

## **1. INTRODUCTION**

The following are Federal Government required flow downs for subcontracts specific to the DOE-NASA NTP Project.

Certain Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) clauses and articles in 48 C.F.R. Parts 52, 952, and 970 are incorporated herein as if set forth in their entirety.

FAR and DEAR clauses and articles incorporated by reference are, unless otherwise specified, to the version applicable under publicly available Contract No. DE-AC07-05ID14517 (Prime Contract <https://www.id.energy.gov/doeid/INLContract/INL-Contract.htm>) effective when the Contract or applicable modification to Contract is entered and shall be construed and applied to require performance by the Subcontractor herein of the duties and obligations of the Contractor therein.

## **2. INCORPORATION BY REFERENCE**

### **2.1 All Contracts Regardless of Price/Value**

2.1.1 Reserved

2.1.2 Reserved

2.1.3 Reserved

2.1.4 Reserved

2.1.5 FAR 52.222-21, Prohibition of Segregated Facilities

2.1.6 FAR 52.222-26, Equal Opportunity

2.1.7 Reserved

2.1.8 Reserved

2.1.9 Reserved

2.1.10 Reserved

2.1.11 Reserved

2.1.12 Reserved

2.1.13 DEAR 952.250-70, Nuclear Hazards Indemnity Agreement

This clause applies in any Contract which may involve the risk of public liability, as that term is defined by the Atomic Energy Act of 1954 as amended (Act) and as further described by DEAR 952.250-70; provided, however, this clause does not apply to a Contract in which the Subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under Section 170b of the Act or NRC agreements of indemnification under Sections 170c and 170k of the Act for the activities under this Contract. For purposes of this clause, Government means the U.S. Government.

2.1.14 DEAR 970.5527-8, Refund of Royalties

2.1.15 DEAR 970.5232-3 (a)-(h), Accounts, Records, and Inspection with Alternate I, if applicable and Alternate II, if applicable. Inspections and audits are to be conducted by DOE or DCMA only. Disposition of records shall be the property of the DOE only.

**2.2 Contracts Priced/Valued Greater than \$10,000**

2.2.1 FAR 52.222-36, Affirmative Action for Workers with Disabilities

**2.3 Contracts Priced/Valued Greater than \$35,000**

2.3.1 FAR 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment

**2.4 Contracts Priced/Valued Greater than \$100,000**

2.4.1 FAR 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

**2.5 Contracts Priced/Valued Greater than \$150,000**

2.5.1 FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (Byrd Amendment)

2.5.2 FAR 52.222-37, Employment Reports on Disabled Veterans & Veterans of the Vietnam Era

**2.6 Contracts Priced/Valued Greater than \$250,000**

2.6.1 FAR 52.223-6, Drug-Free Workplace

2.6.2 FAR 52.232-17, Interest

**2.7 Contracts Exceeding the Simplified Acquisition Threshold (\$250,000)**

2.7.1 FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights

**2.8 Contracts Priced/Valued Greater than \$650,000**

2.8.1 FAR 52.230-5, Cost Accounting Standards—Educational Institutions

2.8.2 FAR 52.230-6, Administration of Cost Accounting Standards Flow-down is required for negotiated lower-tier subcontracts valued over \$750,000. Dependent upon the classification of the lower-tier subcontractor, FAR 52.230-5 is flowed down to educational institutions in accordance with 48 C.F.R. §30.201-4(e) and FAR 52-230-6 is flowed down to businesses in accordance with 48 C.F.R. §30.201-4(d).

**2.9 Reserved**

**2.10 Contracts Priced/Valued Greater than \$750,000**

2.10.1 FAR 52.230-2, Cost Accounting Standards

2.10.2 FAR 52.242-3, Penalties for Unallowable Costs

**2.11 Reserved**

**2.12 Reserved**

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### **2.13 Competition in Subcontracting**

FAR 52.244-5, Competition in Subcontracting, applies and must be flowed down as specified in 48 C.F.R. §44.204(c) if any of the following is anticipated:

- A cost-reimbursement contract
- A letter contract that exceeds the simplified acquisition threshold
- A fixed-price contract that exceeds the simplified acquisition threshold including unpriced modification or unpriced delivery order
- A time-and-materials contract that exceeds the simplified acquisition threshold
- A labor-hour contract the exceeds the simplified acquisition threshold.

### **2.14 Reserved**

### **2.15 Applies if Subcontractor Receives Access to Classified Information, Unclassified Sensitive Information, or Special Nuclear Material or Authorized Unrestricted Access to Areas Containing These, Regardless of Price/Value**

2.15.1 DEAR 970.5204-1, Counterintelligence

### **2.16 Reserved**

## **3. GENERAL DEFINITIONS**

As used throughout these general provisions, except in clauses and articles incorporated by reference and where otherwise indicated, the following definitions apply:

1. *Contract*. This subcontract or purchase order including elements noted in Sub-section 4.1.4 below.
  2. *Contracting Officer, Contract Specialist, Contract Lead, Procurement Specialist, Program Lead*. The duly authorized representative of the Contractor who will administer this Contract.
  3. *Contractor*. GE-Hitachi Nuclear Energy Americas, LLC. or its duly authorized representative or representatives.
  4. *Department of Energy (DOE) Contracting Officer*. The United States (U.S.) DOE designated agent.
  5. *Government*. The United States of America or any duly authorized representative thereof.
  6. *INL*. Idaho National Laboratory
  7. *Lower-tier subcontractor*. Any party entering into an agreement with the Subcontractor or any other party who has entered into a contract with the Subcontractor, for the furnishing of supplies or services required for performance of this Contract.
  8. *Reserved*. Indicates Section number still is available (reserved) for future use if required.
  9. *Subcontractor or Seller*. Any party entering into an agreement with the Contractor or any other party who has entered into a contract with the Contractor, for the furnishing of supplies or services required for performance of this Contract.
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10. USNC-Tech. Ultra Safe Nuclear Corporation, subcontractor to the Prime Contractor.

