

**FLUOR IDAHO, LLC**  
**GENERAL PROVISIONS**

**Table of Contents**

1.	DEFINITIONS.....	3
2.	MODIFICATION AUTHORITY .....	3
3.	TECHNICAL DIRECTION.....	4
4.	DISPUTES.....	5
5.	CONFIDENTIALITY OF INFORMATION.....	6
6.	LAWS AND REGULATIONS .....	6
7.	ADMINISTRATION OF SUBCONTRACTS .....	7
8.	PUBLICITY .....	7
9.	INDEPENDENT SUBCONTRACTOR .....	7
10.	CODE OF BUSINESS CONDUCT AND ETHICS .....	7
11.	DEPARTMENT OF LABOR WAGE DETERMINATION .....	8
12.	VALIDITY OF PROVISIONS.....	8
13.	SURVIVAL .....	8
14.	WAIVER .....	8
15.	PERMITS, APPLICATIONS AND LICENSES .....	8
16.	LOBBYING RESTRICTION.....	8
17.	ALLOCATION OF LIABILITY FOR FINES AND PENALTIES TO RESPONSIBLE PARTY.....	9
18.	COMPANY WORKING DAYS.....	9
19.	FOREIGN NATIONALS.....	9
20.	SUBCONTRACTOR PERSONNEL .....	10
21.	INSURANCE .....	10
22.	INDEMNITY .....	12
23.	ASSIGNMENT .....	14
24.	REPORTING FRAUD, WASTE AND ABUSE TO THE OFFICE OF INSPECTOR GENERAL.....	14
25.	NOTICE OF CIVIL PENALTIES FOR VIOLATION OF SECURITY OF DOE CLASSIFIED OR SENSITIVE INFORMATION OR DATA .....	15
26.	ORDER OF PRECEDENCE.....	15
27.	WAIVER OF FACILITIES CAPITAL COST OF MONEY .....	16
28.	DELAYS.....	16
29.	FAR 52.245-1 GOVERNMENT PROPERTY (APR 2012) .....	16
30.	NOTICE OF LABOR DISPUTES .....	16
31.	QUALITY OF SERVICES .....	17
32.	SUBCONTRACTS AND PURCHASE ORDERS .....	17
33.	DEFENSE NUCLEAR FACILITIES SAFETY BOARD (DNFSB) .....	17
34.	NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS- SENSE OF CONGRESS .....	18
35.	SUBCONTRACTOR'S SHIPMENTS.....	18
36.	CONTROL OF COMPANY FURNISHED MATERIALS .....	18
37.	INTERPRETATION.....	19
38.	RIGHT TO OFFSET .....	19
39.	DIFFERING PROFESSIONAL OPINIONS.....	19
40.	ORDERING .....	19

41.	CONTINUITY OF SERVICES.....	20
42.	OPTION TO EXTEND THE TERM OF THE SUBCONTRACT .....	20
43.	TERMINATION FOR CONVENIENCE .....	20
44.	SUSPENSION OF WORK OR TERMINATION FOR DEFAULT.....	21
45.	SUSPENSION OF SERVICES.....	21
46.	FOREIGN TRAVEL.....	21
47.	EXPORT AUTHORIZATIONS .....	22
48.	ORGANIZATIONAL CONFLICTS OF INTEREST .....	22
49.	INSPECTION AND ACCEPTANCE.....	22
50.	PASSAGE OF TITLE AND LIENS .....	23
51.	WARRANTY .....	24

## 1. DEFINITIONS

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

- (a) "Government" means the United States of America or any duly authorized representative thereof.
- (b) "DOE" means the United States Department of Energy.
- (c) "Company" means Fluor Idaho, LLC, the party issuing this Subcontract.
- (d) "Subcontractor" means the party to whom this Subcontract is awarded.
- (e) "Lower-tier Subcontractor" means any party entering into an agreement with Subcontractor or any other party who has entered into a contract with Subcontractor, for the furnishing of supplies or services required for performance of the Subcontract.
- (f) "Subcontract Technical Representative (STR)" means the individuals identified in the Subcontract as the duly authorized representative of Company for overseeing Subcontractor work activities.
- (g) "Contracting Officer" or "Subcontract Administrator (SCA)" means the duly authorized representative of Company who will administer the Subcontract.
- (h) "INL" means the Idaho National Laboratory located approximately 50 miles west of Idaho Falls, Idaho, exclusive of the Naval Reactors Facility.
- (i) "ICP" means the Idaho Cleanup Project
- (j) "Main Guard Post" means building B-27-603 at the INL main entrance.

## 2. MODIFICATION AUTHORITY

The Company Representatives identified as the "Subcontract Administrator" and the "Subcontract Manager" are the only individuals authorized to bind The Company contractually in performance of work under this subcontract and may at any time, and without notice to the sureties, make changes within the general scope of this Subcontract, in any one or more of the following:

- (a) In the specifications (including drawings and designs);
- (b) In the method or manner of performance of the work;
- (c) In Company-furnished facilities, equipment, materials, services, or site;
- (d) Directing acceleration in the performance of the work; and/or
- (e) The description of services to be performed.

If any change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Subcontract, whether changed or not changed by any such order, an upward or downward equitable adjustment shall be made in this Subcontract cost or delivery schedule or both, and this Subcontract shall be modified in writing accordingly. Any claim by the Subcontractor for adjustment under this Article must be asserted within 30 days from the date of receipt by the Subcontractor of the notification of change – provided, however, that the Company, if it decides that the facts justify such action, may receive and act upon any

such claim asserted at any time prior to final payment under this Subcontract. Where the cost of property made obsolete or excess as a result of a change is included in the Subcontractor's claim for adjustment, the Company shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute within the meaning of the Article of these General Provisions entitled "Disputes." However, nothing in this article shall excuse the Subcontractor from proceeding with this Subcontract as changed.

