, or utility substation or associated structure unless otherwise specifically authorized by this Subcontract; or
4. damage or destroy cultivated and planted areas, and vegetation such as trees, plants, shrubs and grass on or adjacent to the premises that, as determined by CONTRACTOR, do not interfere with the performance of this Subcontract. (This includes damage arising from performance of Work through operation or staging of equipment or stockpiling of materials.)

SUBCONTRACTOR shall not be entitled to any extension of time or compensation on account of SUBCONTRACTOR'S failure to protect materials, equipment, and the environment as described above. All costs in connection with any repairs or restoration necessary or required by reason of unauthorized obstruction, damage, or use shall be borne by SUBCONTRACTOR.

22. SUBCONTRACTOR'S PLANT, EQUIPMENT, AND FACILITIES

SUBCONTRACTOR shall provide and use for the Work performed under this Subcontract only such construction plant and equipment that are capable of producing the quality and quantity of Work scheduled and materials required by this Subcontract and within the time or times specified in the Subcontract Schedule.

Before proceeding with Work, SUBCONTRACTOR shall furnish CONTRACTOR with information and drawings relative to such equipment, plant, and facilities as CONTRACTOR may request. Upon written order of CONTRACTOR, SUBCONTRACTOR shall discontinue operation of unsatisfactory plant, equipment, or facilities and shall either modify the unsatisfactory items or remove such items from the Jobsite.

SUBCONTRACTOR, at the time any equipment is moved onto the Jobsite, shall present to CONTRACTOR an itemized list of said equipment for accountability purposes, including but not limited to cranes, welding machines, pumps, and compressors. Said list must include description and quantity and serial number where applicable. Prior to removal of any or all equipment, SUBCONTRACTOR shall pre-clear such removal through CONTRACTOR.

Any SUBCONTRACTOR or rental equipment involved in an on-site accident shall not be removed from the site until all information required for the accident investigation is obtained and approval for equipment release is received from CONTRACTOR.

23. ILLUMINATION

When any Work is performed at night or where daylight is obscured, SUBCONTRACTOR shall, at its expense, provide artificial light sufficient to permit Work to be performed efficiently, satisfactorily, and safely, and to permit thorough inspection of Work performed or completed or both. During such time periods the access to the place of Work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a safe manner and meet all applicable codes and standards.

24. USE OF CONTRACTOR'S CONSTRUCTION EQUIPMENT OR FACILITIES

Where SUBCONTRACTOR requests CONTRACTOR and CONTRACTOR agrees to make available to SUBCONTRACTOR certain equipment or facilities belonging to CONTRACTOR for the performance of SUBCONTRACTOR Work under the Subcontract, the following shall apply:

- (a) equipment or facilities will be charged to SUBCONTRACTOR at agreed rental rates,
- (b) CONTRACTOR will furnish a copy of the equipment maintenance and inspection record, and these records shall be maintained by SUBCONTRACTOR during the rental period,
- (c) SUBCONTRACTOR shall assure itself of the condition of such equipment and assume all risks and responsibilities for its use. SUBCONTRACTOR shall release, defend, indemnify, and hold CONTRACTOR harmless against any damages or claims that may arise from use of the equipment,
- (d) CONTRACTOR and SUBCONTRACTOR shall jointly inspect such equipment before its use and upon its return. The cost of all necessary repairs or replacement for damage other than normal wear shall be SUBCONTRACTOR's expense, and
- (e) if such equipment is furnished with an operator, the services of such operator will be performed under the complete direction and control of SUBCONTRACTOR, and such operator shall be considered SUBCONTRACTOR'S employee for all purposes other than the payment of wages or salaries, Workers' Compensation Insurance or other benefits whether paid directly or indirectly by CONTRACTOR or the GOVERNMENT.

25. INSPECTION, QUALITY SURVEILLANCE, REJECTION OF MATERIALS, AND WORKMANSHIP

All material and equipment furnished and Work performed shall be properly inspected by SUBCONTRACTOR at its expense, and shall at all times be subject to quality surveillance and quality audit by CONTRACTOR, the GOVERNMENT, or their authorized representatives who shall be afforded full and free access to the shops, factories, or other places of business of SUBCONTRACTOR and its lower tier subcontractors for such quality surveillance or audit. SUBCONTRACTOR shall provide safe and adequate facilities, drawings, documents, and samples as requested, and shall provide assistance and cooperation including suspension of Work to perform such examination as may be necessary to determine compliance with the requirements of this Subcontract. Any Work covered prior to any scheduled quality surveillance or test by CONTRACTOR or the GOVERNMENT shall be uncovered and replaced at the expense of SUBCONTRACTOR. Failure of CONTRACTOR or the GOVERNMENT to make such quality surveillance or to discover defective design, materials, or workmanship shall not relieve SUBCONTRACTOR of its obligations under this Subcontract nor prejudice the rights of CONTRACTOR or the GOVERNMENT thereafter to reject or require the correction of defective Work in accordance with the provisions of this Subcontract.

If any Work is determined by CONTRACTOR or the GOVERNMENT to be defective or failing to conform with specifications in this Subcontract, the provisions ARTICLE 34 titled "WARRANTY" shall apply.

26. TESTING

Unless otherwise provided in the Subcontract, testing of materials or Work shall be performed by SUBCONTRACTOR at its expense and in accordance with Subcontract requirements. Should tests in addition to those required by this Subcontract be desired by CONTRACTOR, SUBCONTRACTOR will be advised in ample time to permit such testing. Such additional tests will be at CONTRACTOR'S expense.

SUBCONTRACTOR shall furnish samples as requested and shall provide reasonable assistance and cooperation necessary to permit tests to be performed on materials or Work in place including reasonable suspension of Work during testing.

If, before acceptance of the entire Work, CONTRACTOR decides to examine already completed work by removing it or tearing it out, SUBCONTRACTOR, on request, shall promptly furnish all necessary facilities, labor, and materials. If the Work is found to be defective or non-conforming in any material respect due to the fault of SUBCONTRACTOR or its lower tier subcontractors, SUBCONTRACTOR shall defray the expense of the examination and of satisfactory reconstruction. However, if the Work is found to meet Subcontract requirements, CONTRACTOR shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time.

27. EXPEDITING

The material and equipment furnished and Work performed under this subcontract shall be subject to expediting by CONTRACTOR or its representatives who shall be allowed full and free access to the shops, factories, and other places of business of SUBCONTRACTOR and its lower tier subcontractors for expediting purposes. As required by CONTRACTORS, SUBCONTRACTOR shall provide detailed schedules and progress reports for use in expediting and shall cooperate with CONTRACTOR in expediting activities.

28. PROGRESS

SUBCONTRACTOR shall give CONTRACTOR full information in advance as to its plans for performing each part of the Work. If at any time SUBCONTRACTOR'S actual progress is inadequate to meet the requirements of this Subcontract, CONTRACTOR may so notify SUBCONTRACTOR that shall thereupon take such steps as may be necessary to improve its progress. If, within a reasonable period as determined by CONTRACTOR, SUBCONTRACTOR does not improve performance to meet the currently approved Subcontract Schedule, CONTRACTOR may require an increase in SUBCONTRACTOR'S labor force, the number of shifts, overtime operations, additional days of Work per week, or an increase in the amount of construction plant, all without additional cost to CONTRACTOR. Neither such notice nor CONTRACTOR'S failure to issue such notice shall relieve SUBCONTRACTOR of its obligation to achieve the quality of Work and rate of progress required by this Subcontract.

Failure of SUBCONTRACTOR to comply with CONTRACTOR'S instructions may be grounds for determination by CONTRACTOR that SUBCONTRACTOR is not prosecuting the Work with such diligence as will assure completion within the times specified. Upon such determination, CONTRACTOR may terminate, in accordance with the applicable provisions of this Subcontract, SUBCONTRACTOR'S right to proceed with the performance of the Subcontract.

