

**GENERAL CONDITIONS FOR COMMERCIAL  
 SERVICES SUBCONTRACTS  
 UNDER  
 U. S. DEPARTMENT OF ENERGY PRIME  
 CONTRACT NO. DE-EM0004559  
 DEPLETED URANIUM HEXAFLORIDE (DUF6)  
 CONVERSION FACILITIES**

**PADUCAH, KY AND PORTSMOUTH, OH**

*Change Bar indicates new article, a change in  
 application, or that text of Article has changed*

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**1 DEFINITIONS**

The following definitions apply internally to these General Conditions and in the other Subcontract Documents, unless the context clearly requires otherwise:

- 1.1 "Applicable Law" shall have the meaning set forth in Article 26.1.
- 1.2 "Certificate of Completion" means the certificate issued by Contractor to Subcontractor after Subcontractor has completed all Work other than potential warranty obligations.
- 1.3 "Contractor" means BWXT Conversion Services, LLC (BWCS).
- 1.4 "Damages" shall have the meaning set forth in Article 26.2.
- 1.5 "Day(s)" or "day(s)" means calendar day(s) unless otherwise specified.
- 1.6 "Facility" means the facility located or to be located by Owner on the Facility Site.
- 1.7 "Facility Site" means all those parcels of land, on which the Project is or is to be located and for purposes of this Subcontract only those parcels of land which are occupied or used by Subcontractor in the performance of the Work.
- 1.8 "Force Majeure Event" shall have the meaning set forth in Article 40.1.
- 1.9 "General Conditions" means the terms and conditions set forth in this document.
- 1.10 "Hazardous Material" means any hazardous material or waste, toxic substance, pollution or contamination.
- 1.11 "Indemnified Parties" shall have the meaning set forth in Article 26.2.
- 1.12 "Lower Tier Subcontractor" means each lower tier vendor, supplier, materialman, consultant, contractor, subcontractor or other person or entity performing a portion of the Work for Subcontractor hereunder and/or providing equipment or

- services directly or indirectly in connection with the Work or Subcontract.
- 1.13 "MSDS" shall have the meaning set forth in Article 36.5.
- 1.14 "Owner" means the ultimate Owner of the project identified as such in the Subcontract Order and any of its contractors, affiliates or vendors of any tier.
- 1.15 "Party" or "Parties" means Subcontractor and/or Contractor.
- 1.16 "Prime Contract" means the contract between Owner (DOE) and Contractor for the Project.
- 1.17 "Project" means Owner's project as described in the Subcontract.
- 1.18 "Project Schedule" means Contractor's overall schedule for its work on the Project under the Prime Contract.
- 1.19 "Special Conditions" means the conditions, if any, identified as such in the Subcontract.
- 1.20 "Subcontract" means the document entitled Subcontract Order issued by Contractor to Subcontractor in connection with the Project, all Subcontract Documents set forth therein, and all written amendments, change orders, modifications and supplements thereto, if any.
- 1.21 "Subcontract Documents" means the documents identified as subcontract documents in the Subcontract Order.
- 1.22 "Subcontract Order" shall mean the document entitled Subcontract Order and executed by Contractor and Subcontractor.
- 1.23 "Subcontract Price" means the price to be paid by Contractor to Subcontractor for the Work as provided for in the Subcontract.
- 1.24 "Subcontractor" means the individual or entity identified as such in the Subcontract.
- 1.25 "Work" shall mean all of the labor, services, equipment, materials, supplies, documentation and other items which are to be provided by Subcontractor under the Subcontract.
- 1.26 "Work Schedule" shall have the meaning set forth in Article 6.1.

**2 SUBCONTRACT ADMINISTRATION**

- 2.1 Contractor may establish and implement a program to monitor the performance and quality of the Work. Subcontractor shall provide Contractor's inspectors and supervisory personnel access to all Work wherever it is in preparation or progress. Notwithstanding any monitoring program implemented by Contractor with respect to the Work, Contractor shall have no obligation to supervise or inspect Subcontractor's Work, and any inspection by Contractor with respect to the Work shall not relieve Subcontractor of its obligations under this Subcontract.
- 2.2 Contractor may expedite Subcontractor and Lower Tier Subcontractors in the performance of the Work and Subcontractor shall provide Contractor with all information reasonably requested by Contractor to enable it to do so. Any expediting efforts by Contractor will not relieve or lessen Subcontractor's responsibility for its failure to meet its obligations under the Subcontract.
- 2.3 Subcontractor shall be solely responsible for the performance of the Work and neither Owner nor Contractor shall be responsible for Subcontractor's safety precautions and programs incident thereto, failure to comply with Applicable Law, or failure to furnish or perform the Work as required under the Subcontract.
- 2.4 Neither Owner nor Contractor shall be responsible for the acts or omissions of Subcontractor or any Lower Tier Subcontractor(s).
- 2.5 During the performance of the Work, Contractor may disapprove or reject Work where, in its opinion, such Work does not conform to the requirements of the Subcontract.

- 2.6 Contractor may schedule and conduct job meetings to be attended by persons designated by Contractor, including Subcontractor and its Lower Tier Subcontractor(s) for the Project, to discuss matters related to the Work and Project, including but not limited to procedures, progress, problems, scheduling, safety and coordination.
- 2.7 Contractor and/or the Owner may implement from time to time safety, health and drug free programs (and amendments thereto) of general applicability to the Facility Site. Contractor's personnel, Subcontractor's personnel, and all Lower Tier Subcontractor personnel shall all fully comply with any such programs. Contractor will keep copies of any such programs at the Facility Site and they will be available during normal business hours for Subcontractor to inspect and/or copy.
- 2.8 Contractor may establish procedures for processing shop drawings, samples and other submittals by Subcontractor.
- 2.9 Contractor shall review and process all requests for change orders by Subcontractor as set forth in Article 9.
- 2.10 Contractor shall determine when Subcontractor's Work is complete as set forth in Article 13.

### **3 SUBCONTRACT**

- 3.1 The Subcontract Documents are intended to be read as a whole, and any Work required by one part and not mentioned in another shall be executed to the same extent and purpose as though required by all. The misplacement, addition, or omission of a word or character shall not change the intent of any part from that set forth by the Subcontract as a whole. Should a question or doubt arise as to the intent and meaning of any part of the Subcontract, Subcontractor shall immediately notify Contractor in writing before the part of the Work affected is performed. Contractor's determination of intent and meaning of such part shall be final, subject to dispute resolution under Article 41.
- 3.2 In the various parts of the Subcontract where reference is made to applicable codes and standards, the Work shall, except as otherwise specified, conform to the latest issue of the referenced code or standard available at the time the Work is performed. Upon any point of conflict between codes and standards applicable to the Work, Contractor shall be notified, but the code or standard imposing the more or most stringent requirement as the case may be shall govern, unless otherwise stipulated by Contractor in writing.
- 3.3 Where specific governing standards are not specified in connection with the Work, the highest applicable industry codes and standards shall govern.
- 3.4 Subcontractor acknowledges and agrees that it shall provide all labor, services, equipment, materials, supplies, documentation and other such items necessary or appropriate to perform and complete the Work in conformity with and as reasonably inferred from the Subcontract Documents, notwithstanding the fact that each such necessary or appropriate item may not be expressly specified therein.

### **4 SAFETY**

- 4.1 Subcontractor acknowledges that safety is of prime importance to Contractor and Owner, and Subcontractor shall cooperate with Contractor and Owner in efforts to prevent injuries to personnel and to comply with all applicable safety rules and regulations.

### **5 LOWER TIER SUBCONTRACTORS**

- 5.1 Subcontractor shall notify Contractor in writing of the names of Lower Tier Subcontractors proposed for any of the Work

and shall not subcontract any part of the Work without the prior written authorization of Contractor. Subcontractor shall not subcontract the Work as a whole. Subcontractor shall bind all Lower Tier Subcontractors to the provisions of the Subcontract applicable to the subcontracted Work.

- 5.2 Neither the Subcontract nor any subcontract with a Lower Tier Subcontractor shall create any contractual relationship between any Lower Tier Subcontractor and either Owner or Contractor, nor any payment or other obligation on the part of either Owner or Contractor to any Lower Tier Subcontractor.
- 5.3 Notwithstanding the existence of any subcontract with a Lower Tier Subcontractor, Subcontractor shall be fully responsible to Contractor for the performance of the Work as if no such subcontract exists.

### **6 SCHEDULE**

- 6.1 Within ten (10) days after Subcontract award, Subcontractor shall prepare and submit for Contractor's approval a detailed schedule for the performance of the Work as required by the Subcontract (such approved schedule, the "Work Schedule"). The Work Schedule must conform to all schedule parameters provided in the Subcontract, including without limitation the Project Schedule. Subcontractor shall, subject to Contractor's approval, maintain and update the Work Schedule throughout the performance of the Work. Unless directed otherwise by Contractor, Subcontractor shall perform the Work strictly in accordance with the Work Schedule (as updated), and shall, without additional cost to Contractor, work such overtime or take such other or different measures as may be required in order to meet the Work Schedule.
- 6.2 Subcontractor represents that it shall (i) prepare documents for its planning, scheduling and coordination of the Work that are feasible and realistic, and (ii) prepare schedules, updates, revisions and reports that accurately reflect Subcontractor's reasonable expectations as to the sequence of activities, duration of activities, productivity or efficiency, projected and actual completion of any Work item or activity, and delays or problems expected or encountered and specified float time.
- 6.3 Subcontractor acknowledges that the dates required in the Work Schedule for the performance and completion of the Work are essential conditions of the Subcontract and agrees that Subcontractor's failure to perform and complete the Work consistent with such dates shall constitute a material violation of the Subcontract for the purposes of Article 17 and for the purposes of any other remedy available to the Contractor under the Subcontract, at law, and/or in equity.

### **7 PROJECT INVESTIGATION**

- 7.1 Subcontractor represents that it has, or has had full opportunity to, examine the Facility Site and Subcontract Documents; that it has satisfied itself as to the requirements of the Work and all conditions which may affect the Work, including but not limited to labor conditions and availability, the condition of the Facility Site and access thereto to perform the Work and local weather conditions; that the Subcontract Price and Work Schedule have been determined with due regard for all such requirements and conditions which do or may affect the Work; and that its entry into the Subcontract has not been induced either wholly or in part by any promises, representations or statements by or on behalf of the Contractor, its agents or representatives, or the Owner, its agents or representatives, other than those set forth in the Subcontract. Subcontractor acknowledges and accepts the risk of mistake or error with

respect to all matters within the scope of its Project investigation, and agrees that it shall not be entitled to, and shall make no claim for, any additional compensation or damages of any kind or character or extension of time should any requirements or conditions applicable to the Work be different from or in addition to those identified by Subcontractor through such investigation.

