

MISSION SUPPORT AND TEST SERVICES, LLC
GENERAL CONDITIONS
FIRM FIXED PRICE CONSTRUCTION SUBCONTRACT

EXHIBIT C

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C-1 ACCEPTANCE OF TERMS AND CONDITIONS (Ts&Cs)

SUBCONTRACTOR, by entering into this Subcontract and/or delivering items or services ordered under this Subcontract, agrees to comply with all the Subcontract Terms and Conditions (Ts&Cs), including all parts of this Subcontract and all documents, information, policies, laws, regulations, and clauses incorporated by reference herein. CONTRACTOR hereby objects to, and does not accept, any Ts&Cs contained in any acknowledgment of this Subcontract that are different from or in addition to those in the Subcontract Documents (as defined herein). SUBCONTRACTOR hereby agrees that any different or additional Ts&Cs shall be null and void and of none effect unless expressly accepted by the Subcontract Administrator via a formal written modification to this Subcontract.

C-2 DEFINITIONS

- (a) The definitions prescribed in Federal Acquisition Regulation (FAR) clause 52.202-1, Definitions (Jun 2020), as modified by Department of Energy Acquisition Regulation (DEAR) 952.202-1, apply to this Subcontract except where a term is defined differently in the Subcontract or where the context clearly manifests a different meaning.
- (b) The following definitions also apply to this Subcontract in addition to any other definitions provided elsewhere in this Subcontract:
 - (1) "Government" means the United States Department of Energy (DOE) (including the National Nuclear Security Administration [NNSA]) and the United States Government generally.
 - (2) "CONTRACTOR" means MISSION SUPPORT AND TEST SERVICES, LLC (MSTS), a limited liability company, which manages and operates the Nevada National Security Sites (NNSS) pursuant to Contract No. DE-NA0003624 between the U.S. Department of Energy (DOE) / National Nuclear Security Administration (NNSA) and MSTS. In addition, Contractor also means all of its authorized representatives acting in their professional capacities, (i.e., Procurement Representative, Subcontract Administrator, etc.).
 - (3) "SUBCONTRACTOR" means the company, corporation, partnership, individual or other entity to which this Subcontract is issued, its authorized representatives, successors, and permitted assignees.
 - (4) "Work" means all activities required by the Subcontract Documents to be performed by SUBCONTRACTOR.
 - (5) "Site" means the CONTRACTOR'S or Government's location(s) at which or for which the Work will be performed.
 - (6) "Subcontract Administrator" means the official designated by the CONTRACTOR as the official responsible for administering the Subcontract on behalf of the CONTRACTOR.
 - (7) "Subcontract Documents" means the Subcontract Agreement Form and all documents listed therein.
 - (8) "Subcontract Schedule" means the time period set forth for performance and completion of the Work under this Subcontract.
 - (9) "STR" means Subcontract Technical Representative

C-3 MERGER, INTEGRATION, AND ORDER OF PRECEDENCE

The Subcontract Agreement Form, all documents listed therein, and subsequently issued Change Notices and Subcontract modifications are all essential parts of this Subcontract, and a requirement occurring in one is binding as though occurring in all. In resolving conflicts, discrepancies, errors or omissions the following order of precedence shall be used:

1. Subcontract/Purchase Order
2. Exhibit D – Special Conditions
3. Exhibit C – General Conditions
4. Exhibit E – Environmental, Safety & Health Requirements
5. Exhibit F – Security Requirements

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6. Exhibit B – Statement of Work, Specifications and Drawings
7. Exhibit A – Quantities, Prices and Data
8. Exhibit G – Task Order

The documents listed above, along with any subsequently issued Change Notices and/or Subcontract modifications, comprise the entire Subcontract, which contains the entire agreement between the Parties and supersedes any and all prior agreements, understandings, representations, and statements between the Parties, whether oral or written. The Parties are entering into this Subcontract based solely on the representations and warranties herein and not based on any promises, representations, and/or warranties not found herein. The Parties shall not be bound by, or be liable for, any statement, representation, promise, inducement or understanding not set forth herein.

No modification, waiver, amendment, discharge, or change to this Subcontract shall be valid unless the same is in writing and executed by the Subcontract Administrator.

C-4 INDEPENDENT CONTRACTOR

- (a) *SUBCONTRACTOR qualifications*: SUBCONTRACTOR represents that it is fully experienced, properly qualified, registered, licensed, insured, equipped, organized, legally authorized, and financed to provide the services under this Subcontract.
- (b) *SUBCONTRACTOR status as an independent contractor*: It is understood and agreed that SUBCONTRACTOR is an independent contractor in the performance of this Subcontract and shall not act as agent or representative of CONTRACTOR. SUBCONTRACTOR understands and agrees it has no authority to bind CONTRACTOR and must take affirmative steps to ensure personnel of the Parties and all third parties are aware SUBCONTRACTOR is not the agent of CONTRACTOR and that SUBCONTRACTOR has no actual or apparent authority to bind or act on behalf of CONTRACTOR.
- (c) *Status of SUBCONTRACTOR Personnel*: It is understood and agreed that the individuals furnished or utilized by SUBCONTRACTOR to perform work under this Subcontract, whether at CONTRACTOR facilities, SUBCONTRACTOR facilities, or elsewhere, shall be considered personnel of SUBCONTRACTOR at all times, whether they are actual employees of SUBCONTRACTOR (e.g. W-2 employees), independent contractors (e.g. IRS Form 1099-MISC independent contractors), or whether they provide services under this Subcontract via any other arrangement with SUBCONTRACTOR (collectively referred to as "SUBCONTRACTOR Personnel" as defined elsewhere in this Subcontract). Such individuals shall not be considered employees of CONTRACTOR or be treated as employees of CONTRACTOR for any purpose. CONTRACTOR shall not be liable to SUBCONTRACTOR or to SUBCONTRACTOR Personnel as an employer or joint-employer in any amount for any causes of action arising out of or relating to any work performed by SUBCONTRACTOR Personnel under or relating to this Subcontract. SUBCONTRACTOR agrees to inform all SUBCONTRACTOR Personnel performing work under this Subcontract of the foregoing and to ensure they understand and acknowledge the same. SUBCONTRACTOR shall furnish to CONTRACTOR signed statements from all SUBCONTRACTOR Personnel performing work under this Subcontract acknowledging and agreeing to the foregoing requirements.
- (d) *SUBCONTRACTOR agreement to comply with all applicable laws and regulations relating to SUBCONTRACTOR Personnel*: SUBCONTRACTOR hereby agrees to comply with all federal, state, and local laws and regulations, including but not limited to, those applicable to the proper classification (e.g. exempt vs. non-exempt; W-2 employee vs. 1099 independent contractor, etc.), treatment (including laws/regulations pertaining to collective bargaining, discrimination, harassment, retaliation, health and safety etc.), and compensation (including the Fair Labor Standards Statue [FLSS], applicable state minimum wage requirements, travel and waiting time pay, etc.) of SUBCONTRACTOR Personnel. At CONTRACTOR'S request, SUBCONTRACTOR shall furnish to CONTRACTOR evidence or documentation clearly demonstrating that SUBCONTRACTOR is in full compliance with all applicable laws and regulations relating to the classification, treatment, and compensation of SUBCONTRACTOR Personnel.
- (e) *Liability for all costs arising from or relating to SUBCONTRACTOR Personnel*: SUBCONTRACTOR shall be solely responsible for paying any and all salaries, wages, benefits, tax withholdings, payroll and other taxes, insurance or employee protections (such as workers' compensation insurance, unemployment insurance, disability insurance, etc.) and contractual or other obligations or liabilities to or on account of all SUBCONTRACTOR Personnel. CONTRACTOR shall not be liable to any SUBCONTRACTOR Personnel or to SUBCONTRACTOR for any such payments, obligations or liabilities whatsoever.

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- (f) The relationship between the parties is that of independent contractors. Nothing in this Subcontract creates a partnership or joint venture between the parties, and, except as otherwise expressly provided herein, neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of the other party, or pledge the credit of, or otherwise bind or obligate the other party.

C-5 CONTRACTOR'S AUTHORIZED REPRESENTATIVES

- (a) The CONTRACTOR will designate a Subcontract Administrator who will be responsible for administering the Subcontract Terms and Conditions and who shall act as the CONTRACTOR's authorized representative. Additionally, all correspondence shall be issued and received by the designed Subcontract Administrator. The only individual authorized to legally bind the CONTRACTOR and/or to extend, terminate, or modify this Subcontract, or to deviate from, or waive, any of the terms or requirements herein, is the cognizant Subcontract Administrator.
- (b) The CONTRACTOR will designate a Subcontract Technical Representative (STR) who is authorized to provide technical direction relating to the performance of the Subcontract. Technical direction must be within the scope of work stated in the SUBCONTRACT (or Order as applicable). The STR is authorized to direct the SUBCONTRACTOR only in the following ways:
- (1) Filling in technical details or shifting work emphasis between work areas;
 - (2) Providing information to the SUBCONTRACTOR that assists in interpreting drawings, specifications, or technical portions of the work description; or
 - (3) Reviewing and approving, technical reports, drawings, specifications, and technical information to be delivered by the SUBCONTRACTOR.
- (c) The STR does not have authority to, and may not, assign additional work outside the Statement of Work or applicable Order; change any contractual terms and conditions or any other contractual requirements whatsoever; provide direction that causes an increase or decrease in the estimated cost/price, including a Not To Exceed (NTE) price, specified in the Subcontract or applicable Order or which increases the time required to complete performance.
- (d) The SUBCONTRACTOR shall proceed promptly with all direction duly issued by the STR in accordance with this clause. In the event the STR issues direction, which he/she may not be authorized to issue pursuant to this clause, the SUBCONTRACTOR shall immediately contact the Subcontract Administrator for resolution before proceeding with the work. Additionally, should the SUBCONTRACTOR and STR disagree over the technical requirements of the Subcontract; such matters will be immediately referred to the CONTRACTOR'S Subcontract Administrator for resolution.

C-6 SUBCONTRACTOR'S AUTHORIZED REPRESENTATIVE

Prior to commencing work, SUBCONTRACTOR shall designate in writing an authorized representative, acceptable to CONTRACTOR, to represent and act for SUBCONTRACTOR and shall specify any and all limitations of such representative's authority. Such representative shall be present or be represented at the Site of Work at all times when Work is in progress and shall be empowered to receive communications in accordance with this Subcontract on behalf of SUBCONTRACTOR. During periods when the Work is suspended, arrangements shall be made for an authorized representative, acceptable to CONTRACTOR, for any emergency work that may be required. Notification of changes of authorized representatives for either CONTRACTOR or SUBCONTRACTOR shall be provided ten-calendar (10) days in advance by written notification to the other party.

C-7 NOTICES

Any notices provided for hereunder shall be in writing and may be served either personally or by first class mail, facsimile, or electronic mail on the authorized representative of the receiving party.

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C-8 SUBCONTRACT INTERPRETATION

All questions concerning interpretation or clarification of this Subcontract, including the discovery of conflicts, errors and omissions, or the acceptable performance thereof by SUBCONTRACTOR, shall be immediately submitted in writing to the Subcontract Administrator for resolution. All determinations, instructions, and clarifications by the Subcontract Administrator shall be final, unless disputed in accordance with the Disputes clause of this Subcontract. SUBCONTRACTOR shall proceed with the Work in accordance with the determinations, instructions, and clarifications by Subcontract Administrator. SUBCONTRACTOR shall be solely responsible for requesting instructions or interpretations and shall be solely liable for any cost and expenses arising from its failure to do so.

C-9 STANDARDS AND CODES

Wherever references are made in this Subcontract to industry standards or codes in accordance with which the Work under this Subcontract is to be performed, the edition or revision of the standards or codes current on the effective date of this Subcontract or Task Order under this Subcontract shall apply, unless otherwise expressly stated. In case of any conflict between any referenced standards and codes and any part of this Subcontract, the latter shall govern.

C-10 LAWS AND REGULATIONS

- (a) SUBCONTRACTOR agrees that it shall comply with all applicable Federal, State, and local laws, ordinances, statutes, rules, regulations, orders or decrees in effect at the time the Work under this Subcontract is performed, and SUBCONTRACTOR shall ensure that its employees, officers, agents, representatives, and lower-tier subcontractors also comply.
- (b) If SUBCONTRACTOR discovers any discrepancy or inconsistency between this Subcontract and any law, ordinance, statute, rule, regulation, order, or decree, SUBCONTRACTOR shall report the same immediately, in writing, to the Subcontract Administrator who will issue such further instructions as may be necessary.

C-11 DISPUTE RESOLUTION AND CHOICE OF LAW

- (a) Definitions. For purposes of this clause:

“Board” means the Civilian Board of Contract Appeals or such successor Board as may be established by law.

“Arbitration decision” means a decision of the Board, or another mutually agreed upon arbitrator in the event that the Board is not available, in an arbitration action pursuant to this clause.

“Claim” means a written demand or written assertion by either contracting party seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of a Subcontract term, or other relief arising under, or relating to, this Subcontract. A voucher, invoice, or other request for payment or equitable adjustment under the terms of the Subcontract that is not in dispute when submitted is not a claim. The SUBCONTRACTOR may convert such submission into a claim if it is disputed either as to liability or amount, or is not acted upon in a reasonable time, by demanding a decision by the Subcontract Administrator.

“Counterclaim” means a claim asserted in a pleading filed with the Board in an arbitration proceeding pursuant to this clause, which arises from the same occurrence, or transaction that is the subject matter of the opposing party’s claim. Counterclaims do not need to be submitted to the Subcontract Administrator for decision.