29. EXCUSABLE DELAYS

If SUBCONTRACTOR'S performance of this Subcontract is prevented or delayed by any unforeseeable cause, existing or future, which is beyond the reasonable control of the parties and without the fault or negligence of SUBCONTRACTOR, SUBCONTRACTOR shall, within twenty-four (24) hours of the commencement of any such delay, give to CONTRACTOR written notice and within seven (7) calendar days of commencement of the delay, a written description of the anticipated impact of the delay on performance of the Work. Delays attributable to and within the control of SUBCONTRACTOR'S lower tier subcontractors shall be deemed delays within the control of SUBCONTRACTOR. Radiological survey time to release personnel, materials, equipment, or facilities from known radiological areas shall not be considered excusable delays. Within seven (7) calendar days after the termination of

any excusable delay, SUBCONTRACTOR shall file a written notice with CONTRACTOR specifying the actual duration of the delay. Failure to give any of the above notices shall be sufficient grounds for denial of an extension of time. If CONTRACTOR determines that the delay was unforeseeable, beyond the control and without the fault or negligence of SUBCONTRACTOR, CONTRACTOR will determine the duration of the delay and will extend the time of performance of this Subcontract by modifying the Special Provision titled "COMMENCEMENT, PROGRESS, AND COMPLETION OF THE WORK" in Exhibit "B" accordingly.

30. CHANGES

CONTRACTOR may, at any time, without notice to any sureties, by written Change Notice, unilaterally make any change in the Work within the general scope of this Subcontract, including but not limited to changes in:

- (a) drawings, designs, or specifications;
- (b) the method, manner, or sequence of SUBCONTRACTOR Work;
- (c) the GOVERNMENT or CONTRACTOR furnished facilities, equipment, materials, services, or site(s);
- (d) the acceleration or deceleration in the performance of the Work; and
- (e) the Subcontract Schedule or the Subcontract Milestones.

In addition, in the event of an emergency in which CONTRACTOR determines endangers life or property, CONTRACTOR may orally direct SUBCONTRACTOR to perform any work required by reason of such emergency. Such orders will be confirmed by Change Notice.

All other changes that are outside the general scope of this Subcontract or that relate to provisions not detailed above shall be by written bilateral modification.

If at any time SUBCONTRACTOR believes that acts or omissions of CONTRACTOR or the GOVERNMENT constitute a change to the Work not covered by a Change Notice, SUBCONTRACTOR shall, within ten (10) calendar days of discovery of such act or omission, submit a written Change Notice Request explaining in detail the basis for the request. CONTRACTOR will either issue a Change Notice or deny the request in writing.

If any change under this clause directly or indirectly causes an increase or decrease in cost of, or the time required for, the performance of any part of the Work under this Subcontract, whether or not changed by any order, an equitable adjustment shall be made and the Subcontract modified accordingly. However, SUBCONTRACTOR shall not be entitled to and neither CONTRACTOR nor the GOVERNMENT shall be liable to SUBCONTRACTOR or its lower tier subcontractors for increased costs in connection with any changes or delays in the Work for claims arising in tort (including negligence) or in contract except as specifically provided in this Subcontract.

If SUBCONTRACTOR intends to assert a request for an equitable adjustment under this clause, it must, within ten (10) calendar days after receipt of a Change Notice, provide written notification of such intent and within a further twenty (20) calendar days, pursuant to the Special Provision in Exhibit "B" titled "PRICING OF ADJUSTMENTS," submit to CONTRACTOR a written proposal setting forth the nature, schedule impact, and monetary extent of such claim in sufficient detail to permit thorough analysis and negotiation.

Additional cost or damages recoverable by SUBCONTRACTOR for any claim for acceleration allowable under this Subcontract shall be limited to additional costs incurred by SUBCONTRACTOR attributable to: (i) increased shift length, (ii) increased number of days worked per week, (iii) increased quantity of construction equipment and materials, (iv) increased supervision, and (v) other Jobsite overheads.

Any delay by SUBCONTRACTOR in giving notice or presenting a proposal for adjustment under this clause shall be grounds for rejection of the claim if and to the extent CONTRACTOR or the GOVERNMENT are prejudiced by such delay. In no case shall a claim by SUBCONTRACTOR be considered if asserted after final payment under this Subcontract and not reserved.

Failure by CONTRACTOR and SUBCONTRACTOR to agree on any adjustment shall be a dispute within the meaning of ARTICLE 31 titled "DISPUTES" below. However, SUBCONTRACTOR shall proceed diligently with performance of the Work as changed pending final resolution of any request for relief arising under the Subcontract and comply with any decision of CONTRACTOR.

31. DISPUTES

SUBCONTRACTOR shall proceed diligently with performance of the Work pending final resolution of any dispute, claim, appeal, or action arising under the Subcontract and comply with any decision by CONTRACTOR.

Any claim for an adjustment to the Subcontract price or time of performance that cannot be resolved by negotiation shall be considered a dispute within the meaning of this clause. For all claims in excess of \$50,000, SUBCONTRACTOR shall certify that the claim is made in good faith; that the supporting data is accurate and complete; and that the amount requested accurately reflects the adjustment for which SUBCONTRACTOR believes CONTRACTOR is liable.

If for any reason SUBCONTRACTOR and CONTRACTOR are unable to resolve a claim for an adjustment, each shall notify the other party in writing that a dispute exists and request or provide a final determination by CONTRACTOR. Any such request by SUBCONTRACTOR shall be clearly identified by reference to this clause and shall summarize the facts in dispute and SUBCONTRACTOR'S proposal for resolution.

CONTRACTOR shall provide, within thirty (30) days of any request by SUBCONTRACTOR, a final written determination describing the contractual basis for its decision and defining what Subcontract adjustments it considers equitable. Upon SUBCONTRACTOR'S acceptance of CONTRACTOR'S determination, the Subcontract will be modified and the determination implemented accordingly or, failing agreement, CONTRACTOR may in its sole discretion pay such amounts and/or revise the time for performance of the Work in accordance with its final determination.

If CONTRACTOR'S final determination is not accepted by SUBCONTRACTOR, the parties agree to consider resolution of the dispute through some form of Alternative Dispute Resolution (ADR) process mutually acceptable to the parties. Either party may propose ADR by a written request made within ninety (90) days following CONTRACTOR'S final determination or in any event before final payment under the Subcontract. Should the parties agree to pursue ADR, each party will be responsible for its own expenses incurred to resolve the dispute.

If the parties do not agree to ADR or are unable to resolve the dispute through ADR, either party shall then have the right to pursue legal redress. Any litigation shall be pursued in a court of competent jurisdiction located in the State of South Carolina. The determination of any substantive issues of law shall be according to the Federal common law of Government Contracts as stated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. If there is no applicable Federal Government Contracts law, the law of the State of South Carolina shall apply in the determination of such issues.

32. USE OF COMPLETED PORTIONS OF WORK

Whenever, as determined by CONTRACTOR, any portion of the Work performed by SUBCONTRACTOR is suitable for immediate use, CONTRACTOR or the GOVERNMENT may occupy, take possession, and use such portion. Use shall not constitute acceptance, relieve SUBCONTRACTOR of its responsibilities, or act as a waiver by CONTRACTOR or any of the terms of the Subcontract.

SUBCONTRACTOR shall not be liable for normal wear and tear or for repair of damage caused by any misuse during such occupancy or use by CONTRACTOR or the GOVERNMENT. If such use increases the cost or time of performance of remaining portions of the Work, SUBCONTRACTOR shall be entitled to an equitable adjustment in its compensation or schedule under this Subcontract.

If, as a result of SUBCONTRACTOR'S failure to comply with the provisions of this Subcontract, such use proves to be unsatisfactory to CONTRACTOR or the GOVERNMENT, CONTRACTOR or the GOVERNMENT shall have the right to continue such use until such portion of the Work can, without injury to CONTRACTOR or the GOVERNMENT, be taken out of service for correction of defects, errors, omissions, or replacement of unsatisfactory materials or as necessary for such portion of the Work to comply with the Subcontract; provided that

the period of such operation or use pending completion of appropriate remedial action shall not exceed twelve (12) months unless otherwise mutually agreed in writing between the parties.

SUBCONTRACTOR shall not use any permanently installed equipment unless such use is approved in writing by CONTRACTOR. When such use is approved, SUBCONTRACTOR shall at SUBCONTRACTOR'S expense properly use and maintain and, upon completion of such use, recondition such equipment as required to meet specifications.