11. Work. Performance by the Subcontractor pursuant to the requirements, terms, and conditions of this Contract.

#### **4. SECTIONS THAT APPLY REGARDLESS OF PRICE/VALUE**

##### **4.1 General**

4.1.1 Reserved

4.1.2 Reserved

4.1.3 The Government, the Contractor, and their designees shall have access at all reasonable times to the Subcontractor's and lower-tier subcontractor facilities and records for surveillance, inspection, or audit.

**4.2 Reserved**

**4.3 Reserved**

**4.4 Reserved**

**4.5 Reserved**

**4.6 Reserved**

**4.7 Reserved**

**4.8 Reserved**

**4.9 Reserved**

##### **4.10 Compliance with Laws and Indemnity**

4.10.1 Section 6.3 supersedes this Section when Subcontractor personnel lower-tier subcontractor personnel are present at premises owned, leased, or controlled by the Government or the Contractor regardless of price.

4.10.2 Reserved

4.10.3 The Subcontractor shall indemnify and hold the Government and the Contractor harmless for injury (physical or otherwise) or death to persons or damage to property arising from the negligent, willful, intentional, unauthorized, or illegal acts or omissions of the Subcontractor, lower-tier subcontractors, or their respective employees, agents or representatives; provided, however, nothing in this indemnification shall be construed to indemnify or save harmless the Government or the Contractor from any liability arising solely as a result of the negligence of the Government or the Contractor, or to the extent DOE provides indemnity under a Nuclear Hazards Indemnity Agreement (see DEAR 952.250-70).

**4.11 Reserved**

**4.12 Reserved**

**4.13 Reserved**

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**4.14 Reserved****4.15 Reserved****4.16 Reserved****4.17 Reserved****4.18 Reserved****4.19 Reserved****4.20 Rights in Data**

4.20.1 Definitions applicable to this Section 4.20:

4.20.1.1 Computer databases. A collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

4.20.1.2 Computer software. Computer programs that are data comprising a series of instructions, rules routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer databases.

4.20.1.3 Data. Recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include data incidental to the administration of this Contract, such as financial, administrative, cost and pricing, or management information.

4.20.1.4 Form, fit, and function data. Data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

4.20.1.5 Limited rights data. Data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice in Paragraph 4.20.7.2.

4.20.1.6 Restricted computer software. Computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice, of this Section 4.20.

4.20.1.7 Technical data. Recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software but does include manuals and instructional materials and technical data formatted as a computer database.

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4.20.1.8 Unlimited rights. The rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

#### 4.20.2 Allocation of Rights

4.20.2.1 Except as provided in Sub-section 4.20.3 regarding copyright, the Government shall have unlimited rights in:

4.20.2.1.1 Data first produced in the performance of this Contract.

4.20.2.1.2 Form, fit, and function data delivered under this Contract.

4.20.2.1.3 Data delivered under this Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Contract.

4.20.2.1.4 All other data delivered under this Contract, unless provided otherwise for limited rights data or restricted computer software in accordance with Sub-section 4.20.7.

4.20.2.2 The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Contract, unless provided otherwise in Sub-section 4.20.4; protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in Subsection 4.20.7; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with Sub-sections 4.20.5 and 4.20.6; and establish claim to copyright subsisting in data first produced in the performance of this Contract to the extent provided in Paragraph 4.20.3.1.

#### 4.20.3 Copyright

4.20.3.1 Unless provided otherwise in Sub-section 4.20.4, the Subcontractor may establish, without prior approval of DOE or the Contractor, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Contract and published in academic, technical or professional journals, symposia proceedings or similar works. Prior, expressly written permission of the DOE Contracting Officer, through the Contractor, is required to establish claim to copyright subsisting in all other data first produced in the performance of this Contract. When claim to copyright is made, the Subcontractor shall affix the applicable copyright notices of 17 U.S.C. §401 or §402 and acknowledgment of the Government sponsorship (including the Contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Subcontractor grants to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Subcontractor grants to the Government and others acting in its behalf, a paid up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

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4.20.3.2 The Subcontractor shall not, without prior written permission of the DOE Contracting Officer, through the Contractor, incorporate in data delivered under this Contract any data not first produced in the performance of this Contract and that contains the copyright notice of 17 U.S.C. §401 or §402, unless the Subcontractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in Paragraph 4.20.3.1; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in this Section 4.20, or as otherwise may be provided in a collateral agreement incorporated in or made part of this Contract. 4.20.3.3 The Government agrees not to remove any copyright notices placed on data pursuant to this section, and to include such notices on all reproductions of the data.

#### 4.20.4 Release, Publication, and Use of Data

4.20.4.1 The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Section 4.20, except to the extent such data may be subject to the federal export control or national security laws or regulations, or unless otherwise provided in this Sub-section or expressly set forth in this Contract.

4.20.4.2 The Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of this Contract that contain restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the DOE Contracting Officer, through the Contractor.

4.20.4.3 The Subcontractor agrees not to assert copyright in computer software first produced in the performance of this Contract without prior written permission of the DOE Patent Counsel assisting the subcontracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Subcontractor, when requested, shall promptly deliver to the Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

#### 4.20.5 Unauthorized Marking of Data

4.20.5.1 Notwithstanding any other provisions of this Contract concerning inspection or acceptance, if any data delivered under this Contract are marked with restrictive or limiting markings not authorized by this Contract, the Contractor with DOE approval may at any time either return the data to the Subcontractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:

4.20.5.1.1 The Contractor, in coordination with DOE, shall make written inquiry to the Subcontractor affording the Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings.

4.20.5.1.2 If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contractor, in coordination with DOE, for a good cause shown), the Government, and the Contractor, shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

4.20.5.1.3 If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in Sub-paragraph 4.20.5.1.1, the Contractor, in coordination with DOE, shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the DOE Contracting Officer determines that the markings are authorized, the Subcontractor shall be notified in writing. If the Contractor determines, with concurrence of the DOE Contracting Officer, that the markings are not authorized, the Contractor shall furnish the Subcontractor a written determination, which determination shall become the final decision regarding the appropriateness of the markings, unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contractor's decision. The Contractor and DOE shall continue to abide by the markings under this Sub-paragraph until final resolution of the matter either by the Contractor's determination becoming final (in which instance the Government and the Contractor shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

4.20.5.1.4 The time limits in the procedures set forth in Paragraph 4.20.5.1 may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. §552) if necessary, to respond to a request thereunder.