- (b) Nature of the Subcontract. This Subcontract is not a Government contract and, therefore, is not subject to the Contract Disputes Act of 1978 (41 U.S.C. §§601-613). SUBCONTRACTOR acknowledges that GOVERNMENT is not a party to the Subcontract, and, for purposes of the Subcontract, CONTRACTOR is not an agent of the Government. Consequently, the provision for arbitration by the Board, as provided for in this clause, does not create or imply the existence of privity of contract between SUBCONTRACTOR and GOVERNMENT.
- (c) Scope of Clause. The rights and procedures set forth in this clause are the exclusive rights and procedures for resolution of all claims and disputes arising under, or relating to, this Subcontract, and no action based upon any claim or dispute arising under, or relating to, this Subcontract shall be brought in any court except as provided in this clause. The Parties shall be bound by any arbitration decision rendered pursuant to this clause, which shall

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be vacated, modified, or corrected only as provided in the Federal Arbitration Act (9 U.S.C. §§1-16). An arbitration decision may only be enforced in any court of competent jurisdiction in the state of Nevada.

(d) Filing a Claim/Subcontract Administrator's Decision.

- (1) Unless otherwise provided in this Subcontract, SUBCONTRACTOR must file any claim against CONTRACTOR within one (1) year after SUBCONTRACTOR knew or should have known the facts giving rise to the claim. Failure to file a claim within the period prescribed by this paragraph shall constitute a waiver of SUBCONTRACTOR'S claim in its entirety and SUBCONTRACTOR shall THEREBY release the CONTRACTOR of any such claim.
- (2) SUBCONTRACTOR shall submit any claim in writing to the Subcontract Administrator who shall issue a decision on the matter within 60 days of receipt of the claim (unless additional time is required to a render a decision, in which case the Subcontract Administrator shall notify the SUBCONTRACTOR of the amount of additional time needed). If the Subcontract Administrator fails to issue a decision within 60 days (or within the amount of time specified in the notification provided by the Subcontract Administrator), the SUBCONTRACTOR'S claim shall be deemed denied, and the SUBCONTRACTOR may request mediation or demand arbitration as provided in paragraphs (e) and (f) of this clause.
- (3) CONTRACTOR may, at any time prior to final payment under the Subcontract or expiration of any warranty period, or within one (1) year of learning of facts or circumstances giving rise to a claim if after final payment or the expiration of the warranty period, whichever is later, file a claim against SUBCONTRACTOR by issuing a written decision by the Subcontract Administrator asserting such a claim.
- (4) The decision of the Subcontract Administrator shall be final and conclusive unless SUBCONTRACTOR requests mediation or demands arbitration in accordance with the terms of this clause. If SUBCONTRACTOR does not request mediation or demand arbitration within the time limits provided within this clause, the decision of the Subcontract Administrator shall be binding and final with the same force and effect as a binding judgement or arbitration decision, and may be strictly enforced by any court of competent jurisdiction or by any other means available to CONTRACTOR under applicable state or federal law.

(e) Request for Mediation.

- (1) If the decision of the Subcontract Administrator is not satisfactory to the SUBCONTRACTOR, or the Subcontract Administrator has failed to timely issue a decision in accordance with subparagraph (d) 2) of this provision, and SUBCONTRACTOR desires to pursue further action, SUBCONTRACTOR may request that the matter be scheduled for mediation. The request for mediation must be made within 45 days after receipt of the Subcontract Administrator's decision.
- (2) If the Subcontract Administrator believes that mediation of the dispute is likely to lead to a satisfactory resolution, he or she will so inform SUBCONTRACTOR and the matter will be scheduled for mediation. The Parties will agree on the format of the mediation and will jointly select the mediator. The cost of the mediator and related expenses shall be divided evenly between the parties. Each Party shall bear its own attorneys' fees and any other related costs.
- (3) If the Subcontract Administrator decides that mediation is not likely to lead to a satisfactory resolution of the claim, or that a mediation undertaken pursuant to this clause has been unsuccessful, he or she will so inform SUBCONTRACTOR in writing.

(f) Demand for Arbitration. If the decision of the Subcontract Administrator is not satisfactory to SUBCONTRACTOR, or if SUBCONTRACTOR'S request for mediation has been denied, or a mediation undertaken pursuant to paragraph (e) of this clause has been unsuccessful, or the Subcontract Administrator has failed to timely issue a decision in accordance with subparagraph(d) (2) of this clause, and SUBCONTRACTOR desires to pursue further action, SUBCONTRACTOR must submit to the Board a written demand for arbitration of the claim within 45 days after receipt of the Subcontract Administrator's decision, or within 45 days after the Subcontract Administrator notifies SUBCONTRACTOR that its request for mediation has been denied or that the mediation undertaken pursuant to paragraph (e) has been unsuccessful, whichever is later.

(g) Arbitration Procedures/Costs. The Board shall arbitrate the claim and any counterclaims in accordance with the Rules of the Board. All claims for \$100,000 or less shall be arbitrated under the Board's Small Claims

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(Expedited) Procedure. All other claims, regardless of dollar amount, shall be arbitrated under the Board's Accelerated Procedure. Both Parties shall be afforded an opportunity to be heard and to present evidence in accordance with the Rules of the Board. Unless the Board orders otherwise, each Party shall pay its own costs of prosecuting or defending an arbitration before the Board, and the costs of the arbitration services shall be divided evenly between the Parties.

- (h) Unavailability of the Board. In the event the Board is unavailable to arbitrate the claim, the Subcontractor may file a demand for arbitration with the Subcontract Administrator within 45 days of learning that the Board is unavailable. The Parties shall then select an arbitrator by mutual agreement. At a minimum, the arbitrator shall have extensive experience and expertise in Federal Government contracts law. Each Party shall pay its own costs of prosecuting or defending the arbitration, and the costs of the arbitration services shall be divided evenly between the Parties.
- (i) Review and Effect of Arbitration Decision. An arbitration decision shall be final and conclusive unless a party files a timely action to vacate, modify, or correct the decision pursuant to the Federal Arbitration Act. A final arbitration decision shall be binding and may be enforced in any court of competent jurisdiction in the State of Nevada or by any other means available under federal or state law.
- (j) Subcontractor Performance Pending Claim Resolution. SUBCONTRACTOR shall proceed diligently with performance of the Subcontract and shall comply with any decision of the Subcontract Administrator pending final resolution of any claim or dispute arising under, or relating to, the Subcontract.
- (k) Choice of Law. The Subcontract shall be governed by federal law, excluding conflicts of laws rules, as provided in this paragraph. Irrespective of the place of award, execution, or performance, the Subcontract shall be construed and interpreted, and its validity determined, according to the federal common law of government contracts as enunciated and applied to prime government contracts by the federal boards of contract appeals and federal courts having appellate jurisdiction over their decisions rendered pursuant to the Contract Disputes Act of 1978. The Federal Arbitration Act, other federal statutes, and federal rules shall govern as applicable. To the extent that federal common law of government contracts is not dispositive, the laws of the State of Nevada shall apply.
- (l) Interest. Interest on amounts adjudicated due and unpaid by a party shall be paid from the date the complaining party files a demand for arbitration with the Board. Interest on claims shall be paid at the rate established by the Secretary of the Treasury of the United States pursuant to Public Law 92-41 (85 Stat. 97).

C-12 WAIVER OF LIENS

- (a) SUBCONTRACTOR shall promptly pay all undisputed claims of persons, companies, vendors, and all lower-tier subcontractors furnishing labor, equipment or materials used in performance of this Subcontract. CONTRACTOR may require SUBCONTRACTOR to submit satisfactory evidence of payment and releases of all such claims. If there is any evidence of any such unpaid claim, CONTRACTOR may withhold any payment until SUBCONTRACTOR has furnished such evidence of payment and release and shall indemnify and defend CONTRACTOR against any liability or loss arising from any such claim.
- (b) SUBCONTRACTOR acknowledges that the Work to be performed under this Subcontract is federally funded. Accordingly, any construction, equipment, real or personal property, materials or other products or services furnished under this Subcontract are not subject to liens or other encumbrances. Nevertheless, for the avoidance of doubt, in order to assure the CONTRACTOR and Government of the prompt and unrestricted use of the property for which the supplies or services are provided under this Subcontract, SUBCONTRACTOR hereby waives, and releases CONTRACTOR and the Government, from any and all liens which it might otherwise assert in the resolution of disputes arising out of the performance of this Subcontract. This waiver is not intended to be, nor will it be construed to be, a limitation of any of SUBCONTRACTOR'S other rights under this Subcontract or its other legal remedies. SUBCONTRACTOR further agrees to incorporate the substance of this clause into all lower-tier subcontracts.

C-13 INSURANCE, TAXES, AND CONTRIBUTIONS

- (a) SUBCONTRACTOR shall pay all taxes, levies, duties and assessments of every nature due in connection with the Work under this Subcontract and shall make any and all payroll deductions required by law and hereby

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indemnifies and holds harmless CONTRACTOR and Government from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

- (b) SUBCONTRACTOR shall comply with the terms and conditions of the Nevada Industrial Insurance Act, Nevada Occupational Diseases Act and the Industrial Safety Act, or other applicable workers' compensation law, and shall furnish the CONTRACTOR with a Certificate of Coverage issued by the Employer's Insurance Company of Nevada or other worker's comp insurer authorized by the State of Nevada, or in compliance with the workers' compensation laws applicable in the state(s) in which the Work is being performed, or, if SUBCONTRACTOR is self-insured, shall furnish certification of same. If, for any reason, the SUBCONTRACTOR does not qualify for, or for any reason does not carry insurance under these Acts, the SUBCONTRACTOR herewith agrees to save and hold harmless and indemnify the Government and the CONTRACTOR from all liabilities resulting from any injury of an occupational nature as described in these Acts and Rulings of the Employer's Insurance Company of Nevada or other authorized worker's or comp insurer of Nevada, or in compliance with workers' compensation laws applicable in the state in which the Work is being performed.
- (c) SUBCONTRACTOR agrees to, and does hereby accept, full and exclusive liability for the payment of any and all contributions for taxes for Unemployment Insurance and/or Old Age Retirement Benefits, pensions or annuities, now or hereafter imposed by the Government of the United States, and/or by the Government of any state or territory of the United States which are measured by the wages, salaries or other remunerations paid to persons employed by the SUBCONTRACTOR for Work performed under the terms of this Subcontract.

C-14 OPERATIONS, DISMANTLED EQUIPMENT AND MATERIAL, UTILITIES, AND STORAGE AREAS

- (a) Operations. The SUBCONTRACTOR shall confine all operations (including storage of materials) on CONTRACTOR-controlled or Government-controlled premises to areas authorized or approved by the STR. The SUBCONTRACTOR shall hold and save CONTRACTOR and the government, their officers and agents, free and harmless from liability of any nature occasioned by the SUBCONTRACTOR'S performance.
- (b) Storage Areas. Temporary buildings (e.g., storage sheds, shops, offices, sanitation facilities) and utilities may be erected by the SUBCONTRACTOR only with the approval of the STR and shall be built with labor and material furnished by the SUBCONTRACTOR without expense to CONTRACTOR. The temporary buildings and utilities shall remain the property of the SUBCONTRACTOR and shall be removed by the SUBCONTRACTOR at its expense upon completion of the work. With the written consent of the STR, the buildings and utilities may be abandoned and need not be removed.
- (c) Utilities. The SUBCONTRACTOR shall provide all necessary utilities at the work site unless use of existing utilities at the work site is approved in advance by the STR.
- (d) Dismantled Equipment and Material. Dismantled equipment and material removed from the work site shall remain the property of the government. If the dismantled equipment and material is not reused in the performance of this subcontract, the SUBCONTRACTOR shall:
 - i. label or tag large items and package small items;
 - ii. prepare an inventory in triplicate on CONTRACTOR-furnished forms; and
 - iii. deliver the dismantled equipment and material to a location designated by the STR.
- (e) Clean Up. The SUBCONTRACTOR shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the SUBCONTRACTOR shall remove from the work area and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the CONTRACTOR or the government. If the subcontract requires the modification of areas within buildings or the movement or relocation of furniture or equipment, the SUBCONTRACTOR shall vacuum and/or sweep and wet mop the area before moving in furniture or equipment and after the move is complete. Upon completing the work, the SUBCONTRACTOR shall leave the work area in a clean, neat, and orderly condition satisfactory to the Subcontract Administrator or the STR.

C-15 EXCUSABLE DELAYS

- (a) Except for defaults of lower-tier subcontractors, a Party shall not be in default because of any failure to perform this Subcontract under its terms if the failure arises from causes beyond the control and without

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the fault or negligence of the Party and only if the Party provides notice to the other Party of the failure and the conditions causing the failure within a reasonable amount of time. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Party. "Default" includes failure to make progress in the work so as to endanger performance.

- (b) If the failure to perform is caused by the failure of a lower-tier subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the SUBCONTRACTOR and the lower-tier subcontractor, and without the fault or negligence of either, the SUBCONTRACTOR shall not be deemed to be in default unless the subcontracted supplies or services were obtainable from other sources at fair market value.
- (c) To the extent that paragraph (a) applies as determined by the Subcontract Administrator, the Parties shall agree upon a reasonable revision to the delivery or performance schedule, subject to the rights of the CONTRACTOR under the termination for convenience provisions of this SUBCONTRACT.

