

## 1) General

- (a) The entire agreement and understanding between the parties pertaining to the scope of this agreement is comprised within the Purchase Order or Subcontract including these General Provisions and any plans, drawings, specifications, scope of work and/or other documents referenced or expressly incorporated therein (collectively referred to as "Subcontract" or "Purchase Order"). All prior agreements, understandings, commitments, representations, writings, and discussions, whether oral or otherwise, are incorporated herein and/or superseded hereby.
- (b) These general provisions and the terms set forth in the Purchase Order or Subcontract shall govern notwithstanding any different and/or additional terms and conditions which may be submitted or proposed by Subcontractor. Premier Technology shall not be bound by any additional or different terms and conditions unless expressly agreed to in writing.
- (c) Subcontractor shall bind all lower-tier subcontractors to the Provisions of this Subcontract, including this obligation to bind lower tier subcontractors to the provisions herein.
- (d) The failure of either party to enforce any provision of this Subcontract shall in no way be construed to be a waiver of such provision, nor in any way affect the validity of this Subcontract or any part thereof, or the right of either party to thereafter enforce each and every provision.
- (e) The headings used in this Subcontract shall not be construed as modifying, limiting or expanding in any way the scope or extent of the provisions in this Subcontract.
- (f) Inconsistencies between provisions or terms of this Subcontract shall be resolved in the following order of precedence: 1) written changes to the Purchase Order or Subcontract; 2) Purchase Order or Subcontract; 3) Statement of Work; 4) these General Provisions; and 5) other provisions of this Subcontract. Subcontractor shall obtain Contractor's concurrence and approval prior to performing work based on resolution of an inconsistency pursuant to the order of precedence set forth herein.
- (g) Unless otherwise specifically approved by the Contractor, all equipment, materials, or products, including components, parts, and materials, which are permanently installed into systems, subsystems, and/or assemblies, shall be new and of the grade and/or type specified by this Subcontract. No mixed manufacturers' or manufacturing production lots will be accepted. All workmanship shall be performed in a skillful and workmanlike manner consistent with the specifications, drawings, stated requirements, and/or other applicable criteria of this Order.

## 2) Definitions

- (a) "Contractor" means Premier Technology, Inc.
- (b) "Subcontractor" and "Seller" mean the business entity contracted to provide the materials, supplies or services covered by this Subcontract.
- (c) "Lower-tier Subcontractor" means any party entering into an agreement with the Subcontractor or any other party who has entered into a contract with the Subcontractor, for the furnishing of supplies or services required for performance of this Subcontract.
- (d) "Government" shall mean the United States of America or any duly authorized representative thereof.
- (e) "DOE" means the U.S. Department of Energy.
- (f) "Contracting Officer" means the Contractor-authorized purchasing agent and procurement management personnel.

## 3) Changes

- (a) The Contractor may at any time, by written order, make changes within the general scope of this Subcontract, to any of the following: 1) drawings, designs, or specifications of supplies or services to be custom manufactured or specially provided for Contractor; 2) method of shipment or packing; and 3) time and/or place of delivery.

(b) If any change directed by Contractor causes a cost or schedule impact to any part of the work an equitable adjustment increase or decrease shall be made to this Subcontract in writing. Any claim by the Subcontractor for adjustment under this Clause must be asserted within 30 days from the date of receipt Contractor's directed change. Disagreement regarding the value or extent of an equitable adjustment shall be resolved pursuant to Article 11 "Disputes." Nothing in this Article shall excuse Subcontractor from proceeding with the Subcontract as changed.

(c) Adjustments. When costs are a factor in determining an equitable adjustment such costs shall be in accordance with the cost principles and procedures set forth in Federal Acquisition Regulation Part 31, as supplemented or modified by the Department of Energy Acquisition Regulation (DEAR) Part 931 in effect on the date of this Subcontract.

## 4) Approvals

(a) Contractor review and approval of any data submitted by Subcontractor shall not affect, or relieve, Subcontractor from the responsibility for performance of the work in compliance with this Subcontract.

## 5) Inspection

(a) Subcontractor shall perform, or have performed, all inspections and tests necessary to substantiate that the supplies or services furnished under this Subcontract conform to Subcontract requirements, including any applicable technical requirements for specified manufacturers' parts.

(b) Contractor may independently inspect and test all Subcontract supplies and services at all practicable places and times, including the period of performance and before or after acceptance. Contractor inspections and tests shall not unduly delay the work. Contractor is not obligated to perform any inspection or test for the benefit of Subcontractor unless expressly agreed to in the Subcontract or subsequent change order.