4.20.5.1.5 This Sub-section 4.20.5 does not apply if this Contract is for a major system or for support of a major system by a civilian agency other than National Aeronautics and Space Administration and the U.S. Coast Guard agency subject to the provisions of Title I of the Federal Property and Administrative Services Act of 1949.

4.20.5.1.6 Except to the extent the Contractor's action occurs as the result of the final disposition of the matter by a court of competent jurisdiction, the Subcontractor is not precluded by this Sub-paragraph from bringing a claim pursuant to this Sub-section 4.20.5, as applicable, that may arise as the result of the Contractor removing or ignoring authorized markings on data delivered under this Contract.

#### 4.20.6 Omitted or Incorrect Marking

4.20.6.1 Data delivered to the Contractor without either the Limited Rights Notice or the Restricted Rights Notice as authorized by Sub-section 4.20.7, or the copyright notice required by Sub-section 4.20.3 shall be deemed to have been furnished with unlimited rights, and the Government and the Contractor assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Subcontractor may request, within six months (or a longer time approved by the Contractor for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Subcontractor's expense, and the Contractor, in coordination with DOE, may agree to do so if the Subcontractor identifies the data to which the omitted notice is to be applied; demonstrates that the omission of the notice was inadvertent; establishes that the use of the proposed notice is authorized; and acknowledges that the Government and the Contractor have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

4.20.6.2 The Contractor, in coordination with DOE, may also permit correction at the Subcontractor's expense of incorrect notices if the Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or correct any incorrect notices.

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#### 4.20.7 Protection of Limited Rights Data and Restricted Computer Software

4.20.7.1 When data other than that listed in Sub-paragraphs 4.20.2.1.1, 4.20.2.1.2, and 4.20.2.1.3 are specified to be delivered under this Contract and qualify as either limited rights data or restricted computer software, if the Subcontractor desires to continue protection of such data, the Subcontractor shall withhold such data and not furnish them to the Contractor under this Contract. As a condition to this withholding, the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer database for delivery to the Contractor are to be treated as limited rights data and not restricted computer software.

4.20.7.2 Notwithstanding Paragraph 4.20.7.1, the Contract may identify and specify the delivery of limited rights data, or the Contractor's Contract Specialist or Procurement Specialist may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Subcontractor may affix the following Limited Rights Notice to the data and the Contractor will thereafter treat the data, subject to the provisions of Sub-sections 4.20.5 and 4.20.6, in accordance with such notice:

##### LIMITED RIGHTS NOTICE

A. These data are submitted with limited rights under Contract No. \_\_\_\_\_ between \_\_\_\_\_ (Subcontractor) and GE-Hitachi Nuclear Energy Americas, LLC (Contractor), acting in its capacity as a subcontractor to USNC-Tech, who is acting in its capacity as subcontractor to the Prime Contractor, who is acting in its capacity as the management and operating contractor to the U.S.

Department of Energy at Idaho National Laboratory. These data may be reproduced and used by the Government, Prime Contractor and the Contractor with the express limitation that they will not, without written permission of the Subcontractor, be used for purposes of manufacture nor disclosed outside the Government, Prime Contractor or the Contractor; except that the Government, Prime Contractor or the Contractor may disclose these data outside the Government, Prime Contractor or the Contractor for the following purposes, if any; provided that the Government, Prime Contractor and the Contractor make such disclosure subject to prohibition against further use and disclosure:

1. Use (except for manufacture) by support services contractors or subcontractors within the scope of their contracts or subcontracts.
2. This limited rights data may be disclosed for evaluation purposes under the restriction that the limited rights data be retained in confidence and not be further disclosed.
3. This limited rights data may be disclosed to other contractors or subcontractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the Work performed under their contracts or subcontracts and under the restriction that the limited rights data be retained in confidence and not be further disclosed.
4. This limited rights data may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the limited rights data be retained in confidence and not be further disclosed.

5. Release to a foreign government, or instrumentality thereof, as the interests of the U.S. Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

B. This notice shall be marked on any reproduction of these data, in whole or in part.

#### 4.20.8 Subcontracting

4.20.8.1 The Subcontractor has the responsibility to obtain from its lower-tier subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations under this Contract. If a lower-tier subcontractor refuses to accept terms affording the Government and the Contractor such rights, the Subcontractor shall promptly bring such refusal to the attention of the Contractor and not proceed with the lower-tier subcontract award without written authorization by the Contractor.

#### 4.20.9 Relationship to Patents

4.20.9.1 Nothing contained in this Section shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

#### 4.20.10 Inspection

4.20.10.1 The Subcontractor agrees, except as may be otherwise specified in this Contract for specific data items listed as not subject to this Sub-section 4.20.10, that the DOE Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this Contract, inspect at a Subcontractor's facility any data withheld pursuant to Sub-section 4.20.7 for purposes of verifying the Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Subcontractor whose data are to be inspected demonstrates to the DOE Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the DOE Contracting Officer shall designate an alternate inspector.

### **4.21 Additional Technical Data Requirements**

4.21.1 In addition to the technical data specified elsewhere in this Contract to be delivered, the Contractor may at any time during this Contract performance or within one year after final payment call for the Subcontractor to deliver any technical data first produced or specifically used in the performance of this Contract, except technical data pertaining to items of standard commercial design.

4.21.2 The provisions of Section 4.20 are applicable to all technical data called for under this Section. Accordingly, nothing contained in this Section shall require the Subcontractor to actually deliver any technical data, the delivery of which is excused by Section 4.20.

4.21.3 When technical data are to be delivered under this contract, the Subcontractor will be compensated for appropriate costs for converting such data into the prescribed form for reproduction and for delivery.

### **4.22 Reserved - Addendum A**

### **4.23 Reserved - Addendum B**

### **4.24 Cooperation with the Office of Inspector General**

4.24.1 The Subcontractor must ensure that all employees of the Subcontractor and its lower-tier subcontractors 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; and ensure that reprisals are not taken against employees who cooperate with or disclose information to the OIG or other lawful appropriate authority.