C-16 LABOR, PERSONNEL, AND WORK RULES

- (a) SUBCONTRACTOR shall employ only competent and skilled personnel to perform the Work under this Subcontract. SUBCONTRACTOR shall, at CONTRACTOR'S or Government's request, remove from the Work any SUBCONTRACTOR personnel who are: (1) unable to obtain a necessary security clearance (or whose security clearance is denied, suspended, terminated, or revoked), or (2) acting in violation of any provision of this Subcontract, including, but not limited to Site Work, safety or security rules, or (3) at CONTRACTOR'S sole discretion, determined to be inimical (obstruct or harm) to the Work or the interests of CONTRACTOR, the Government, or other customers. In the event an employee is so removed, SUBCONTRACTOR shall promptly replace such individual with another who is fully competent and skilled to perform the Work.
- (b) For Work performed on CONTRACTOR or Government premises (including leased facilities), SUBCONTRACTOR shall observe CONTRACTOR'S or Government's procedures, regulations and Work rules to include, but not limited to, established Site working hours and security requirements.
- (c) SUBCONTRACTOR shall, to the extent permissible under applicable law, comply with the provisions of any applicable labor agreement(s), e.g., collective bargaining agreement(s), etc. which apply to the Work under this Subcontract. SUBCONTRACTOR will pay rates of wages and fringe benefits and shall observe hours of Work and other economic terms and conditions of employment required by applicable labor agreements, Federal, State, or Local laws and regulations and by this SUBCONTRACT.
- (d) All jurisdictional disputes arising during the course of the Work between unions shall be settled in accordance with the procedural rules and regulations found in the respective collective bargaining agreements. The SUBCONTRACTOR shall insert this clause in any lower-tier subcontracts.

C-17 INFORMATION, DATA, AND SITE CONDITIONS

- (a) Government and CONTRACTOR-owned information or data has been provided or may be provided to the SUBCONTRACTOR as specified elsewhere in this Subcontract. CONTRACTOR makes no representations or warranties as to the accuracy or usefulness of such information or data. It is the SUBCONTRACTOR'S responsibility to verify the accuracy of such information and to obtain all information or data required for performance of SUBCONTRACTOR'S Work. Any time or expenses incurred by SUBCONTRACTOR'S employees in obtaining all such data or information shall be the SUBCONTRACTOR'S responsibility and shall not be charged to this SUBCONTRACT.
- (b) The SUBCONTRACTOR acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, lower-tier subcontractors, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the

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site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The SUBCONTRACTOR also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the SUBCONTRACTOR to take the actions described and acknowledged in this paragraph will not relieve the SUBCONTRACTOR from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

- (c) The CONTRACTOR assumes no responsibility for any conclusions or interpretations made by the SUBCONTRACTOR based on the information made available by the CONTRACTOR. Nor does the CONTRACTOR assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this Subcontract.

C-18 CONFIDENTIALITY OF INFORMATION

- (a) To the extent that the Work under this Subcontract requires the SUBCONTRACTOR to be given access to confidential or proprietary business, technical, or financial information (Sensitive Information) belonging to the Government, third parties, or the CONTRACTOR, including Official Use Only (OUO) information, Unclassified Controlled Nuclear Information (UCNI), and Personally Identifiable Information (PII) (see clauses entitled "Official Use Only (OUO) Documents/Information" and Unclassified Controlled Nuclear Information (UCNI) for additional requirements), the SUBCONTRACTOR shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the CONTRACTOR in writing. All CONTRACTOR or Government data, including, without limitation, designs, processes, drawings, specifications, reports, schedules, statements of Work, financial information, OUO information, UCNI, and PII etc., as well as any data developed or generated under this Subcontract, is Sensitive Information which shall be protected from improper disclosure in accordance with this clause. The foregoing obligations, however, shall not apply to information, which, at the time of receipt by the SUBCONTRACTOR, is legally in the public domain other than through the fault or negligence of the Subcontractor.
- (b) The SUBCONTRACTOR shall obtain the written agreement, in a form satisfactory to the CONTRACTOR, of each Subcontractor employee permitted access to Sensitive Information, whereby the employee agrees that he/she will not discuss, divulge, or disclose any such information or data to any person or entity except to authorized individuals in their official capacity to the extent necessary for the performance of the Subcontract. Subcontractor employees shall also be required to agree that they will not appropriate any such information or their own use or that of another party without the express authorization of the Subcontract Administrator.
- (c) The SUBCONTRACTOR agrees, if requested by the CONTRACTOR, to sign an agreement identical, in all material respects, to the provisions of this clause, with each entity supplying Sensitive Information to the SUBCONTRACTOR under this Subcontract, and to supply a copy of such agreement to the CONTRACTOR. From time-to-time, upon request of the CONTRACTOR, the SUBCONTRACTOR shall supply the CONTRACTOR with reports itemizing information received as confidential or proprietary and setting forth the entities from which the SUBCONTRACTOR received such information.
- (d) SUBCONTRACTOR shall obtain the written agreement of each employee permitted access to Sensitive Information, whereby the employee agrees that such information or data that the SUBCONTRACTOR is obligated to treat in confidence will not be misappropriated or discussed, divulged or disclosed except to those persons within the SUBCONTRACTOR organization directly concerned with the performance of this Subcontract or to CONTRACTOR or Government representatives. SUBCONTRACTOR agrees to obtain from each employee a confidentiality agreement acceptable to CONTRACTOR and/or the DOE/NNSA Contracting Officer and to furnish copies upon request.
- (e) SUBCONTRACTOR shall include the foregoing confidentiality requirements in all lower-tier subcontracts and purchase orders.

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C-19 INNOVATIONS; WORK-MADE-FOR-HIRE; REPORTING; ASSIGNMENT

- (a) Subcontractor hereby acknowledges:
- (1) All Work performed under this Subcontract is specifically ordered or commissioned by CONTRACTOR;
 - (2) The Work constitutes and shall constitute a work-made-for-hire as defined in the U.S. Copyright Act of 1976; and
 - (3) CONTRACTOR is and shall be the author of said work-made-for-hire and the owner of all rights in and to the Work to the extent provided in the applicable Intellectual Property clauses of this Subcontract.
- (b) SUBCONTRACTOR agrees to require SUBCONTRACTOR Personnel to agree in writing to disclose to SUBCONTRACTOR management all innovations and/or work-made-for-hire, whether or not patentable, copyrightable or registrable, including but not limited to products, processes, methods, systems, designs, techniques, mask works, computer programs, facilities, equipment, and devices that have been or may be conceived or generated by SUBCONTRACTOR Personnel solely or jointly with others during the period of performance under this Subcontract:
- (1) Which are along the lines of or relate to the business, work, or investigations of CONTRACTOR or Work to be performed under this Subcontract, or of any company with which CONTRACTOR is affiliated;
 - (2) Which result from or arise out of any Work SUBCONTRACTOR Personnel may do under this Subcontract;
 - (3) Which result from or arise out of any Proprietary Information that may have been disclosed or otherwise made available to SUBCONTRACTOR Personnel as a result of duties assigned to them under this SUBCONTRACT; or
 - (4) Which are otherwise made through the use of official time in performing services under this Subcontract via use of CONTRACTOR or Government facilities, materials, equipment, property, or funding.
- (c) SUBCONTRACTOR'S obligations to report such innovations to CONTRACTOR, and the ownership and use rights for such innovations, are governed by the applicable intellectual property clauses of this Subcontract, including but not limited to applicable FAR and DEAR clauses incorporated by reference in this Exhibit C or elsewhere in this Subcontract. To the extent that the applicable intellectual property clauses of this Subcontract require that ownership of such innovations be assigned to the Government and/or to the CONTRACTOR, the SUBCONTRACTOR agrees to require SUBCONTRACTOR Personnel to execute appropriate assignments to CONTRACTOR and /or to the Government or their assigns, nominees, or successors and to provide copies of such written assignments to CONTRACTOR.
- (d) SUBCONTRACTOR shall include the foregoing requirements in all lower-tier subcontracts except for purchases of commercial-off-the-shelf supplies, materials, or equipment.

C-20 PUBLICITY AND ADVERTISING

- (a) SUBCONTRACTOR shall not make any announcement, take any photographs, or release any information concerning this Subcontract, or the CONTRACTOR'S Prime Contract, or the Government's or CONTRACTOR'S operations, or any part thereof, to any member of the public, press, business entity, or any official body unless prior written consent is obtained from the Subcontract Administrator, or unless ordered to do so by a court of competent jurisdiction.
- (b) SUBCONTRACTOR shall not allow any publication or public presentation or disclosure of information developed, or Government/CONTRACTOR-owned information received, pursuant to this Subcontract or as a result of the work performed under this Subcontract (including without limitation reports, journal articles, thesis or dissertations, conference presentations and the like) without prior written authorization of the Subcontract Administrator and approval by the Government. SUBCONTRACTOR should allow at least 45 days for the clearance process, or a longer time if Classified, Controlled Nuclear, or other sensitive or controlled unclassified information is involved.

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C-21 CHANGES

The Subcontract Administrator may at any time, and without notice to the sureties, if any, by written revision, direct additions, deletions or changes, including acceleration or deceleration, to all or any part of the Work, including the specifications, drawings, designs, method or manner of performance, and Government-furnished property or services, and SUBCONTRACTOR agrees to perform such Work as changed. If any such change causes an increase or decrease in SUBCONTRACTOR'S cost of, or the time required for the performance of any part of the Work, SUBCONTRACTOR may request that the Subcontract Administrator make an equitable adjustment to the price, the delivery schedule, or both, and the Subcontract shall be modified to the extent of the actual impact of the change on price and/or schedule. Nothing in this SUBCONTRACT shall excuse SUBCONTRACTOR from proceeding with the Subcontract as changed, whether or not an equitable adjustment has been made. The SUBCONTRACTOR must assert its claim for an equitable adjustment under this clause within 20 days of receipt of the change notice and failure to do so will constitute a waiver of any such claim for equitable adjustment under this Subcontract. Equitable Adjustments shall be made based only on the actual or estimated cost and or/schedule impact as demonstrated by adequate supporting documentation provided by the SUBCONTRACTOR. This clause applies to the Subcontract as well as to all task orders, delivery orders, work releases, task assignments, purchase order releases, and all other similar tasking documents which may be issued under this Subcontract (if any). Only the Subcontract Administrator has the authority to change or modify the Subcontract on behalf of the CONTRACTOR.

C-22 INTEREST AND OTHER FINANCIAL COSTS

Under no circumstances shall SUBCONTRACTOR be entitled to recover prejudgment interest or interest and other financial costs as defined in Federal Acquisition Regulation (FAR) Part 31.205-20 on any claims for extra costs except to the extent CONTRACTOR is reimbursed for or recovers such costs under its prime contract with the Government.

C-23 OWNERSHIP AND DISPOSITION OF RECORDS

Government-owned records. Except as provided elsewhere in this Subcontract, all records, data, documents, reports, drawings, maps, recordings, or other information, whether in electronic form or hard copy and regardless of form or format, acquired or generated by the SUBCONTRACTOR in its performance of this Subcontract shall be the property of the CONTRACTOR and/or the Government and shall be delivered to the CONTRACTOR and/or the Government as directed by the Subcontract Administrator, or otherwise disposed of by the Subcontractor either as the Subcontract Administrator may from time-to-time direct during the progress of the Work or, in any event, as the Subcontract Administrator shall direct upon completion or termination of the Subcontract. Except as may otherwise be provided elsewhere in this Subcontract. The CONTRACTOR and the Government shall have the right to use all or any part of said data or information for any purpose whatsoever consistent with applicable laws and regulations.

C-24 EXAMINATION OF SUBCONTRACTOR'S RECORDS

SUBCONTRACTOR shall maintain books and accounts of SUBCONTRACTOR'S charges under this Subcontract in accordance with generally accepted accounting principles and practices. For the duration of the Subcontract and for a period of three years thereafter CONTRACTOR, Government or their representatives shall have the right to examine during SUBCONTRACTOR'S normal business hours these books and accounts and any other relevant records to the extent required to verify charges, labor hours, and any reimbursable costs (excluding lump sum and established standard allowances and rates) incurred where such costs are the basis of compensation to SUBCONTRACTOR hereunder or for evaluating the reasonableness of proposed Subcontract price adjustments and claims.

C-25 MATERIAL, WORKMANSHIP, AND SPECIFICATIONS FOR CONSTRUCTION WORK

- (a) All equipment, material, and articles incorporated into the Work covered by this Subcontract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Subcontract. All equipment, material, articles or patented processes identified by trade name, make, catalog number in the SOW, specifications, drawings, or elsewhere in this Subcontract shall be delivered and/or incorporated into the Work

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exactly as provided unless the Subcontract Administrator or STR approves substitutes which are of like or better quality. The SUBCONTRACTOR shall obtain the CONTRACTOR'S approval for all equipment, material, or articles to be incorporated into the Work as provided in this Subcontract (including any specific submittal requirements), or as otherwise directed by the Subcontract Administrator or STR. When requesting approval, the SUBCONTRACTOR shall provide full information concerning the material or articles as required by the Subcontract Administrator or STR. When directed to do so, the SUBCONTRACTOR shall submit samples for approval at the SUBCONTRACTOR's expense, with all shipping charges prepaid. Equipment, material, and articles that do not comply with the Subcontract requirements or which do not have the required approval shall be installed or used at the risk of subsequent rejection at SUBCONTRACTOR'S expense.