If CONTRACTOR or the GOVERNMENT furnishes an operator for such equipment, all services performed shall be under the complete direction and control of SUBCONTRACTOR, and such operator shall be considered SUBCONTRACTOR'S employee for all purposes other than payment of such operator's wages, Workers' Compensation Insurance, or other benefits paid directly or indirectly by CONTRACTOR or the GOVERNMENT.

33. WARRANTY

SUBCONTRACTOR warrants to CONTRACTOR and the GOVERNMENT that equipment and materials furnished under this Subcontract shall be new, of clear title, and of the most suitable grade of their respective kinds for their intended uses, unless otherwise specified. All workmanship shall be first-class and performed in accordance with sound construction practices acceptable to CONTRACTOR. All equipment, materials, and workmanship shall also conform to the requirements of this Subcontract.

SUBCONTRACTOR warrants all equipment and material it furnishes and all work it performs against defects in design, equipment, materials, or workmanship either for a period from Work commencement to a date twelve (12) months after Mechanical Completion of the project as a whole by CONTRACTOR or the GOVERNMENT or the standard commercial warranty period, whichever is more advantageous to the CONTRACTOR. Any warranties for manufactured or fabricated equipment that survive the 12-month warranty period of the project shall remain in effect and be accessible to CONTRACTOR or the GOVERNMENT.

If at any time during the warranty period, CONTRACTOR or the GOVERNMENT discovers any defect in the design, equipment, materials, or workmanship, immediate notice shall be given to the other parties. SUBCONTRACTOR shall within a reasonable time propose corrective actions to cure such defects to meet the requirements of this Subcontract.

CONTRACTOR, at its sole discretion, may direct SUBCONTRACTOR in writing and SUBCONTRACTOR agrees to:

- (a) rework, repair, or remove and replace defective equipment and materials or perform again the defective workmanship to acceptable quality at a time and in a manner acceptable to CONTRACTOR;
- (b) cooperate with others assigned by CONTRACTOR to correct such defects and pay to CONTRACTOR all actual costs reasonably incurred by CONTRACTOR in performing or in having performed corrective actions; or
- (c) propose and negotiate in good faith an equitable reduction in the Subcontract price in lieu of corrective action.

All costs incidental to corrective actions including demolition for access, removal, disassembly, transportation, reinstallation, reconstruction, retesting, and re-inspection as may be necessary to correct to the defect and to demonstrate that the previously defective work conforms to the requirements of this Subcontract shall be borne by SUBCONTRACTOR.

SUBCONTRACTOR further warrants any and all corrective actions it performs against defects in design, equipment, materials, and workmanship for an additional period of twelve (12) months following acceptance by CONTRACTOR of the corrected Work or standard commercial warranty on product meeting standard warranty.

34. BACKCHARGES

If, under the provisions of this Subcontract, SUBCONTRACTOR is notified by CONTRACTOR to correct defective or nonconforming Work, and SUBCONTRACTOR states or by its actions indicates that it is unable or

unwilling to proceed with corrective action in a reasonable time, CONTRACTOR may proceed, upon written notice, to accomplish the redesign, repair, rework, or replacement of nonconforming Work by the most expeditious means available and backcharge SUBCONTRACTOR for the costs incurred. Furthermore, if CONTRACTOR agrees to or is required to perform Work for SUBCONTRACTOR, such as cleanup, off-loading, or completion of incomplete Work, CONTRACTOR may, upon written notice, perform such Work by the most expeditious means available and backcharge SUBCONTRACTOR for the costs incurred.

The cost of backcharged Work shall include:

- (a) incurred labor costs including all payroll fringes,
- (b) incurred net delivered material costs,
- (c) incurred lower tier subcontractor costs directly related to performing the corrective actions,
- (d) equipment and tool rentals at prevailing rates in the Jobsite area, and
- (e) a factor of sixty percent (60%) applied to the total of items (a) through (d) for CONTRACTOR'S overhead, supervision, and administrative costs.

The backcharge notice will request SUBCONTRACTOR'S approval for CONTRACTOR to proceed with the required Work. However, failure of SUBCONTRACTOR to grant such approval shall not impair CONTRACTOR'S right to proceed with Work under this or any other provision of this Subcontract.

CONTRACTOR shall separately invoice or deduct from payments otherwise due to SUBCONTRACTOR the costs incurred. CONTRACTOR'S right to backcharge is in addition to any and all other rights and remedies provided in this Subcontract or by law. The performance of backcharged Work by CONTRACTOR shall not relieve SUBCONTRACTOR of any of its responsibilities under this Subcontract, including but not limited to express or implied warranties, specified standards for quality, contractual liabilities and indemnification, and the Subcontract Schedule.

35. INDEMNITY

SUBCONTRACTOR hereby releases and shall indemnify, defend, and hold CONTRACTOR and the GOVERNMENT and their subsidiaries and affiliates and the officers, agents, employees, successors, and assigns an authorized representatives of all the foregoing harmless from and against any and all suits, actions, legal, or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, expenses, and losses of whatsoever kind or nature in connection with or incidental to the performance of this Subcontract, whether arising before or after completion of the Work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of SUBCONTRACTOR, its lower tier subcontractors, or anyone acting under its direction or control or on its behalf.

The foregoing shall include but is not limited to indemnity for:

- (a) events directly or indirectly caused by or incident to the radioactive, toxic and/or hazardous properties of any substance;
- (b) events arising out of violation of any state or federal statute relating to radioactive, toxic and/or hazardous materials or waste, such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), or Resource Conservation and Recovery Act of 1976, as amended (RCRA), and applying to any clean-up or response costs occasioned by the transport, treatment, storage or disposal by SUBCONTRACTOR or any third party of radioactive, toxic and/or hazardous materials or wastes;
- (c) property damage and injury to or death of any person, including employees of CONTRACTOR, the GOVERNMENT, or SUBCONTRACTOR; or

- (d) the breach by SUBCONTRACTOR of any representation, warranty, covenant, or performance obligation of this Subcontract.

SUBCONTRACTOR'S aforesaid release, indemnity and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless. Nothing in the foregoing shall be construed to require SUBCONTRACTOR to indemnify and save harmless CONTRACTOR or the GOVERNMENT from any liability out of or resulting from the liabilities for which indemnification is provided under DEAR 952.250-70 titled "NUCLEAR INDEMNITY".

SUBCONTRACTOR specifically waives any immunity provided against this indemnify by any industrial insurance or workers' compensation statute.

36. PATENT AND INTELLECTUAL PROPERTY INDEMNITY

SUBCONTRACTOR hereby indemnifies and shall defend and hold CONTRACTOR, the GOVERNMENT, and their representatives harmless from and against any and all claims, actions, losses, damages and expenses, including attorneys' fees, arising from any claim, whether rightful or otherwise, that any concept, product, design, equipment, materials, process, copyrighted materials, or confidential information furnished by SUBCONTRACTOR under this Subcontract constitutes an infringement of any patent or copyrighted material or a theft of trade secrets. If use of any part of such concept, product, design, equipment, material, process, copyrighted material, or confidential information is limited or prohibited, SUBCONTRACTOR shall, at its sole expense, procure the necessary licenses to use the infringing concept, product, design, equipment, material, process, copyrighted material or confidential information or, with CONTRACTOR'S or the GOVERNMENT'S prior written approval, replace it with substantially equal but non-infringing concepts, products, designs, equipment, materials, processes, copyrighted material, or confidential information; provided, however:

- (a) that any such substituted or modified concepts, products, designs, equipment, material, processes, copyrighted material, or confidential information shall meet all the requirements and be subject to all the provisions of this Subcontract; and
- (b) that such replacement or modification shall not modify or relieve SUBCONTRACTOR of its obligations under this Subcontract.

The foregoing obligation shall not apply to any concept, product, design, equipment, material, process, copyrighted material, or confidential information the detailed design of which (excluding rating and/or performance specifications) has been furnished in writing by CONTRACTOR or the GOVERNMENT to SUBCONTRACTOR.