### **3. TECHNICAL DIRECTION**

- (a) Performance of the work under this subcontract may be subject to the technical direction of the cognizant Company Subcontract Technical Representative (STR), as identified in the Subcontract section entitled "Subcontract Administration, in the release issued under this subcontract, or in writing by the manager or SCA identified in the Subcontract Administration clause otherwise. The term "technical direction" is defined to include, without limitation:
  - (1) Directions to the Subcontractor that redirect the subcontract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the Statement of Work (SOW).
  - (2) Provision of written information to the Subcontractor, which assists in the interpretations of drawings, specifications, or technical portions of the work description.
  - (3) Review and, where required by the subcontract, approve technical reports, drawings, specifications and technical information to be delivered by the Subcontractor to the Company under this subcontract.
- (b) Technical direction must be within the scope of the SOW stated in the Subcontract. The cognizant Company Subcontract Technical Representative does not have the authority to, and shall not, issue any technical directions which:
  - (1) Constitute an assignment of additional work outside the scope of the SOW of the delivery order or release;
  - (2) Constitute a change as defined in the applicable clause of this subcontract entitled "Changes".
  - (3) In any manner causes an increase or decrease in the total estimated subcontract price, the estimated price or cost of a release, or the time required for the subcontract and/or performance of a release;
  - (4) Changes any of the expressed terms, conditions or specifications of the release;
  - (5) Interferes with the Subcontractor's right to perform the terms and conditions of the release.
- (c) All technical direction shall be issued in writing by the Company Subcontract Technical Representative.

- (d) The Subcontractor shall proceed promptly with the performance of technical directions duly issued by the Company Subcontract Technical Representative in the manner prescribed by this clause and within the Company Subcontract Technical Representative's authority under the provisions of this clause. If, in the opinion of the Subcontractor, any instruction or direction by the Company Subcontract Technical Representative falls within one of the categories defined in (b)(1) through (b)(5) above, the Subcontractor shall not proceed but shall notify the Company SCA in writing within five (5) working days of any such instruction or direction and shall request the Company SCA to modify the subcontract. Upon receiving the written notification from the Subcontractor, the Company SCA shall:
  - (1) Advise the Subcontractor in writing within seven (7) working days after receipt of the Subcontractor's letter that the technical direction is within the scope of the release and does not constitute a change under the Company clause entitled "Changes";
  - (2) Advise the Subcontractor in writing within seven (7) working days after receipt of the Subcontractor's letter not to perform under the direction and to cancel the direction; or
  - (3) Advise the Subcontractor in writing within a reasonable time that the Company will issue a written change order.
- (e) Failure of the Subcontractor and the Company SCA to agree that the technical direction is within the scope of the contract, or failure to agree upon the subcontract action to be taken with respect thereto shall be subject to the clause of this subcontract entitled "Disputes."

#### **4. DISPUTES**

- (a) The parties agree that the appropriate forum for resolution of any dispute pertaining to this Subcontract shall be a court of competent jurisdiction as follows:
  - (1) Subject to paragraph (a)(2) of this Article, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court for the District of Idaho in Pocatello, Idaho.
  - (2) Provided, however, that in the event that the requirements for jurisdiction in the Federal District Court for the District of Idaho, in Pocatello, Idaho are not present, such litigation shall be brought exclusively in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, with venue in Idaho Falls, Idaho.
- (b) Any substantive issue of law in dispute shall be determined in accordance with federal U.S. procurement law; provided, however, if there is no applicable federal U.S. procurement law, then Idaho law shall govern.
- (c) There shall be no interruption in the prosecution of the Work, and the Subcontractor shall proceed diligently with the performance of this Order pending final resolution of any dispute, claim, or litigation, arising under, or related to, this Order, between the parties hereto or between the Subcontractor and Lower-tier Subcontractors or suppliers.

- (d) The Contract Disputes Act of 1978 (41 U.S.C. Sections 601 613) shall not apply to this Order; provided, however, nothing in this Article shall prohibit Fluor Idaho, LLC, at its sole discretion, from sponsoring a claim of the Subcontractor for resolution under the provisions of its prime contract with DOE. In the event that Fluor Idaho, LLC sponsors a claim at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as Fluor Idaho, LLC.

## **5. CONFIDENTIALITY OF INFORMATION**

If the Subcontractor is given access to proprietary business, technical, or financial information belonging to Company or third parties, including the Government, the Subcontractor shall, after receipt thereof, protect such information, and shall not appropriate such information for its own use or disclose such information to third parties unless it receives prior specific written authorization to do so by the Company.

The foregoing obligations shall not apply to information:

- (a) Which is in the public domain when the Company discloses it to the Subcontractor
- (b) Which entered the public domain through no fault of the Subcontractor after it was disclosed by the Company
- (c) Which was in the Subcontractor's possession free of any obligation for the Subcontractor to hold it in confidence
- (d) Which is disclosed to the Subcontractor by a third party who has the lawful right to disclose the information.

The Subcontractor shall obtain a written Employee Non-Disclosure Agreement from each employee performing under this Subcontract, the format of which is acceptable to the Company, prior to permitting them access to information covered by this clause.

## **6. LAWS AND REGULATIONS**

- (a) Subcontractor shall comply strictly with all local, municipal, state, federal and governmental laws, orders, codes and regulations applicable to Subcontractor's operations in the performance of the Work hereunder.
- (b) Subcontractor shall not under any circumstances apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health or air, water or noise pollution, laws or regulations relating to this Subcontract or to the performance thereof, without Company and Owner's prior written approval.
- (c) Subcontractor certifies that it is in compliance, and shall at all times remain in compliance, with all applicable anti-corruption and anti-bribery laws, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended.
- (d) This Subcontract shall be subject to the law and jurisdiction of the Commonwealth of Idaho, unless expressly designated otherwise in this Subcontract.

## **7. ADMINISTRATION OF SUBCONTRACTS**

- (a) The administration of all subcontracts entered into and/or managed by the Subcontractor, including responsibility for payment hereunder, shall remain with the Subcontractor unless assigned at the direction of The Company.
- (b) The Company reserves the right to direct the Subcontractor to assign to the Company, the Government or another Subcontractor any subcontract awarded under this Subcontract.

## **8. PUBLICITY**

Subcontractor shall not make news releases, publicize or issue advertising pertaining to the Work or this Subcontract without first obtaining the written approval of Company. Information, data, photographs, sketches and advertising, relating to the work under the Subcontract, which Subcontractor desires to release or publish, shall be submitted to Company for approval eight weeks prior to the desired release date. As part of the approval request, Subcontractor shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases, regardless of tier or supplier, must have the prior approval of Company.