- (b) In addition to any information required by paragraph (a), SUBCONTRACTOR shall submit shop drawings if required elsewhere in this Subcontract or as directed by the STR. "Shop drawings" means drawings submitted to the CONTRACTOR by the SUBCONTRACTOR or any lower tier subcontractor showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (*i.e.*, fit and attachment details) of materials or equipment. Shop drawings include drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and any similar materials furnished by the SUBCONTRACTOR to explain, in detail, specific portions of the Work required by the Subcontract. The CONTRACTOR and/or the Government may duplicate, use, and/or disclose in any manner and for any purpose shop drawings delivered under this Subcontract. The STR will indicate approval or disapproval of the shop drawings and, if not approved as submitted, shall indicate the reasons therefor. Any Work done before such approval shall be at the SUBCONTRACTOR'S risk. If shop drawings show variations from the Subcontract requirements, the SUBCONTRACTOR shall describe such variations in writing, separate from the drawings, at the time of submission. If the Subcontract Administrator approves any such variation, the Subcontract Administrator shall issue an appropriate Subcontract modification; However, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued. Approval by the Subcontract Administrator shall not relieve the SUBCONTRACTOR from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Subcontract, except with respect to variations described and approved by the Subcontract Administrator in accordance with this paragraph.
- (c) Anything identified in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the STR, who shall make a determination in writing. Any adjustment by the SUBCONTRACTOR without such a determination shall be at the SUBCONTRACTOR'S own risk and expense. The STR may furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

C-26 WARRANTY

- (a) Notwithstanding inspection and acceptance by the CONTRACTOR or payment made for any supplies or services (including construction) received by the Contractor, and notwithstanding any contrary provision in this Subcontract concerning the conclusiveness of inspection, acceptance, or payment, the SUBCONTRACTOR warrants that all services performed, or supplies delivered, under this Subcontract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Subcontract, including any orders placed hereunder. The CONTRACTOR may at any time, either prior to or after inspection, acceptance, or payment, give written notice of any defect or nonconformance to the SUBCONTRACTOR. This notice shall state either: (1) that the SUBCONTRACTOR shall correct or re-perform any defective or nonconforming services or construction; or (2) repair or replace defective supplies; or (3) that the CONTRACTOR does not require correction or re-performance.
- (b) If the SUBCONTRACTOR is required to correct, re-perform, repair, or replace services or supplies, it shall be at no cost to the CONTRACTOR, and any services corrected or re-performed, or supplies repaired or replaced, by the SUBCONTRACTOR shall be subject to this clause to the same extent as the Work initially performed. If the SUBCONTRACTOR fails or refuses to correct, re-perform, repair, or replace the defective supplies or services,

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the CONTRACTOR may, by subcontract or otherwise, correct, re-perform, repair, or replace the defective services or supplies directly or via another vendor/subcontractor and charge to the SUBCONTRACTOR the cost occasioned to the CONTRACTOR thereby, offset any amounts due to the SUBCONTRACTOR, or make an equitable adjustment to the Subcontract price. If the Subcontract Administrator chooses to accept (in writing) a non-conforming supply or service and does not require correction or re-performance, the Subcontract Administrator may make an equitable adjustment appropriately reducing the Subcontract price, or amounts paid under this Subcontract to compensate CONTRACTOR for the non-conformance. IF SUBCONTRACTOR disagrees with the equitable adjustment, the disagreement shall be considered a dispute which shall be resolved in accordance with the Disputes Clause of this Subcontract. The CONTRACTOR also retains the right to seek any other damages or remedies of whatsoever nature from the SUBCONTRACTOR relating to or arising from the failure of any supplies or services to conform to the requirements of this Subcontract, and any orders hereunder, including consequential damages.

- (c) With respect to all warranties, express or implied, from lower-tier subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the SUBCONTRACTOR shall-
 - a. Obtain all warranties that would be given in normal commercial practice;
 - b. Require all warranties to be executed, in writing, for the benefit of the CONTRACTOR and the Government; and
 - c. Enforce all warranties for the benefit of the CONTRACTOR and Government, if directed by the Subcontract Administrator.
- (d) Only the Subcontract Administrator has the authority to accept non-conforming services or supplies or to waive any requirements of this Subcontract on behalf of the CONTRACTOR. Purported acceptance of nonconforming services or supplies or waiver of any requirement of this Subcontract by anyone other than the Subcontract Administrator is not enforceable against the Contractor.
- (e) The rights of the CONTRACTOR provided in this clause apply in addition to those specified in any other warranty provisions elsewhere in this Subcontract (if any).

C-27 **INDEMNITY**

- (a) In addition to any and all other indemnities provided in this Subcontract, SUBCONTRACTOR shall defend, indemnify, save and hold harmless, CONTRACTOR, its customers, and the U.S. Government, and their officers, servants, employees, representatives, affiliates, subsidiaries, owners, attorneys, agents, associates, successors, and assigns, past, present and future (each an "Indemnitee" and collectively, the "Indemnitees"), from and against any and all claims, liability, losses, third party claims, damages, costs, or expenses (including attorneys' and experts' fees) of whatsoever nature, including consequential damages, reasonable attorneys' fees, awards, fines, penalties, judgments and settlements, arising by reason of, or relating to, the following:
 - (1) The death of or bodily injury to persons (including SUBCONTRACTOR's employees), (ii) defects in designs created, supplied or acquired by SUBCONTRACTOR's, or (iii) damages or destruction of property or the loss of use thereof, occasioned wholly or in part, or alleged to have been occasioned wholly or in part, by an act or omission of SUBCONTRACTOR, its lower-tier subcontractors, agents, affiliates, consultants, or employees.
 - (2) Any assertion by an Indemnitee that any cost, price or fee included in or incurred under this Subcontract should or will be reduced as a result of, or arising out of facts attributable to, cost or pricing data furnished or required to be furnished by SUBCONTRACTOR, or a lower tier subcontractor or consultant, or prospective lower tier subcontractor or consultant, of SUBCONTRACTOR, which was not complete, accurate or current, or which was fraudulent.
 - (3) SUBCONTRACTOR's failure to comply with an applicable provision of the Cost Accounting Standards clause or the Administration of Cost Accounting Standards clause (incorporated by reference elsewhere in this Subcontract).
 - (4) SUBCONTRACTOR's violation of any applicable local, state, or Federal law, rule, regulation or order.

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- (5) Any penalty or fine incurred by or assessed against CONTRACTOR to the extent caused by SUBCONTRACTOR, its employees, agents, suppliers, affiliates, subcontractors or consultants.
 - (6) SUBCONTRACTOR's failure to provide any certification or supporting information required hereunder or under applicable laws and regulations.
 - (7) SUBCONTRACTOR's submission of any false or erroneous certification or supporting information required hereunder or under applicable laws or regulations.
 - (8) Any false claims submitted or caused to be submitted by SUBCONTRACTOR under this Subcontract, or any misrepresentation of fact or fraud by SUBCONTRACTOR under or in connection with this Subcontract.
 - (9) If this Subcontract is a cost-reimbursement subcontract or contains cost-reimbursable elements which are subject to the FAR and/or DEAR cost principles (FAR Part 31, DEAR Parts 931 and/or 970.31) (e.g., the materials portion of Time and Materials subcontracts), any costs incurred by the SUBCONTRACTOR and submitted for reimbursement under this Subcontract which are determined at any time by the Government to be unallowable.
 - (10) Any breach of warranties provided under this Subcontract or any failure to comply with any of the terms and conditions of this Subcontract.
 - (11) The inclusion of Suspect/Counterfeit Items (S/CI) in any items delivered to CONTRACTOR under this Subcontract.
 - (12) Any claims alleging that CONTRACTOR is a joint-employer of SUBCONTRACTOR Personnel, as defined in the clause of this Subcontract entitled "Independent Contractor".
 - (13) The payment of taxes, levies, duties and assessments of any nature due in connection with the Work under this Subcontract.
 - (14) Claims relating to payroll deductions, the payment of any and all contributions for taxes, Unemployment Insurance and/or Old Age Retirement Benefits, pensions or annuities, defined benefit and contribution retirement plans, Medicare contributions, workers' compensation, and other fringe benefits or payroll taxes or deductions relating to SUBCONTRACTOR Personnel as defined in the clause of this Subcontract entitled "Independent Contractor."
 - (15) Export/import compliance violations pursuant to the clause of this Subcontract entitled "Export/Import Control."
 - (16) Alleged violations of third-party intellectual property rights (other than patent infringement which is governed by paragraph (c) of this clause and other provisions of this Subcontract) occasioned by SUBCONTRACTOR'S failure to obtain the necessary rights in intellectual property used or delivered under this Subcontract.
- (b) SUBCONTRACTOR expressly agrees that it assumes the foregoing indemnity obligation without limit and without regard to the cause or causes thereof and whether or not said liability, claim, demand, loss, cost or expense arises in whole or in part from the acts or omissions (including the joint or concurrent, active or passive negligence) of the Indemnitees, but excluding the sole and exclusive negligence or willful misconduct of the Indemnitees or for defects in design furnished by such persons. This indemnification shall survive the Subcontract and be enforceable as a separate agreement. Such obligation shall not be construed to negate or abridge or otherwise reduce any other right or obligation of indemnification or contribution that would otherwise exist in favor of the Indemnitees. SUBCONTRACTOR expressly agrees that for the purpose of indemnification of the Indemnitees under this clause, SUBCONTRACTOR waives any claimed right to assert any worker's compensation immunity against the Indemnitees in suits brought by SUBCONTRACTOR's employees in which any of the Indemnitees is made a party.

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(c) Patent Infringement Indemnity:

- (1) SUBCONTRACTOR shall indemnify CONTRACTOR, its customers, and the Government and their successors, affiliates, officers, agents, and employees, users, and operators against any and all claims and in all proceedings alleging infringement of any United States or foreign patent or copyright in the manufacture or sale of any items delivered under this Subcontract, and SUBCONTRACTOR shall hold said parties harmless from any resulting liabilities and losses, provided SUBCONTRACTOR is reasonably notified in writing of such claims and proceedings, and further provided that said parties give SUBCONTRACTOR authority, information and assistance at SUBCONTRACTOR's expense for the defense of same. SUBCONTRACTOR's obligation shall not apply to items manufactured pursuant to designs developed and furnished by CONTRACTOR or to any alleged infringement arising from the use or sale of items delivered under this Subcontract in combination with items not delivered by SUBCONTRACTOR if such alleged infringement would not have occurred from the use or sale of such items solely for the purpose for which they were designed or sold to CONTRACTOR.
 - (2) When this Subcontract is performed under the authorization and consent of the United States Government to infringe United States patents, SUBCONTRACTOR's liability for infringement of such patents pursuant to such performance shall be limited to the extent of the obligation of CONTRACTOR to indemnify or hold harmless the United States Government.
- (d) The costs of enforcing this clause, including attorneys' fees and other related costs, shall be borne by the SUBCONTRACTOR. The cost of satisfying any liabilities incurred by SUBCONTRACTOR under the provisions of this clause shall not be deemed or considered "allowable costs" for purposes of this Subcontract.

C-28 **REPORTING OF ROYALTIES**

If this Subcontract exceeds \$25,000 and if any royalty payments are directly involved in the Work or are reflected in the price to the CONTRACTOR, the SUBCONTRACTOR agrees to report in writing to the CONTRACTOR, during the performance of this Subcontract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this Subcontract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of the CONTRACTOR or the Government of any individual payments or royalties shall not stop the CONTRACTOR or Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payment is made.

C-29 **ASSIGNMENT BY SUBCONTRACTOR (MONIES AND PERFORMANCE)**

- (a) Any assignment of this Subcontract or rights hereunder, in whole or part, without the prior written consent of CONTRACTOR shall be void, except that upon ten (10) calendar days written notice to CONTRACTOR, SUBCONTRACTOR may assign monies due or to become due under this Subcontract, provided that any assignment of monies shall be subject to proper set-offs in favor of CONTRACTOR and any deductions provided for in this Subcontract. No assignment or Subcontract will be approved which would relieve SUBCONTRACTOR or its sureties, if any, of their responsibilities under this Subcontract.
- (b) SUBCONTRACTOR shall not subcontract with any third party for the performance of all or any portion of the Work without the advance written approval of the Subcontract Administrator. Lower-tier subcontracts and purchase orders must include provisions to secure all rights and remedies of CONTRACTOR and Government provided under this Subcontract, and must impose upon the lower-tier subcontractor and supplier all of the general duties and obligations required to fulfill this Subcontract.
- (c) Copies of all purchase and subcontract agreements are to be provided to CONTRACTOR upon request. Pricing may be deleted unless the compensation to be paid there under is reimbursable under this Subcontract.

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C-30 **ASSIGNMENT OF SUBCONTRACT BY CONTRACTOR**

- (a) SUBCONTRACTOR agrees that the subcontract rights and duties of the CONTRACTOR may be freely assigned to the Government or a successor Management and Operating CONTRACTOR to the DOE/NNSA (or successor agency) for the management and operation of the Nevada National Security Site (NNSS).
- (b) SUBCONTRACTOR shall cooperate in the proper and orderly transition to the successor CONTRACTOR chosen to perform any uncompleted portion of this subcontract/Purchase Order.

C-31 **NEW MATERIALS**

Unless otherwise specified in the subcontract, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. This doesn't exclude the use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

C-32 **SUSPENSION**

- (a) CONTRACTOR may by written notice to SUBCONTRACTOR suspend the Work under this Subcontract in whole or in part at any time. Upon receipt of such notice, SUBCONTRACTOR shall discontinue Work to the extent specified in the notice; continue to protect and maintain the Work; and take any other steps to minimize costs associated with such suspension. Promptly after receipt of a notice of suspension, SUBCONTRACTOR shall confer with CONTRACTOR to reach agreement on what steps CONTRACTOR will take to protect the Work, retain staff on standby if appropriate, and maintain the ability to re-start. Upon receipt of a notice to resume suspended Work, SUBCONTRACTOR shall immediately resume performance to the extent specified in the notice.
- (b) To the extent the suspension causes an increase in the SUBCONTRACTOR'S costs, the SUBCONTRACTOR may request an equitable adjustment. As full compensation for such suspension, the equitable adjustment will provide for the reimbursement of only the following costs, to the extent such costs directly result from such suspension and are consistent with SUBCONTRACTOR'S obligation to minimize such costs:
 - (1) A standby charge, to be paid during the period of suspension, sufficient to compensate SUBCONTRACTOR for keeping its personnel, and equipment committed on a standby basis, as authorized by the Subcontract Administrator, and
 - (2) All reasonable and necessary costs, demobilization, and remobilization of SUBCONTRACTOR'S personnel and equipment and the protection of that portion of the Work on which performance has been suspended.
- (c) An equitable adjustment to the schedule or completion date may also be made if requested.
- (d) The SUBCONTRACTOR must assert its claim for an equitable adjustment under this clause within 20 calendar days of the suspension and failure to do so will constitute a waiver of any such claim for equitable adjustment under this Subcontract. Equitable Adjustments shall be made based only on the actual or estimated cost and or/schedule impact as demonstrated by adequate supporting documentation provided by the SUBCONTRACTOR. This clause applies to the Subcontract as well as to all task orders, delivery orders, work releases, task assignments, purchase order releases, and all other similar tasking documents which may be issued under this Subcontract (if any). Only the Subcontract Administrator has the authority to agree to an equitable adjustment.