(c) If Contractor performs an inspection or test on the premises of Subcontractor, or the premises of lower-tier subcontractor(s), Subcontractor and its lower-tier subcontractors shall furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance thereof.

(d) If supplies or services are not ready for inspection or testing at the time specified by Subcontractor, it will be responsible for any additional costs incurred by Contractor related to such delay.

(e) Subcontractor shall also be responsible for any additional cost of inspection or test, including those incurred by Contractor, when prior rejection makes re-inspection or retest necessary. Contractor may, in its sole discretion either reject or require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or otherwise do not conform to Subcontract requirements and/or industry standards, whichever is more stringent. Contractor may reject nonconforming supplies with or without disposition instructions.

(f) If any services do not conform to Subcontract requirements, Contractor may require Subcontractor to re-perform the services in conformity with Subcontract requirements for no additional consideration. When nonconforming services cannot be corrected by re-performance Contractor may, in its sole discretion: 1) accept some or all of the services provided; 2) require Subcontractor to take necessary action to ensure any remaining future performance conforms to Subcontract requirements; and 3) reduce the Subcontract price to reflect the reduced value of the services, rejected and/or performed and accepted despite the nonconformance.

(g) If Subcontractor fails to promptly remove, replace, or correct rejected supplies or to re-perform nonconforming service in conformance with Subcontract requirements, or fails to take the necessary action to ensure future performance in conformity with Subcontract requirements, Contractor may: 1) self-perform or engage a third party to remove, replace, or correct the supplies and perform the services and charge Subcontractor for any additional costs incurred; 2) terminate this Subcontract for default and pursue available legal remedies; or 3) require delivery and make an equitable price reduction.

(h) Contractor's failure to inspect or reject work shall neither relieve Subcontractor from responsibility for work that does not comply with Order requirements nor impose liability upon the Contractor.

(i) Contractor's inspection of supplies shall not in any way relieve or waive any Subcontractor contractual obligation or any other liability that may result from nonconforming supplies; nor does such inspection constitute an acceptance of any nonconformance not discovered by inspection.

(j) In addition to any other rights and remedies, Contractor may: 1) require Subcontractor to correct or replace, for no additional consideration, defective or nonconforming supplies in accordance with a mutually agreeable delivery schedule, subject to a reduction in price if Subcontractor fails to meet such delivery schedule; or 2) if Contractor elects not to require correction or replacement, make an equitable reduction to the contract value or require Subcontractor to repay such portion of this Subcontract as is equitable under the circumstances.

(k) Subcontractor shall bear transportation cost for all rejected supplies returned to it.

#### 6) Assignment

(a) Except as expressly authorized in writing by Contractor, Subcontractor may not assign or otherwise transfer this Subcontract, any interest herein or claim hereunder.

(b) With Contractor approval, Subcontractor may pledge or assign amounts owed, or to become payable, under this contract to a financial institution or federal lending agency. Said pledge or assignment shall be to only one party or entity, or a single party acting as agent or trustee on behalf of two or more parties. In accordance with DEAR 932.803 and FAR 32.804, Payments to an assignee shall be subject to setoff or recoupment for any current or future claims which Contractor may have against Subcontractor. Subcontractor shall promptly submit to Contractor two copies of any assignment and each invoice shall clearly identify the payee and where payment is to be made.

(c) Contractor may assign this Subcontract to another entity.

#### 7) Equal opportunity /Affirmative Action:

(a) During the performance of this contract, Seller will:

(b) not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin;

(c) take affirmative action to ensure applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, or national origin (such action includes, but is not limited to employment; upgrading; demotion; transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship);

(d) post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(e) comply with 41 CFR 60-741.5(a) which prohibits discrimination on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

#### 8) Gratuities

The Government and Contractor prohibit employees from using their official position for personal gain, or any personal advantage or favor from anyone under circumstances which might reasonably be interpreted as an attempt to influence their official duties. In circumstances which might reasonably be interpreted as an attempt to influence the conduct of official duties, Subcontractor or its employees shall: 1) not extend or offer any gratuity or special favor to Government or Contractor employees; and 2) not accept any gratuity or special favor from individuals or organizations with whom Subcontractor is doing business, or proposing to do business, in accomplishing work under this Subcontract.

#### 9) Permits and Licenses

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

#### 10) Public Release of Information

Subcontractor shall obtain Contractor approval prior to releasing or publishing any information, data, photographs, sketches, and advertising related to the subject matter of this Subcontract and/or the existence of this Subcontract relationship. Subcontractor shall submit a written request for approval eight weeks prior to the desired release date. The approval request shall identify the specific medium/method to be used and details of the proposed release. All releases, regardless of tier, must have prior written approval of the Contractor which is also subject to approval by Contractor's customer.