## **9. INDEPENDENT SUBCONTRACTOR**

Nothing in this Subcontract shall be deemed to constitute Subcontractor or any of Subcontractor's employees or agents to be the agent, representative or employee of Company or Owner. Subcontractor shall be an independent subcontractor and shall have responsibility for and control over the details and means for performing the Work and shall be subject to the directions of Company only with respect to the scope and general results required.

## **10. CODE OF BUSINESS CONDUCT AND ETHICS**

The Company's "Code of Business Conduct and Ethics" publication is available at <http://www.fluor.com/SiteCollectionDocuments/BRHQ056009-Supplier-Expectations.pdf>. Subcontractor confirms that it has received or accessed and reviewed Company's "Code of Business Conduct and Ethics" and agrees that it and its suppliers and subcontractors, and the employees, agents and representatives of each shall at all times comply with the Company's "Code of Business Conduct and Ethics," and where more stringent, applicable laws and Subcontractor's own business conduct guidelines and policies. Violation of this clause may be deemed by the Company to be a material breach of this Subcontract and in such event, Company may, without prejudice to any other rights or remedies may hold in abeyance further payments to Subcontractor and/or terminate Subcontractor's right to continue performance of this Subcontract in accordance with the clause of this Subcontract entitled "Default". Company's "Code of Business Conduct and Ethics" may be modified at any time by publication at the website address above and general mailing to its suppliers and subcontractors at the address contained in Company's supplier and subcontractor database. The most current publication of Company's "Code of Business Conduct and Ethics" shall apply to this clause.

## **11. DEPARTMENT OF LABOR WAGE DETERMINATION**

When the Service Contract Act is applicable to the performance of this subcontract, the Subcontractor shall comply with the requirements of U.S. Department of Labor Wage Determination attachment in the Subcontract. Revised wage determinations from the Department of Labor shall be incorporated into this subcontract. The Subcontractor and/or subcontractor shall comply with the revised wage determination for Service Contract Act covered employees.

When the Davis-Bacon Act is applicable to the performance of this subcontract, the Subcontractor shall comply with the requirements of Davis-Bacon Wage Determination Number attachment in the Subcontract. Revised wage determinations from the Department of Labor shall be incorporated into this subcontract. The Subcontractor and/or subcontractor shall comply with the revised wage determination for Davis-Bacon Act covered employees.

## **12. VALIDITY OF PROVISIONS**

In the event any Section, or any part or portion of any Section of this Subcontract shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that Section, or any other Section hereof.

## **13. SURVIVAL**

The provisions of this Subcontract, which by their nature are intended to survive the termination, cancellation, completion or expiration of this Subcontract shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

## **14. WAIVER**

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

## **15. PERMITS, APPLICATIONS AND LICENSES**

Except as otherwise directed by The Company, the Subcontractor shall procure and execute all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this subcontract is performed.

## **16. LOBBYING RESTRICTION**

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



## **17. ALLOCATION OF LIABILITY FOR FINES AND PENALTIES TO RESPONSIBLE PARTY**

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

## **18. COMPANY WORKING DAYS**

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

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

New Year's Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Day

Any other day designated by Federal statute, Executive order, or the President's proclamation.

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

## **19. FOREIGN NATIONALS**

- (a) In accordance with DOE Order 142.3A, Subcontractor Requirements Document (SRD) the terms of which are incorporated by reference, and are flowed to the subcontractor and its subcontractors at any tier, the Subcontractor has the responsibility to identify to the SCA any personnel who are Foreign Nationals who may be involved or working with Company personnel or have access to Department of Energy information during the performance of this subcontract.

- (b) Such personnel (whether off or on site) who will be involved, working with, or visiting Company personnel (including making deliveries), or be assigned to work at the site must obtain approval of the Company before such involvement can take place. This approval requirement includes access to any Department of Energy information used in performance of this subcontract. A foreign national is defined as a person who is a stateless person or is not a U.S. citizen (i.e., not a U.S. national); an immigrant alien; any corporation not incorporated in the U.S; any international organization; foreign government; or any agency or subdivision of foreign government (e.g., diplomatic missions). A stateless person is one who is currently without nationality by either the action of a state withdrawing the protection of nationality; by his/her own action in effectively renouncing the nationality previously held or because he/she has never held nationality due to the circumstances of birth.
- (c) Each individual must complete applications allowing six to eight weeks for processing after submitting the required information. The Subcontractor should contact the Company to obtain the necessary information and forms.

## **20. SUBCONTRACTOR PERSONNEL**

- (a) The Subcontractor, in performance of this subcontract, shall be responsible for selecting personnel who are well qualified to perform the required services, for supervising its personnel and for keeping them informed of all improvements, changes and methods of operation. Persons employed by the Subcontractor shall be and remain employees of the Subcontractor, and shall not be deemed employees of the Company. Nothing herein shall require the establishment of any employer-employee relationship between the Subcontractor and the consultants or others whose services are utilized by the Subcontractor for work hereunder.
- (b) The Subcontractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the Subcontractor fails to remove any employee from the subcontract work whom the Company deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by The Company to be contrary to the public interest, The Company reserves the right to require the Subcontractor to remove the employee at no cost to the Company.
- (c) When the reason for the removal request is due solely to security or misconduct on the part of the employee, replacement shall be at the Subcontractor's expense and not chargeable to the Company.

## **21. INSURANCE**

Subcontractor shall, at its sole expense, obtain and maintain in force for the duration of the Subcontract, and for such period thereafter as may be necessary under the circumstances, insurance of the following types, with limits not less than those set forth below. Such insurance shall be written on an "occurrence" basis and shall be with a company or companies with an AM Best rating of "A" or better.