C-33 **NON-WAIVER**

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

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nor shall any termination of Work under this Subcontract by CONTRACTOR operate as a waiver of any of the terms hereof.

C-34 HOLD HARMLESS AND INSURANCE

- (a) This Subcontract is written with the full understanding that the SUBCONTRACTOR holds harmless the CONTRACTOR, and the Government against any accident or injury, while working at any of the NNSA facilities.

In addition to any other insurance requirements specified elsewhere in this Subcontract, the SUBCONTRACTOR shall maintain all insurance which is required by federal or state laws or regulations in the state(s) where the SUBCONTRACTOR will perform this Subcontract

C-35 PROPERTY RIGHTS

The CONTRACTOR shall make payments under this Subcontract from Federal funds advanced by the Government, and not from its own assets. Accordingly, all property rights and interests resulting from this subcontract shall pass directly from SUBCONTRACTOR to the Government.

C-36 SUSPECT/COUNTERFEIT ITEMS OR COMPONENTS

Suspect/counterfeit item(s), fraudulent services, and fraudulent misrepresentations of goods or services are of serious concern to CONTRACTOR because they not only threaten personal safety, equipment, and system reliability, but also may inhibit compliance with regulatory standards and could result in security implications at DOE facilities. Therefore, delivery of Suspect/counterfeit items shall not be acceptable or tolerated under this Subcontract.

(a) Definitions

Suspect Item(s). An item is suspect when inspection or testing indicates that it may not conform to established Government or industry-accepted specifications or standards or the standards or specifications described in this Subcontract; and/or the item's documentation, appearance, performance, material, or other characteristics may have been misrepresented by the vendor, supplier, distributor, or manufacturer.

Counterfeit Item(s). A counterfeit item is one that has been copied, substituted, or appended without legal right or authority or whose material, performance, or characteristics have been misrepresented as to be authentic or unmodified from the original manufacture or not fully disclosed by the vendor, supplier, distributor, or manufacturer.

Suspect/Counterfeit Items (S/CI) include but are not limited to: (i) items that are intentionally manufactured, refurbished, appended, or altered to imitate original products without authorization in order to be passed off as genuine or authentic; (ii) unlawful or unauthorized substitution or addition of component parts; (iii) false identification of grade, lot number, serial number, or performance characteristics, (iv) fraudulent services; (v) misrepresented items and services, (vi) items that introduce unintended or unwanted features such as surveillance, transmissions, or other malicious characteristics.

(b) SUBCONTRACTOR hereby agrees to the following:

- (1) Unless specifically authorized elsewhere in this subcontract, SUBCONTRACTOR shall only furnish items/components provided by authorized distributors. Any item/components shall meet all OEM specifications and industry standards.
- (2) SUBCONTRACTOR expressly warrants that all items, services, or software provided under this Subcontract are suitable for the intended or specified use, and do not include unintended or unspecified characteristics.
- (3) SUBCONTRACTOR warrants and shall ensure that counterfeit items, including component parts, and/or materials will not be furnished or delivered to CONTRACTOR.
- (4) SUBCONTRACTOR warrants authorized and lawful use of any labels, trademarks, or logos designed for/affixed to items supplied or delivered to CONTRACTOR.

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- (5) SUBCONTRACTOR warrants that all items, goods, or services provided to CONTRACTOR are verifiably compliant with applicable quality, and/or safety and manufacturing standards including, but not limited to U.S. Government or industry-accepted specifications, national consensus standards and the specifications and applicable requirements of this Subcontract.
- (6) SUBCONTRACTOR shall use counterfeit prevention and/or quality assurance procedures that include a S/CI detection program.
 - a. SUBCONTRACTOR shall immediately notify CONTRACTOR if SUBCONTRACTOR suspects or becomes aware of used or counterfeit goods furnished to CONTRACTOR. SUBCONTRACTOR shall disclose the source of the S/CI to CONTRACTOR and shall provide documentation authenticating traceability of affected item(s). SUBCONTRACTOR shall immediately notify CONTRACTOR by contacting the Subcontract Administrator and the STR.
- (7) Suspect/counterfeit items furnished under this Subcontract will be impounded by CONTRACTOR. SUBCONTRACTOR may be required to replace such items, at no cost to CONTRACTOR, with items acceptable to CONTRACTOR. SUBCONTRACTOR shall be liable for all costs relating to discovery, removal, impoundment, and replacement of materials and equipment that exhibit suspect or counterfeit item characteristics or conditions at no cost to CONTRACTOR.
- (8) Subcontractor shall indemnify CONTRACTOR in accordance with the Indemnity Clause of this Subcontract for any financial loss, injury, death, or property damage resulting directly or indirectly from any and all suspect or counterfeit services, goods, software, materials, components, or parts furnished under this Subcontract.
- (c) Detection of suspect counterfeit item(s), services, or software, evidence of misrepresentation of goods or services, or any fraudulent misrepresentations may result in reporting and/or investigation by the Department of Energy and the Office of the Inspector General.
- (d) Additional detailed information is available at the DOE webpage and in the DOE Suspect/Counterfeit Items Resource Handbook.

The requirements of this clause shall be flowed down to all lower-tier subcontractors.

C-37 BANKRUPTCY

In the event SUBCONTRACTOR enters into proceedings relating to bankruptcy, whether voluntary or involuntary, SUBCONTRACTOR agrees to furnish CONTRACTOR written notification of the bankruptcy within five (5) days of the proceedings.

C-38 REPORTING FRAUD, WASTE, ABUSE OR OTHER CONCERNS; COOPERATION WITH INVESTIGATIONS

SUBCONTRACTOR agrees to comply with, and to require its employees to comply with, the "Contractor Requirements Documents (CRD)" of the following Department of Energy (DOE) and National Nuclear Security Administration (NNSA) Directives or Policies (or their successors) relating to reporting Fraud, Waste, and Abuse and cooperating with investigations conducted by the DOE Inspector General's Office or the NNSA Internal Affairs Office:

1. DOE Order 221.1B Reporting Fraud, Waste, and Abuse to the Office of the Inspector General (available at <https://www.directives.doe.gov/directives-documents/200-series/0221-1-border-b>)
2. DOE Order 221.2A Cooperation with the Office of Inspector General (available at <https://www.directives.doe.gov/directives-documents/200-series/0221.02-BOrder-a>)
3. NNSA Policy (NAP 220.1) Internal Affairs Program (available at <https://directives.nnsa.doe.gov/nnsa-policy-documents/nap-0220-0001>)

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C-39 STOP WORK IN EVENT OF IMMINENT DANGER

For work performed at any of the NNSS sites, SUBCONTRACTOR shall immediately cease any activity that is imminently dangerous to the life or health of the workers, the public, or the environment. In the event of imminent danger, any SUBCONTRACTOR employee shall be authorized and empowered to instruct the SUBCONTRACTOR, the CONTRACTOR, or other parties to stop work. In the event that a stop-work order is issued pursuant to this clause, CONTRACTOR shall be notified immediately in order for CONTRACTOR to comply with its obligations to report the stop-work order to the Federal Contracting Officer in accordance with CONTRACTOR'S Prime Contract. Employees of SUBCONTRACTOR shall be apprised of their right to stop work pursuant to this clause.

C-40 PATENT RIGHTS FOR EXCEPTIONAL CIRCUMSTANCES SUBJECT INVENTIONS

- (a) Except as provided in paragraphs (b) and (c) of this clause for Exceptional Circumstances Subject Inventions, Patent rights are governed by the Government flow-down (FAR/DEAR) clauses specified elsewhere in Exhibit C.
- (b) Exceptional Circumstance Subject Inventions. The Subcontractor does not have the right to retain title to any Exceptional Circumstance Subject Inventions (as identified below) and agrees to assign to the Government the entire right, title, and interest, throughout the world, in and to any Exceptional Circumstance Subject Inventions conceived or first actually reduced to practice in the course of or under this Subcontract.
 - (i) Inventions within or relating to the following fields of technology are Exceptional Circumstance Subject Inventions:
 - (A) uranium enrichment technology;
 - (B) storage and disposal of civilian high-level nuclear waste and spent fuel technology; and
 - (C) national security technologies classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168).
 - (ii) Inventions made under any agreement, contract or subcontract related to the following initiatives or programs are exceptional circumstance subject inventions:
 - (A) DOE Steel Initiative and Metals Initiative;
 - (B) U.S. Advanced Battery Consortium;
 - (C) any funding agreement which is funded in part by the Electric Power Research Institute (EPRI) or the Gas Research Institute (GRI);
 - (D) Solid State Energy Conversion Alliance (SECA) if the Contractor is a participant in the "Core Technology Program"; and
 - (E) Solid State Lighting Program (SSLP) if the Contractor is a participant in the "Core Technology Program."
- (c) DOE/NSA reserves the right to unilaterally amend the list of Exceptional Circumstances Subject Inventions at any time. Accordingly, SUBCONTRACTOR agrees that CONTRACTOR may unilaterally modify this Subcontract, by deletion or insertion, technical fields, programs, initiatives, and/or other classifications for the purpose of complying with DOE/NSA changes to the list of Exceptional Circumstance Subject Inventions.

C-41 DIRECT LIABILITY TO THE GOVERNMENT FOR SUBCONTRACTOR CAS COMPLIANCE FAILURE

SUBCONTRACTOR agrees that it is directly liable to the Government for increased costs or interest resulting from SUBCONTRACTOR'S failure to comply with FAR Clauses 52.230-2, 52.230-3, and 52.230-6 (incorporated by reference in the Government Flow downs Section herein), and SUBCONTRACTOR agrees to indemnify, defend, and hold harmless CONTRACTOR for any increased costs, interest, or other liabilities of whatsoever nature relating

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to, or arising from, SUBCONTRACTOR'S failure to comply with said FAR clauses in accordance with the Indemnity Clause of this Subcontract. Additionally, the CONTRACTOR shall be entitled to a price adjustment to the Subcontract to the extent necessary to compensate the CONTRACTOR and/or the Government for any resulting overpayments and interest.

C-42 FINAL PAYMENT AND RELEASE OF CLAIMS

The SUBCONTRACTOR, and each assignee under an assignment entered into under this Subcontract and in effect at the time of final payment under this Subcontract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Subcontract, a release on a form provided by the Subcontract Administrator discharging and releasing the CONTRACTOR, its customers, the Government, and their officers, agents, employees, successors, and affiliates of and from all liabilities, obligations, and claims arising out of or under this Subcontract, except specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the SUBCONTRACTOR. A release of claims shall also be provided for any final payment to be made under a task or delivery order, or similar ordering document issued under this Subcontract (if applicable). Additionally, the SUBCONTRACTOR shall include the substance of this clause in each lower-tier subcontract and shall provide to the Subcontract Administrator copies of the release of claims, using the form provided by the Subcontract Administrator, executed by each lower-tier subcontractor hereunder as a condition precedent to final payment under this Subcontract.

C-43 OVERPAYMENTS

- (a) SUBCONTRACTOR hereby acknowledges and agrees that any amounts paid to SUBCONTRACTOR in excess of amounts actually due to SUBCONTRACTOR in accordance with the terms and conditions of this Subcontract constitute an overpayment and a debt to the CONTRACTOR and/or to the Government. SUBCONTRACTOR agrees to repay CONTRACTOR or the Government, as directed by the Subcontract Administrator, all such amounts promptly, but no later than thirty calendar days after discovery of the overpayment or thirty days after the CONTRACTOR issues a demand for repayment, whichever is first. Any overpayments, or portions thereof, not paid within thirty days from the date of a demand for payment issued by the CONTRACTOR or by the Government will bear interest. Interest shall be computed from the date of the demand for payment until repayment by the SUBCONTRACTOR. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as established by the Secretary until the amount is paid.
- (b) SUBCONTRACTOR hereby agrees and consents that if SUBCONTRACTOR fails to repay any overpayment within thirty calendar days of a demand for payment issued by the CONTRACTOR or by the Government, the CONTRACTOR or the Government may pursue any remedies and procedures available to the CONTRACTOR or to the Government under this Subcontract, under applicable laws or regulations, or as prescribed in FAR Subpart 32.6 to collect the debt, including offsetting the past due amount against amounts otherwise due and payable to SUBCONTRACTOR under this Subcontract or under other subcontracts or federal prime contracts.

C-44 PAYMENTS UNDER FIRM-FIXED-PRICE CONSTRUCTION SUBCONTRACTS

- (a) The price specified in Exhibit A may apply to the whole Subcontract, or separate prices may be identified for each deliverable, line item, option, or order (or line item or deliverable thereunder), as indicated in Exhibit A and/or as indicated in the order (if applicable). Unless expressly stated otherwise, the price(s) shown is firm and fixed and inclusive of all costs of whatsoever nature, such as taxes, insurance, bonds, permits, licenses, materials, equipment, labor, etc. Except to the extent expressly provided elsewhere in this Subcontract, the Firm Fixed Price(s) is not subject to adjustment for any reason whatsoever, including but not limited to fluctuations in materials costs, labor costs, taxes, insurance costs, equipment costs, etc.
- (b) Unless Exhibit D of this Subcontract expressly provides for the payment of periodic progress payments based on costs incurred, payments based on the percentage of completion, or performance-based payments such as milestone payments, SUBCONTRACTOR shall not be entitled to payment until the satisfactory completion and acceptance of all the Work to which the price(s) applies as shown in Exhibit A or in any applicable orders.