37. ASSIGNMENTS AND SUBCONTRACTS

SUBCONTRACTOR shall not assign or transfer this Subcontract or any interest herein, or claims arising hereunder, without the prior written consent of CONTRACTOR or CONTRACTOR'S assignee. SUBCONTRACTOR may upon ten (10) calendar days written notice to CONTRACTOR assign funds due or to become due under this Subcontract, provided that any assignment of funds shall be subject to proper set-offs in favor of CONTRACTOR and any deductions provided for in this Subcontract.

CONTRACTOR may assign this Subcontract to the GOVERNMENT or to such other party as the GOVERNMENT designates to perform CONTRACTOR'S obligations. Upon written notice to Subcontractor that or the GOVERNMENT or a party so designated by the GOVERNMENT has accepted an assignment of this Subcontract, CONTRACTOR shall be relieved of all responsibilities.

SUBCONTRACTOR shall not subcontract with any third party for the performance of all or any portion of the Work without the advance written approval of CONTRACTOR. Lower tier subcontracts and purchase orders must include provisions to secure all rights and remedies of CONTRACTOR and the GOVERNMENT provided under this Subcontract and must impose upon the lower tier subcontractors all of the general duties and obligations required to fulfill this Subcontract, including any quality assurance requirements (e.g., nuclear quality assurance standards).

Copies of all purchase orders and lower tier subcontracts are to be provided to CONTRACTOR upon request. Pricing may be deleted unless the compensation to be paid thereunder is reimbursable under this Subcontract.

38. SUSPENSION

CONTRACTOR may by written notice to SUBCONTRACTOR suspend at any time the performance of all or any portion of the Work to be performed under the Subcontract. Upon receipt of such notice, SUBCONTRACTOR shall, unless the notice requires otherwise:

- (a) immediately discontinue Work on the date and to the extent specified in the notice,
- (b) place no further purchase orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice,
- (c) promptly make every reasonable effort to obtain suspension upon terms satisfactory to CONTRACTOR of all purchase orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work,
- (d) continue to protect and maintain the Work including those portions on which Work has been suspended, and
- (e) take any other reasonable steps to minimize costs associated with such suspensions.

As full compensation for such suspension, SUBCONTRACTOR will be reimbursed for the following costs, excluding profit, reasonably incurred, without duplication of any item, to the extent that such costs directly result from such Work suspension (no home office overhead costs will be paid, e.g., Eichleay formula damages):

- (a) a standby charge to be paid to SUBCONTRACTOR during the period of Work suspension, which standby charge shall be sufficient to compensate SUBCONTRACTOR for keeping, to the extent required in the suspension notice, its organization and equipment committed to the Work on a standby basis;
- (b) all reasonable costs associated with mobilization and demobilization of SUBCONTRACTOR'S plant, forces, and equipment; and
- (c) an equitable amount to reimburse SUBCONTRACTOR for the cost of maintaining and protecting that portion of the Work upon which performance has been suspended.

Upon receipt of notice to resume suspended Work, SUBCONTRACTOR shall immediately resume performance under this Subcontract to the extent required in the notice.

If SUBCONTRACTOR intends to assert a claim for equitable adjustment under this clause, it must, within ten (10) calendar days after receipt of notice to resume Work, submit to CONTRACTOR a written statement fully describing the schedule impact and monetary extent of such claim in sufficient detail to permit thorough analysis. No adjustment shall be made for any suspension to the extent that performance would have been suspended, delayed, or interrupted by any SUBCONTRACTOR noncompliance with the requirements of this Subcontract.

39. TERMINATION FOR DEFAULT

Notwithstanding any other provisions of the Subcontract, SUBCONTRACTOR shall be considered in default of its contractual obligations under this Subcontract if SUBCONTRACTOR:

- (a) performs work that fails to conform to the requirements of this Subcontract;
- (b) fails to make progress so as to endanger successful performance of this Subcontract;
- (c) abandons or refuses to proceed with any of the Work, including modifications direct pursuant to ARTICLE 30 titled "CHANGES" above;
- (d) fails to fulfill or comply with any of the material terms of this Subcontract;

- (e) engages in behavior that either is dishonest or fraudulent or constitutes a conflict of interest with SUBCONTRACTOR'S obligations under this Subcontract; or
- (f) becomes insolvent or makes a general assignment for the benefit of creditors or reasonable grounds for financial insecurity arise with respect to SUBCONTRACTOR'S performance.

Upon the occurrence of item (a), (b), (d) or (f) above, CONTRACTOR shall notify SUBCONTRACTOR in writing of the nature of the failure and of CONTRACTOR'S intention to terminate the Subcontract for default. If SUBCONTRACTOR does not cure such failure within seven (7) calendar days from receipt of notification, or sooner if safety to persons is involved, or fails to provide satisfactory evidence that such default will be corrected within a reasonable time, CONTRACTOR may, by written notice to SUBCONTRACTOR and without notice to SUBCONTRACTOR'S sureties, if any, (i) terminate in whole or in part SUBCONTRACTOR'S right to proceed with the Work, and (ii) prosecute the Work to completion by subcontract or by any other method deemed expedient. CONTRACTOR may take possession of and utilize any data, designs, licenses, equipment, materials, plant, tools, and property of any kind furnished by SUBCONTRACTOR necessary to complete the Work.

Upon the occurrence of item (c) or (e) above, CONTRACTOR may terminate this Subcontract for default immediately. Any notice to or request for information from SUBCONTRACTOR prior to issuing such notice of default is solely for CONTRACTOR'S convenience and confers no rights upon SUBCONTRACTOR.

SUBCONTRACTOR and its sureties, if any, shall be liable for all costs in excess of the Subcontract price for such terminated work reasonably and necessarily incurred in the completion of the Work as scheduled, including costs of administration of any purchase order or subcontract awarded to others for completion.

Upon termination for default, SUBCONTRACTOR shall:

- (a) immediately discontinue Work on the date and to the extent specified in the notice and place no further purchase orders or lower tier subcontracts to the extent that they relate to the performance of the terminated Work;
- (b) inventory, maintain, and surrender to CONTRACTOR all data, designs, licenses, equipment, materials, plant, tools, and property furnished by SUBCONTRACTOR or provided by CONTRACTOR for performance of the terminated Work;
- (c) promptly obtain cancellations, upon terms satisfactory to CONTRACTOR, of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated Work or assign those agreements as directed by CONTRACTOR;
- (d) cooperate with the CONTRACTOR in transfer of data, designs, licenses, and information and disposition of Work in progress so as to mitigate damages;
- (e) comply with other reasonable requests from CONTRACTOR regarding the terminated Work; and
- (f) continue to perform in accordance with all of the terms and conditions of this Subcontract such portion of the Work that is not terminated.

If, after termination pursuant to this clause, it is determined for any reason that SUBCONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to ARTICLE 41 titled "TERMINATION FOR CONVENIENCE" below.

40. TERMINATION FOR CONVENIENCE

A. CONTRACTOR may terminate performance of Work under this Subcontract in whole or in part if the Procurement Representative determines that a termination is in CONTRACTOR'S interest. The Procurement Representative shall terminate by delivering to SUBCONTRACTOR a Notice of Termination specifying the extent of termination and the effective date.