- (a) Commercial General Liability
  - 1. Each Occurrence: \$1 Million
  - 2. Fire Damage (any one fire): \$100,000
  - 3. Medical Expense (any one person): \$5,000
  - 4. Personal and Advertising Injury: \$1 Million
  - 5. General Aggregate: \$2 Million
  - 6. Produces/Completed Operations Aggregate: \$2 Million
  
- (b) Automobile Liability
  - 1. Combined Single Limit (each accident): \$1 Million
  
- (c) Worker Compensation and Employer Liability
  - 1. Worker Compensation: Statutory Limits
  - 2. Employer Liability (each accident): \$500,000
  - 3. Employer Liability Disease/Each Employee: \$500,000
  - 4. Employer Liability Disease/Policy Limit: \$1 Million
  
- (d) Asbestos Liability (if the Subcontract includes any asbestos-related work i.e., inspection, handling, removal, or other)
  - 1. Per Occurrence/Annual Aggregate: \$2 Million
  
- (e) Professional / Errors and Omissions Liability (if the Subcontract includes professional services of any kind, whether engineering, design, research, development)
  - 1. Per occurrence: \$1 Million
  
- (f) Subcontractor's insurance policies shall be endorsed to include:
  - 1. Fluor Idaho, LLC and its successors in interest" and the US Department of Energy named as additional insured parties for all specified in this Article, except for Worker Compensation and Employer Liability.
  - 2. Waiver of subrogation in favor of Fluor Idaho, LLC and its successors in interest and the US Department of Energy.
  - 3. Subcontractors insurance is primary.
  - 4. Thirty days prior written notice to the Company in the event of any coverage cancellation.

A certificate of insurance shall be furnished to the Company's Subcontract Administrator earlier of either ten calendar days after award of this Subcontract or before Subcontractor begins any work under this Subcontract. Each certification of insurance shall include the endorsements required by this Section and shall be signed by an authorized representative of the insurance company who must indicate the capacity in which he/she is signing.

Separate certificates shall be provided by each insurance company providing coverage to the Subcontractor.

Subcontractor's procurement, maintenance, limits or coverage of any insurance policies, whether or not approved by Company, shall not relieve Subcontractor from any liability assumed under this Subcontract.

Failure by Subcontractor to comply with the insurance requirements of this Article, including timely submittal of properly executed certificates, is a basis for termination under the Article entitled Suspension of Work or Termination for Default, of these General Provisions.

Subcontractor shall include all the requirements of this Article, including the specifically required insurance coverage, in all lower-tier subcontracts under this Subcontract. Subcontractor shall obtain appropriate certificates of insurance and said lower-tier subcontractors, maintain the certificates on file, and make the certificates available to the Company upon request.

## **22. INDEMNITY**

- (a) Subcontractor agrees to defend, indemnify and hold harmless the Company, its members, affiliates, subsidiaries and their officers, directors, employees, agents, and representatives from and against:
  - (1) Any claim, demand, cause of action, liability, loss or expense arising from Subcontractor's actual or asserted failure to comply with any of the provisions of this subcontract;
  - (2) Any claim, demand, cause of action, liability, loss or expense arising from Subcontractor's actual or asserted failure to comply with any law, ordinance, regulation, rule or order of any governmental or quasi-governmental body (including, but not limited to, the actual or asserted failure to pay taxes) including such failures by Subcontractor, its subcontractors or suppliers; and
  - (3) Any claim, demand, cause of action, liability, loss or expense relating to actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of the goods or services provided under this subcontract, including the acts or omissions of Subcontractor, its subcontractors or suppliers.
- (b) (1) If this subcontract is one for the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition and excavating connected therewith, then:
  - (i) Subcontractor agrees to indemnify and hold harmless the Company, its members, affiliates, subsidiaries, and their officers, directors, employees, agents, and representatives from and against any claim, demand, cause of action, liability, loss or expense arising from personal injury (including death) or property damage, to the extent that such personal injury or property damage is caused by the negligence of Subcontractor, its subcontractors or suppliers; and
  - (2) For subcontracts not included in subparagraph (b)(1) above, Subcontractor agrees to defend, indemnify and hold harmless the Company, its members, affiliates, subsidiaries, and their officers, directors, employees, agents, and representatives from and against any claim, demand, cause of action, liability, loss or expense arising from injury to or death of persons (including employees of the Company, Subcontractor and Subcontractor's subcontractors) or from damage to or loss of property (including the property of the Government), arising directly or indirectly out of this subcontract or out of any acts or

omissions of Subcontractor or its subcontractors. The defense and indemnity obligations of Subcontractor under this subparagraph (b)(2) extend to personal injury or property damage caused by Subcontractor's subcontractors or suppliers, and include claims, demands, causes of action, liability, loss or expense arising under non-delegable duties of the Company or arising from Subcontractor's use of equipment, tools or facilities furnished by the Company. .

- (c) Subcontractor agrees that its indemnity obligations include the duty to reimburse attorneys' fees and expenses incurred by the Company for legal action to enforce Subcontractor's indemnity obligations under this clause.
- (d) In the event that any of the indemnity provisions in this clause entitled "Indemnity" are held by a court of competent jurisdiction to be void, invalid or otherwise unenforceable according to any law governing this subcontract, then such holding shall not affect the remaining provisions, and the remaining indemnity obligations shall be construed to be enforceable to the fullest extent allowed under applicable law.
- (e) With respect to claims by employees of Subcontractor or its subcontractors, the indemnity obligations created by this clause entitled "Indemnity" shall not be limited by the fact of, amount, or types of benefits or compensation payable by or for Subcontractor, its subcontractors or suppliers under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Subcontractor waives any limitations of liability or immunity arising from workers' compensation or such other acts or regulations.
- (f) The Company shall be entitled to retain from payments otherwise due Subcontractor such amounts as shall reasonably be considered necessary to satisfy any charges, claims, suits or liens for damages that fall within Subcontractor's indemnity obligations under this clause entitled "Indemnity," until such charges, claims, suits or liens have been settled and satisfactory evidence to that effect has been furnished to The Company.
- (g) Subcontractor will have no obligation to indemnify the Company under the provisions of this clause entitled "Indemnity" if and to the extent that the claim, demand, cause of action, liability, loss or expense, or any portion thereof, results directly and proximately from the gross negligence of the Company.
- (h) Solely with respect to any claim for indemnification made by the Company against Subcontractor under any of the provisions of this clause entitled "Indemnity," the Subcontractor hereby expressly and specifically waives any statutory or constitutional workers' compensation immunity to which it might otherwise be entitled under any applicable state law or regulations. As a result of such waiver, subcontractor further agrees that the amount of its indemnity obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under laws or regulations otherwise applicable to workers' compensation, disability or other employee benefits.