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- (c) If progress payments, performance-based payments, or payments based on the percentage of completion are authorized under this Subcontract, the relevant clauses in Exhibit D shall govern such payments.

C-45 PROHIBITION ON RESTRICTING COMPETITION

SUBCONTRACTOR hereby agrees that it shall not require SUBCONTRACTOR Personnel, as defined in the clause entitled "Independent Contractor," performing work under this Subcontract to enter into any agreement which would restrict their ability to compete with the SUBCONTRACTOR (i.e. a non-compete agreement), or which would otherwise restrict their ability to become an employee of the Government, the CONTRACTOR, its subcontractors, or customers, or their ability to provide goods or services directly to the Government, CONTRACTOR, its subcontractors, or customers.

C-46 OFFICIAL USE ONLY (OUO) DOCUMENTS/INFORMATION

If Official Use Only (OUO) documents or information (including Personally Identifiable Information (PII)) are used, accessed, or generated by SUBCONTRACTOR in performance of this Subcontract or individual task orders, such documents shall be handled and controlled according to IDENTIFYING AND PROTECTING OFFICIAL USE ONLY INFORMATION DOE ORDER 471.7 (available at <https://www.directives.doe.gov/directives-documents/400-series/0471.7-BOrder/@@images/file>). This information may be exempt from public release under the Freedom of Information Act (FOIA) and has the potential to damage governmental, commercial, or private interests if disseminated to persons who do not need to know the information to perform their jobs or other DOE-authorized activities.

C-47 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

If Unclassified Controlled Nuclear Information (UCNI) documents or information are used, accessed, or generated by SUBCONTRACTOR in performance of this subcontract or individual task orders, such documents shall be handled and controlled in accordance with IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION, DOE ORDER O 471.1B (available at: <https://www.directives.doe.gov/directives-documents/400-series/0471.1-BOrder-b/@@images/file> and 10 CFR Part 1017. In addition to any contractual remedies available to the CONTRACTOR, Failure to comply with these requirements can result in civil penalties.

C-48 SEVERABILITY

If any clause, or portion of a clause, in this Agreement is considered invalid under the rule of law, it shall be regarded as stricken while the remainder of this Agreement shall continue to be in full effect.

C-49 SUBCONTRACT MODIFICATIONS

- (a) The Subcontract Administrator may modify this subcontract in accordance with the clause entitled "Changes," or as provided elsewhere in this Subcontract, by issuing a written Change notice, which shall be followed by a formal written Subcontract Modification.
- (b) The parties may bilaterally modify this Subcontract by written agreement. Bilateral modifications must be in writing and must be signed by the Subcontract Administrator and the Authorized Representative of the SUBCONTRACTOR; verbal modifications shall be of no force or effect unless followed up by a written modification.

C-50 CERTIFIED PAYROLLS

In addition to any and all other requirements in this Subcontract relating to the Construction Wage Rate Requirements and certified payrolls, the certified payrolls shall include the following:

- 1) Individual's name, address and Social Security Number
- 2) The craft

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- 3) Worker designation (journeyman, foreman, apprentice, etc.)
- 4) Group designation
- 5) The base rate and all applicable hourly benefit rates
- 6) The hours worked by straight time and overtime (time and one-half or double-time)
- 7) NTS subsistence rate
- 8) Any additional pay rate due to *special work conditions* (hazard pay, welding premium, etc.)
- 9) Any in- and out-travel pay, if required

The SUBCONTRACTOR shall submit weekly certified payrolls to the Subcontract Administrator or designee, completely filled out and signed by the SUBCONTRACTOR and their lower-tier subcontractors. The CONTRACTOR may provide forms for certified payrolls, or the SUBCONTRACTOR may use its own forms with prior approval of the Subcontract Administrator. Failure by the SUBCONTRACTOR or their lower-tier subcontractors to submit certified payrolls will result in delays in payment to the SUBCONTRACTOR.

C-51 DIFFERING SITE CONDITIONS

- (a) The SUBCONTRACTOR shall promptly, and before the conditions are disturbed, give a written notice to the Subcontract Administrator of-
 1. Subsurface or latent physical conditions at the site which differ materially from those indicated in this Subcontract; or
 2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Subcontract.
- (b) The Subcontract Administrator shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the SUBCONTRACTOR'S cost of, or the time required for, performing any part of the work under this Subcontract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Subcontract modified in writing accordingly.
- (c) No request by the SUBCONTRACTOR for an equitable adjustment to the Subcontract under this clause shall be allowed, unless the SUBCONTRACTOR has given the written notice required; *provided*, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Subcontract Administrator at his/her sole discretion. The Subcontract Administrator is not obligated to enlarge the time for submission of the said notice.
- (d) No request by the SUBCONTRACTOR for an equitable adjustment to the Subcontract for differing site conditions shall be allowed if made after final payment under this Subcontract.

C-52 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS

Applies to all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (03/2023)

- (a)(1) In accordance with 31 U.S.C. 3903 and 10 U.S.C. 3801, within 15 days after receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.
- (2) The Contractor agrees to make such payments to its small business subcontractors without any further

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consideration from or fees charged to the subcontractor.

(b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

(c) Include the substance of this clause, including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

C-53 MITIGATING SUPPLY CHAIN RISK USING ENHANCED PROCUREMENT AUTHORITY FOR INFORMATION AND COMMUNICATION TECHNOLOGY (OCT 2022)

(a) *Definitions.* As used in this clause—

Covered article - The term "covered article" includes-

- (1) "Information technology" which means –
 - (i) any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use-
 - (A) of that equipment,
 - (B) of that equipment to a significant extent in the performance of a service or the furnishing of a product;
 - (ii) computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; however,
 - (iii) does not include any equipment acquired by a federal contractor incidental to a federal contract.
- (2) "Telecommunications Equipment", which means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).
- (3) "Telecommunications Service", which means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- (4) the processing of information on a Federal or non-Federal information system, subject to the requirements of the Controlled Unclassified Information program; or
- (5) hardware, systems, devices, software, or services that include embedded or incidental information technology.

Supply Chain Risk - The term "Supply Chain Risk" means the risk that a person

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may sabotage, maliciously introduce unwanted function, extract data, or otherwise manipulate the design, integrity, manufacturing, production, distribution, installation, operation, maintenance, disposition, or retirement of covered articles so as to surveil, deny, disrupt, or otherwise manipulate the function, use, or operation of the covered articles or information stored or transmitted on the covered articles.

- (b) The Contractor shall take all prudent actions, and comply with all Government directions (as identified in (c)), to mitigate supply chain risk when providing covered articles or services affecting covered articles to the Government.
- (c) In order to manage supply chain risk, the Government may use the authority provided by 41 U.S.C. 4713 to, among other things, withhold consent for the Contractor to subcontract with a particular source or direct the Contractor to exclude a particular source from consideration for a subcontract under the contract.
- (d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

C-54 MITIGATING SUPPLY CHAIN RISK USING ENHANCED PROCUREMENT AUTHORITY FOR NATIONAL SECURITY SYSTEMS, NUCLEAR WEAPONS COMPONENTS AND ASSOCIATED ITEM (OCT 2022)

- (a) *Definitions.* As used in this clause—
 - (1) “Covered system” means—
 - (A) National security systems (as defined at 44 U.S. Code § 3552) and components of such systems;
 - (B) Nuclear weapons and components of nuclear weapons;
 - (C) Items associated with the design, development, production, and maintenance of nuclear weapons or components of nuclear weapons;
 - (D) Items associated with the surveillance of the nuclear weapon stockpile; or
 - (E) Items associated with the design and development of nonproliferation and counterproliferation programs and systems.
 - (2) “Covered item of supply” means an item—
 - (A) that is purchased for inclusion in a covered system; and
 - (B) the loss of integrity of which could result in a supply chain risk for a covered system.
 - (3) “Supply Chain Risk” means the risk that an adversary may sabotage, maliciously introduce unwanted function, or otherwise subvert the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of a covered system or covered item of supply so as to surveil, deny, disrupt, or otherwise degrade the function, use, or operation of the system or item of supply.

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(b) The Contractor shall take all prudent actions, and comply with all Government directions (as identified in (c)), to mitigate supply chain risk when providing covered systems or covered items of supply to the Government, and services affecting covered systems or covered items of supply.

(c) In order to manage supply chain risk, the Government may use the authority provided by 50 U.S.C. 2786, to, among other things, withhold of consent for the Contractor to subcontract with a particular source or direct the Contractor to exclude a particular source from consideration for a subcontract under the contract. When the Government exercises this authority, it will only provide the Contractor with information pertaining to the basis of the action to the extent necessary to carry out the action. No action taken by the Government pursuant to 50 U.S.C. § 2786 shall be subject to review in any Federal court.

Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

C-55 GOVERNMENT FLOW DOWNS

- (a) The FAR and DEAR clauses incorporated herein shall have the same force and effect as if printed in full text (the FAR is available on the Internet at <https://www.acquisition.gov/browse/index/far>, and the DEAR is at <https://www.acquisition.gov/dears>. Wherever necessary to make the context of the FAR and DEAR clauses applicable to this Subcontract, the term "CONTRACTOR" shall mean "SUBCONTRACTOR", the term "Contract" shall mean this Subcontract, and the term "Government", "Contracting Officer" and equivalent phrases shall mean the CONTRACTOR'S Subcontract Administrator, except the terms "Government" and "Contracting Officer" do not change where the context indicates that these terms apply in subcontracts, including the following: (1) in the phrases "Government Property", "Government-Furnished Property", and "Government-Owned Property"; (2) in FAR or DEAR intellectual property clauses incorporated herein (i.e. clauses prescribed in FAR Part 27, DEAR Part 927, or DEAR Subpart 970.27); (3) when a right, act, authorization or obligation can be granted or performed only by the Government's duly authorized representative; (4) when title to property is to be transferred directly to the Government; (5) when access to proprietary financial information or other proprietary data is required except for authorized audit rights; and (6) where specifically modified herein. CONTRACTOR and its successor Management and Operating (M&O) contractors at the Nevada National Security Site (NNSS) shall have the same rights as those granted to the Government in any of the FAR or DEAR clauses incorporated herein (including the property and intellectual property clauses) to the extent necessary for CONTRACTOR and its successor M&O contractors to perform prime Contract No. DE-NA0003624, or any successor M&O contracts, at the NNSS. SUBCONTRACTOR shall flow down all required clauses to lower-tier subcontracts and purchase orders as prescribed in each clause or in the special application instructions.
- (b) CONTRACTOR may unilaterally add, delete, or update any of the required FAR or DEAR flow-down clauses if CONTRACTOR is required to do so by the Government. If such a change results in an actual cost or schedule impact to the SUBCONTRACTOR in performance of this Subcontract, the SUBCONTRACTOR may request an equitable adjustment in accordance with the clause of this Subcontract entitled "Changes."

C-56 APPLICABLE REGARDLESS OF DOLLAR AMOUNT OF THE SUBCONTRACT PRICE, UNLESS OTHERWISE NOTED

FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.202-1	Definitions (06/2020) Modified by DEAR 952.202-1)	Applies to all subcontracts except where a term is defined differently in the Subcontract or where the context clearly manifests a different meaning.
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (01/2017)	Applies in all solicitations and resultant subcontracts, other than personal services

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FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
		subcontracts with individuals.
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (12/2023)	Applies to all subcontracts, including subcontracts for the acquisition of commercial items.
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (11/2021)	Applies in all subcontracts, including subcontracts for the acquisition of commercial items.
52.204-27	Prohibition on a ByteDance Covered Application (06/2023)	Applies in all solicitations and subcontracts, including subcontracts for the acquisition of commercial products or commercial services.
52.204-30	Federal Acquisition Supply Chain Security Act Orders—Prohibition. (12/2023)	Applies in all solicitations and subcontracts, including paragraph (e) and excluding paragraph (c)(1) of this clause, including subcontracts for the acquisition of commercial products and commercial services.
52.222-4	Contract Work Hours and Safety Standards Act — Overtime Compensation (05/2018)	Applies to subcontracts that may require or involve the employment of laborers and mechanics. If applicable, only paragraphs (a) through (d) apply. Furthermore, if applicable, SUBCONTRACTOR shall flow down paragraphs (a) through (d) to all its lower-tier subcontracts that may require or involve the employment of laborers and mechanics.
52.222-50	Combating Trafficking in Persons (11/2021)	Applies in all subcontracts and in all contracts with agents (as defined in FAR 52.222-50). The requirements in paragraph (h) of this clause apply only to any portion of a subcontract that— (A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and (B) Has an estimated value that exceeds \$500,000.
52.223-2	Affirmative Procurement of Biobased Products Under Service and Construction Contracts (09/2013)	Applies in service or construction solicitations and subcontracts, unless the subcontract will involve the use of USDA-designated items at http://www.biopreferred.gov or 7 CFR part 3201.
52.223-3	Hazardous Material Identification And Material Safety Data (02/2021) and Alternate I (Jul 1995)	Applies only if subcontract involves delivery of hazardous materials as defined in FAR subpart 23.301. If applicable, the term “Government” as used in this clause means “CONTRACTOR and the Government.”
52.223-5	Pollution Prevention and Right-to-Know Information (05/2011) Alternate I (05/2011)	Applies in solicitations and subcontracts that provide for performance, in whole or in part, at the NNSS.
52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (06/2016)	Applies in solicitations and subcontracts for – (i) Refrigeration equipment (in product or service code (PSC) 4110); (ii) Air conditioning equipment (PSC 4120); (iii) Clean agent fire suppression systems/equipment (e.g., installed room flooding systems, portable fire extinguishers, aircraft/tactical vehicle fire/explosion suppression systems) (in PSC 4210); (iv) Bulk refrigerants and fire suppressants (in PSC 6830); (v) Solvents, dusters, freezing compounds, mold release agents, and any other miscellaneous