B. After receipt of a Notice of Termination, and except as directed by the Procurement Representative, SUBCONTRACTOR shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

1. Stop work as specified in the notice.
 2. Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the Subcontract.
 3. Terminate all subcontracts to the extent they relate to the Work terminated.
 4. Assign to CONTRACTOR, as directed by the Procurement Representative, all rights, title, and interest of the SUBCONTRACTOR under the subcontracts terminated, in which case the CONTRACTOR shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 5. With approval or ratification to the extent required by the Procurement Representative, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this clause.
 6. As directed by the Procurement Representative, transfer title and deliver to CONTRACTOR:
 - i. the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced or acquired for the Work terminated; and
 - ii. the completed or partially completed plans, designs, drawings, information and other property that, if the Subcontract had been completed, would be required to be furnished to CONTRACTOR.
 7. Complete performance of the Work not terminated.
 8. Take any action that may be necessary, or that the Procurement Representative may direct, for the protection and preservation of the property related to this Subcontract that is in the possession of SUBCONTRACTOR and in which CONTRACTOR has or may acquire an interest.
 9. Use its best efforts to sell, as directed or authorized by the Procurement Representative, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that SUBCONTRACTOR:
 - i. is not required to extend credit to any purchaser; and
 - ii. may acquire the property under the conditions prescribed by, and at prices approved by, the Procurement Representative. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by CONTRACTOR under this Subcontract, credited to the price or cost of the Work, or paid in any other manner directed by the Procurement Representative.
- C. SUBCONTRACTOR shall submit complete termination inventory schedules no later than one hundred-twenty (120) days from the effective date of termination, unless extended in writing by the Procurement Representative upon written request of SUBCONTRACTOR within this 120-day period.
- D. After expiration of the "plant clearance period," as defined in Subpart 45.6 of the Federal Acquisition Regulation, SUBCONTRACTOR may submit to the Procurement Representative a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Procurement Representative. SUBCONTRACTOR may request CONTRACTOR to remove those items or enter into an agreement for their storage. Within fifteen (15) days, CONTRACTOR will accept title to those items and remove them or enter into a storage agreement. The Procurement Representative may verify the list upon removal of the items, or if stored, within forty-five (45) days from submission of the list, and shall correct the list, as necessary, before final settlement.
- E. After termination, SUBCONTRACTOR shall submit a final termination settlement proposal to the Procurement Representative in the form and with the certification prescribed by the Procurement Representative. SUBCONTRACTOR shall submit the proposal promptly, but no later than one (1) year from the effective date

of termination, unless extended in writing by the Procurement Representative upon written request of SUBCONTRACTOR within this one-year period. However, if the Procurement Representative determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If SUBCONTRACTOR fails to submit the proposal within the time allowed, the Procurement Representative may determine, on the basis of information available, the amount, if any, due SUBCONTRACTOR because of the termination and shall pay the amount determined.

F. Subject to paragraph E of this clause above, SUBCONTRACTOR and the Procurement Representative may agree upon the whole or any part of the amount to be paid or remaining to be paid because of termination. The amount may include a reasonable allowance for profit on Work performed. However, the agreed amount, whether under this paragraph F or paragraph G of this clause, exclusive of costs shown in subparagraph G.2 of this clause below, may not exceed the total contract price as reduced by:

1. the amount of payments previously made; and
2. the Subcontract price of Work not terminated.

The Subcontract shall be modified and SUBCONTRACTOR paid the agreed amount. Paragraph G of this clause below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph F.

G. If SUBCONTRACTOR and the Procurement Representative fail to agree on the whole amount to be paid SUBCONTRACTOR because of the termination of Work, the Procurement Representative shall pay SUBCONTRACTOR the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph F of this clause above:

1. For Subcontract Work performed before the effective date of termination, CONTRACTOR shall pay the total (without duplication of any items) of:
 - i. the cost of this Work;
 - ii. the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Subcontract if not included in paragraph G.1.i of this clause above; and
 - iii. a sum, as profit of paragraph G.1.i of this clause above, determined by the Procurement Representative under Section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Subcontract, to be fair and reasonable; however, if it appears that SUBCONTRACTOR would have sustained a loss on the entire Subcontract had it been completed, the Procurement Representative shall allow no profit under this paragraph G.1.iii and shall reduce the settlement to reflect the indicated rate of loss; and
2. the reasonable costs of settlement of the work terminated, including:
 - i. accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - ii. the termination costs for settling subcontracts (excluding the amounts of such settlements); and
 - iii. storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

H. Except for normal spoilage, and except to the extent that CONTRACTOR expressly assumed the risk of loss, the Procurement Representative shall exclude from the amounts payable to SUBCONTRACTOR under paragraph G of this clause above, the fair value, as determined by the Procurement Representative, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to CONTRACTOR or to a buyer.

I. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Subcontract, shall govern all costs claimed, agreed to, or determined under this clause.

- J. CONTRACTOR shall have the right of appeal, under ARTICLE 31 titled "DISPUTES" above, from any determination made by the Procurement Representative under paragraph E, G, of L this clause, except that if SUBCONTRACTOR failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph E or L, respectively, and failed to request a time extension, there is no right of appeal.
- K. In arriving at the amount due the SUBCONTRACTOR under this clause, there shall be deducted:
1. all unliquidated advance or other payments to the SUBCONTRACTOR under the terminated portion of this Subcontract;
 2. any claim that CONTRACTOR has against the SUBCONTRACTOR under this Subcontract; and
 3. the agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the SUBCONTRACTOR or sold under the provisions of this clause and not recovered by or credited to CONTRACTOR.
- L. If the termination is partial, SUBCONTRACTOR may file a proposal with the Procurement Representative for an equitable adjustment of the price(s) of the continued portion of the Subcontract. The Procurement Representative shall make any equitable adjustment mutually agreed upon. Any proposal by the SUBCONTRACTOR for an equitable adjustment under this clause shall be requested within ninety (90) days from the effective date of termination unless extended in writing by the Procurement Representative.
- M. CONTRACTOR may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the SUBCONTRACTOR for the terminated portion of the Subcontract, if the Procurement Representative believes the total of these payments will not exceed the amount to which the SUBCONTRACTOR will be entitled. If the total payments exceed the amount finally determined to be due, SUBCONTRACTOR shall repay the excess to CONTRACTOR upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S. Code App. 1215 (b) (2). Interest shall be computed for the period from the date the excess payment is received by the SUBCONTRACTOR to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the SUBCONTRACTOR'S termination settlement proposal because of retention or other disposition of termination inventory until ten (10) days after the date of the retention of disposition, or a later date determined by the Procurement Representative because of the circumstances.
- N. Unless otherwise provided in this Subcontract or by statute, the SUBCONTRACTOR shall maintain all records and documents relating to the terminated portion of this Subcontract for three (3) years after final settlement. This includes all books and other evidence bearing on SUBCONTRACTOR'S costs and expenses under this Subcontract. SUBCONTRACTOR shall make these records and documents available to the CONTRACTOR, at SUBCONTRACTOR'S office, at all reasonable times, without any direct charge. If approved by the Procurement Representative, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

41. FINAL INSPECTION AND ACCEPTANCE

When SUBCONTRACTOR considers the Work, or any CONTRACTOR-identified independent portion of the Work, under this Subcontract to be complete and ready for acceptance, SUBCONTRACTOR shall notify CONTRACTOR in writing. CONTRACTOR, with SUBCONTRACTOR'S cooperation, will conduct such reviews, inspections, and tests as may be reasonably required to satisfy CONTRACTOR that the Work, or identified portion of the Work, conforms to all requirements of the Subcontract. If all or any part of the Work covered by SUBCONTRACTOR'S notice does not conform to Subcontract requirements, CONTRACTOR shall notify SUBCONTRACTOR of such nonconformance and SUBCONTRACTOR shall take corrective action and then have the nonconforming work reinspected until all Subcontract requirements are satisfied.

CONTRACTOR shall issue a Notice of Provisional Acceptance for individual portions that have been satisfactorily inspected subject only to CONTRACTOR'S Final Acceptance of the Work as a whole.

CONTRACTOR'S written Notice of Final Acceptance of the Work under this Subcontract shall be final and conclusive except with regard to latent defects, fraud, or such gross mistakes as amount to fraud, or with regard to CONTRACTOR'S and the GOVERNMENT'S right under ARTICLE 34 titled "WARRANTY" above.

42. NON-WAIVER

Failure by CONTRACTOR to insist upon strict performance of any terms or conditions of this Subcontract; or failure or delay to exercise any rights or remedies provided herein or by law, or failure to properly notify SUBCONTRACTOR in the event of breach; or the acceptance of or payment for any goods or services hereunder; or the review or failure to review designs shall not release SUBCONTRACTOR from any of the warranties or obligations of this Subcontract and shall not be deemed a waiver of any right of CONTRACTOR or the GOVERNMENT to insist upon strict performance thereof or any of rights or remedies as to any prior or subsequent default under this Subcontract. Further, any termination of Work under this Subcontract by CONTRACTOR shall not operate as a waiver of any of the terms hereof.