## **8 OTHER WORK**

8.1 Subcontractor shall be required in the performance of its Work to coordinate its activities at the Facility Site with those of Contractor's or Owner's other contractors. Subcontractor agrees that the Owner or Contractor shall have the right to perform or have performed in or about the Facility Site during the time when Subcontractor is performing its Work such other work as Owner or Contractor may desire and that Subcontractor shall make every reasonable effort to enable both its Work and such other work to be completed without hindrance or interference. In the event Subcontractor's performance of its Work is delayed or interfered with by the work of Contractor, Owner or their respective other contractors, or the manner in which Contractor coordinates, prioritizes or otherwise requires or permits the Work and such other work to be performed, Subcontractor's sole and exclusive remedy shall be an extension of time for the performance of the Work. Any claim by Subcontractor for an extension of time arising out of any alleged delay or interference shall be made to Contractor in accordance with Article 9.

## **9 CHANGES**

9.1 Contractor has the right by written order to Subcontractor to add to, deduct from or otherwise change the Work. If any such Contractor directed change in the Work affects the Subcontract Price, Work Schedule or any other provision of the Subcontract, or Subcontractor becomes aware of any circumstance which Subcontractor believes necessitates a change in the Subcontract Price, Work Schedule or any other provision of the Subcontract, Subcontractor shall, within seven (7) days of receipt of such written order or becoming aware of such circumstance, submit a written request to Contractor for an adjustment to the Subcontract Price, Work Schedule or other provision of the Subcontract Subcontractor believes is affected thereby. Subcontractor's written request shall include documentation sufficient to enable Contractor to determine the factors necessitating the adjustment(s) being requested. If Subcontractor fails to provide such written request to Contractor within such seven (7) day period (or fails within such period to provide Contractor with a detailed statement of the reasons it is unable to do so and, as soon as it is able to do so, provides such request), Subcontractor shall be deemed to have waived any claim for an adjustment of the applicable Subcontract Price, Work Schedule or other provision of the Subcontract.

9.2 Following receipt of timely written documentation from Subcontractor as prescribed in Article 9.1, Contractor shall, provided an adjustment is warranted, issue a written amendment to Subcontractor either (i) adjusting the Subcontract Price, Work Schedule or other provision of the Subcontract as requested by Subcontractor or (ii) in the event Contractor disagrees with Subcontractor's statement as to the effect of a Contractor directed or other change to the Work, adjusting the Subcontract Price, Work Schedule or other provision of the Subcontract if and as it deems

appropriate. Subcontractor shall thereafter perform its Work in accordance with such written amendment, subject to dispute resolution under Article 41. Subcontractor shall have no right to suspend or delay its performance of Work while Contractor is reviewing Subcontractor's change request or if it disagrees with the written amendment issued to it by Contractor

- 9.3 Notwithstanding anything to the contrary in this Article 9.0; no adjustment in the Subcontract Price, Work Schedule or any other provision of the Subcontract shall be made for or as a result of any correction of errors, omissions, deficiencies, or improper or defective Work on the part of Subcontractor or its Lower Tier Subcontractors.
- 9.4 Any changes to the Work hereunder shall be performed by Subcontractor consistent with all of the requirements of the Subcontract, unless otherwise directed in writing by Contractor.

## **10 INVOICING AND PAYMENT**

- 10.1 By not later than the fifth (5<sup>th</sup>) day of each month, and utilizing Contractor's application for payment form (in the form included in the Subcontract Documents), Subcontractor shall submit to the Contractor's Representative an invoice with supporting documentation for review and reconciliation.
- 10.2 Following reconciliation, and by not later than the twenty-fifth (25<sup>th</sup>) day of each month, Subcontractor shall submit an approved invoice with supporting documentation to the Contractor's Representative for payment.
- 10.3 Subcontractor shall complete and submit a tax withholding notice (in the form included in the Subcontract Documents), no later than the date on which Subcontractor's first invoice for the Work is submitted. Failure to submit the tax withholding notice may result in the delay in payment by Contractor and will be cause for Contractor to deduct from all payments income taxes as required by Applicable Law.
- 10.4 Contractor shall review and process all invoices for payment submitted by Subcontractor.
- 10.5 Subcontractor invoices will be paid as set forth herein only if they meet the invoicing requirements set forth in Article 10.0, and shall each be subject to ten percent (10%) retainage until final completion of all Work and issuance by Contractor to Subcontractor of the Certificate of Completion (in the form included in the Subcontract Documents).
- 10.6 Any invoice deviating from the requirements of this Article 10 will be returned to Subcontractor for correction and/or submission of acceptable supporting documentation.
- 10.7 Terms of payment contained in the Subcontract shall take precedence over terms of payment shown on Subcontractor's invoices or elsewhere.
- 10.8 Subcontractor shall, and shall cause its Lower Tier Subcontractors to, submit a release and waiver of liens and claims and certification and proof of payment as to all labor and materials, with each invoice in the form prescribed by the Contractor (in the form included in the Subcontract Documents).
- 10.9 No payment shall constitute a waiver of any claims Contractor may have against Subcontractor.
- 10.10 All payments are provisional and any overpayment by Contractor to Subcontractor shall be deemed to be a mistake of fact and promptly repaid to Contractor upon demand.
- 10.11 The date of receipt by Contractor of a proper, complete and fully substantiated invoice from Subcontractor will establish the effective date of the invoice. If not otherwise specified in the Subcontract, payment shall be net forty five (45) days after the effective date of the invoice. The acceptance of any

payment shall constitute a waiver of all claims by Subcontractor.

- 10.12 Applicable freight charges and sales and use taxes shall be shown separately on the invoices. Freight charges shall be supported by copy of the paid freight bill.
- 10.13 Notwithstanding anything to the contrary in this Subcontract, Contractor shall pay Subcontractor the undisputed portion of any invoice only after Contractor receives corresponding payment from Owner.

**11 PAYMENTS UNDER TIME AND MATERIALS AND LABOR HOUR SUBCONTRACTS**

11.1 Definitions.

- (a) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
- (b) *Hourly rate* means the rate(s) prescribed in the subcontract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—
- (1) Performed by the subcontractor;
  - (2) Performed by lower-tier subcontractors; or
  - (3) Transferred between divisions, subsidiaries, or affiliates of the subcontractor under a common control.
- (c) *Materials* means—
- (1) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the subcontractor under a common control;
  - (2) Subcontracts for supplies and incidental services for which there is not a labor category specified in the subcontract;
  - (3) Other direct costs (e.g., incidental services for which there is not a labor category specified in the subcontract, travel, computer usage charges, etc.);
  - (4) Any subcontracts for services which are specifically excluded from the hourly rate identified as such in the schedule; and
  - (5) Indirect costs specifically provided for in this clause.
- (d) Lower-tier *subcontract* means any contract, entered into with a supplier to furnish supplies or services for performance of the work under this subcontract. It includes but is not limited to, purchase orders, and changes and modifications to purchase orders.

11.2 *Payments.*

- (a) Services accepted. Payment shall be made for services accepted by Contractor that have been delivered to the delivery destination(s) set forth in this subcontract. Contractor will pay the Subcontractor as follows upon the submission of commercial invoices approved by Contractor:
- (1) *Hourly rate.*
    - (A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the subcontract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.
    - (B) The rates shall be paid for all labor performed on the subcontract that meets the labor qualifications specified in the subcontract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be

paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by Contractor.

- (C) Invoices may be submitted once each month (or at more frequent intervals, if approved by Contractor) to the Contractor.
  - (D) When requested by Contractor, the Subcontractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the subcontract, or other substantiation specified in the subcontract.
  - (E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Subcontractor having performed work on an overtime basis.
    - (i) If no overtime rates are provided in the Schedule and Contractor approves overtime work in advance, overtime rates shall be negotiated.
    - (ii) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this subcontract.
    - (iii) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by Contractor.
- (2) *Materials.*
- (A) If the Subcontractor furnishes materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for such materials shall be the subcontractor's established catalog or market price, adjusted to reflect the—
    - (i) Quantities being acquired; and
    - (ii) Any modifications necessary because of subcontract requirements.
  - (B) Except as provided for in paragraph (2)(A) above and (2)(D)(ii) below, Contractor will reimburse the Subcontractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the subcontract) provided the Subcontractor—
    - (i) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or
    - (ii) Makes these payments within 30 days of the submission of the Subcontractor's payment request to Contractor and such payment is in accordance with the terms and conditions of the agreement or invoice.
  - (C) To the extent able, the Subcontractor shall—
    - (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
    - (ii) Give credit to Contractor for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the subcontract.