#### **4.25 Reserved**

#### **4.26 Export Control**

4.26.1 The Subcontractor is responsible to ensure the proper identification, access, control, and disposition of all commodities, technology, technical data, and items subject to export control laws. These laws include, without limitation, the Arms Export Control Act, the Export Administration Act, the International Economic Emergency Powers Act, the Atomic Energy Act, the Nuclear Non Proliferation Act, and regulations issued pursuant to these including the Export Administration Regulations (15 C.F.R. Parts 730-774), the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130), and the Nuclear Regulatory Commission and DOE export regulations (10 C.F.R. Parts 110 and 810). The parties acknowledge that export control requirements may change and that the export of goods, technical data, or services from the United States without an export license or other governmental authorization may result in criminal and/or other liability. In the performance of this Contract, the Subcontractor agrees that it will not export, re export or otherwise transfer, directly or indirectly, commodities, technology, or technical data in violation of U.S. export control laws and regulations.

4.26.2 The Subcontractor is responsible for its own compliance with laws and regulations governing export controls in the performance of this Contract and acknowledges that it can contact the U.S. Departments of Commerce, State, Energy and Treasury for guidance as to applicable licensing requirements and other restrictions. This Contract does not provide the Subcontractor any express or implied governmental export authorization or license.

4.26.3 Subcontractor understands and agrees to comply with the U.S. Foreign Corrupt Practices Act that prohibits the Subcontractor from providing items of value to a foreign public official, members of a foreign political party, or certain relatives of such persons in order to obtain or retain business. The Subcontractor agrees not to give anything of value, including, but not limited to, business gratuities and reimbursement for travel, to any such persons in violation of the U.S. Foreign Corrupt Practices Act. The Subcontractor shall comply with all requirements relevant to its business arrangement with the Contractor, including any registration requirements and warrants its performance under this Contract shall comply with all applicable laws and regulations of the country or countries in which it performs any services for the Contractor.

4.26.4 The Subcontractor agrees to identify in writing for each item it produces or provides to the Contractor under this Contract the applicable Export Control Classification Number, if any, under the Export Administration Regulations, the applicable U.S. Munitions List category, if any, under the International Traffic in Arms Regulations and other applicable export classification, if any.

#### **4.27 Reserved**

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**4.28 Reserved**

**4.29 Reserved**

**4.30 Reserved**

**4.31 Public Release of Information**

4.31.1 Information, data, photographs, sketches, and advertising relating to the Work under this Contract, which the Subcontractor desires to release or publish, shall be submitted to the Contractor for approval eight weeks prior to the desired release date. As part of the approval request, the 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 prior approval of the Contractor. The Subcontractor shall include all provisions of this Section, including this paragraph, in all lower-tier subcontracts under this Contract.

**4.32 Reserved**

**4.33 Reserved**

**4.34 Reserved**

**4.35 Limitation of Price**

4.35.1 This Section applies only to fixed-unit/labor hour contracts and purchase orders.

4.35.2 The parties estimate that performance of this Contract will not cost the Contractor more than the established total price and/or bank of hours specified. The Subcontractor agrees to use its best efforts to perform the Work and all obligations under this Contract within the established total price.

4.35.3 The Subcontractor shall notify the Contractor in writing whenever it has reason to believe that 1) the cost the Subcontractor expects to incur under this Contract in the next 60 days when added to all costs previously incurred, will exceed 75% of the established total price and or/bank of hours, or 2) the total estimated cost for the performance of this Contract will be either greater or substantially less than the established total price and/or bank of hours.

4.35.4 As part of the notification, the Subcontractor shall provide the Contractor a revised estimate of the total price and/or bank of hours of performing the Contract.

4.35.5 Except as required by other provisions of this Contract, specifically citing and stated to be an exception to this Section:

4.35.5.1 The Contractor is not obligated to reimburse the Subcontractor for costs incurred in excess of the established total price and/or bank of hours, and

4.35.5.2 The Subcontractor is not obligated to continue performance under this Contract (including actions under Section 4.33) or otherwise incur costs in excess of the established total price and/or bank of hours, until the Contractor-

1) notifies the Subcontractor by written modification of this Contract, that the total price and/or bank of hours has been increased; and

2) provides a revised total price and/or bank of hours of performing this Contract.

4.35.6 No notice, communication, or representation in any form other than that specified in Paragraph 4.35.5.2 or from any person other than the Contractor, shall affect the total price and/or bank of hours of this Contract to the Contractor. In the absence of the specified notice, the Contractor is not obligated to reimburse the Subcontractor for any costs in excess of the total price and/or bank of hours, whether those excess costs were incurred during the course of this Contract or a result of termination.

4.35.7 If the total price and/or bank of hours is increased, any costs the Subcontractor incurs before the increase that are in excess of the previous price and/or bank of hours shall be allowable to the same extent as if incurred afterward, unless the Contractor issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

#### **4.36 Reserved**

#### **4.37 Reserved**

### **5. RESERVED**

## **6. SECTIONS THAT APPLY WHEN SUBCONTRACTOR PERSONNEL OR LOWER-TIER SUBCONTRACTOR PERSONNEL, ARE PRESENT AT THE PREMISES OWNED, LEASED, OR CONTROLLED BY THE CONTRACTOR OR THE U.S. GOVERNMENT, REGARDLESS OF PRICE/VALUE**

### **6.1 Reserved**

#### **6.2 Environmental, Safety, and Health**

6.2.1 The environmental, safety, and health (ES&H) requirements established by this Contract shall not relieve the Subcontractor from complying with more stringent laws and regulations issued by a federal, state, or local authority, as well as any manufacturer's instructions.

6.2.2 The Subcontractor shall protect the safety and health of employees, lower-tier subcontractor employees, members of the public, and any other persons, and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of the Contractor. The Contractor shall notify the Subcontractor, in writing, of any noncompliance with the provisions of this section and the immediate corrective action to be taken.

6.2.3 The Contractor reserves the right to have removed from the site and deny reentry to any Subcontractor employee or lower-tier subcontractor employee (including supervision and management) if:

- 1) found to be in a situation of imminent danger to life and health created by violating procedures, including, without limit, those for fall protection, confined space entry and work, lockout/tagout requirements, respiratory protection, and excavations, where injury could occur,
- 2) advising an employee to work in an unsafe condition/position or
- 3) willfully violating any environment, safety, and health policy, procedure, rule or regulation.