**For Asbestos Related Contracts/Work, the following paragraph (i) is incorporated**

- (i) Without limiting any other indemnity obligations under the Subcontract, Subcontractor agrees to indemnify and hold harmless the Indemnified Parties from and against any and all Claims arising out of, resulting from or associated with waste, debris, or any other materials removed from the Project Site as part of the Asbestos Work and disposed of off-site, including without

limitation the collecting, transporting, treatment, disposal or other handling of such materials, under any Law whatsoever, including without limitation Environmental Laws and specifically the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., and analogues state statutes, irrespective of whether or not the Subcontractor is negligent with respect to such materials or has handled such materials in conformance with applicable law. This indemnification shall commence upon the removal of any such material from the Project Site. This indemnification shall survive the expiration or any earlier termination of the subcontract.

### **23. ASSIGNMENT**

- (a) Neither this subcontract nor any interest therein nor claim there under shall be assigned or transferred by the Subcontractor except as expressly authorized in writing by the Company.
- (b) The Company may assign this Subcontract, in whole or in part to DOE or to such party as DOE may designate to perform The Company's obligations hereunder. Upon receipt by Subcontractor of written notice that the DOE or a party so designated by the DOE or The Company has accepted an assignment of this Subcontract, The Company shall be relieved of all responsibility hereunder and Subcontractor shall thereafter look solely to such assignee for performance of The Company's obligations.

### **24. REPORTING FRAUD, WASTE AND ABUSE TO THE OFFICE OF INSPECTOR GENERAL**

Subcontractors must ensure that its employees who have information about actual or suspected violations of laws, regulations, or policies including fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, subcontracts or information technology systems notify an appropriate authority.

Subcontractor is required to:

- (a) Notify employees annually of their duty to report allegations of fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement relating to DOE programs, operations, facilities, contracts, or information technology systems to an appropriate authority (e.g. OIG, other law enforcement, supervisor, employee concerns office, security officials). Examples of violations to be reported include, but are not limited to, allegations of false statements; false claims; bribery; kickbacks, fraud; DOE environment, safety, and health violations; theft; computer crimes; Company or subcontractor mischarging; conflicts of interest, and conspiracy to commit any of these acts. Subcontractors must also ensure that its employees are aware that they may always report incidents or information directly to the OIG.
- (b) Display the OIG hotline telephone number in buildings and common areas such as cafeterias, public telephone areas, official bulletin boards, reception rooms, and building lobbies.
- (c) Publish the OIG hotline telephone number in telephone books and newsletters under the subcontractor's cognizance.

- (d) Ensure that its employees report to the OIG within a reasonable period of time, but not later than 24 hours after discovery, all alleged violations of law, regulations, or policy, including incidents of fraud, waste, abuse, misuse.
- (e) Ensure that its employees report to the OIG any allegations of reprisals taken against employees who have reported to the OIG fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.
- (f) Ensure that its managers do not retaliate against subcontractor employees who report fraud, waste, abuse, misuse, corruption, criminal acts, or mismanagement.
- (g) Ensure that all their employees understand that they must:
  - Comply with requests for interviews and briefings and must provide affidavits or sworn statements, if so requested by an employee of the Office of Inspector General (OIG) so designated to take affidavits or sworn statements.
  - Not impede or hinder another employee's cooperation with the OIG.
  - Ensure that reprisals are not taken against subcontractor employees who cooperate with or disclose information to the OIG or other lawful appropriate authority.
- (h) Seek more specific guidance concerning reporting of fraud, waste, abuses, corruption, or mismanagement, and cooperation with the Inspector General, in DOE directives.

## **25. NOTICE OF CIVIL PENALTIES FOR VIOLATION OF SECURITY OF DOE CLASSIFIED OR SENSITIVE INFORMATION OR DATA**

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

## **26. ORDER OF PRECEDENCE**

Any inconsistency in this solicitation or subcontract shall be resolved by giving precedence in the following order:

- (a) The Scope of Work (excluding the specifications).
- (b) Representations and other instructions.
- (c) Subcontract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

## **27. WAIVER OF FACILITIES CAPITAL COST OF MONEY**

The Company did not include facilities capital cost of money as a proposed cost in the prime contract. Therefore, it is an unallowable cost under this subcontract.

## **28. DELAYS**

- (a) In the event Subcontractor or the Company is delayed in performing any of their respective obligations in this Subcontract and such delay is caused by acts of God, war, riots, civil insurrection, acts of the public enemy, accidents, acts of civil or military authority, fires, floods, or earthquakes, beyond the reasonable control of the party delayed, such delay will be excused and the period of such delay will be added to the time for performance of the obligation delayed, unless the date, schedule or time period for performance of the obligation is expressly stated in this Subcontract to be guaranteed. In the event any delay due to the foregoing causes or events occurs or is anticipated, the party delayed or anticipating delay shall promptly notify the other party in writing of such delay or expected delay and the cause and estimated duration of such delay. In the event of a delay due to the foregoing causes or events, the party delayed shall, at no cost to the other party, exercise due diligence to shorten and avoid the delay and shall keep the other party advised as to the continuance of the delay and steps taken to shorten or terminate the delay.
- (b) Subcontractor shall, within five (5) working days of the commencement of any delay, give to Company written notice thereof and of the anticipated effects thereof. Within two (2) working days of the termination of any delay, Subcontractor shall file a written notice with Company specifying the actual duration of the delay. If Company determines that a delay was beyond the control and without the fault or negligence of Subcontractor or its subcontractors and not foreseeable by Subcontractor at the effective date of this Subcontract, Company shall determine the duration of the delay and shall extend the time of performance of this Subcontract thereby.
- (c) Subcontractor shall not be entitled to, and hereby expressly waives recovery of, any damages suffered by reason of delays of any nature, including the negligence of Company and Owner, and extension of time shall constitute the sole liability of Company and Owner and Subcontractor's sole remedy for delays.

## **29. FAR 52.245-1 GOVERNMENT PROPERTY (APR 2012)**

[hereby incorporated by reference when government furnished property is assigned to the subcontract or subcontractor acquired government property is part of the scope of this subcontract].