- (D) **Other Costs.** Unless listed below, other direct and indirect costs will not be reimbursed.
- (i) **Other Direct Costs.** Contractor will reimburse the Subcontractor on the basis of actual cost for other costs, such as travel, computer usage, etc., provided such costs comply with the requirements in paragraph (2)(B) of this clause and the specific cost element to be allowed is *identified elsewhere in this order*,
  - (ii) **Indirect Costs (Material Handling, Subcontract Administration, etc.).** Contractor will reimburse the Subcontractor for indirect costs on a pro-rata basis over the period of subcontract performance at the following fixed price: *(See Schedule of Items. If such costs are not included in the schedule or identified elsewhere in this order, they are not allowed).*
- (b) **Total cost.** It is estimated that the total cost to Contractor for the performance of this subcontract shall not exceed the ceiling price set forth in the Schedule and the Subcontractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this subcontract within such ceiling price. If at any time the Subcontractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this subcontract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Subcontractor shall notify Contractor giving a revised estimate of the total price to Contractor for performing this subcontract with supporting reasons and documentation. If at any time during the performance of this subcontract, the Subcontractor has reason to believe that the total price to Contractor for performing this subcontract will be substantially greater or less than the then stated ceiling price, the Subcontractor shall so notify Contractor, giving a revised estimate of the total price for performing this subcontract, with supporting reasons and documentation. If at any time during performance of this subcontract, Contractor has reason to believe that the work to be required in performing this subcontract will be substantially greater or less than the stated ceiling price, Contractor will so advise the Subcontractor, giving the then revised estimate of the total amount of effort to be required under the subcontract.
- (c) **Ceiling price.** Contractor will not be obligated to pay the Subcontractor any amount in excess of the ceiling price in the Schedule, and the Subcontractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until Contractor notifies the Subcontractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this subcontract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Subcontractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- (d) **Access to records.** At any time before final payment under this subcontract, Contractor (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Subcontractor and Contractor):
- (1) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the subcontract;
  - (2) For labor hours (including any lower-tier subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—
    - (A) The original timecards (paper-based or electronic);
    - (B) The Subcontractor's timekeeping procedures;
    - (C) Subcontractor records that show the distribution of labor between jobs or contracts; and
    - (D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.
  - (3) For material and lower-tier subcontract costs that are reimbursed on the basis of actual cost—
    - (A) Any invoices or lower-tier subcontract agreements substantiating material costs; and
    - (B) Any documents supporting payment of those invoices.
- (e) **Overpayments/Underpayments**
- (1) Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by Contractor not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Subcontractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. Contractor within 30 days will pay any such increases, unless the parties agree otherwise. The subcontractor's payment will be made by check. If the Subcontractor becomes aware of a duplicate invoice payment or that Contractor has otherwise overpaid on an invoice payment, the Subcontractor shall immediately notify Contractor and request instructions for disposition of the overpayment.
  - (2) Upon receipt and approval of the invoice designated by the Subcontractor as the "completion invoice" and supporting documentation, and upon compliance by the Subcontractor with all terms of this subcontract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Subcontractor as promptly as practicable following completion of the work under this subcontract, but in no event later than 1 year (or such longer period as Contractor may approve in writing) from the date of completion.
- (f) **Release of claims.** The Subcontractor, and each assignee under an assignment entered into under this subcontract and in effect at the time of final payment under this subcontract, shall execute and deliver, at

the time of and as a condition precedent to final payment under this subcontract, a release discharging Contractor, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this subcontract, subject only to the following exceptions.

- (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Subcontractor.
- (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising out of performing this subcontract, that are not known to the Subcontractor on the date of the execution of the release, and of which the Subcontractor gives notice in writing to Contractor not more than 6 years after the date of the release or the date of any notice to the Subcontractor that Contractor is prepared to make final payment, whichever is earlier.
- (3) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the terms of this subcontract relating to patents.
- (g) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
- (h) In the event of a termination for convenience of this order, the Subcontractor shall be paid an amount for direct labor hours (as defined in the Schedule of the subcontract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the subcontract, less any hourly rate payments already made to the Subcontractor plus reasonable charges the Subcontractor can demonstrate to the satisfaction of Contractor using its standard record keeping system that have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give Contractor any right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

## 12 PAYMENTS WITHHELD

- 12.1 Contractor may withhold the whole or any part of any payment to Subcontractor to such extent as may be necessary to protect Contractor from loss as a result of:
  - (a) incomplete, defective or damaged Work not remedied;
  - (b) Backcharges, per Article 47;
  - (c) claims filed or reasonable evidence indicating probable filing of claims, including lien claims, involving or arising out of Subcontractor's Work;
  - (d) damage to Contractor's, Owner's or their respective other contractors work;
  - (e) failure of the Subcontractor to make payments when due to Lower Tier Subcontractors;
  - (f) reasonable insecurity regarding Subcontractor's intention or ability to continue with the proper and timely performance of the Work;

- (g) failure of the Subcontractor to perform or comply with any of its obligations under the Subcontract Documents; or
- (h) expenses arising from frivolous claims against Contractor.

12.2 Funds withheld in accordance with this Subcontract are not for the benefit of the bonding company or any other third party.

## 13 COMPLETION OF THE WORK

- 13.1 When Subcontractor deems the Work finally completed, Subcontractor shall give written notice thereof to Contractor. Within fifteen (15) days after receipt of such notice, Contractor will determine if the Work has been completed as required and advise Subcontractor in writing either (i) that the Work has been finally completed or (ii) that the Work has not been finally completed, stating reasons therefor. In the event the Contractor advises Subcontractor that the Work is not finally complete, Subcontractor will promptly complete the Work and give written notice to Contractor when it has done so. The procedure stated herein shall be repeated until the Work has been satisfactorily and finally completed and the Certificate of Completion has been submitted by Subcontractor and accepted in writing by Contractor. The Work will be deemed finally complete as of the date of Contractor's notice to Subcontractor to that effect. The procedure set forth in this Article 13 shall in no way limit Contractor's rights or Subcontractor's obligations under Article 22. No delivery of any product shall be considered made or complete until such product is completely and finally delivered to Contractor's physical possession and control in its entirety, including but not limited to replacement of any defective parts.
- 13.2 At any time prior to final completion of all the Work, Contractor may temporarily take possession of and use any part of the Work. Contractor may return any such Work to Subcontractor for completion.
- 13.3 The Contractor may at any time request in writing that Subcontractor permit Contractor to accept any such part of the Work and Subcontractor shall make that part of the Work available for Contractor's inspection as soon as reasonably possible, and in no event later than five (5) days following the request. If Contractor agrees following the inspection that the part of the Work in question can be accepted by Contractor, Contractor shall issue a Certificate of Completion for such portion of the Work. Such action by Contractor and/or use by Contractor and/or Owner shall neither relieve Subcontractor of any of its responsibilities under the Subcontract, nor act as a waiver by Contractor of any of the conditions thereof, provided that Subcontractor shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. Subcontractor shall not use any portion of the Work other than as approved in writing by Contractor. In any such case Subcontractor shall properly use and maintain and, upon completion of its use and at its expense, recondition such portion of the Work to the satisfaction of Contractor.

## 14 SUBCONTRACTOR INSURANCE

- 14.1 Unless otherwise specified in the Subcontract, Subcontractor agrees that it shall obtain and maintain during the performance of any Work at the Facility Site and until the acceptance thereof, the insurance described in 14.2 and shall be carried with insurance companies with at least a Best's "A" rating. Subcontractor will furnish to Contractor three (3) copies of the certificate(s) evidencing such

insurance prior to commencing performance or physically present on the Facility site under the Subcontract.

- 14.2 The required insurance coverage is as follows:
- (a) Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits of the Worker's Compensation laws of any applicable jurisdiction in which the Work is to be performed hereunder, and Employers' Liability Insurance with limits of five hundred thousand dollars (\$500,000) for trauma, each accident; five hundred thousand dollars (\$500,000) for disease, each person and five hundred thousand dollars (\$500,000) disease, policy limit.
  - (b) Commercial General Liability Insurance written on the latest ISO occurrence form and including coverage for Contractual Liability and Products and Completed Operations (to remain in force for two (2) years following acceptance of the Work. The insurance required by this clause (b) shall have the following limits of liability:
    - (1) Third Party Bodily Injury and Property Damage Liability: \$1,000,000 combined single limit per occurrence and \$2,000,000 combined single limit general aggregate, with such limits available to the Project.
  - (c) Business Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Work, with not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
  - (d) If professional services are involved, Professional Liability Insurance with not less than \$1,000,000 per occurrence with a 24 months discovery period after completion of the work.
- 14.3 The following endorsements shall be included in the above insurance coverages:
- (a) Thirty (30) days advance written notice in the event of cancellation, non-renewal or material change of any policy. Language referring to "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be stricken from the certificate of insurance.
  - (b) Contractor and Owner named as additional insureds (except on workers' compensation and professional liability)
  - (c) A waiver of subrogation in favor of Contractor and Owner.
  - (d) Severability of Interest or Separation of insureds.
  - (e) Subcontractor's insurance is primary and any insurance maintained by Contractor is considered excess and non-contributory.
- 14.4 Subcontractor shall insert the substance of this Article in lower tier subcontracts under the Subcontract that require work at the facility site and shall require lower-tier subcontractors to provide and maintain the insurance required in this Article or elsewhere in the subcontract.

**15 RISK OF LOSS; DEDUCTIBLES; TITLE**

- 15.1 Notwithstanding any other provision(s) in this Subcontract, at all times prior to the final completion of the Work as evidenced by issuance of the Certificate of Completion, Subcontractor shall bear the risk of loss and full responsibility for the costs of replacement or repair resulting from any damage to, loss of or destruction of the Work (to the extent not covered by insurance proceeds received by or for the benefit of Contractor under Builder's Risk insurance

applicable to the Project), including but not limited to Owner furnished work, construction equipment, and the Facility as a whole.

- 15.2 In addition to its obligations under Article 15.1, Subcontractor shall be responsible for deductibles for any damage or loss covered by insurance provided by Subcontractor under Article 14, and for the payment of deductibles for any damage or loss covered by any Builder's Risk insurance and covering the Work, provided that with respect to such Builder's Risk insurance deductible, such damage or loss was (i) caused by the fault, negligence or willful misconduct of Subcontractor or any of its Lower Tier Subcontractors or (ii) caused by the failure of Subcontractor to meet its obligations under the Subcontract.
- 15.3 Title of the Work, or portions thereof, shall pass to Contractor upon the occurrence of the earliest of the following events, as applicable: a) when such Work or portion is delivered to the Contractor or Facility Site pursuant to the Subcontract; b) when Subcontractor has been paid any sum to which it may become entitled in respect to such Work or portion; c) when such Work or portion is identifiable to the Subcontract ; or d) when the Certificate of Completion is issued by Contractor. All equipment, materials, supplies and other items to which Contractor has title shall not be removed from the Facility Site without Contractor's prior written consent. Use of storage facilities furnished to Subcontractor at the Facility Site shall not relieve Subcontractor of such risk of loss unless otherwise agreed in writing.

**16 CONTRACTOR'S RIGHT TO DO WORK**

- 16.1 If the Subcontractor should neglect to prosecute the Work properly or timely or fail to perform any of its other obligations under the Subcontract, Contractor, after two (2) days written notice to the Subcontractor (or shorter period if necessary in Contractor's sole discretion), may proceed to make good such deficiencies and deduct all costs, expenses and damages thereby suffered, in whole or in part, from any payment then or thereafter due to the Subcontractor, without prejudice to any other remedy it may have to collect the said damages or any part thereof not so deducted.