#### **6.3 Compliance, Permits, and Indemnification**

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6.3.1 At its expense, the Subcontractor shall comply with all federal, state, county, and municipal laws, ordinances, and regulations applicable to the Work to be performed under this Contract.

6.3.2 The Subcontractor shall indemnify and hold harmless the Government, the Prime Contractor and the Contractor, and each of their respective officers, directors, employees, agents, and successors in interest from and against all liability, claims, suits, damages, losses, costs, fines, civil penalties, remediation, corrective action or other response action costs, and any associated reasonable expense when they occur (including, without limitation, costs of defense; settlement; reasonable attorneys' fees; and costs incurred in enforcing this indemnification) arising out of or in connection with any of the following attributable to the conduct of the Subcontractor, its lower-tier subcontractors, or their respective employees, agents, or representatives:

6.3.2.1 Injury, whether physical or otherwise, or death of persons or damage to property resulting from Subcontractor's negligence or misconduct.

6.3.2.2 Contamination of, or adverse effects on, the environment.

6.3.2.3 Reserved

6.3.2.4 The Subcontractor's generation and management of, or arranging the transportation, treatment, storage, or disposal of, waste generated at INL at a treatment, storage, or disposal facility or other location that has not been approved in writing by the Contractor.

6.3.2.5 Loss of fee suffered by the Contractor under its Prime Contract with DOE.

6.3.2.6 Any claim maintained in tort against the Government or the Contractor for negligence or otherwise concerning any injury or death of a Subcontractor employee or lower-tier subcontractor employee which was, or could have been, the basis for a statutory worker's compensation claim. To make the indemnity under this paragraph fully effective, the Subcontractor hereby expressly waives the exclusive remedy and indemnity limitation under the Idaho Worker's Compensation Law of Title 72 of the Idaho Code or under any other applicable state or federal worker's compensation law.

6.3.2.7 Costs incurred by the Contractor under applicable FAR and/or DEAR provisions addressing costs related to legal and other proceedings.

6.3.3 Nothing in the foregoing indemnification of the Government and the Contractor by the Subcontractor shall be construed to indemnify or save harmless the Government or the Contractor from any liability arising solely as a result of the negligence of the Government or the Contractor, or to the extent DOE provides indemnity under a Nuclear Hazards Indemnity Agreement (see DEAR 952.250-70).

6.3.4 The Subcontractor shall procure or cause to be procured, at its expense, and likewise shall maintain, or cause to be maintained, during performance of the Work, and for such period thereafter as may be necessary under the circumstances, insurance sufficient to protect the Subcontractor, the Contractor, the Contractor's subcontractors, and DOE against all liability with respect to bodily injury or death, or property loss or damage that may be imposed by law upon the Subcontractor or that is assumed by the Subcontractor under this Contract. 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 and in such forms as are satisfactory

to the Contractor. At a minimum, the Subcontractor shall maintain the following insurance coverages and limits under this Sub-section:

6.3.4.1 Commercial general liability:

6.3.4.1.1 Each occurrence: \$1 million.

6.3.4.1.2 Fire damage (any one fire): \$100,000.

6.3.4.1.3 Medical expense (any one person): \$5,000.

6.3.4.1.4 Personal and advertising injury: \$1 million.

6.3.4.1.5 General aggregate: \$2 million.

6.3.4.1.6 Products/completed operations aggregate: \$2 million.

6.3.4.2 Automobile liability:

6.3.4.2.1 Combined single limit (each accident): \$1 million.

6.3.4.3 Worker compensation and employer liability:

6.3.4.3.1 Worker compensation: Statutory limits.

6.3.4.3.2 Employer liability (each accident): \$100,000.

6.3.4.3.3 Employer liability disease/each employee: \$100,000.

6.3.4.3.4 Employer liability disease/policy limit: \$500,000.

6.3.4.4 Asbestos liability (if the work includes any asbestos related work [such as inspection, handling, removal, or other]):

6.3.4.4.1 Per occurrence/annual aggregate: \$2 million.

6.3.5 The Subcontractor's insurance policies shall be endorsed to include:

6.3.5.1 "GE-Hitachi Nuclear Energy Americas, LLC and its successors in interest", "USNC-Tech and its successors in interest", "Battelle Energy Alliance, LLC, and its successors in interest" and the "U.S. Department of Energy" named as additional insured parties for all coverage specified in this Section, except for worker compensation and employer liability.

6.3.5.2 Waiver of subrogation in favor of Contractor and its successors in interest and DOE.

6.3.5.3 The Subcontractor's insurance is primary.

6.3.5.4 Thirty-days prior written notice to the Contractor in the event of any coverage cancellation.

6.3.6 A certificate of insurance shall be furnished to the Contractor upon the earlier of either 10-calendar days after award of this Contract or before the Subcontractor begins any Work under this Contract on DOE or Contractor controlled property or facilities. Each certificate of insurance shall include the endorsements required by Sub-section 6.3.6 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.

6.3.7 The Subcontractor's procurement, maintenance, limits, or coverage of any insurance policies, whether or not approved by the Contractor, shall not relieve the Subcontractor from any liability assumed pursuant to this Section 6.3.

6.3.8 Failure by the Subcontractor to comply with the insurance requirements of this Section 6.3, including timely submittal of properly executed certificates, is a basis for termination under Section 4.14.

6.3.9 The Subcontractor shall include all the requirements of this Section 6.3, including the specifically required insurance coverage, in all lower-tier subcontracts under this Contract that require Work on Government owned premises. The Subcontractor shall obtain appropriate certificates of insurance from said lower-tier subcontractors, maintain the certificates on file, and make the certificates available to the Contractor upon request.

#### **6.4 Real ID Act**

6.4.1 Subcontractor personnel requiring access to Government- or Contractor-owned, leased, or controlled facilities must present proof of identity that is compliant with the Real ID Act. If Subcontractor personnel do not have compliant identification, the following forms of current identification may be accepted, subject to Contractor approval:

6.4.1.1 U.S. Passport or U.S. Passport Card.

6.4.1.2 Military ID card or Military dependent's ID card.

6.4.1.3 HSPD-12 credential or Common Access Card.

6.4.1.4 Permanent Resident Card or Alien Registration Receipt Card (Form I-551).

6.4.1.5 Foreign Passport that contains a temporary I-551 stamp or temporary I-551 printed notations on a machine-readable immigrant visa.