## **30. NOTICE OF LABOR DISPUTES**

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



### **31. QUALITY OF SERVICES**

Subcontractor warrants to Company and Owner/United States Government that all services supplied by Subcontractor, in performance of this Subcontract, shall be supplied by personnel who are careful, skilled, experienced and competent in their respective trades or professions. Subcontractor agrees that he is supplying professional services, findings, and/or recommendations in the performance of this Subcontract and warrants to Company and Owner/United States Government, that the same shall conform to the highest professional and engineering standards and principles.

### **32. SUBCONTRACTS AND PURCHASE ORDERS**

- (a) Subcontractor shall not subcontract performance of all or any portion of the Work under this Subcontract without first notifying Company of the intended subcontracting and obtaining Company acceptance in writing of the subcontracting and the subcontractor. If requested by Company, Subcontractor shall furnish Company a copy of the proposed subcontract (with price deleted if the subcontracted work is part of fixed price Work of Subcontractor under this Subcontract) for Company review of the terms and conditions thereof and shall not execute such subcontract until Company has accepted such terms. Failure of Subcontractor to comply with this clause may be deemed by Company to be a material breach of this Subcontract.
- (b) Subcontractor guarantees that its subcontractors will comply fully with the terms of this Subcontract applicable to the portion of the Work performed by them. If any portion of the Work which has been subcontracted by Subcontractor is not prosecuted in accordance with this Subcontract, on request of Company, the subcontractor shall be replaced at no additional cost to Company and shall not be employed again on the Work.
- (c) Subcontractor shall include a provision in every subcontract that it places authorizing assignment of such subcontract to Company or Owner without requiring further consent from such subcontractor or supplier.
- (d) Company shall have the right from time to time to contact Subcontractor's subcontractors to discuss their progress.
- (e) As used in this Subcontract, the term "subcontract" shall also include purchase orders and rental agreements for materials or equipment, and the term "subcontractor" shall also include vendors or suppliers of such material or equipment.
- (f) Subcontractor shall not be relieved of its responsibility for the Work by virtue of any subcontracts it may place regardless of Company's acceptance of such subcontract.

### **33. DEFENSE NUCLEAR FACILITIES SAFETY BOARD (DNFSB)**

The Subcontractor shall cooperate with the Company in preparation of responses to DNFSB. Based on SCA direction, the Subcontractor shall fully cooperate with DNFSB and provide access to such work areas, personnel, and information as necessary. If the Company direction to provide DNFSB support causes an increase or decrease in the cost of performance of any work under this Subcontract, Subcontractor may request and equitable adjustment pursuant to the Changes clause. Subcontractor shall include the requirements of this DNFSB clause in all lower-tier subcontracts.

#### **34. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS- SENSE OF CONGRESS**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

#### **35. SUBCONTRACTOR'S SHIPMENTS**

- (a) Subcontractor shall be responsible for arranging all shipments of Subcontractor supplied materials and equipment to the site of the Work and shall consign such shipments to itself as Consignee at the project shipping address, freight fully prepaid. Subcontractor shall be responsible for making demurrage agreements and settlement with carriers for its shipments.
- (b) Subcontractor shall advise Company in writing, in advance of major shipments of Subcontractor's materials and equipment and shall coordinate with Company the arrival, unloading and release of carriers' equipment. Subcontractor shall promptly unload its shipments and promptly release carrier's equipment.
- (c) In the event Subcontractor may be unable to promptly unload its shipment, Subcontractor shall notify Company of such inability not less than ten (10) working days in advance of arrival. Company, at its option, may unload or make arrangements for others to unload such shipments for the account and risk of Subcontractor. Subcontractor will promptly pay Company for such costs of unloading.

#### **36. CONTROL OF COMPANY FURNISHED MATERIALS**

- (a) Materials and equipment furnished by Company shall be received by Subcontractor in the presence of Company authorized representative and quantities thereof shall be checked jointly by Subcontractor and Company. The delivery and acceptance of all such materials and equipment shall be recorded in writing, and Subcontractor shall evidence receipt and acceptance of such materials and equipment by signing forms satisfactory to Company.
- (b) Subcontractor shall carefully note any visible damage to Company furnished materials and equipment prior to Subcontractor's acceptance of delivery. After Subcontractor has accepted delivery of such materials and equipment, Subcontractor shall assume full responsibility for any loss of or damage to such materials and equipment. Subcontractor shall notify Company of any materials and equipment supplied to Subcontractor by Company which are surplus and, without additional compensation, shall cooperate with Company and Owner in the disposition of such surplus as directed by Company.
- (c) Subcontractor shall notify Company of any lack of, or requirement for, materials and equipment required under this Contract to be supplied by Company in sufficient time for Company to furnish said materials or equipment in advance of Subcontractor's need. In the event of misfit of Company furnished materials or equipment, Subcontractor shall promptly notify Company of such misfit.
- (d) Subcontractor shall take all reasonable steps to avoid standby time due to such misfit or lack of Company furnished materials or equipment and to continue progress of other portions of Work pending correction of such misfit and/or the furnishing of materials or equipment.

### **37. INTERPRETATION**

Headings and titles of Clauses, Sections, Subsections paragraphs or other subparts of this Subcontract are for convenience of reference only and shall not be considered in interpreting the text of this Subcontract. No provision in this Subcontract is to be interpreted for or against any party because that party or its counsel drafted such provision.

### **38. RIGHT TO OFFSET**

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

### **39. DIFFERING PROFESSIONAL OPINIONS**

- (a) This clause is applicable when the statement of work involves professional, technical areas where there is more than one professional opinion, solution or direction significantly impacting programmatic missions, safety, health, or the environment. By accepting this subcontract, the Subcontractor agrees to participation in Company Differing Professional Opinions program pursuant to Department of Energy (DOE) Order (O) 442.2, *Differing Professional Opinions for Technical Issues Involving Environmental, Safety, and Health Technical Concerns*, issued on July 29, 2011. The Subcontractor will notify its employees quarterly of their right to utilize Company Differing Professional Opinion (DPO) Process.
- (b) This notification shall include at a minimum informing employees quarterly of the DPO process and that they have the right to report environment, safety, and health technical concerns that have not been resolved through routine work processes.
- (c) All issues or concerns regarding the DPO process must be addressed through the Company Engineering Manager using the Differing Professional Opinion (DPO) Submittal Form available through the Company Subcontract Technical Representative.