**17 TERMINATION FOR CAUSE**

- 17.1 If the Subcontractor should file a bankruptcy petition or be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for the Subcontractor, or if it should fail to supply enough properly skilled workmen or proper plant or materials or fail to make sufficient progress so as to endanger the timely and proper performance of the Work, or if it should abandon the Work or unreasonably delay its progress or completion, or persistently disregard Applicable Law or the instructions of Contractor or otherwise be guilty of a material violation of any provisions of the Subcontract, then Contractor may, without prejudice to any other right or remedy, upon written notice to Subcontractor, terminate the employment of the Subcontractor with respect to all or part of the Work and take possession of such Work, and all materials for the Work and tools, plant, appliances and equipment and temporary construction used in connection therewith and finish the Work by whatever method Contractor may deem expedient, all at the expense of Subcontractor. In such case Subcontractor shall not be entitled to receive any further payment from Contractor.
- 17.2 If Contractor's expense of completing the Work, including any attorney's fees and other legal expenses in connection therewith, exceed the amount, if any, which Contractor



agrees would have been payable to Subcontractor had it completed the Work as required under the Subcontract, Subcontractor shall pay the difference to Contractor within ten (10) days after receipt from Contractor of written notice of the amount thereof.

- 17.3 Upon the failure of Subcontractor to pay Contractor as set forth in Article 17.2, Contractor shall have the right to sell the whole or any part of any of Subcontractor's materials, tools, plant, appliances, equipment and temporary structures at public or private sale at any time or times thereafter without further notice to Subcontractor and to transfer and deliver the same. Contractor shall have the right to become the purchaser at such sale or sales (free and discharged of any equity of redemption) and after deducting all legal and other costs, attorney fees and expense of sale and delivery, shall apply the balance, if any, of the proceeds of such sale or sales so made, to the amount due Contractor. Contractor shall pay the surplus, if any, to Subcontractor and Subcontractor shall pay any deficiency to Contractor on demand.

## **18 TERMINATION FOR CONVENIENCE OF CONTRACTOR**

- 18.1 Contractor may upon written notice to Subcontractor, without cause and without prejudice to any other right or remedy, elect to terminate all or any part of the Work. Such termination shall be effective in the manner specified in said notice. On receipt of such notice Subcontractor shall, unless the notice directs otherwise, immediately discontinue Work and the placing of orders for equipment, materials, supplies and other items in connection with the performance of the terminated Work, and shall, if requested, make every reasonable effort to procure cancellation of existing orders and subcontracts upon terms satisfactory to Contractor, and shall thereafter do only such Work as may be necessary to preserve and protect Work already in progress and continue to complete the Work not terminated hereunder, and to protect all material, plant or equipment on the Facility Site or in transit thereto.
- 18.2 Should Contractor elect to terminate all or any part of the Work for convenience as provided herein, a complete and final settlement of any and all claims of Subcontractor arising as a result of such termination shall be made as follows: Contractor shall pay to Subcontractor, forty five (45) days after receipt of an invoice which meets the requirements of Article 10, all amounts due and owing to Subcontractor on or prior to the date of termination, including a payment for that Work satisfactorily completed but not yet invoiced by Subcontractor prior to the termination date, all retainage held by Contractor at the date of termination, and all reasonable, actual termination costs incurred by Subcontractor in terminating the Work (but excluding any and all costs and expenses incurred by Subcontractor from and after the date of termination for those of its employees who are not directly performing required termination activities). In no event shall Subcontractor be entitled lost profit on Work not performed.
- 18.3 As a condition precedent to receiving any termination payment under this Article 18, Subcontractor shall execute and deliver all such papers and take such steps concerning obligations and commitments of and to Subcontractor in connection with the Work as Contractor may require for the purpose of fully vesting in Contractor the rights and benefits of Subcontractor under such obligations and commitments, including but not limited to valid and final waiver of any and all actual or potential liens and/or claims.

## **19 SUSPENSION**

- 19.1 Contractor may upon written notice to Subcontractor at any time suspend the performance of all or any portion of Work. Upon receipt of such notice, Subcontractor shall, unless the notice requires otherwise:
- (a) immediately discontinue the suspended Work on the date and to the extent specified in the notice;
  - (b) place no further orders or contracts for equipment, material, supplies, services or facilities with respect to suspended Work, except to the extent required in the notice;
  - (c) promptly make every reasonable effort to obtain suspension upon terms satisfactory to Contractor of all orders, contracts, subcontracts and other agreements to the extent they relate to the performance of Work suspended;
  - (d) continue to protect and maintain Work already in place, including those portions of Work which have been suspended; and
  - (e) take any other reasonable steps to minimize Subcontractor's costs associated with such suspension.
- 19.2 As full compensation for Contractor's suspension of Work, Contractor will pay to Subcontractor forty five (45) days after receipt of an invoice which meets the requirements of Article 10, the actual, reasonable costs associated with mobilization and demobilization of Subcontractor's plant, forces and equipment, the cost of maintaining and protecting the Work to the date of the invoice, and those amounts Contractor and Subcontractor agree Subcontractor should be paid for equipment, materials, supplies, documentation or other items which Subcontractor procured for the Project but for which Subcontractor has not been paid as of the date of the suspension. Subcontractor shall during the period of the suspension continue to invoice Contractor in accordance with Article 10 for the costs of maintaining and protecting the Work.
- 19.3 Upon receipt of notice to resume suspended Work, Subcontractor shall immediately resume performance thereof to the extent required in the notice.
- 19.4 No adjustment shall be made for any suspension to the extent that performance of the Work would have been concurrently suspended, delayed, or interrupted by Subcontractor's non-compliance with the requirements of this Subcontract.

## **20 EMERGENCIES**

- 20.1 In the event of an emergency at the Facility Site threatening loss or injury to life or property which Subcontractor may be able to prevent or mitigate, Subcontractor, without awaiting special instruction or authorization from Contractor, shall act as necessary to attempt to prevent or mitigate such threatened loss or injury.

## **21 LABOR AND SUPERVISION**

- 21.1 Subcontractor shall engage in the performance of the Work a sufficient number of skilled workers to perform the Work promptly, diligently, and in accordance with the requirements of the Subcontract. Prior to commencement of the Work, Subcontractor shall provide Contractor with copies of its policies regarding the furnishing of labor including copies of all wage agreements, working rules, and regulations, if applicable, affecting the Work.
- 21.2 Subcontractor shall engage in the performance of the Work a sufficient number of competent supervisory personnel as are necessary to perform the Work in accordance with the requirements of the Subcontract. Subcontractor shall further have a competent superintendent continuously on the

Facility Site during work hours and readily available upon call. The superintendent shall be fully acquainted with the Work and shall have the authority to administer the Subcontract on Subcontractor's behalf and shall not be changed except with the consent of Contractor, which shall not be unreasonably withheld.

- 21.3 If Contractor notifies Subcontractor in writing that any employee or agent of Subcontractor or one of its Lower Tier Subcontractors is incompetent, disorderly, or otherwise unsatisfactory, such person shall immediately be removed, at Subcontractor's cost, from the Work and shall not thereafter be employed in the performance of the Work.

## **22 MATERIALS, WORKMANSHIP, AND WARRANTIES**

- 22.1 All of the equipment, material, supplies and other items to be furnished by Subcontractor and incorporated into the Facility or Project shall be new, unused, of first rate quality, suitable for use in the Work and in strict conformity with the Subcontract Documents.

- 22.2 Unless specified otherwise in the Subcontract, the following shall apply:

- (a) Subcontractor shall at all times and in a manner reasonably satisfactory to Contractor, cover and protect from damage, loss, theft or destruction all equipment, materials, supplies and other items which are to be used in the performance of, or incorporated into, the Work at the Facility Site. Subcontractor is solely responsible for all equipment, materials, supplies and other items stored by it at the Facility Site and any shortages thereof will be replaced by Subcontractor at its expense.
- (b) Subcontractor shall, at its expense, promptly repair, restore or replace any property of the Owner, Contractor or their respective other contractors which Subcontractor or any of its Lower Tier Subcontractors damages, destroys or loses.

- 22.3 Subcontractor warrants that all Work (i) shall, as applicable, be free of defects in design, workmanship and material, (ii) shall be performed in accordance with the highest accepted industry codes and standards applicable to the Work, (iii) shall be performed in a good and workmanlike manner and (iv) shall strictly conform to the Subcontract Documents. The warranty period shall be for a period of twelve (12) months after completion and acceptance of the work by Subcontractor, or the Subcontractors standard commercial warranty period, whichever is more advantageous to the Contractor. Upon receipt of written notice of a defect or deficiency in the Work, Subcontractor shall at Contractor's sole option and at no cost to Contractor, promptly repair, replace, or reperform such defective or deficient Work so that it conforms with the requirements of the Subcontract.

- 22.4 If Contractor deems it inexpedient for Subcontractor to correct defective or deficient Work, Contractor may make a deduction from the Subcontract Price in lieu of such correction, as determined by Contractor.

- 22.5 Subcontractor shall, at Contractor's option, assign to Contractor or Owner any and all rights under any warranties it may have received or be entitled to from suppliers.

- 22.6 Contractor may or may not elect to obtain (with or without payment therefor) the services, from Subcontractor, a Lower Tier Subcontractor or elsewhere, of technical advisors for such periods of time, if any, as Contractor in its sole and exclusive discretion deems appropriate. However the presence, absence, quality of performance, or period of time of service of any such technical advisor(s) shall be irrelevant to and shall not in any manner impact any guarantee or

warranty of Subcontractor or of any Lower Tier Subcontractor.

## **23 LIENS**

- 23.1 Subcontractor shall promptly pay for all labor, services, equipment, materials, supplies, documentation or other items used or employed by it or on its behalf in the performance of the Work and shall keep and maintain all equipment, materials, supplies, and other items and the Facility, Facility Site and Project free from all mechanic's liens and other liens. If any lien or claim of lien is filed upon or against the Facility, Facility Site and/or Project by a Lower Tier Subcontractor, Subcontractor shall promptly furnish to Contractor (or appropriate governmental authority) a bond or other collateral necessary to discharge such lien or claim of lien and shall indemnify, defend and hold harmless the Indemnified Parties against and from any and all Damages arising from or in connection with any such lien, claim of lien and/or claim for payment, as applicable, and subject to Applicable Law.