6.4.1.6 Employment Authorization Document that contains a photograph (Form I-776).

#### **6.5 Stop Work Authority**

6.5.1 The Government or the Contractor may stop all, or any part of, the Work in the event the following occurs, or if comparable situations are encountered:

6.5.1.1 Observation and determination of conditions that present an immediate threat to the life and/or health of employees, workers, or the general public.

6.5.1.2 Observation of any activity or action, which is determined to be a threat to the environment or surrounding ecology.

6.5.1.3 Observation and determination of any activity that could result in the potential or actual damage to Government material, property, facilities, or equipment.

6.5.1.4 The Subcontractor fails to comply with the quality requirements of the Contract.

6.5.1.5 The Subcontractor fails to comply or fails to provide resolution to a noncompliance with applicable environment, safety, and health requirements.



6.5.1.6 The Subcontractor fails to comply with applicable, federal, state, or local laws or regulations or requirements of DOE.

6.5.2 If Work is stopped by a representative of the Government or the Contractor, other than the technical point of contact or the Contract Specialist or Procurement Specialist, the Subcontractor shall immediately notify the Contract Specialist or Procurement Specialist or their supervisor.

6.5.3 Any stop work order issued under this Section shall be without prejudice to any legal or contractual rights of the Contractor. The Subcontractor shall not be entitled to an extension of time or additional costs, compensation or damages by reason of, or in connection with, any Work stoppage ordered as a result of the Subcontractor's fault or failure to comply with any Contract requirements.

## **6.6 Reserved**

## **7. SECTIONS THAT APPLY WHEN THE SUBCONTRACTOR RECEIVES ACCESS TO CONTROLLED UNCLASSIFIED INFORMATION, SENSITIVE NUCLEAR TECHNOLOGY, OR SPECIAL NUCLEAR MATERIAL OR AUTHORIZED UNRESTRICTED ACCESS TO AREAS CONTAINING THESE**

### **7.1 Classified Inventions**

7.1.1 The Subcontractor shall not file, or cause to be filed, on any invention or discovery conceived or first actually reduced to practice in the course of, or under, this Contract, in any country other than the United States, an application or registration for a patent without obtaining written approval of the Contractor.

7.1.2 When filing a patent application in the United States on any invention or discovery conceived or first actually reduced to practice in the course of, or under, this Contract, the subject matter of which is classified for reasons of security, the Subcontractor shall observe all applicable security regulations covering the transmission of classified subject matter. In transmitting the patent application to the U.S. Patent and Trademark Office, the Subcontractor shall, by separate letter, identify, by agency and number, the Contract that require security classification markings to be placed on the application.

### **7.2 Classification of Unclassified Sensitive Information**

7.2.1 In the performance of the Work under this Contract, the Subcontractor shall ensure that all documents, material, and equipment originated or generated under this Contract involving a classified or potentially classified subject, or unclassified sensitive or potentially unclassified sensitive subject, are reviewed by a Federal Government Original Classifier or a Federal Government or Contractor Derivative Classifier and authorized reviewing official in accordance with classification and unclassified sensitive information regulations and guidance furnished to the Subcontractor by the Contractor.

### **7.3 Marking and Control of Controlled Unclassified Information**

7.3.1 Data generated or made available in performance of this Contract may be marked as appropriate with markings referenced in

- 1) the Contractor Requirements Document (CRD) affixed as Attachment 1 to DOE O 471.3, Change 1,
  - 2) the CRD affixed as Attachment 1 to DOE Manual 471.3-1, Change 1 and
  - 3) any other CRD made applicable to Contractor or Subcontractor regarding marking and treatment of Official Use Only (OUO) or Controlled Unclassified Information (CUI).
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The requirements of said CRDs are made applicable to the Subcontractor as if set forth here verbatim in their entirety. In the event successor or replacement requirements to those specified in said CRDs are made applicable to the Contractor with a requirement the same be made applicable to the Subcontractor, the same shall thereupon be immediately effective and applicable to the Subcontractor with or without written amendment to the Contract.

7.3.2 Reserved

## **8. RESERVED**

## **9. RESERVED**

## **10. SECTIONS THAT APPLY WHEN CONTRACT PRICE/VALUE IS GREATER THAN \$100,000**

### **10.1 Notice and Assistance Regarding Patent and Copyright Infringement**

10.1.1 The Subcontractor shall report to the Contractor, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement, based on the performance of this Contract, of which the Subcontractor has knowledge.

10.1.2 In the event of any claim or suit against the Government or the Contractor on account of any alleged patent or copyright infringement arising out of the performance of this Contract, or out of the use of any supplies furnished or Work or services performed hereunder, the Subcontractor shall furnish to the Government or the Contractor upon request all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Subcontractor has agreed to indemnify the Government and the Contractor.

10.1.3 This Section shall be included in all lower-tier subcontracts and purchase orders priced greater than \$100,000.

## **11. SECTIONS THAT APPLY WHEN CONTRACT PRICE/VALUE IS GREATER THAN \$150,000**

### **11.1 Contract Work Hours and Safety Standards Act, Overtime Compensation General**

#### **11.1.1 Overtime Requirement**

11.1.1.1 The Subcontractor, or any lower-tier subcontractor, contracting for any part of the Work that may require or involve the employment of laborers or mechanics (see FAR Subpart 22.3), shall not require or permit any such laborers or mechanics, in any workweek in which the individuals are employed on such Work, to work in excess of 40 hours in such workweek, unless such laborers or mechanics receive compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

#### **11.1.2 Violation, Liability for Unpaid Wages, and Liquidated Damages**

11.1.2.1 In the event of any violation of the provisions set forth in Sub-section 11.1.1, the Subcontractor and any lower-tier subcontractor responsible for the violation shall be liable for the unpaid wages. In addition, the Subcontractor and such lower-tier subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provision set forth in Sub-section 11.1.1, at the greater of:

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1) the sum of \$10 for each calendar day on which each such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in Sub-section 11.2.1, and

2) the rate specified in 29 C.F.R. §5.5(b)(2) per affected employee for each calendar day the employer required or permitted the employee to work in excess of the standard without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found in 40 U.S.C. Chapter 37).