### **40. ORDERING**

Any supplies and services to be furnished under this subcontract shall be ordered by issuance of release by the individuals or activities designated in the Schedule.

- (a) All releases are subject to the terms and conditions of this subcontract. In the event of conflict between a release and this subcontract, the subcontract shall control.
- (b) If mailed, a release is considered "issued" when the Company deposits the order in the mail. Orders may be issued orally, facsimile, or by electronic commerce methods.
- (c) Any order issued during the effective period of this subcontract and not completed within that period shall be completed by the Subcontractor within the time specified in the order. The subcontract shall govern the Subcontractor's and the Company rights and obligations with respect to that order to the same extent as if the order were completed during the subcontract's effective period.

#### **41. CONTINUITY OF SERVICES**

- (a) The Subcontractor recognizes that the services under this subcontract and /or releases are vital and must be continued without interruption and that, upon subcontract expiration, a successor may continue them. The Subcontractor agrees to (1) furnish phase-in training; and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor, if directed to do so by the Company. The Company will exercise its right under this clause by unilateral modification prior to expiration of the subcontract and/or release in accordance with the clause titled “Changes”, H.3. The continuation of services will be with the limits and at the rates specified in the contract. This continuity of services provision may be exercised more than once, but the total extension of performance hereunder shall not exceed six (6) months.
- (b) The Subcontractor shall, upon The Company’s written notice:
  - (1) Furnish phase-in, phase-out services for the period specified (up to six (6) months after the previous period of performance and
  - (2) Negotiate in good faith a plan with The Company or other successor to determine the nature and extent of phase-in, phase-out services required. This plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to The Company’s approval. The Subcontractor shall provide sufficient experience personnel during the phase-in, phase-out period to ensure that the services called for by this subcontract are maintained at the required level of proficiency.
- (c) The Subcontractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this subcontract. The Subcontractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Subcontractor shall release them at mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

#### **42. OPTION TO EXTEND THE TERM OF THE SUBCONTRACT**

- (a) The Company may extend the term of this subcontract by written notice to the Subcontractor anytime during the period of performance. The option(s) to be exercised are identified in Section B of this contract.
- (b) If the Company exercises this option, the extended subcontract shall be considered to include this option clause.

#### **43. TERMINATION FOR CONVENIENCE**

The Company may terminate this Subcontract in whole, or from time to time, in part, in accordance with the terms of FAR 52.249-2, “Termination for Convenience of the Government (Fixed Price)” in effect on the date of this Subcontract, which is incorporated herein by reference and made part hereof. The Subcontractor may obtain the full text of the referenced clause at <http://www.arnet.gov/far/>. Wherever necessary to make the context of the clause applicable to this Subcontract, the term “Company” shall mean Subcontractor, the term “Subcontractor” shall mean lower-tier Subcontractor, the term “Contract” shall mean this Subcontract, the term

“subcontract” shall mean lower-tier subcontract, and where noted or necessary to derive proper meaning, the terms “Government”, “Contracting Officer”, and equivalent phrases shall mean Company.

#### **44. SUSPENSION OF WORK OR TERMINATION FOR DEFAULT**

- (a) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted (1) by an act of Company in the administration of this Subcontract, or (2) by Company’s failure to act within the time specific in this Subcontract (or if no time is specified, within a reasonable time), and adjustment shall be made for an increase in the cost of performance of this Subcontract (excluding project) necessarily caused by such suspension, delay, interruption of an unreasonable period of time and this Subcontract modified in writing accordingly.
  
- (b) If Subcontractor ceases its operations, is unable to meet its obligations, or fails to perform any of its obligations under this Subcontract, including failure to comply with any of Company’s instructions, regulations, or procedures or failure to meet the specified schedule of performance, then Subcontractor shall be in default. Company may suspend work until the basis for Subcontractor’s default has been corrected to Company’s satisfaction, or terminate this Subcontract, or any part hereof, for default. Subcontractor shall not be entitled to any compensation for costs incurred during such a suspension. In addition, Subcontractor shall be responsible for any damages suffered by Company, its successors, assigns or clients as a result of the failure to comply with subcontract requirements, suspension or termination for default. If it is determined that Company improperly terminated this Subcontract for default, such termination shall be deemed a termination for convenience.

#### **45. SUSPENSION OF SERVICES**

Company may, by written notice to Subcontractor, suspend further performance of all or any portion of the Services and later may, by written notice to Subcontractor, withdraw all or part of the suspension. Any proposed changes to the scheduled time of completion of the Services and/or a change in the compensation, resulting from said suspension or withdrawal of suspension, must be submitted by Subcontractor to Company in accordance with the provisions of Article 14.0, Changes. Subcontractor shall not be entitled to any prospective profits or any damages because of such suspensions or withdrawals of suspension.

#### **46. FOREIGN TRAVEL**

DEAR 952.247-70, Foreign Travel (JUN 2010) shall apply when the scope of work under this subcontract requires travel outside the United States of America or its territories.

#### **47. EXPORT AUTHORIZATIONS**

- (a) Subcontractor agrees to comply with all applicable export and re-export control laws and regulations, including but not limited to United States Export Administration Regulations (EAR) administered by the Bureau of Industry and Security, U.S. Department of Commerce, trade and economic sanctions regulations administered by the Office of Foreign Assets Control (OFAC), U.S. Department of Treasury, the International Traffic in Arms Regulations (ITAR), Arms Control Export Act, and United States Munitions List (USML) administered by Directorate of Defense Trade Controls, Bureau of Political-Military Affairs of the U.S. Department of State, and any other export authorities identified in Supplement 3 to Part 730 of the EAR.
- (b) Subcontractor shall accurately identify in writing to Company, within thirty (30) calendar days after issuance of this Agreement, those goods, services and technologies for which an export license or other regulatory approval is required and shall provide accurate export classification and licensing information necessary for supporting export documents, including but not limited to (as applicable) the appropriate Export Control Classification Numbers (ECCN), an indication of the applicability or availability of license exceptions or exemptions, and all pertinent technical data, drawings, brochures, technical expertise, or other relevant information as deemed necessary by Company. Subcontractor shall obtain any required license or other regulatory approval required.