## **24 INTELLECTUAL PROPERTY PROTECTION**

- 24.1 Subcontractor shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Damages which the Indemnified Parties may suffer or pay by reason of any claims or suits arising out of claims of infringement of any patent rights, copyrights or other intellectual property, proprietary or confidentiality rights relating to the Work performed by Subcontractor or any Lower Tier Subcontractor under or in connection with the Subcontract, subject to Applicable Law. Any such suit or claim shall be defended at Subcontractor's expense by counsel satisfactory to Contractor. If, in any such suit or claim, a temporary restraining order or preliminary injunction is granted, Subcontractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such suit or claim, the Work, or any part, combination or process thereof, is held to constitute an infringement and its use is permanently enjoined, Subcontractor shall promptly make every reasonable effort to secure for Owner or Contractor, at no cost to Owner or Contractor, a license authorizing continued use of the infringing item. If Subcontractor is unable to secure such suspension or such license within a reasonable time, Subcontractor shall, at its own expense and without impairing Owner's or Contractor's use of the Work, either replace the affected Work, or part, combination or process thereof, with non-infringing components or parts or modify the same so that same becomes non-infringing.

## **25 CONFIDENTIALITY**

- 25.1 All drawings, specifications, technical data, and other information furnished to Subcontractor by Contractor, or Owner, or their respective other contractors are, and shall remain, the property of Owner, Contractor or such other contractors, as the case may be, and may not be copied or otherwise reproduced or used in any way except in connection with the Work, or disclosed to third parties or used in any manner detrimental to the interests of Owner, Contractor or such other contractors.
- 25.2 The following information shall not be subject to the confidentiality requirements of Article 25.1:

- (a) information in the public domain through no action of Subcontractor in breach of this Subcontract; or
  - (b) information independently developed by Subcontractor; or
  - (c) information acquired by Subcontractor from a third party not delivered to Subcontractor in breach of confidentiality agreements which said third party may have with Contractor, Owner, Owner's other contractors, or any other third party.
- 25.3 If and when requested in writing, Subcontractor shall, and shall cause its Lower Tier Subcontractors to, execute any such confidentiality agreements as are deemed necessary for the protection of Contractor, Owner and/or any of their respective other contractors.

## **26 APPLICABLE LAW**

- 26.1 Subcontractor, all Lower Tier Subcontractors, and all Work provided hereunder shall comply with all laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any court or governmental agency or authority, and rules, regulations, codes, orders, interpretations of any federal, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the Project or any activity conducted at or in connection with the Project ("Applicable Law").
- 26.2 Subcontractor shall indemnify, defend, and hold harmless Owner, Contractor, and their respective directors, officers, employees, parents and subsidiaries of any tier, representatives, agents, successors and assigns, and any and all representatives, agents, directors, officers, employees of any of the foregoing, (the "Indemnified Parties"), against and from any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, including without limitation administrative and legal costs, reasonable attorney's fees (collectively, "Damages"), arising from or based on any actual or asserted violation of Applicable Law by Subcontractor or any of its Lower Tier Subcontractors or vendors, subject to Applicable Law.
- 26.3 Subcontractor shall not under any circumstance apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution, laws or regulations relating to the Subcontract or the performance thereof, without Contractor's prior written approval.

## **27 FACILITY SITE**

- 27.1 Prior to moving any equipment or personnel to the Facility Site, Subcontractor shall review and become familiar with Facility Site programs and procedures and Subcontractor and its Lower Tier Subcontractors shall fully and strictly comply with same.
- 27.2 Any temporary construction buildings and sanitary facilities provided by Subcontractor shall conform to Facility Site and permit requirements.
- 27.3 Subcontractor shall perform site clean-up regularly (including on a daily basis if necessary or directed by Contractor) in order to keep that area of the Facility Site on which it performs any Work hereunder clean and free from accumulation of petroleum, waste materials (including, without limitation, any waste Hazardous Materials that were brought to or disturbed or released upon or near the Facility Site by Subcontractor or its Lower Tier Subcontractors or were created or disturbed or released as a result of, or in connection with, the performance by Subcontractor or any of

- its Lower Tier Subcontractors of the Work), rubbish and other debris resulting from the performance of the Work.
- 27.4 Subcontractor shall not permit visitors, cameras, or picture or video taking on the Facility Site or Work without the prior, written approval of Contractor.
- 27.5 Subcontractor shall repair or replace, at its expense, any Work or property which it or any of its Lower Tier Subcontractors damages.
- 27.6 Subcontractor shall conduct inspections to determine if those areas of the Facility Site used by Subcontractor and any of its Lower Tier Subcontractors to perform the Work are safe for the performance thereof and Subcontractor accepts the sole, non-delegable responsibility for providing a safe place to work for its employees and the employees of its Lower Tier Subcontractors and for the adequacy of and required use of all safety equipment.

## **28 PERMITS AND LICENSES**

- 28.1 Unless obtained by Owner or Contractor, Subcontractor shall obtain and pay for any permits, licenses, or royalties which may be required for the performance of the Work, and shall furnish evidence thereof to Contractor. Furthermore, whenever reports to municipal authorities are required from Owner or Contractor under penalty to report, or to report within a specific time, Subcontractor shall be held liable for any costs or penalties to which Owner or Contractor may be subjected as a result of Subcontractor's failure to give proper evidence of a license or permit within any time limit specified.

## **29 TAXES**

- 29.1 Subcontractor agrees to pay and that the Subcontract Price is inclusive of, all taxes, fees and contributions on or measured by the income, gross receipts or assets of Subcontractor or any of its Lower Tier Subcontractors and all taxes, fees and contributions on or measured by employees or other labor costs of Subcontractor or any of its Lower Tier Subcontractors, including without limitation all payroll or employment compensation tax, social security tax or similar taxes for Subcontractor's or any of its Lower Tier Subcontractor's employees. Subcontractor further agrees to pay and that the Subcontract Price is inclusive of all sales and use taxes, and all import, export and other customs duties, charges, levies and fees imposed or incurred in connection with the shipping and delivery of any equipment, materials, supplies or other items required for the Work to the Facility Site. In the event that Contractor should pay or be required to pay any of the foregoing items or any portion thereof, Subcontractor shall reimburse Contractor therefor in full within five (5) days of receipt of written demand from Contractor for any such reimbursement.

## **30 GENERAL INDEMNITY**

- 30.1 Subcontractor shall indemnify, defend and hold harmless the Indemnified Parties against and from any and all Damages (including without limitation any damage to or destruction of property of, or death of or bodily injury to, persons (regardless of whether they are employees of an Indemnified Party, Subcontractor or any Lower Tier Subcontractor, or unaffiliated with the Project, or otherwise)) caused or contributed to by (i) any fault or act or omission of Subcontractor or any of its Lower Tier Subcontractors, or of any of their respective employees, agents, or representatives, under, in connection with or otherwise relating to this Subcontract or the Project or (ii) by any failure

of Subcontractor to comply with the terms of this Subcontract; subject to Applicable Law.

- 30.2 In any and all claims against one or more of the Indemnified Parties by any employee of Subcontractor or of any of its Lower Tier Subcontractors, the indemnification, defense and hold harmless obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or of any of its Lower Tier Subcontractors, under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

### **31 ASSIGNMENT**

- 31.1 Subcontractor agrees that it shall have no right, power or authority to assign or delegate any of its rights or obligations under the Subcontract, either voluntarily or involuntarily, or by operation of law, without prior written consent of Contractor and that any such unauthorized assignment or delegation shall be null and void and of no effect.

### **32 NO WAIVER OF BREACH**

- 32.1 Any failure by Contractor at any time, or from time to time, to enforce or require the strict compliance with and performance by Subcontractor of any of the terms or conditions of the Subcontract shall not constitute a waiver by Contractor or a breach of any such terms or conditions or any other breaches, or the right of the Contractor to avail itself of the remedies it may have for any such breach.

### **33 PUBLICITY**

- 33.1 Subcontractor shall not disclose the nature of its work on the Project, or engage in any other publicity or public media disclosures with respect to the Project without the prior written consent of the Contractor.

### **34 SEVERABILITY AND SURVIVAL**

- 34.1 The provisions of the Subcontract are severable, and, if any provision shall be determined to be illegal or unenforceable, such determination shall in no manner affect any other provision of the Subcontract, and the remainder of the Subcontract shall remain in full force and effect. In the event that any provision of the Subcontract is held to be unenforceable or invalid by any court of competent jurisdiction, Contractor and Subcontractor shall in good faith negotiate an equitable adjustment in the provisions of the Subcontract to preserve its purpose and maintain the allocation of risk, liabilities and obligations originally agreed upon, to the maximum extent then possible under Applicable Law.
- 34.2 Notwithstanding anything to the contrary in the Subcontract, the provisions of the Subcontract setting forth (i) Subcontractor's obligations with respect to confidentiality, indemnification, and warranty; (ii) limitations on Contractor's liability; and (iii) any obligation which expressly or by implication survives termination of the Subcontract, shall survive completion of the Work or the earlier termination under Article 15 or Article 16.

### **35 SUCCESSORS AND ASSIGNS**

- 35.1 The Subcontract shall be binding upon and inure to the benefit of the Parties' respective heirs, successors, executors, administrators and authorized assigns.

### **36 HAZARDOUS MATERIALS**

- 36.1 Subcontractor shall notify Contractor immediately upon the discovery of the presence of any Hazardous Material on, or the release of Hazardous Material on or from, the Facility Site, and shall proceed in accordance with Article 36.2 hereof in connection therewith.

- 36.2 In the event a Hazardous Material is discovered to exist at the Facility Site and is one for which Subcontractor is responsible pursuant to Article 36.3 hereof, Subcontractor shall notify Contractor of the presence thereof and be responsible for responding to and handling such Hazardous Material (including but not limited to the condition resulting from the presence thereof) in compliance with the requirements of all Applicable Laws and as directed by Contractor. In the event a Hazardous Material is discovered to exist at the Facility Site and is not one for which Subcontractor is responsible pursuant to Article 36.3 hereof, Subcontractor shall immediately notify Contractor of the presence thereof and thereafter proceed with the performance of the Work as directed by Contractor or otherwise

- 36.3 Subcontractor is responsible for any Hazardous Material that Subcontractor or any of its Lower Tier Subcontractors creates, brings to or disturbs or releases upon or near the Facility Site.