43. SURVIVAL

The rights and obligations of the parties that by their nature survive termination or completion of this Subcontract, including but not limited to those set forth in the General Provisions titled "WARRANTY" (ARTICLE 34) and "INDEMNITY"(36), shall remain in full force and effect.

44. PAYMENT BY ELECTRONIC FUNDS TRANSFER

A. Methods of Payment.

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

B. Mandatory Submission of SUBCONTRACTOR'S EFT Information.

SUBCONTRACTOR is required to provide CONTRACTOR with the information required to make payment by EFT. SUBCONTRACTOR shall provided this information directly to the office designated in this Subcontract on forms provided by CONTRACTOR, no later than fifteen (15) days after award. If not otherwise specified in the Subcontract, the payment office is the designated office for receipt of SUBCONTRACTOR'S EFT information. In the event that the EFT information changes, SUBCONTRACTOR shall be responsible for providing the updated information to the designated office.

C. Mechanisms for EFT Payment.

CONTRACTOR may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System.

D. Suspension of Payment.

1. CONTRACTOR is not required to make any payment under this Subcontract until after receipt, by the designated office, of the correct EFT payment information from SUBCONTRACTOR. Until receipt of the correct EFT information, any invoice or Subcontract financing request shall be deemed not to be a proper invoice for the purpose of payment under the Subcontract.

2. If the EFT information changes after submission of correct EFT information, CONTRACTOR shall begin using the changed EFT information no later thirty (30) days after is receipt by the designated office. However, SUBCONTRACTOR may request that no further payments be made until the updated EFT information is implemented by the payment office.

E. Payment Information.

On the day payment on SUBCONTRACTOR'S invoice is due, CONTRACTOR will issue instructions to its bank to transfer payment to SUBCONTRACTOR, and will also send a telefacsimile to SUBCONTRACTOR explaining the details to support the payment.

F. Liability for Uncompleted or Erroneous Transfers.

1. If an uncompleted or erroneous transfer occurs because CONTRACTOR used SUBCONTRACTOR'S EFT information incorrectly, CONTRACTOR remains responsible for:
 - i. making a correct payment; and
 - ii. recovering any erroneously directed funds.
2. If an uncompleted or erroneous transfer occurs because SUBCONTRACTOR'S EFT information was incorrect, or was revised within thirty (30) days of CONTRACTOR release of the EFT payment transaction instructions to the bank, and if:
 - i. the funds are no longer under the control of the payment office, CONTRACTOR is deemed to have made payment and SUBCONTRACTOR is responsible for recovery of any erroneously directed funds; or
 - ii. the funds remain under the control of the payment office, CONTRACTOR shall not make payment and the provisions of paragraph D of this clause above shall apply.

45. TRAVEL

Travel, per diem and lodging costs are not reimbursable under this Subcontract.

46. SUPERINTENDENCE BY SUBCONTRACTOR

At all times during performance of this Subcontract and until the Work is completed and accepted, SUBCONTRACTOR shall directly superintend the Work or assign and have on the Worksite a competent superintendent who is satisfactory to CONTRACTOR and has authority to act for SUBCONTRACTOR. Prior to commencing any work at the Worksite, SUBCONTRACTOR shall inform CONTRACTOR, in writing, of the identity of the supervising representative by name. SUBCONTRACTOR shall not reassign or remove such supervising representative without first notifying CONTRACTOR of the proposed reassignment or removal, and the name of his/her replacement.

47. FITNESS FOR DUTY AND WORKPLACE SUBSTANCE ABUSE PROGRAMS

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

A. Fitness for Duty.

1. i. SUBCONTRACTOR shall advise its employees and the employees of lower tier subcontractors that it is the policy of CONTRACTOR to prohibit the use, possession, sale and distribution of alcohol, drugs or other controlled substances within the limits of the Savannah River Site, and/or any offsite facilities, and to prohibit the presence of individuals who have such substances in their bodies for non-medical

reasons. Any employee who is found in violation of the policy may be removed or barred from the site.

- ii. SUBCONTRACTOR agrees to advise its employees and the employees of lower tier subcontractors of the above policy prior to assignment to the Savannah River Site and to maintain documentation that such advice has been given.
2. CONTRACTOR will collect urine specimens when SUBCONTRACTOR and lower tier subcontractor employees are processed for badging. CONTRACTOR will send these specimens to a consultant for testing and verification. The testing process may take up to five (5) days to obtain results. SUBCONTRACTOR and lower-tier subcontractor employees will be badged upon satisfaction of all other pre-assignment requirements. **In the event of "positive" findings**, SUBCONTRACTOR will be notified and shall bring the individual to the Badge Office for an "Exit Conference". SUBCONTRACTOR agrees to promptly remove such employees from the Savannah River Site and return their badges to CONTRACTOR'S Badge Office.
3. SUBCONTRACTOR agrees to secure the written consent of employees to release results of urine tests to the designated CONTRACTOR representative. CONTRACTOR agrees to use such results solely in connection with its decision as to whether to permit a SUBCONTRACTOR employee or lower tier subcontractor employee to access Savannah River Site property.
4. SUBCONTRACTOR agrees to notify CONTRACTOR'S Subcontract Employment Office a minimum of forty-eight (48) hours in advance of badging. The Subcontract order number and the number of employees to process through the badging office shall be provided. This procedure is required for all lower tier subcontractors as well. The telephone number to be used for this notice will be provided by the Procurement Representative. In the event of an inability to process employees on the scheduled day, the Procurement Representative will reschedule the badging.
5. CONTRACTOR will also conduct for-cause and **random** drug and alcohol testing on all employees badged by CONTRACTOR. SUBCONTRACTOR agrees to comply with and secure the compliance of its employees and employees of lower tier subcontractors with this testing. **In the event of "positive" findings**, SUBCONTRACTOR agrees to promptly remove such employees from the Savannah River Site and return their badges to CONTRACTOR'S Badge Office.
6. A Breath Alcohol Test will be given during the initial badging process and the results will be available immediately. **In the event of "positive" findings**, said employees will not be badged, will be issued a temporary pass, and will be escorted offsite by a representative of SUBCONTRACTOR.

B. Suitability for Employment.

1. Subcontract employees, including employees of SUBCONTRACTOR and lower tier subcontractors, who are to be badged to permit access onto the Savannah River Site, must successfully complete Suitability for Employment process. As part of this process, SUBCONTRACTOR agrees to advise its employees and employees of lower tier subcontractors that they will be required to complete certain forms that authorize background investigations. These forms shall be submitted during the badging process.
2. Employees will be issued a photo badge and allowed access on the first reporting day. In the event Subcontract employees subsequently fail to successfully complete the background investigation, the SUBCONTRACTOR agrees to promptly remove such employees from the Savannah River Site and to return their badges to the CONTRACTOR'S Badging Office.
3. SUBCONTRACTOR agrees to advise the Subcontract employees of the above requirement prior to assignment to the Savannah River Site and to maintain documentation that such advice has been given.

48. GENERAL EMPLOYEE TRAINING AND ANNUAL REFRESHER TRAINING FOR SUBCONTRACT EMPLOYEES

(The following terms are applicable if performance of this Subcontract will require Subcontract employee(s) to perform work on-site for more than ten (10) working days.)