#### 11.1.3 Withholding, Liability for Unpaid Wages, and Liquidated Damages

11.1.3.1 The Contractor may, upon its own action or upon written request of an authorized representative of DOE, the Contracting Office or the U.S. Department of Labor withhold, or cause to be withheld, from any amounts payable on account of Work performed by the Subcontractor or lower-tier subcontractor under this Contract or any other federal contract with the Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the Contractor, such sums as may be determined to be necessary to satisfy any liability of the Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as set forth in Subsection 11.1.2.

#### 11.1.4 Payroll and Basic Records

11.1.4.1 The Subcontractor and its lower-tier subcontractor shall maintain payrolls and basic payroll records during the course of Work and shall preserve them for a period of three years from the completion of this Contract for all laborers and mechanics working on this Contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rate of wages paid daily, and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this section shall require the duplication of records required to be maintained for construction work by the Department of Labor regulations at 29 C.F.R. §5.5(a)(3).

11.1.4.2 The records to be maintained under Paragraph 11.1.4.1 shall be made available by the Subcontractor or lower-tier subcontractor for inspection, copying, or transcription by authorized representatives of the Contractor, DOE, or the Department of Labor. The Subcontractor and its lower-tier subcontractor shall permit such representatives to interview employees during working hours on the job.

#### 11.1.5 Subcontracts

11.1.5.1 The Subcontractor and its lower-tier subcontractor shall insert in any subcontracts priced greater than \$150,000 the provisions set forth in Section 11.1. The subcontractor in each such contract must be responsible for compliance by its subcontractors, at the next lower-tier, with the provisions of this Section.

## **12. SECTIONS THAT APPLY WHEN CONTRACT PRICE/VALUE IS GREATER THAN \$250,000**

### **12.1 Reserved**

### **12.2 Organizational Conflicts of Interest**

12.2.1 This Section applies when the Contract involves any Work or effort, a principal purpose of which is to provide advisory and assistance services [as addressed in 48 C.F.R. Subpart 37.2 and defined in 48 C.F.R. §37.201. Such services may include assistance in preparing program plans; evaluation, monitoring or

review of the Contractor's activities or proposals submitted by prospective subcontractors; and preparation of preliminary designs, specifications, or statements of work.

12.2.2 The purpose of this Section is to ensure that the Subcontractor is not biased because of its financial, contractual, organizational, or other interests that relate to the Work under this Contract, and does not obtain any unfair competitive advantage over other parties by virtue of its performance of this Contract.

12.2.3 The restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as the "Subcontractor") in the activities covered by this Section as a prime subcontractor, lower-tier subcontractor, cosponsor, joint venture, consultant, or in any similar capacity. For the purpose of this Section, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.

12.2.4 Subcontractor shall be ineligible to participate in any capacity in the Contractor's subcontracts or proposals therefore (solicited and unsolicited), that stem directly from the Subcontractor's performance of Work under this Contract for a period of one year after the completion of this Contract. Furthermore, unless so directed in writing by the Contractor, the Subcontractor shall not perform any advisory and assistance services Work under this Contract on any of its products or services or the products or services of another firm, if the Subcontractor is, or has been substantially involved in their development or marketing. Nothing in this paragraph shall preclude the Subcontractor from competing for follow on subcontracts for advisory and assistance services.

12.2.5 If, under this Contract, the Subcontractor prepares a complete, or essentially complete, statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform, or participate in any capacity, in any contractual effort that is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications, unless so directed in writing by the Contractor, in which case the restriction in this paragraph shall not apply.

12.2.6 Nothing in this Section shall preclude the Subcontractor from offering or selling its standard commercial items to the Government.

12.2.7 If the Subcontractor, in the performance of this Contract, obtains access to information, such as contractor plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. §552a), or data that have not been released or otherwise made available to the public, the Subcontractor agrees that, without prior written approval of the Contractor, it shall not use such information for any private purpose unless the information has been released or otherwise made available to the public; compete for Work for the Contractor, based on such information for a period of six months after either the completion of this Contract or until such information is released or otherwise made available to the public, whichever is first; submit an unsolicited proposal to the Government, which is based on such information, until one year after such information is released or otherwise made available to the public; and release such information unless such information has previously been released or otherwise made available to the public by DOE or the Contractor.

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12.2.8 The Subcontractor also agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. §552a), or other confidential or privileged technical, business, or financial information under this Contract, it shall treat such information in accordance with any restrictions imposed on such information.

12.2.9 The Subcontractor may use technical data it first produces under this Contract for its private purposes consistent with this Section and the patent, rights in data, and security provisions of this Contract.

12.2.10 The Subcontractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this Contract, occur during the performance of this Contract, it shall make an immediate and full disclosure of such changes in writing to the Contractor. Such disclosure may include a description of any action that the Subcontractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Contractor may, however, terminate this Contract for convenience, if it deems such termination to be in the best interest of the Government.

12.2.11 In the event that the Subcontractor was aware of facts required to be disclosed (per C.F.R 952.209-8), or the existence of an actual or potential organizational conflict of interest, and did not disclose such facts or such conflict of interest to the Contractor, the Contractor may terminate this Contract for default.

12.2.12 For breach of any of the foregoing restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this Contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Contractor may terminate this Contract for default, disqualify the Subcontractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this Contract.

12.2.13 Requests for waiver under this Section shall be directed in writing to the Contractor and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government and the Contractor, the Contractor shall grant such a waiver in writing.

### **12.3 Anti-Kickback Procedures**

12.3.1 Definitions applicable in this Section 12.3:

12.3.1.1 *Kickback*. Any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided, directly or indirectly, to any Prime Contractor, Prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Prime Contract, or in connection with a subcontract relating to a Prime Contract.

12.3.1.2 *Person*. A corporation, partnership, business association of any kind, trust, joint stock company, or individual.

12.3.1.3 *Prime Contract*. A contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

12.3.1.4 *Prime Contractor*. A person who has entered into a Prime Contract with the United States.