- 36.4 Subcontractor shall indemnify, defend and hold harmless the Indemnified Parties against and from all Damages caused or contributed to by any Hazardous Material for which Subcontractor is responsible pursuant to Article 36.3 hereof, subject to Applicable Law.

- 36.5 Subcontractor agrees to comply with Federal OSHA Hazard Communication Standards 29 CFR 1926.59 and 29 CFR 1910.1200 which require that manufacturers, importers and distributors properly label all containers of hazardous materials or components and furnish a Material Safety Data Sheet ("MSDS") for each hazardous material supplied. One (1) copy of the related MSDS must be provided with each shipment of any hazardous material. Failure to provide the MSDS or proper labeling on the container(s) is a violation of Federal regulations and may result in the rejection of the shipment. Subcontractor shall be responsible for all shipping charges related thereto. Revised MSDSs must be submitted to Contractor when there is a change in composition or when significant new information concerning hazards or ways to protect against hazards become known.

- 36.6 Nothing furnished by Subcontractor in the performance of the Work for incorporation into the Facility shall contain asbestos (i.e. shall be "asbestos-free"). Subcontractor shall execute and submit a certificate of conformance with this Section 36.6 in the form furnished by Contractor.

### **37 CONTRACTOR INFORMATION**

- 37.1 No information, including but not limited to, estimated quantities, bills of materials, lists, weights or quantities of materials or structures which have been or may be furnished to Subcontractor under the Subcontract are warranted or guaranteed as to accuracy, completeness or otherwise. They may or may not be accurate in any or all particulars, and they shall not be considered as finally correct, sufficiently complete or accurately covering any portion or all of the Work to be done under the Subcontract.

- 37.2 Although the actual amount of Work completed under unit price items, if any, may differ from estimated quantities, the basis of payment for such Work shall be the actual amount of Work completed in each case, unless otherwise agreed in writing. Subcontractor agrees that it will make no claim for loss of anticipated profits or for any other damages because no work is ordered under certain items or because of the

quantities of Work actually completed are less than any estimates of quantity that have been or may be furnished to Subcontractor.

### **38 CONTRACTOR FURNISHED MATERIALS**

- 38.1 All equipment, material, supplies or other items furnished by Contractor, if any, as part of the Work shall be unloaded and received by Subcontractor in the presence of Contractor's authorized representative and quantities thereof shall be checked by Subcontractor. The delivery and acceptance of all such items shall be recorded in writing, and Subcontractor shall evidence receipt and acceptance of such items by signing forms satisfactory to Contractor.
- 38.2 Subcontractor shall carefully note any visible shortage or damage to Contractor furnished items prior to Subcontractor's acceptance of delivery thereof and shall assume full responsibility for any loss or damage of such items thereafter. Subcontractor shall promptly notify Contractor if any items supplied to Subcontractor are surplus and, without additional compensation, shall cooperate in the disposition of such surplus.

### **39 LABOR AGREEMENTS/POLICIES**

- 39.1 Subcontractor and each of its Lower Tier Subcontractors shall at all times during the performance of the Work abide by and be signatories to any project labor agreement(s) applicable to the Project and Subcontractor shall provide evidence that it and each of its Lower Tier Subcontractors are signatories to such agreement(s) prior to performing any Work at the Facility Site.
- 39.2 Subcontractor shall notify Contractor as promptly as possible of any actual or potential labor dispute which may affect the Work. If any such labor conditions threatens the timely completion of any portion of the Subcontract, or if Subcontractor fails to give satisfactory assurance of its ability to complete the Work even in the event of such work stoppage, or fails to employ labor that is in harmony with and compatible with other labor employed on the Project, or fails to continue to perform the Work without interruption or delay during a strike, picket, walkout, or other work stoppage or slowdown caused by a labor dispute, Contractor may terminate the Subcontract for cause and proceed in accordance with Article 17 hereof.
- 39.3 Subcontractor shall comply with all drug, alcohol and safety programs of Contractor.

### **40 FORCE MAJEURE**

- 40.1 Any delay in or failure of performance by either Party hereunder shall be excused if and to the extent caused by a "Force Majeure Event". Force Majeure Events are defined as fire, explosion, act of God, act of the public enemy, and change in law, provided that such event is beyond the control of and without fault on the part of the Subcontractor and the effects of which could not be prevented or avoided by the exercise of due care or foresight.
- 40.2 In the event Subcontractor, by reason of a Force Majeure Event, is rendered unable to perform any of its obligations or comply with any conditions under the Subcontract, Subcontractor shall give written notice to Contractor no later than three (3) days after the occurrence of such Force Majeure Event, with a description of the particulars of the Force Majeure Event, including the estimated duration of said Force Majeure Event or the effect thereof and the probable impact on Subcontractor's performance under the Subcontract. The effects of said Force Majeure Event shall,

so far as possible, be remedied by Subcontractor with all reasonable dispatch, and Subcontractor shall use its best efforts to eliminate and mitigate the consequences thereof. The time for Subcontractor's performance may be extended for a period equal to the time such performance is delayed by said Force Majeure Event, but such relief shall be conditioned upon Subcontractor's initial and continued satisfaction of the notice, reporting, remedy and mitigation, and other requirements of this Article 40.2 in relation to said Force Majeure Event. Under no circumstances shall Subcontractor be entitled to any additional compensation or damages of any kind or character by virtue of a Force Majeure Event. Any claim by Subcontractor for an extension of time arising out of any alleged Force Majeure Event shall be made to Contractor in accordance with Article 9.

### **41 DISPUTES**

- 41.1 In the event a dispute arises between the Parties regarding the application or interpretation of any provision of the Subcontract, the aggrieved Party shall give notice in writing to the other Party and the Parties shall negotiate in good faith and attempt to resolve such dispute. If the Parties fail to resolve the dispute within thirty (30) days after delivery of such notice, each Party shall have the right to pursue any and all remedies available to it hereunder or available to it at law or in equity. Notwithstanding the existence of a dispute between the Parties and regardless of whether such dispute is the subject of dispute resolution pursuant to this Article 41, Subcontractor shall not be entitled to suspend or otherwise delay its performance of the Work.
- 41.2 Notwithstanding any other provision of this Article 41, in the event: a) Owner and Contractor become involved in any arbitration, mediation, litigation or other proceedings, and b) Contractor determines that it would be appropriate that disputes under this Subcontract be resolved in such dispute proceeding due to the existence of common issues of fact or law, Subcontractor shall consent to joinder to, and a consolidated resolution of issues in, that proceeding. Subcontractor hereby consents to such joinder and irrevocably waives any objection which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction, including any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in personam jurisdiction.
- 41.3 In the event Subcontractor submits or pursues a poorly substantiated or frivolous change order or claim against Contractor or Owner or their respective other contractors, Contractor shall be entitled to back-charge Subcontractor for all cost and expense (including but not limited to attorneys fees) incurred by Contractor and/or Owner because of such change order or claim. In the event Subcontractor should submit and/or pursues any such change order or claim against Contractor, Subcontractor shall pay to Contractor any and all costs and expenses (including but not limited to attorneys fees) incurred in investigating and/or defending against and/or resolving such claim or change order, within ten (10) days after Contractor's submission of its invoice (which may be interim or total) to Subcontractor therefor.

### **42 NO THIRD PARTY OR OTHER CLAIMS**

- 42.1 Subcontractor agrees that nothing in any agreement between Owner and Contractor creates any rights in favor of Subcontractor and Subcontractor covenants not to sue Owner or Contractor as a third-party beneficiary of any such agreement.

42.2 Subcontractor agrees that any claims it may have for additional compensation or economic loss of any kind or character arising out of its performance of the Work or otherwise in connection with the Subcontract shall be made solely as provided for in Article 9. Subcontractor covenants not to assert any such claim against Owner or Owner's or Contractor's respective other contractors. Subcontractor covenants not to sue Owner, Contractor or Owner's or Contractor's respective other contractors on any such claim, whether based upon delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, and agrees that it shall assign any such claim it may have in that regard to Contractor if and when requested by Contractor in connection with any adjustment pursuant to Article 9 hereof.

#### **43 DAMAGES**

43.1 In no event shall Owner, Contractor, or any of their respective parents, affiliates, subsidiaries, representatives or any directors, officers, or employees of any of the foregoing be liable to Subcontractor or any of its Lower Tier Subcontractors, whether based on delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, for any consequential, special, incidental, indirect, exemplary, multiple or punitive damages or damages arising from or in connection with loss of use or loss of revenue or profit, actual or anticipated or otherwise, and Subcontractor hereby releases Owner, Contractor and each of their respective parents, affiliates, subsidiaries, representatives or any directors, officers and employees from any such liability.

#### **44 GOVERNING LAW AND VENUE**

44.1 The Purchase Order, unless it expressly provides to the contrary in the "Purchase Order Form", shall be governed by and construed in accordance with the laws of the State of Delaware, excluding any provisions or principals thereof which would require the application of the laws of a different jurisdiction. Any litigation initiated by and between the Parties arising out of or relating to the Purchase Order shall be conducted in the federal or state court of jurisdiction in the State whose laws govern the Purchase Order, and Buyer and Seller each consent to the jurisdiction of such court, and excluding FAR and DEAR clauses incorporated into the Purchase Order. FAR and DEAR clauses incorporated into the Purchase Order shall be governed by and construed in accordance with the federal law of government contracts. In the event a dispute arises between the Contractor and Owner in connection with the Work or Subcontract, Contractor shall have the right to implead Subcontractor into the dispute resolution proceeding and Subcontractor hereby agrees to any such impleader.

#### **45 ARTICLE HEADINGS**

45.1 The Article headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of anything herein contained nor govern the rights and liabilities of the Parties.

#### **46 COMPLETE AGREEMENT**

46.1 The Subcontract constitutes the complete agreement between the Parties with respect to the subject matter hereof, and supercedes all prior written or oral contracts, agreements, representations and/or understandings of any

kind or nature that the Parties may have entered into or had prior to the date hereof with respect to the subject matter hereof.

46.2 Subcontractor shall have accepted these Conditions provided Subcontractor has received these Conditions, and either a) received payment; or b) started performance of the Work, or c) has accepted the order by written acknowledgement and acceptance s.