A. General Employee Training (GET).

1. SUBCONTRACTOR shall inform its employees and the employees of its lower tier subcontractors that it is the policy of CONTRACTOR to adhere to the requirements contained in the DOE Order entitled "Personnel Selection, Qualification and Training Requirements," which requires any individual, employed either full or part-time at any DOE reactor or non-reactor facility to receive selected general training.
2. Successful Completion Required. Said employees, referred to in the remainder of this clause as "individual," must successfully complete the training known as "General Employee Training" (GET) as offered by the Savannah River Site. The GET sessions are given by a Savannah River Site authorized GET instructor. There are three categories of GET:
 - i. Category 1 consists of viewing a video that lasts for one hour. This category is limited to delivery personnel, visitors, and other temporary personnel who require badged access to the general site and property protection areas and are typically on-site greater than ten (10) days, but not consecutively, in a calendar year.
 - ii. Category 2 consists of viewing a video and a written examination, and lasts for approximately two hours. This category applies to visitors or other temporary personnel who require badged access to the general site and property protection areas and are on-site greater than ten (10) days consecutively in a calendar year, and additional training is not required as determined by CONTRACTOR.
 - iii. Category 3 consists of eight (8) hours of training and includes instructor lectures along with audio and visual aids and a written examination. This category applies to individuals who require badged access to the general Savannah River Site, property protection areas, or security controlled areas and additional training is required (as determined by CONTRACTOR).
3. Successful Completion Defined. Successful completion occurs when the individual:
 - i. is scheduled for GET, and
 - ii. attends the GET session.
4. Unsuccessful Completion Defined. If the individual fails to successfully complete GET, the individual is given a failure notice and is to notify the Procurement Representative for rescheduling for remedial training or for a re-test. The individual will be allowed several chances to successfully complete the GET. Continued failure to successfully complete GET will result in resolution at the discretion of the Procurement Representative.
5. Scheduling for GET. The Procurement Representative shall direct the individual to the appropriate training center to attend the GET session. GET training is scheduled subject to demand.
6. Records. Get records will be maintained by CONTRACTOR.

B. Annual Refresher Training.

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

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

49. SECURITY EDUCATION REQUIREMENTS FOR SUBCONTRACTORS

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

A. Subcontractor Security Education Coordinator.

1. If SUBCONTRACTOR will require a force of more than thirty (30) SUBCONTRACTOR or lower tier subcontractor employees receive badges, then SUBCONTRACTOR shall provide to the Procurement Representative the name of its representative appointed to administer its Security Education Program. This representative shall be referred to as the Subcontractor Security Education Coordinator (SSEC).
2. If this Subcontract will require that less than thirty (30) SUBCONTRACTOR or lower tier subcontractor employees receive badges, then the Procurement Representative will perform the activities discussed below.

B. Company Roster.

The SSEC will be responsible for providing the Procurement Representative with a roster of all employees receiving a badge under this Subcontract. At a minimum the data shall include name, social security number, work telephone number, clearance level and place where Work is generally performed. This list shall be kept current and updated every sixty (60) days.

C. Initial Briefing.

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

D. Comprehensive Briefing.

If Subcontract employees have a clearance, the SSEC/Procurement Representative will ensure that those Subcontract employees receive a Comprehensive Briefing from CONTRACTOR.

E. Annual Refresher Briefing.

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

F. Foreign Travel Briefing.

If a Subcontract employee plans a trip to a sensitive country, whether on official business or for pleasure, the SSEC/STR is responsible for ensuring that the individual receives a Foreign Travel Briefing from CONTRACTOR before departing and a Debriefing upon return. The Savannah River Site Operational Security (OPSEC) Officer is responsible for these Briefings.

G. Badge Retrieval at Termination.

SUBCONTRACTOR is responsible for ensuring that badges are returned or accounted for when Subcontract employees terminate employment or the Subcontract is completed. Said employees must report to the Employment Processing Center for proper completion of out-processing and badge return. This effort should be coordinated with the Procurement Representative.

H. Termination Briefing.

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

Briefing materials and appropriate forms are provided by CONTRACTOR.

50. COMPLIANCE WITH EMPLOYEE CONCERNS

- A. SUBCONTRACTOR shall ensure Subcontract employees are aware of the respective U.S. Department of Energy Savannah River Operations Office (DOE-SR) and CONTRACTOR Employee Concerns Program (ECP) and how to use the two programs by performing the following:
1. Ensure employees are provided with information on the DOE-SR ECP and CONTRACTOR ECP during initial orientation and annual training.
 2. Ensure that posters identifying the DOE-SR ECP and CONTRACTOR ECP telephone "hotline" numbers are displayed in conspicuous locations throughout the worksite. CONTRACTOR will provide posters, as necessary.
 3. Inform Subcontract employees of the availability of the DOE-SR ECP in case of dissatisfaction or lack of confidence with other reporting systems.
 4. Ensure CONTRACTOR and SUBCONTRACTOR managers and supervisors are aware of the prohibition of any reprisal against Subcontract employees who have or are believed to have raised or reported concerns.
- B. SUBCONTRACTOR must immediately notify the Procurement Representative of any employee concern involving:
1. A condition which constitutes an imminent threat to the health and safety of site personnel or to the general public.
 2. Circumstances which would cause adverse public reaction or receive local media attention.
 3. Allegations of reprisal.
- C. SUBCONTRACTOR shall investigate any employee concern referred by the Procurement Representative and inform the Procurement Representative of investigation results within seven (7) days of receipt of a concern. SUBCONTRACTOR shall inform the Procurement Representative in writing if an extension to this seven-day timeframe is required, along with status of investigation to date and actions pending to closure. The investigation shall be conducted to the satisfaction of CONTRACTOR'S Purchasing Representative.

51. FOREIGN NATIONALS

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

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

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

52. ACCESS TO DOE-OWNED OR LEASED FACILITIES

(Article applies if employees of SUBCONTRACTOR and lower tier subcontractors who will require physical access to DOE-owned or leased facilities.)

- A. The performance of this Subcontract requires that employees of SUBCONTRACTOR and lower tier subcontractors have physical access to DOE-owned or leased facilities. SUBCONTRACTOR understands and agrees that DOE has a prescribed process and policies with which employees of SUBCONTRACTOR and or lower tier subcontractors must comply in order to receive a security badge that allows such physical access. SUBCONTRACTOR shall propose those employees whose backgrounds offer the best prospect of obtaining a security badge approval for access. This clause does not control requirements for an employee obtaining a security clearance.
- B. SUBCONTRACTOR shall assure:
 - 1. compliance with procedures established by DOE and CONTRACTOR in providing its employees with any forms directed by DOE-SR or CONTRACTOR;
 - 2. employees properly complete any forms;
 - 3. employees submit the forms to the person designated by CONTRACTOR'S Procurement Representative;
 - 4. employees cooperate with DOE and CONTRACTOR officials responsible for granting access to GOVERNMENT-owned or leased facilities; and
 - 5. Employees provide additional information requested by those DOE/CONTRACTOR officials.
- C. SUBCONTRACTOR understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE or CONTRACTOR that an employee's application for a security badge is or will be denied, SUBCONTRACTOR shall promptly identify and submit the appropriate forms for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Subcontract or any SUBCONTRACTOR claim against CONTRACTOR or the GOVERNMENT.
- D. SUBCONTRACTOR shall return to CONTRACTOR'S Procurement Representative, or designee, the badge(s) or other credential(s) provided by DOE-SR pursuant to this clause, granting physical access to GOVERNMENT-owned or leased facilities by Subcontract employee(s) upon:
 - 1. termination of this Subcontract;
 - 2. expiration of this Subcontract;
 - 3. termination of employment on this Subcontract by an individual employee; or
 - (4) demand by CONTRACTOR or DOE-SR for return of the badge.
- E. SUBCONTRACTOR shall include this clause, including this paragraph E, in any lower tier subcontract, awarded in the performance of this Subcontract in which an employee(s) of the lower tier subcontractor will require physical access to GOVERNMENT-owned or leased facilities.

53. GOVERNMENT FLOWDOWNS

The Federal Acquisition Regulation (FAR), the Department of Energy FAR Supplement (DEAR) clauses, and the DOE Procurement Regulations incorporated herein shall have the same force and effect as if printed in full text. Upon request, CONTRACTOR will make their full text available. Wherever necessary to make the context of the clauses set forth below applicable to this Subcontract, the term "Contractor" 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 where necessary to derive proper meaning the term "Government", "Contracting Officer" and equivalent phrases shall mean CONTRACTOR'S Representative, except the terms "Government" and "Contracting Officer" do not change:

- (a) in the phrases "Government Property", "Government-Furnished Property" and "Government-Owned Property";
- (b) in the patent clauses incorporated by reference in this Subcontract;
- (c) when a right, act, authorization, or obligation can be granted or performed only by the GOVERNMENT'S duly authorized representative;
- (d) when title to property is to be transferred directly to the GOVERNMENT;
- (e) when access to proprietary financial information or other proprietary data is required except for authorized audit rights; and
- (f) where specifically modified.