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FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
		chemical specialty that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 6850); (vi) Corrosion prevention compounds, foam sealants, aerosol mold release agents, and any other preservative or sealing compound that may contain ozone-depleting substances or high global warming potential hydrofluorocarbons (in PSC 8030); (vii) Fluorocarbon lubricants (primarily aerosols) (in PSC 9150); and (viii) Any other manufactured end products that may contain or be manufactured with ozone-depleting substances.
52.223-15	Energy Efficiency in Energy-Consuming Products (05/2020)	Applies to subcontracts when ENERGY STAR® Program or Federal Energy Management Program (FEMP) products will be delivered, acquired, furnished or specified.
52.223-17	Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts (08/2018)	Applies in service or construction subcontracts unless the subcontract will not involve the use of EPA-designated items.
52.225-9	Buy American-Construction Materials (10/2022)	Applies to subcontracts for construction that is performed in the United States valued at less than \$7,032,000.
52.225-13	Restrictions on Certain Foreign Purchases (02/2021)	Applies to all subcontracts.
52.227-4	Patent Indemnity-Construction Contracts (12/2007)	Applies in solicitations and subcontracts for construction or that are fixed-price for dismantling, demolition, or removal of improvements.
52.227-23	Rights to Proposal Data (Technical) (06/1987)	Applies if subcontract awarded is based on consideration of a technical proposal.
52.232-39	Unenforceability of Unauthorized Obligations (06/2013)	Applies to all subcontracts.
52.236-11	Use and Possession Prior to Completion (04/1984)	Applies to all subcontracts involving construction.
52.244-6	Subcontracts for Commercial Products and Commercial Services (02/2024)	Applicable to subcontracts at all tiers.
52.245-1	Government Property (09/2021)	Applies to (1) all cost reimbursement and time-and-material solicitations and subcontracts, and labor-hour solicitations when property is expected to be furnished for the labor-hour subcontract; (2) fixed-price solicitations and subcontracts when CONTRACTOR will provide Government property; and (3) subcontracts for the acquisition of commercial items where Government property that exceeds the simplified acquisition threshold is furnished or where SUBCONTRACTOR is directed to acquire property for use under the subcontract that is titled to the Government.
52.245-2	Government Property Installation Operation Services (04/2012)	Applies if work performed at the NNSS, or at other CONTRACTOR locations (as specified), when Government/CONTRACTOR-furnished property will be provided for initial provisioning only and CONTRACTOR is not responsible for repair or replacement. [If applicable, the Subcontract Administrator shall include a list of Government/CONTRACTOR-furnished property subject to this clause.]

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FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.245-9	Use and Charges (04/2012)	Applies to subcontracts when FAR 52.245-1 is included.
52.247-63	Preference for U.S.-Flag Air Carriers (06/2003)	Applies to each subcontract that may involve international air transportation.
52.247-64	Preference for Privately Owned U.S. Flag Commercial Vessels (11/2021)	Applies to all subcontracts, except those described in paragraph (e)(4) of FAR 52.247-64.
52.249-2	Termination for Convenience of the Government (Fixed-Price) (04/2012) Alternate I (09/1996)	Applies to all fixed price subcontracts for construction. Paragraph (d) is deleted; the period for submitting the subcontractor's termination settlement proposal in paragraph (e) is reduced to 6 months; and the period for submitting the subcontractor's request for equitable price adjustment in paragraph (l) is reduced to 45 days.
52.249-10	Default (Fixed-Price Construction) (04/1984)	Applies to all fixed-price subcontracts for construction.
52.252-6	Authorized Deviations in Clauses (11/2020)	Applies to all subcontracts.
970.5225-1	Compliance with Export Control Laws and Regulations (11/2015)	Applies to all subcontracts.

C-57 APPLICABLE TO SUBCONTRACTS OVER \$2,000

FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.222-6	Construction Wage Rate Requirements (08/2018)	Applies to subcontracts in excess of \$2,000 for construction within the United States.
<u>52.222-7</u>	Withholding of Funds (05/2014)	Applies subcontracts in excess of \$2,000 for construction within the United States.
<u>52.222-8</u>	Payrolls and Basic Records (07/2021)	Applies subcontracts in excess of \$2,000 for construction within the United States.
<u>52.222-9</u>	Apprentices and Trainees (07/2005)	Applies subcontracts in excess of \$2,000 for construction within the United States.
<u>52.222-10</u>	Compliance with Copeland Act Requirements (02/1988)	Applies subcontracts in excess of \$2,000 for construction within the United States.
<u>52.222-11</u>	Subcontracts (Labor Standards) (05/2014)	Applies subcontracts in excess of \$2,000 for construction within the United States.
<u>52.222-12</u>	Contract Termination–Debarment (05/2014)	Applies subcontracts in excess of \$2,000 for construction within the United States.
<u>52.222-13</u>	Compliance with Construction Wage Rate Requirements and Related Regulations (05/2014)	Applies to solicitations and subcontracts in excess of \$2,000 for construction within the United States.
<u>52.222-14</u>	Disputes Concerning Labor Standards (02/1988)	Applies to subcontracts in excess of \$2,000 for construction within the United States.
<u>52.222-15</u>	Certification of Eligibility (05/2014)	Applies to subcontracts in excess of \$2,000 for construction within the United States.
52.222-30	Construction Wage Rate Requirements – Price Adjustment (None of Separately Specified Method (08.2018)	Applies to subcontracts in excess of \$2000 for construction with an option to extend the term of the subcontract.
52.222-55	Minimum Wages for Contractor Workers Under Executive Order 14026 (01/2022)	Applies to all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

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FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.222-62	Paid Sick Leave Under Executive Order 13706 (01/2022)	Applies to all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

C-58 APPLICABLE TO SUBCONTRACTS OVER \$3,500

FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.222-54	Employment Eligibility Verification (05/2022)	Applies in each subcontract that— (1) Is for— (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or (ii) Construction; (2) Has a value of more than \$3,500; and (3) Includes work performed in the United States.

C-59 APPLICABLE TO SUBCONTRACTS OVER \$10,000

FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.222-3	Convict Labor (06/2003)	Applies in subcontracts when the subcontract will be above the micro-purchase threshold, performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands; unless— (a) The subcontract will be subject to 41 U.S.C. chapter 65, Contracts for Materials, Supplies, Articles and Equipment Exceeding \$15,000 (see subpart 22.6) which contains a separate prohibition against the employment of convict labor; (b) The supplies or services are to be purchased from Federal Prison Industries, Inc.; or (c) The subcontract involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.
52.222-21	Prohibition of Segregated Facilities (04/2015)	Applies to subcontracts containing FAR 52.222-26 Equal Opportunity.
52.222-26	Equal Opportunity (09/2016)	Applies to all subcontracts which are not exempt by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246; see FAR Subpart 22.807(b) for a list of exemptions.
52.222-27	Affirmative Action Compliance Requirements for Construction (04/2015)	Applies to construction subcontracts in excess of \$10,000 and to lower-tier subcontracts expected to exceed \$10,000.
52.222-40	Notification of Employee Rights Under the National Labor Relations Act (12/2010)	Applies to every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor

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		issued pursuant to section 3 of Executive Order 13496 of January 30, 2009.
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving (06/2020)	Applies to all subcontracts that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award.

C-60 APPLICABLE TO SUBCONTRACTS OVER \$15,000

FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.222-36	Equal Opportunity for Workers with Disabilities (06/2020)	Applies to every subcontract in excess of \$15,000 unless exempted by the rules, regulations, or orders of the Secretary of Labor.

C-61 APPLICABLE TO SUBCONTRACTS $\geq$ \$25,000

DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
970.5223-4	Workplace Substance Abuse Programs at DOE Sites (12/2010)	Applies to subcontracts with a value of \$25,000 or more, performed at DOE owned or controlled sites (including sites leased by DOE or the CONTRACTOR) and which involve: (i) Access to or handling of classified information or special nuclear materials; (ii) High risk of danger to life, the environment, public health and safety, or national security; or (iii) Transportation of hazardous materials to or from a DOE site. (iv) Employees with L or Q Clearances (v) Construction Activities

C-62 APPLICABLE TO SUBCONTRACTS OVER \$30,000

FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards (06/2020)	Applies to all subcontracts of \$30,000 or more.

C-63 APPLICABLE TO SUBCONTRACTS OVER \$35,000

FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (11/2021)	Applies in each subcontract that— (1) Exceeds the threshold specified in FAR 9.405-2(b) on the date of subcontract award; and (2) Is not a subcontract for commercially available off-the-shelf items. Further, Federal Acquisition Regulation 9.405-2(b) specifies a threshold of \$35,000.

C-64 APPLICABLE TO SUBCONTRACTS OVER \$100,000

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DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
970.5227-5	Notice and Assistance Regarding Patent and Copyright Infringement (12/2000)	Applies to all subcontracts at any tier expected to exceed \$100,000

C-65 APPLICABLE TO SUBCONTRACTS OVER \$150,000

FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.203-7	Anti-Kickback Procedures (06/2020)	Applies in all subcontracts that exceed the threshold specified in Federal Acquisition Regulation 3.502-3(i) on the date of subcontract award, excluding paragraph (c)(1). Further, Federal Acquisition Regulation 3.502-3(i) specifies the simplified acquisition threshold.
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (06/2020)	Applies in any subcontract that exceeds the threshold specified in Federal Acquisition Regulation 3.808 on the date of subcontract award. Further, Federal Acquisition Regulation 3.808 specifies a threshold of \$150,000.
52.222-35	Equal Opportunity for Veterans (06/2020)	Applies to subcontracts of \$150,000 or more unless exempted by the rules, regulations, or orders of the Secretary of Labor.
52.222-37	Employment Reports On Veterans (06/2020)	Applies to subcontracts of \$150,000 or more unless exempted by the rules, regulations, or orders of the Secretary of Labor.

C-66 APPLICABLE TO SUBCONTRACTS OVER \$250,000

FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.203-3	Gratuities (04/1984)	Applies to all subcontracts exceeding the simplified acquisition threshold.
52.203-5	Covenant Against Contingent Fees (05/2014)	Applies to all subcontracts exceeding the simplified acquisition threshold, other than those for commercial items.
52.203-6	Restrictions on Subcontractor Sales to the Government (06/2020) Alternate I (11/2021)	Applies to subcontracts exceeding the simplified acquisition threshold. Alternate I applies if the subcontract is for the acquisition of commercial items.
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (05/2014)	Applies to subcontracts for other than commercial items that exceed the simplified acquisition threshold.
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (05/2014)	Applies to subcontracts for other than commercial items that exceed the simplified acquisition threshold. If applicable, in paragraph (d) the term "Government" means "Government or CONTRACTOR."
52.203-16	Preventing Personal Conflicts of Interest (06/2020)	Applies to subcontracts— (1) That exceed the simplified acquisition threshold; and

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FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
		(2) Under which subcontractor employees will perform acquisition functions closely associated with inherently governmental functions. (i.e., instead of performance only by a self-employed individual).
52.203-17	Contractor Employee Whistleblower Rights (11/2023)	Applies to all solicitations and subcontracts over the simplified acquisition threshold
52.215-2	Audit and Records—Negotiation (06/2010)	Applies to all subcontracts that exceed the simplified acquisition threshold, and- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these; (2) For which certified cost or pricing data are required; or (3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
52.219-8	Utilization of Small Business Concerns (02/2024).)	Applies when subcontract amount is expected to exceed the simplified acquisition threshold unless a personal service contract is contemplated or the subcontract will be performed entirely outside the United States and outlying areas. Applies if subcontract offers further subcontracting opportunities and is to be performed within the United States and its outlying areas. If applicable and the subcontract exceeds \$1,500,000, SUBCONTRACTOR shall include FAR 52.219-8 in lower-tier subcontracts (except subcontracts to small business concerns) that offer subcontracting possibilities.
52.227-1	Authorization and Consent (06/2020)	Applies to all subcontracts expected to exceed the simplified acquisition threshold as defined in the Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award.
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities and Improvements (04/1984)	Applies in solicitations and subcontracts when a fixed-price construction subcontract or a fixed-price dismantling, demolition, or removal of improvements subcontract is contemplated and the subcontract amount is expected to exceed the simplified acquisition threshold.
52.246-12	Inspection of Construction (08/1996)	Applies in solicitations and subcontracts for construction when a fixed-price subcontract is contemplated and the subcontract amount is expected to exceed the simplified acquisition threshold.
52.248-3	Value-Engineering – Construction (10/2020)	Applies in Construction solicitations and subcontracts when the amount is estimated to exceed the simplified acquisition threshold, unless an incentive subcontract is contemplated. The Procurement representative may include the clause in subcontracts of lesser value if the Procurement

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FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
		Representative sees a potential for significant savings. The Procurement Representative shall not include the clause in incentive-type construction subcontracts.
970.5223-7	Sustainable Acquisition Program (10/2010)	Applies to first tier subcontracts exceeding the simplified acquisition threshold that support operation of a DOE facility and offer significant subcontracting opportunities for energy efficient or environmentally sustainable products or services.

C-67 APPLICABLE TO SUBCONTRACTS OVER \$500,000

DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
952.226-74	Displaced Employee Hiring Preference (06/1997)	Applies to subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.
970.5226-2	Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (12/2000)	Applies to subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

C-68 APPLICABLE TO SUBCONTRACTS OVER \$1,500,000 IF THE SUBCONTRACTOR IS A LARGE BUSINESS AND FAR 52.219-8 IS APPLICABLE

FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.219-9	Small Business Subcontracting Plan (09/2023), Alternate II (11/2016)	Applies in subcontracts to other than small business concerns that offer subcontracting possibilities, and are expected to exceed \$1,500,000.
52.219-16	Liquidated Damages – Subcontracting Plan (01/1999)	Applies to all solicitations and subcontracts containing the clause at FAR 52.219-9, Small Business Subcontracting Plan.
52.242-5	Payments to Small Business Subcontractors (01/2017)	Applies to all subcontracts containing the clause at FAR 52.219-9, Small Business Subcontracting Plan.