#### **47 BACKCHARGE; OFFSET**

47.1 Contractor may accomplish the required redesign, repair, rework or replacement of any Work by the most expeditious means available, and backcharge Subcontractor for the costs and expenses incurred.

47.2 If Subcontractor requests Contractor to provide the services of its personnel or equipment, or provide permanent, temporary or consumable materials for Subcontractor's use, Contractor will charge Subcontractor for such items in accordance with Articles 47.4 and 47.6 below.

47.3 In the event of emergency, Contractor may proceed to perform any Work and backcharge Subcontractor for Contractor's costs and expenses.

47.4 The cost of such backcharge shall include but not be limited to:

- (a) fully burdened labor costs;
- (b) material costs including shipping and handling;
- (c) subcontractor or subsupplier costs directly related to performing the backcharge work;
- (d) equipment and tool rentals at Contractor customary rates; and
- (e) a factor of fifty percent (50%) shall be applied to the total of the foregoing Articles 47.4(a), (b) (c) and (d) for indirect, overhead and administrative costs.

47.5 Prior to completion of the Work, backcharge costs will be treated as a Subcontract Price adjustment. Subcontractor shall pay the invoice within ten (10) days from receipt. Contractor's right to backcharge is in addition to any and all other rights and remedies provided in the Subcontract or by law. The performance of backcharge work by Contractor shall not relieve Subcontractor of any of its responsibilities under the Subcontract.

47.6 Independently of its backcharge rights, Contractor shall at any time and from time to time be entitled, but not required, to offset, against any obligation of Contractor to Subcontractor, any obligation of Subcontractor to Contractor, by giving Subcontractor written notice thereof.

#### **48 PRODUCT INFORMATION**

48.1 If any design change at any time ever occurs (or is seriously contemplated) to any component of the Work to be supplied under the Subcontract, Subcontractor shall immediately advise Contractor of such design change, and concurrently provide Contractor with a full written description of such design change, the reasons for it, and all known or suspected impacts, implications, consequences, and details thereof, particularly including but not limited to any matters relating to performance, configuration, size, weight and durability. If Contractor is not willing to accept such design change, any component, material, or other item of any kind incorporating or affected by such design change shall be deemed defective and therefore rejected under the Subcontract and Subcontractor shall immediately cause such component, material or other item to be replaced at its sole cost and risk with a component, material or item which does not incorporate and is not affected by such design change.

48.2 Prior to commencing any Work under the Subcontract, Subcontractor shall furnish to Contractor in detail all pertinent information concerning the operating history of any product to be furnished hereunder, particularly including but not limited to any deficiencies, problems or customer complaints relating thereto. Subcontractor shall thereafter promptly keep Contractor current with regard to any new developments regarding such operating history, particularly including but not limited to any deficiencies, problems or customer complaints.

#### **49 INDEPENDENT CONTRACTOR**

49.1 Subcontractor is an independent contractor, and neither an employee, agent, nor representative of the Contractor or the Owner, and shall maintain complete control of, and responsibility for, its Lower Tier Subcontractors, employees, agents, means, methods, and operations.

#### **50 SUBCONTRACTOR'S DRAWINGS, SPECIFICATIONS, AND CALCULATIONS**

50.1 Drawings, specifications, and calculations submitted by Subcontractor to the Contractor with a request for review, may be reviewed and commented upon by the Contractor. Such review and comment shall relate only to general conformance with the specifications and for confirmation of physical interface of items shown with related systems. In no event will such review and comment relieve Subcontractor of the responsibility of compliance with all requirements of the Subcontract.

50.2 Subcontractor shall furnish all submittals and other documentation when and as required by the Subcontract. All materials specifically prepared or developed by Subcontractor or any of its Lower Tier Subcontractors to perform Subcontractor's obligations under the Subcontract shall become the property of Contractor upon payment for or termination of Subcontractor's Work, whether delivered to Contractor or not, and shall be delivered to Contractor on written request.

#### **51 EMPLOYEE CONCERNS PROGRAM**

Subcontractor shall advise its employees that they have the right and responsibility to report concerns relating to the environment, safety, and health, or management of DOE-related activities; and to cooperate with assessments used to verify that they have acted to minimize, correct, or prevent recurrence of the situation that precipitated a valid concern. No retaliation or reprisal shall occur for any employee who has identified employee concerns to their management or Contractor. Subcontractor shall flow this requirement down to all lower-tier subcontractors/suppliers.

#### **52 ONSITE EQUIPMENT USE REQUIREMENTS**

52.1 All equipment (vehicles, machinery, and/or hand tools) used by the Subcontractor to perform Work at the Project site must be in good working condition for the purpose intended and meet all applicable codes and standards. Such equipment must be used and maintained only as intended by the manufacturer and in accordance with the manufacturer's instructions and limitations. The equipment must be free of defects and suitable for safe performance of the Work. Contractor reserves the right, in its sole discretion, to inspect Subcontractor's equipment prior to use. Equipment found to be unsatisfactory by Contractor shall be

promptly repaired or removed from the premises and replaced with satisfactory items at no cost to URS. Inspections, whether or not any equipment is found to be unsatisfactory or whether or not any defects are found by such inspections, do not relieve Subcontractor of any responsibility or liability under this Article or for performing the Work in a safe manner.

#### **53 ABILITY TO WORK**

53.1 Subcontractor shall have procedures requiring employees to immediately notify their supervisor of:

- (a) Work restrictions imposed as a result of any medical/physical condition; or
- (b) Medication being taken which may impact the safety of themselves, their co-workers, or the public.

Subcontractor shall ensure proper work accommodation.

53.2 Subcontractor shall, in addition, refer employees to the appropriate medical providers for health evaluation when:

- (a) Subcontractor identifies a behavior or a condition it, in good faith, believes to be health-related which could impact safety; or
- (b) An employee requests a medical evaluation due to potential impact on Work assignments and/or safety and health.

53.3 Any Subcontractor employee who identifies behavior or conditions creating an imminent hazard to health and safety shall take whatever steps are reasonably necessary to correct the condition, including stopping the Work.

53.4 Subcontractor procedures shall provide that confidentiality of medical information (related to the evaluation) shall be preserved; only work restrictions imposed shall be reported to Subcontractor. Subcontractor shall not request diagnostic medical information.

53.5 Subcontractor shall have in effect a company policy which prohibits retaliation or retribution resulting from compliance with the requirements of this Article.

53.6 Subcontractor shall insert or have inserted this Article, including this paragraph, in lower-tier subcontracts at all tiers, with respect to Work performed on site.

#### **54 ENVIRONMENT, SAFETY AND HEALTH**

54.1 Reference the Article Titled "Integration of Environment, Safety and Health into Work Planning and Execution", included in these General Conditions.

54.2 The Department of Energy has promulgated worker safety and health rules in accordance with Section 234C of the Atomic Energy Act of 1954 (as amended). These rules govern the conduct of contractors (including subcontractors) whose employees work at specified DOE workplaces as defined in 10 CFR 851.3 and are designed to provide safe and healthful workplaces for DOE contractors and workers. Violation of the applicable rules may provide a basis for the assessment of civil penalties under 10 CFR 851 Subpart E. Worker safety and health rules subject to such enforcement are 10 CFR 850, Chronic Beryllium Disease Prevention Program, and 10 CFR 851, Worker Safety and Health Program as of February 9, 2007. This Subcontract is subject to the above rules if the subcontractor will be performing work on a DOE site not specifically excluded by 10 CFR 851.

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

requirements, orders, and procedures including related reporting requirements. Prior to the start of work under this subcontract, the subcontractor shall provide to Contractor a letter acknowledging a Corporate Safety and Health Policy and confirmation of compliance with Contractors procedures

54.4 The Contractor shall notify the Subcontractor in writing of any noncompliance with the provisions of this Article and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. In the event that the Subcontractor fails to take corrective action and comply with said Contractor/DOE regulations, requirements and procedures the Contractor may, without prejudice to any other legal or contractual rights of Contractor, issue an order stopping work in whole or in part. An order authorizing the resumption of work may be issued at the discretion of the Contractor. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article. The Subcontractor may also be subject to civil penalties for violation of any applicable safety and health requirement of 10 CFR 851 as included in Contractors Environment, Safety and Health procedures.

54.5 Permits, Compliance, and Indemnification

(a) Subcontractor shall comply with all federal, state, county, and municipal laws, ordinances, and regulations applicable to the Work to be performed.

(b) Subcontractor shall indemnify and hold harmless Contractor and the Government from all damages of any nature whatsoever that they may incur as a result of Subcontractor's failure to comply with all federal, state, county, and municipal laws, ordinances, and regulations applicable to the Work, or Subcontractor's failure to secure required licenses or permits prior to commencing Work and to comply with such licenses or permits throughout the course of the Work. Subcontractor also agrees, if requested, to assume at its own expense the defense of suits that may be filed against Contractor or the Government as a result of Subcontractor's failure to comply with any applicable federal, state, county, and municipal laws, ordinances, or regulations, or Subcontractor's failure to secure and comply with any required licenses or permits.

54.6 Subcontractor shall flow down all of the provisions of this Article and all environmental, safety, and health requirements in all lower-tier subcontracts, at any level.

**55 SUSPECT/COUNTERFEIT PARTS IDENTIFICATION**

55.1 Subcontractor shall supply products that are not and do not contain suspect/counterfeit parts. Subcontractor shall establish a Suspect/Counterfeit Parts Identification Program that provides identification, notification, and disposition of suspect/counterfeit parts.

55.2 Subcontractor shall ensure that procurement documents executed in the acquisition of products under this subcontract include these Suspect/Counterfeit Parts Identification Program requirements and exclude identified suspect/counterfeit parts from the procurement process and subsequent installation.

55.3 A defective part is any part that has recognized common manufacturing flaw. A suspect/counterfeit part is any item whose characteristic or identity does not appear to be authentic and is verified to be either counterfeit or fraudulent; or is refurbished, remanufactured, or has material substitutions as determined by the definitions below. Subcontractor's identification program shall monitor

these characteristics particularly at receipt inspection and at time of installation

(a) counterfeit – forgery, or an imitation with the intent to deceive

(b) fraudulent – deliberate intent to misrepresent the actual characteristics of an item

(c) material substitution – occurs when a change to specified material of an item is made (failure by the supplier to document the material substitution is considered to be fraud, and the item then becomes suspect/counterfeit)

(d) refurbished - item that is taken part, cleaned, adjusted, inspected, or cosmetically enhanced (failure by the supplier to identify that the part is refurbished is considered to be fraud, and the item then becomes suspect/counterfeit)

(e) remanufactured – item that is refurbished, physically modified, or where its subcomponents were replaced (failure by the supplier to identify that the part is remanufactured is considered to be fraud, and the item then becomes suspect/counterfeit).