SUBCONTRACTOR agrees to incorporate the requirements of this clause and the regulations listed below into any lower tier subcontracts and purchase orders.

Clauses Applying to All Subcontracts

| <u>Clause</u> | <u>Title</u> |
|---------------|---|
| FAR 52.204-9 | Personal Identity Verification of Contractor Personnel (NOV 2006) |
| FAR 52.222-3 | Convict Labor (JUN 2003) |
| FAR 52.222-50 | Combating Trafficking In Persons (AUG 2007) |
| FAR 52.223-5 | Pollution Prevention and Right-To-Know Information (MAY 2011) |
| FAR 52.224-1 | Privacy Act Notification (APR 1984) |
| FAR 52.224-2 | Privacy Act (APR 1984) |
| FAR 52.225-8 | Duty-Free Entry (FEB 2000) |
| FAR 52.225-9 | Buy American Act – Construction Materials (FEB 2009) |
| FAR 52.225-13 | Restrictions on Certain Foreign Purchases (FEB 2006) |
| FAR 52.227-4 | Patent Indemnity – Construction Contracts (APR 1994) |
| FAR 52.227-23 | Rights to Proposal Data (Technical) (JUN 1987) |
| FAR 52.245-1 | Government Property (June 2007) |

Clauses Applicable if SUBCONTRACTOR is Provided GOVERNMENT-Owned Property for Use in Performance of Work Under the Subcontract

| | |
|-----------------|---|
| DEAR 952.203-70 | Whistleblower Protection for Contractor Employees DEC 2000) |
| DEAR 952.204-2 | Security (MAY 2002) |

Clauses Applicable if SUBCONTRACTOR Employees Require Access Authorization Clearances (L or Q)

| | |
|-----------------|--|
| DEAR 952.250-70 | Nuclear Hazards Indemnity Agreement (OCT 2005) |
| DEAR 970.5223-1 | Integration of Environmental, Safety, and Health into Work Planning and Execution (DEC 2000) <i>(Note: SUBCONTRACTOR shall track and expect any lower tier subcontractors to track their Experience Modification Rate (EMR) and Total Recordable Case (TRC) rate and submit a properly executed Environmental Safety and</i> |

Health Worksheet (obtainable from the CONTRACTOR'S Environmental Safety & Health Department) in addition to letters from their workers' compensation carriers verifying their EMRs. If a three-year average interstate EMR exceeds 1.0, SUBCONTRACTOR and lower tier subcontractors no longer are in compliance to continue the performance of work under this Subcontract.)

Clauses Applying to Subcontracts Over \$2,000

| <u>Clause</u> | <u>Title</u> |
|---------------|--|
| FAR 52.222-1 | Notice to the Government of Labor Disputes (FEB 1997) |
| FAR 52.222-6 | Davis-Bacon Act (JUL 2005) |
| FAR 52.222-7 | Withholding of Funds (FEB 1988) |
| FAR 52.222-8 | Payrolls and Basic Records (FEB 1988) |
| FAR 52.222-9 | Apprentices and Trainees (JUL 2005) |
| FAR 52.222-10 | Compliance with Copeland Act Requirements (FEB 1988) |
| FAR 52.222-11 | Subcontracts (Labor Standards) (JUL 2005) |
| FAR 52.222-12 | Contract Termination – Debarment (FEB 1988) |
| FAR 52.222-13 | Compliance with Davis-Bacon and Related Act Regulations (FEB 1988) |
| FAR 52.222-14 | Disputes Concerning Labor Standards (FEB 1988) |
| FAR 52.222-15 | Certification of Eligibility (FEB 1988) |

Clauses Applying to Subcontracts Over \$3,000

| <u>Clause</u> | <u>Title</u> |
|---------------|--|
| FAR 52.222-54 | Employment Eligibility Verification (JAN 2009) |

Clauses Applying to Subcontracts Over \$10,000

| <u>Clause</u> | <u>Title</u> |
|---------------|---|
| FAR 52.222-21 | Prohibition of Segregated Facilities (FEB 1999) |
| FAR 52.222-23 | Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction (FEB 1999) |
| FAR 52.222-26 | Equal Opportunity (MAR 2007) |
| FAR 52.222-27 | Affirmative Action Compliance Requirements for Construction (FEB 1999) |
| FAR 52.222-36 | Affirmative Action for Workers with Disabilities (JUN 1998) |

Clause Applying to Subcontracts Over \$25,000

| <u>Clause</u> | <u>Title</u> |
|---------------|---|
| FAR 52.209-6 | Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JAN 2005) |

Clauses Applying to Subcontracts Over \$100,000

| <u>Clause</u> | <u>Title</u> |
|---------------|--|
| FAR 52.203-6 | Restrictions on Subcontractor Sales to the Government (SEP 2006) |
| FAR 52.203-7 | Anti-Kickback Procedures (JUL 1995) |
| FAR 52.203-12 | Limitation on Payments to Influence Certain Federal Transactions (SEP 2005) |
| FAR 52.219-8 | Utilization of Small Business Concerns (OCT 2004) |
| FAR 52.215-2 | Audit and Records – Negotiation (Jun 1999) |
| FAR 52.222-4 | Contract Work Hours and Safety Standards Act - Overtime Compensation (JUL 2005) |
| FAR 52.222-35 | Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam ERA, and Other Eligible Veterans (SEP 2006) |
| FAR 52.222-37 | Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) |

| | |
|-----------------|---|
| FAR 52.222-39 | Notification of Employee Rights Concerning Payment of Union Dues or Fees (DEC 2004) |
| FAR 52.223-14 | Toxic Chemical Release Reporting (AUG 2003) |
| FAR 52.227-1 | Authorization and Consent (JUL 1995) |
| FAR 52.247-64 | Preference for Privately-Owned U.S. Flag Commercial Vessels (FEB 2006) |
| DEAR 970.5227-5 | Notice and Assistance Regarding Patent and Copyright Infringement (AUG 2002) |

Clauses Applying to Subcontracts Over the Simplified Acquisition Threshold (Currently \$150,000)

| | |
|-----------------|--|
| DEAR 952.223-78 | Sustainable Acquisition Program (OCT 2010) |
| FAR 52.223-2 | Affirmative Procurement of Biobased Products under Service and Construction Contracts (JUL 2012) |
| FAR 52.223-15 | Energy Efficiency In Energy-Consuming Products (Dec 2007) |
| FAR 52.223-17 | Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (MAY 2008) |

Clauses Applying to Subcontracts Over \$500,000

| <u>Clause</u> | <u>Title</u> |
|--|--|
| FAR 52.230-2 | Cost Accounting Standards (APR 1998) |
| FAR 52.230-6 | Administration of Cost Accounting Standards (APR 2005) |
| <i>(Note: Cost Accounting Standards Clauses apply unless exempted by the FAR Appendix, 48 CFR section 9903.201-1.)</i> | |
| DEAR 952.226-74 | Displaced Employee Hiring Preference (JUN 1997) |

Clauses Applying if Cost or Pricing Data Are Required in Pricing the Subcontract or in Pricing a Modification Under the Subcontract

| <u>Clause</u> | <u>Title</u> |
|---------------|--|
| FAR 52.215-10 | Price Reduction for Defective Pricing Data (OCT 1997) |
| FAR 52.215-11 | Price Reduction for Defective Pricing Data – Modifications (OCT 1997) |
| FAR 52.215-15 | Pension Adjustments and Asset Reversions (OCT 2004) |
| FAR 52.215-18 | Reversion or Adjustment of Plans for Post Retirement Benefits (PRB) Other Than Pensions (JUL 2005) |

Clause Applying to Subcontracts Over \$1,000,000

| <u>Clause</u> | <u>Title</u> |
|---------------|---|
| FAR 52.219-9 | Small Business Subcontracting Plan (SEP 2006) |

(Not Applicable to Small Business concerns.)

Clause Applying to Subcontracts Over \$5,000,000

| <u>Clause</u> | <u>Title</u> |
|---------------|---|
| FAR 52.203-13 | Contractor Code of Business Ethics and Conduct (DEC 2007) |
| FAR 52.203-14 | Display of Hotline Poster(s) (DEC 2007) |