#### **48. ORGANIZATIONAL CONFLICTS OF INTEREST**

- (a) Subcontractor and lower tier subcontractor personnel performing work under this subcontract may receive, have access to, or participate in the development of proprietary or source selection information (e.g., cost or pricing information, budget information or analyses, specifications or work statements, etc.) or perform evaluation services which may create a current or subsequent Organizational Conflicts of Interest (OCI) as defined in FAR Subpart 9.5.
- (b) The Subcontractor shall notify the SCA immediately whenever it becomes aware that such access or participation may result in any actual or potential OCI and shall promptly submit a plan to the SCA to avoid or mitigate any such OCI.
- (c) The Subcontractor's mitigation plan will be determined to be acceptable solely at the discretion of the SCA and in the event the SCA unilaterally determines that any such OCI cannot be satisfactorily avoided or mitigated, the SCA may other remedies as he or she deems necessary, including prohibiting the Subcontractor from participation in subsequent contracted requirements which may be affected by the OCI.

#### **49. INSPECTION AND ACCEPTANCE**

- (a) Inspection and acceptance of all items under this subcontract shall be accomplished by the Subcontract Manager's representative, or any other duly authorized representative identified by the Subcontract Manager. The subcontractor will be notified in writing if a different representative is designated.

- (b) The Company has the right to inspect and test all materials furnished and services performed under this subcontract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Company may also inspect the plant or plants of the Subcontractor or any subcontractor engaged in contract performance. The Company shall perform inspections and tests in a manner that will not unduly delay the work. The Company assumes no sub-contractual obligation to perform any inspection and test for the benefit of the Subcontractor unless specifically set forth elsewhere in this subcontract.
- (c) If any of the services do not conform to subcontract requirements, the Company may require the Subcontractor to perform the services again in conformity with subcontract requirements, at no increase in subcontract price. When the defects in services cannot be corrected by re-performance, the Company may --
- (1) Require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements; and
  - (2) Reduce the subcontract price to reflect the reduced value of the services performed.
  - (3) If the Subcontractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with subcontract requirements, the Company may --
    - (i) By subcontract or otherwise, perform the services and charge to the Subcontractor any cost incurred by the Company that is directly related to the performance of such service; or,
    - (ii) Terminate the subcontract for default.

## **50. PASSAGE OF TITLE AND LIENS**

- (a) Title to the supplies shall pass to the Government at the place of delivery to Company. If purchased F.O.B. shipping point, delivery to the carrier shall be deemed to be delivery to Company.
- (b) Subcontractor agrees to furnish all deliverables free and clear of liens, claims, and encumbrances. Subcontractor agrees to hold Company and the Government harmless from all liens, claims, or demands in connection with the Work.
- (c) Except as otherwise provided in this Subcontract,
- Subcontractor shall bear the risk of loss, destruction, or damage to the supplies until delivered at the designated delivery point, regardless of the point of inspection.
  - After delivery to Company at the designated point and prior to acceptance by Company, Subcontractor shall be responsible for the loss or destruction of or damage to the supplies unless such loss, destruction, or damage results from negligence of the officers, agents, or employees of Company or the Government acting within the scope of their employment; and

Subcontractor shall bear all risk of loss, destruction or damage to rejected supplies.

## 51. WARRANTY

- (a) In addition to any other warranties in this Subcontract, Subcontractor warrants, except as provided herein, that work performed under this Subcontract conforms to the Subcontract requirements and is free of any defect, whether patent or latent, in equipment, material, or design furnished, or workmanship performed by Subcontractor or any subcontractor or supplier at any tier. Subcontractor further warrants that the items are free and clear of all liens and encumbrances, and that Subcontractor has secured Company's right to own, sell, or use such items. Subcontractor shall transfer all manufacturer or vendor warranties associated with the goods supplied to Company and/or entity designated by Company. For purposes of this Subcontract, material or equipment supplied shall include any documentation, such as quality control or test records or certificates of compliance that may be specified or are customarily furnished in the trade.
- (b) This warranty shall continue for one (1) year from the date of final acceptance of the work. If Company takes possession of any part of the work before final acceptance, this warranty shall continue for one (1) year from the date Company takes possession.
- (c) Subcontractor shall remedy at Subcontractor's expense any failure to conform, or any defect, resulting from Subcontractor's breach of warranty. In addition, Subcontractor shall remedy at Subcontractor's expense any damage to Company- or Government-owned or controlled real or personal property, when that damage is the result of (1) Subcontractor's failure to conform to Subcontract requirements or (2) any defect of equipment, material, workmanship, or design furnished. If Subcontractor fails to replace or correct any such work within ten (10) calendar days after receipt of written notice from Company or as otherwise specified by Company, Company may, at its sole option, cause such work to be replaced or corrected and Subcontractor shall be liable for all costs and expenses incurred, notwithstanding such stipulated period for correction by Subcontractor. In the event the nonconforming work poses an immediate and serious threat to the safety of others or to the environment, then Company shall cause correction of the nonconformance by the most expedient means available, and Subcontractor shall be liable and responsible for all costs and expenses related thereto.
- (d) Subcontractor shall restore any work damaged in fulfilling the terms and conditions of this clause. Subcontractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.
- (e) Company shall notify Subcontractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. In the event Subcontractor's warranty under this clause has expired, Company may bring suit at its expense to enforce a lower-tier subcontractor's, manufacturers, or supplier's warranty.
- (f) Unless a defect is caused by the negligence of Subcontractor or subcontractor or supplier at any tier, Subcontractor shall not be liable for the repair of any defects of material or design furnished by Company or for the repair of any damage that result from any defect in Company-furnished material or design.



- (g) This warranty supersedes any lesser warranty, whether stated or implied, that may be contained in submittals or other documentation delivered to Company by Subcontractor, regardless of whether the submittals or other documentation is accepted or otherwise approved by Company, unless a lesser warranty is specifically identified and agreed to in writing as part of this Subcontract. This warranty shall not limit Company's rights under the Inspection/Acceptance clause of this Subcontract with respect to latent defects, gross mistakes, or fraud.
- (h) No further warranties or guaranties express or implied, are made with respect to any goods or services provided under this agreement, and any implied warranties of merchantability or fitness for a particular purpose are expressly disclaimed.