55.4 Notification. Immediately upon determination that a part is or may be suspect/counterfeit, notify Contractor for disposition. If it is determined that a suspect/counterfeit part has been supplied, Contractor will then notify the local Department of Energy Office of Inspector General.

**56 PRICE-ANDERSON AMENDMENTS ACT**

56.1 The Department of Energy has promulgated Nuclear Safety Rules in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules may provide a basis for the assessment of civil and criminal penalties under the PAAA. Nuclear Safety Rules subject to enforcement under PAAA are 10 CFR 820, "Procedural Rules for DOE Nuclear Activities", 10 CFR 830, "Nuclear Safety Management Subpart A,

56.2 This Order is subject to the requirements of the above rules if the performance of work involves conducting activities (including providing items and services), that affects, or may affect, the safety of DOE nuclear facilities.

56.3 Subcontractor assumes full responsibility and shall indemnify, save harmless, and defend Buyer and its principal subcontractors, their agents, officers, employees, and directors from any civil or criminal liability under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq., arising out of the activities of the Subcontractor, its lower-tier subcontractors, suppliers, agents, employees, officers, or directors.

56.4 Subcontractor shall comply in all respects to Contractor's program for noncompliance identification, tracking, and corrective system, established under the terms of its contract with the owner.

**57 SECURITY AND SITE ACCESS**

57.1 All persons on the DUF6 project site are required to have a DOE identification badge and a General Employee Training (GET) badge. These badges are required for access through the DOE security gate and must be worn, visible at all times while on DOE property.

57.2 The DUF6 site is not within the secure perimeter of the Gaseous Diffusion Plant and there are no known radiological hazards on the DUF6 site; therefore, no other badges or



training are required at this time for general access to the DUF6 site.

57.3 DOE identification Badge - Employees will be photographed when they first report to work. At the present time it takes approximately two weeks for the badge to be issued after the picture is taken. Contractor is attempting to shorten this turn around time. Employees and visitors who do not have a DOE badge may be escorted onto the DUF6 site by subcontractor employees who are properly badged. Each escort is allowed to escort up to three unbadged individuals at one time. The individuals being escorted must remain within the escort person's field of view at all times.

(a) There is no charge for issuing DOE Badges. However, since unauthorized possession of a DOE identification badge is a serious security issue, the subcontractor will be assessed an administrative fee of \$250.00 for each DOE identification badge which is not returned at the completion of the subcontractor's task or upon employee termination.

(b) GET and Site Access Badging - When employees first report to work at the DUF6 site they will be required, in addition to being photographed for the DOE identification badge, to attend a one and a half hour site orientation lecture provided by Contractor at no charge to the subcontractor, followed by a half hour computerized test. After attending the orientation lecture and successfully completion of the test, the employee will be issued a GET and Site Access badge. This badge attests that the employee has received the basic safety and security training required for access to the site. Unlike the identification badge, the GET badge is transportable between subcontractors on the DUF6 site and is valid for two years from the date of issue. Employees must retake the orientation lecture and test prior to the expiration date of their badge or if their badge is rescinded for safety/security violations. A certificate of completion of GET is also provided to the employee. If the GET badge is lost, this certificate may be used as evidenced of GET certification pending issuance of a new badge.

## 58 FOREIGN NATIONALS

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

58.1. The Subcontractor shall obtain the approval of Procurement Representative, in writing, prior to any visit to a DOE or Contractor Operated 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 DOE or Contractor event offsite from DOE/DUF6 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 Contractor Procurement Representative at least four (4) to six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited. Forms can be obtained from the Procurement Representative.

58.2 In addition, the Subcontractor shall obtain the approval of the Contractor 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 off-site locations. Such approvals will be processed in accordance with the requirements of DOE Order 142.3.

58.3 In the performance of offsite work, Foreign Nationals only incidentally involved with the Subcontract work, and who have no knowledge that their activities are associated with the Subcontract work, are exempt from the above provisions.

## 59 FIRST AID FACILITIES

59.1 If performance of work is at the site, Subcontractor must arrange for their own first-aid treatment. However, where the contractor has first-aid facilities at the jobsite they will be made available for treatment of employees of Subcontractor for life threatening injuries while engaged in the performance of the work under this subcontract.

59.2 If first-aid facilities and/or services are made available to subcontractor employees then, in consideration for the use of such facilities and the receipt of such services, subcontractor hereby agrees:

(a) To release, defend, indemnify and hold harmless contractor and government and their authorized representatives, successors, assignees, and all of their officers and employees from and against any and all claims, demands, liabilities, including attorney's fees, arising from the receipt of such services or the use of such facilities by subcontractor employees, except for claims and demands arising out of the sole active negligence of contractor or any of their representatives.

(b) Upon receipt of any notice from contractor of any such claim, demand or liability being pursued against contractor, to not only undertake the defense of such claim, demand, or liability, but also upon entry of judgment, to make any and all payments necessary hereunder, and

(c) That in the event any of subcontract's employees require off-site medical services, including transportation thereto, Subcontractor shall promptly pay for such services directly to the providers thereof.

## FAR AND DEAR CLAUSES (INCORPORATED BY REFERENCE)

This subcontract incorporates certain clauses below by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) provisions incorporated by reference, "Contractor" means Subcontractor and "Contracting Officer" means the Contractor's Procurement Representative. Government means the owner or the Contractor except that the term "Government" or its authorized representatives shall retain its original meaning where (1) the provision pertains to, addresses or governs rights and obligations in property (real, personal or intellectual), (2) a right, act, authorization or obligation can be granted or performed only by the Government (e.g., under the Nuclear Hazards Indemnity Agreement provision), (3) the intent of the provision is to provide benefit or protection to the Government, or (4) when access to the subcontractor's proprietary financial or other data is required. FAR clauses may be accessed electronically at <https://www.acquisition.gov/far/>. DEAR clauses can be found at <http://www.management.energy.gov/DEAR.htm>. Upon request, BWCS will make their full text available

**60 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (DEC 2008)**

FAR 52.203-13

*(Article is applicable if the value of this subcontract exceeds \$5 million, and the performance period exceeds 120 days)*

**61 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2007)**

DEAR 952.203-70

*(Applicable for subcontract involving work performed on or behalf of DOE directly related to activities at DOE-owned or leased sites)*

**62 SECURITY (JUN 2009)**

DEAR 952.204-2

*(Applicable if Subcontractor Employees will require access authorizations in performance of the work (L or Q clearances)*

**63 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (SEP 2007)**

FAR 52.204-9

*(Applicable if subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system)*

**64 COMPUTER SECURITY (AUG 2006)**

DEAR 952.204-77

*(Applicable if Subcontractor Employees will have access to computers owned, leased or operated on behalf of the DOE)*

**65 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)**

DEAR 952.209-72

*(Applicable to orders for Advisory and Assistance Services Only)*

**66 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)**

FAR 52.219-8

**67 SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008) – Alternative II (Oct 2001)**

FAR 52.219-9

*(Applicable if subcontract exceeds \$550,000. Article does not apply if subcontractor is a Small Business concern)*

**68 NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004)**

FAR 52.222-39

*(Article applicable if this subcontract exceeds \$150,000)*

**69 EQUAL OPPORTUNITY (MAR 2007)**

FAR 52.222-26

**70 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VIETNAM ERA VETERANS AND OTHER ELIGIBLE VETERANS (SEP 2006)**

FAR 52.222-35

**71 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

FAR 52.222-36

**72 SERVICE CONTRACT ACT OF 1965 AS AMENDED (NOV 2007)**

FAR 52.222-41

*(Article applicable if subcontract exceeds \$2,500 and involves employment by subcontractor of service employees, as defined in DOL Regulations)*

**73 COMBATING TRAFFICKING IN PERSONS (FEB 2009)**

FAR 52.222-50

**74 EMPLOYMENT ELIGIBILITY VERIFICATION (FEB 2009)**

FAR 52.222-54

**75 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)**

DEAR 970.5223-1

*(Applicable if subcontract involves performance of work on-site)*

**76 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)**

DEAR 970.5223-4

*(Applicable if subcontract amount exceeds \$25,000 and scope of work involves access to classified information or special nuclear materials; transportation of hazardous materials to or from a DOE site; or a high risk of danger to life, the environment, public health and safety, or national security)*

**77 RIGHTS IN DATA – GENERAL (JUN 1987)**

FAR 52.227-14, WITH ALTERNATIVE V as modified pursuant to DEAR 927.409(a) (1)

**78 PRIVACY AND SECURITY SAFEGUARDS (AUG 1996)**

FAR 52.239-1

**79 GOVERNMENT PROPERTY (JUN 2007)**

FAR 52.245-1

*(Applicable if Government property is provided to the subcontractor for use in performance of the work)*

**80 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**

DEAR 952.250-70

*The following Articles 81 and 82 are applicable if this Subcontract uses funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009. (See Special Provisions included elsewhere in the Subcontract for applicability)*

**81 AUDIT AND RECORDS-NEGOTIATION (JUN 1999) WITH (ALTERNATE I) (MAR 2009)**

FAR 52.215-2

**82 WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)**

FAR 52.203-15

**83 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (MAY 2012)**

FAR 52.223-2

**84 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011)**

FAR 52.223-5

**85 WASTE REDUCTION PROGRAM (MAY 2011)**

FAR 52.223-10

**86 COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011)**

FAR 52.223-19

**87 SUSTAINABLE ACQUISITION PROGRAM (OCT 2010)**

DEAR 952.223-78

**88 EXECUTIVE ORDER 13423, STRENGTHENING FEDERAL ENVIRONMENTAL, ENERGY, AND TRANSPORTATION MANAGEMENT (OCT 2010)**

DEAR 970-5223-6

**89 For procurements in Excess of \$3,000**

Buy American Act (FEB 2009)

FAR 52.225-1

**END OF GENERAL CONDITIONS**