12.3.1.5 *Prime Contractor employee*. Any officer, partner, employee, or agent of a Prime Contractor.

12.3.1.6 *Subcontract*. A contract or contractual action entered into by a Prime Contractor or subcontractor at any tier, for the purpose of obtaining supplies, materials, equipment, or services of any kind under a Prime Contract.

12.3.1.7 *Subcontractor*. Any person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a Prime Contract or a lower-tier subcontract entered in connection with such Prime Contract, and includes any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher-tier subcontractor.

12.3.1.8 *Subcontractor employee*. Any officer, partner, employee, or agent of a subcontractor.

### **12.3.2 Procedures**

12.3.2.1 The Anti-Kickback Act of 1986 (41 U.S.C. §§51–58) (the Act), prohibits any person from providing or attempting to provide or offering to provide any kickback; soliciting, accepting, or attempting to accept any kickback; or including, directly or indirectly, the amount of any kickback in the Contract price charged by a Subcontractor to a Prime Contractor or higher-tier subcontractor.

12.3.2.2 When the Subcontractor has reasonable grounds to believe that a violation described in Paragraph 12.3.2.1 may have occurred, the Subcontractor shall promptly report, in writing, the possible violation. Such reports shall be made to the Contractor and to the Inspector General of DOE or the U.S. Department of Justice.

12.3.2.3 The Subcontractor shall cooperate fully with any federal agency investigating a possible violation described in Paragraph 12.3.2.1.

12.3.2.4 The Contractor may withhold from sums owed to the Subcontractor the amount of the kickback, which may be paid to the Government.

12.3.2.5 The Subcontractor agrees to incorporate the substance of this Section, including this paragraph, in all lower-tier subcontracts under this Contract priced greater than \$150,000.

### **12.4 Restrictions on Subcontractor Sales to the Government**

12.4.1 Except as provided in Sub-section 12.4.2, the Subcontractor shall not enter into any agreement with an actual or prospective lower-tier subcontractor, no otherwise act in any manner, that has or may have the effect of restricting sales by such lower-tier subcontractor directly to the Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor for this Contract or under any follow-production order.

12.4.2 The prohibition in Sub-section 12.4.1 does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.

12.4.3 The Subcontractor agrees to incorporate the substance of this section, in all lower-tier subcontracts under this Contract priced greater than \$250,000.

## **13. SECTIONS THAT APPLY WHEN CONTRACT PRICE/VALUE IS GREATER THAN \$500,000**

### **13.1 Displaced Employee Hiring Preference**

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### 13.1.1 Definitions

13.1.1.1 *Eligible employee.* A current or former employee of a Contractor or Subcontractor employed at a DOE Defense Nuclear Facility

- 1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause),
- 2) who has also met the eligibility criteria contained in the DOE guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, and
- 3) who is qualified for a particular job vacancy at the time the particular position is available.

### 13.1.2 Procedures

13.1.2.1 Consistent with the DOE guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, the Subcontractor agrees that it will provide a preference in hiring to an eligible employee, to the extent practicable, for Work performed under this Contract.

13.1.2.2 The requirements of this Section shall be included in lower-tier subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. §403), expected to exceed \$500,000.

## **14. SECTIONS THAT APPLY WHEN CONTRACT PRICE/VALUE IS GREATER THAN \$700,000**

### **14.1 Small Business and Small Disadvantaged Business Subcontracting Plan**

#### 14.1.1 Definitions

14.1.1.1 *Commercial product.*

- 1) A product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices.
- 2) A product that, in the opinion of the Contractor, differs only insignificantly from the Subcontractor's commercial product.

14.1.1.2 *Subcontract.* Any agreement (other than one involving an employer employee relationship) entered into by the Subcontractor calling for supplies or services required for performance of this Contract.

#### 14.1.2 Procedures

14.1.2.1 The Subcontractor shall include Section 14.1 in all subcontracts that offer further subcontracting opportunities, and require all lower-tier subcontractors (except small business concerns) who receive subcontracts in excess of \$700,000 (\$1,500,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the Subcontractor.

14.1.2.2 The Subcontractor shall:

14.1.2.2.1 Cooperate in any studies or surveys as may be required.

14.1.2.2.2 Submit periodic reports, to allow the Contractor to determine the extent of compliance with the subcontracting plan.

14.1.2.2.3 Submit semiannual subcontracting reports current as of the last day of March and of September and a subcontracting report at the completion of this Contract, in accordance with the requirements of the DOE internet based Electronic Subcontract Reporting System.

14.1.2.2.4 Ensure that its lower-tier subcontractors agree to submit subcontracting reports in accordance with Sub-paragraph 14.1.2.2.3. Subcontracting reports required by Sub-paragraph 14.1.2.2.3 and this paragraph shall be submitted within 30 days following the end of each reporting period.

14.1.2.3 The Subcontractor shall perform the following functions:

14.1.2.3.1 Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Subcontractor's lists of potential small and small disadvantaged lower-tier subcontractors are excessively long, reasonable effort shall be made to give all such business concerns an opportunity to compete over a period of time.

14.1.2.3.2 Provide adequate and timely consideration of the potential of small business and small disadvantaged business concerns in all "make or buy" decisions.

14.1.2.3.3 Counsel and discuss lower-tier subcontracting opportunities with representatives of small and small disadvantaged business firms.

14.1.2.3.4 Provide notice to lower-tier subcontractors concerning penalties for misrepresentation of business status as small business or small disadvantaged business for the purpose of obtaining a lower-tier subcontract that is to be included as part or all of a goal contained in the subcontracting plan.

14.1.2.4 The failure of the Subcontractor or a lower-tier subcontractor to comply in good faith with Section 14.1 or the Subcontractor's approved subcontracting plan required by this Section, shall be a material breach of this Contract.

#### **14.2 Liability for Increased Cost or Interest**

14.2.1 The Subcontractor is liable to the Government for any increased cost or interest resulting from the Subcontractor's failure to comply with FAR 52.230-2, FAR 52.230-5, or FAR 52.230-6. The Contract price is subject to adjustment by the Contractor to cover any increased cost or interest resulting from such failure.



**RESERVED - Addendum A**

**RESERVED - Addendum B**