C-69 APPLICABLE TO SUBCONTRACTS OVER \$2,000,000

FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.230-2	Cost Accounting Standards, (06/2020)	Applies in all negotiated subcontracts in excess of \$2,000,000, unless the subcontract is: (1) Exempted from CAS (see 48 CFR 9903.201-1 (FAR Appendix)), or (2) Subject to modified CAS coverage (see 48 CFR 9903.201-2 (FAR Appendix)), or (3) Awarded to a foreign concern. When applicable, paragraph (b) is deleted and SUBCONTRACTOR shall include the substance of

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FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
		this clause, without paragraph (b), in all other subcontracts of any tier.
52.230-3	Disclosure and Consistency of Cost Accounting Practices (06/2020)	Applies only to a negotiated subcontract that exceeds \$2,000,000 but is less than \$50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage. When applicable, paragraph (b) is excluded, and SUBCONTRACTOR shall include this clause in all other subcontracts of any tier, except those exempted by FAR 52.230-3 (d).
52.230-4	Disclosure and Consistency of Cost Accounting Practices-Foreign Concerns (06/2020)	Applies in all negotiated subcontracts in excess of \$2,000,000 with foreign concerns, unless the subcontract is otherwise exempt from CAS (see 48 CFR 9903.201-1). Foreign concerns do not include foreign governments or their agents or instrumentalities.
52.230-6	Administration of Cost Accounting Standards (06/2010)	Applies if FAR 52.230-2, 52.230-3, 52.230-4 or 52.230-5 is applicable.
970.5232-5	Liability with Respect to Cost Accounting Standards (12/2000)	Applies when any Cost Accounting Standards clauses are applicable (i.e., FAR 52.230-2, 52.230-3, 52.230-4, 52.230-6).

C-70 APPLICABLE TO SUBCONTRACTS OVER \$2,000,000 AND THE SUBCONTRACTOR IS REQUIRED TO SUBMIT CERTIFIED COST OR PRICING DATA, OR WHERE PRE-AWARD OR POST-AWARD COST DETERMINATION WILL BE SUBJECT TO FAR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES

FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.215-10	Price Reduction for Defective Cost or Pricing Data (08/2011)	Applies in solicitations and subcontracts when it is contemplated that certified cost or pricing data will be required from the SUBCONTRACTOR or any lower-tier subcontractor (see FAR 15.403-4), unless an exception under FAR 15.403-1(b) applies.
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data-Modifications (06/2020)	Applies in solicitations and subcontracts when it is contemplated that certified cost or pricing data will be required from the SUBCONTRACTOR or any lower-tier subcontractor (see FAR 15.403-4) for the pricing of subcontract modifications, unless an exception under FAR 15.403-1(b) applies, and FAR 52.215-10 has not been included.
52.215-12	Subcontractor Certified Cost or Pricing Data (06/2020)	Applies to solicitations and subcontracts when FAR 52.215-10 is included.
52.215-13	Subcontractor Certified Cost or Pricing Data-Modifications (06/2020)	Applies to solicitations and subcontracts when FAR 52.215-11 is included.
52.215-15	Pension Adjustments and Asset Reversions (10/2010)	Applies to solicitations and subcontracts for which it is anticipated that certified cost or pricing data will be required or for which any pre-award or post-award cost determinations will be subject to FAR part 31.
52.215-19	Notification of Ownership Changes (10/1997)	Applies to solicitations and subcontracts for which it is anticipated that certified cost or pricing data will be required or for which any pre-award or post-

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FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
		award cost determinations will be subject to FAR Part 31.
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data-- Modifications (11/2021)	Applies in solicitations and subcontracts if it is reasonably certain that certified cost or pricing data or data other than certified cost or pricing data will be required for modifications from the SUBCONTRACTOR or any lower-tier subcontractor.

C-71 APPLICABLE TO SUBCONTRACTS OVER \$6,000,000

FAR CLAUSE	title	SPECIAL APPLICATION instructions
52.203-13	Contractor Code of Business Ethics and Conduct (11/2021)	Applies in solicitations and subcontracts if the value of the subcontract is expected to exceed \$6 million and the performance period is 120 days or more.
52.203-14	Display of Hotline Poster(s) (11/2021) <i>Required poster is: 'DOE Hotline Poster.'</i> (See https://www.energy.gov/sites/prod/files/2017/05/f34/HotlinePoster.pdf .)	Applies to all subcontracts that exceed \$6 million, except when the subcontract is performed entirely outside the United States.
52.210-1	Market Research (11/2021)	Applies to all solicitations and subcontracts in excess of \$6 million for procurement of items other than commercial items.
52.225-11	Buy American - Construction Materials under Trade Agreements (11/2021) Alternate I (01/2021)	Applies to subcontracts for construction that is performed in the United States valued over \$7,032,000. Alternate 1 applies over \$7,032,000 but less than \$12,001,460.

C-72 APPLICABLE TO SUBCONTRACTS FOR SERVICES ON A GOVERNMENT FACILITY, SITE, OR USING GOVERNMENT INFORMATION SYSTEMS

FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.204-9	Personal Identity Verification of Contractor Personnel (01/2011)	Applies to all subcontracts when the subcontractor's employees are required to have routine physical access to a Government-owned or Government-controlled facility (including facilities leased by the Government or the CONTRACTOR on behalf of the Government) and/or routine access to a Government information system.
52.237-2	Protection of Government Buildings, Equipment, and Vegetation (04/1984)	Applies to all subcontracts performed at a Government-owned or Government-controlled facility (including facilities leased by the Government or the CONTRACTOR on behalf of the Government)
952.203-70	Whistleblower Protection for Contractor Employees (12/2000)	Applies to subcontracts involving work performed on behalf of DOE directly related to activities at a Government-owned or Government-controlled facility (including facilities leased by the Government or the CONTRACTOR on behalf of the Government)
970.5223-1	Integration of Environment, Safety, and Health into Work Planning and Execution (12/2000)	Applies to subcontracts involving complex or hazardous work at a Government-owned or Government-controlled facility (including facilities

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FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
		leased by the Government or the CONTRACTOR on behalf of the Government)

C-73 APPLICABLE TO SUBCONTRACTS IF THE SCOPE OF WORK REQUIRES THE DESIGN / RE-DESIGN, DEVELOPMENT, OR OPERATION OF A SYSTEM OF RECORDS ON INDIVIDUALS THAT IS SUBJECT TO THE PRIVACY ACT OF 1974

FAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.224-1	Privacy Act Notification (04/1984)	Applies if subcontract scope of work requires the re-design, development, or operation of a system of records on individuals that is subject to the Privacy Act of 1974.
52.224-2	Privacy Act (04/1984)	Applies if subcontract scope of work requires the design, development, or operation of a system of records on individuals that is subject to the Privacy Act of 1974.

C-74 APPLICABLE TO SUBCONTRACTS INVOLVING SECURITY OR ACCESS TO CLASSIFIED INFORMATION OR SPECIAL NUCLEAR MATERIAL

DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
952.204-2	Security (08/2016)	Applies to subcontracts which involve or are likely to involve classified information or special nuclear material.
952.204-70	Classification/Declassification (09/1997)	Applies to subcontracts which involve or may involve access to classified information.
952.204-71	Sensitive Foreign Nations Controls (03/2011)	Applies to any subcontracts which may involve making unclassified information about nuclear technology available to sensitive foreign nations.
952.204-77	Computer Security (08/2006)	Applies to subcontracts that may provide access to computers owned, leased or operated on behalf of the DOE.
970.5204-1	Counterintelligence (12/2010)	Applies to subcontracts that contain DEAR 952.204-2, Security, and 952.204-70, Classification / Declassification.

C-75 APPLICABLE TO SUBCONTRACTS AS STATED IN THE SPECIAL APPLICATION INSTRUCTIONS

FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
52.204-14	Service Contract Reporting Requirements (10/2016)	Applies in subcontracts for services (including construction) that meet or exceed the thresholds at FAR 4.1703 , except for indefinite-delivery contracts. Further, at FAR 4.1703(a)(2) , a statement is made that reporting is required according to the following thresholds: (i) All cost-reimbursement, time-and-materials, and

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FAR/DEAR CLAUSE	TITLE	SPECIAL APPLICATION INSTRUCTIONS
		labor-hour service subcontracts and orders with an estimated total value above the simplified acquisition threshold. (ii) All fixed-price service subcontracts awarded and orders issued according to the following thresholds: (C) Awarded or issued in Fiscal Year 2016, and subsequent years, with an estimated total value of \$500,000 or greater.
52.204-21	Basic Safeguarding of Covered Contractor Information Systems (11/2021)	Applies in subcontracts (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items) in which the SUBCONTRACTOR may have Federal contract information residing in or transiting through its information system.
52.211-15	Defense Priority and Allocation Requirement (04/2008)	Applies in subcontracts in support of an approved program issued in accordance with the provisions of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700). Applies if this Subcontract is a rated order as specified elsewhere in this Subcontract.
52.223-7	Notice of Radioactive Materials (01/1997)	Applies if items containing either radioactive material (requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended) or other radioactive material (not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries) are to be delivered or serviced under this subcontract. If applicable, SUBCONTRACTOR shall notify CONTRACTOR, in writing, 30 days prior to delivery of, or prior to completion of any servicing required by this subcontract.
52.224-3	Privacy Training (01/2017)	Applies to all subcontracts when subcontractor employees will- (1) Have access to a system of records; (2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or (3) Design, develop, maintain or operate a system of records.
52.225-26	Contractors Performing Private Security Functions Outside the United States (10/2016)	Applies in all subcontracts that will be performed outside the United States in areas of- (1) Combat operations, as designated by the Secretary of Defense; or (2) Other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area.
52.246-26	Reporting Nonconforming Items (11/2021)	Applies if the subcontract is for, or includes, items which are designated in the subcontract as "critical" or are subject to higher-level quality standards and the clause titled, Higher-Level Quality Standards is included in Exhibit D.
52.225-8	Duty-Free Entry (10/2010)	Applies to all subcontracts if: (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the

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		customs territory of the United States; or (2) Other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States.
52.227-14	Rights in Data—General (05/2014) Alternate II (12/2007), alternate III (12/2007) and Alternate V (12/2007) as modified by DEAR 927.409(a), including Alternate V (12/2007) therein.	(a) Applies to subcontracts under which data or computer software is expected to be produced or delivered. To the extent that any commercial licenses or other intellectual property rights or data rights clauses or agreements included, incorporated into, or otherwise made part of this Subcontract or Purchase Order conflict with this clause and/or its Alternates, the terms of this clause and its Alternates shall govern. To the extent that any commercial licenses or other intellectual property rights or data rights clauses or agreements included, incorporated into, or otherwise made part of this Subcontract or Purchase Order contain a requirement for the CONTRACTOR or the Government to indemnify the SUBCONTRACTOR or contain any other terms or conditions which conflict with federal laws, regulations, and/or policies governing federal government contracts and/or subcontracts, such indemnity clause and other conflicting terms or conditions shall be void and of no effect. (b) 52.214-14 does not apply to subcontracts involving the design or operation of any plants or facilities, or specially designed equipment for such plants or facilities, that are managed or operated by a DOE/NNSA M&O Contractor, including subcontracts for related support services (Clause 970.5227-1 applies instead).
952.211-71	Priorities and Allocation (ATOMIC ENERGY) (Apr 2008) Contract rated as DX-A2 and DO-H1	Applies in subcontracts issued in accordance with the provisions of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) that are placed in support of authorized DOE atomic energy programs. Applies if this Subcontract is a rated order as specified elsewhere in this Subcontract.
952.247-70	Foreign Travel (06/2010)	Applies when foreign travel may be required under the subcontract. Subcontractor foreign travel shall be conducted pursuant to the requirements contained in Department of Energy (DOE) Order 551.1C, Official Foreign Travel, or its successor in effect at the time of award.
952.250-70	Nuclear Hazards Indemnity Agreement (08/2016)	Applies if performance of subcontract involves the risk of "public liability", as defined in the Atomic Energy Act of 1954, as amended (Act), which (i) arises out of or in connection with the activities under the subcontract, including transportation and (ii) arises out of or results from a "nuclear incident" or "precautionary evacuation", as those terms are defined in the Act.
970.5204-3	Access to and Ownership of Records (10/2014) (Deviation) (See DOE Policy Flash 2015-23)	Applies to all subcontracts that contain the <i>Radiation Protection and Nuclear Criticality</i> clause at 952.223-72, or whenever an on-site subcontract scope of work (i) could result in potential exposure to:

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		A) radioactive materials; B) beryllium; or C) asbestos or (ii) involves a risk associated with chronic or acute exposure to toxic chemicals or substances or other hazardous materials that can cause adverse health impacts, in accordance with 10 CFR part 851.
970.5208-1	Printing (12/2000)	Applies to all subcontracts which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).
970.5227-1	Rights in Data—Facilities (12/2000)	Applies to subcontracts involving the design or operation of any plants or facilities, or specially designed equipment for such plants or facilities, that are managed or operated by a DOE/NNSA M&O Contractor, including subcontracts for related support services.
970.5227-8	Refund of Royalties (08/2002)	Applies if the amount of royalties reported during negotiation of the subcontract exceeds \$250. If applicable, SUBCONTRACTOR shall insert the substance of this clause in all lower tier subcontracts under this subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.
970.5232-3	Accounts, Records, and Inspection (12/2010)	Applies to subcontracts of any tier where costs incurred are a factor in determining the amount payable to the SUBCONTRACTOR. When the condition precedent is met, only paragraphs (a) through (h) of the clause shall apply.