#### 11) Suspension of Work

(a) Contractor may direct Subcontractor in writing to suspend, delay, or interrupt all or any part of the Subcontract scope of work for such period of time as determined by Contractor. When the suspension is lifted or otherwise terminated in writing, Subcontractor shall recommence and proceed with the work as promptly as practicable.

(b) If all or any part of the Work is suspended, delayed or interrupted for an unreasonable period of time due to Contractor actions or failures to act within a time specified in the Subcontract, an equitable adjustment by written change order shall be made for any increased cost (*excluding profit*) caused by such suspension, delay or interruption. However, no adjustment shall be made for any suspension, delay, or interruption resulting from other causes, including the fault or negligence of Subcontractor or which are excluded under any other provision of this Subcontract. Contractor shall promptly give written notice to Contractor of such suspension delay or interruption.

(c) No claim under Article 10(b) shall be allowed: 1) for any costs incurred more than 20 days before Subcontractor's written notice of the relevant act or failure to act; and 2) unless a quantified claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but no later than the date of final payment under this Subcontract. No part of any claim shall be allowed if not supported by adequate evidence showing the cost would not have otherwise been incurred but for Contractors actions or failures to act.

#### 12) Disputes

(a) Forum for resolution of any unresolved dispute or claim pertaining to this Subcontract shall be Federal District Court, for the District of Idaho in Pocatello, Idaho. In the event requirements for federal jurisdiction are not met, such litigation shall be brought in the District Court of the Seventh Judicial District of the State of Idaho. Contractor and Subcontractor waive the right to object that venue or forum is improper or inconvenient.

(b) Substantive issues of law shall be determined in accordance with the body of law applicable to procurement of goods and services by the Federal Government. Nothing in this Article shall grant any rights or remedies not expressly set forth in this Subcontract.

(c) The parties may mutually agree to an alternate dispute resolution (ADR) process.

(d) There shall be no interruption in the prosecution of the work. The Subcontractor shall diligently proceed with performance of this Subcontract despite pendency of final resolution of any dispute, claim, or litigation between the parties or between the Subcontractor and its lower-tier subcontractors or suppliers.

(e) The Contract Disputes Act of 1978 (41 U.S.C. 7101-7109 formerly Sections 601-613) shall not apply to this Subcontract.

### 13) Notice of Labor Disputes

Whenever an actual or potential labor dispute is delaying or threatening timely performance of work, the Subcontractor shall immediately notify Contractor in writing. Such notice shall include all relevant information concerning the dispute.

### 14) Default

- (a) Subject to paragraphs (d) and (e) of this Article, Contractor, by written notice of default, may terminate this Subcontract in whole or in part, if Subcontractor fails to: 1) deliver the supplies or to perform the services within the time specified in this Subcontract or amendment; 2) make reasonable progress jeopardizing timely performance of this Subcontract; or 3) perform any of the other provisions of this Subcontract.
- (b) Contractor's right to terminate this Subcontract under subdivisions 13(a)(2) and (a)(3) of this Article, may be exercised if Subcontractor does not cure such default within ten days (or other period authorized in writing by Contractor) after receipt of the notice of default from Contractor.
- (c) If Contractor terminates this Subcontract for default in whole or in part, it may take commercially reasonable action to remedy the default and/or acquire substitute supplies or services. Subcontractor shall be liable for any increased costs incurred by Contractor. Subcontractor shall continue with the portion of the work that was not terminated.
- (d) Excusable Delays, Force Majeure. Except for defaults of its lower-tier subcontractor(s) at any tier, Subcontractor shall not be liable for any excess costs if the failure to perform this Subcontract arises from causes beyond the control and without the fault or negligence of Subcontractor, e.g. acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of Subcontractor and/or the lower tier supplier or subcontractor. Subcontractor may be entitled to schedule relief but no additional consideration unless Contractor directs or requested Subcontractor to expedite performance.
- (e) Subcontractor shall give prompt written notice to Contractor after commencement of any excusable delay. Said notice shall include details regarding the delay and a proposed recovery plan and schedule. Subcontractor shall take all reasonable measures to mitigate the impact of such delay and to remedy such occurrence with all reasonable dispatch. Subcontractor shall promptly give written notice to the Contractor of the cessation of such occurrence.
- (f) If default is caused by a lower-tier subcontractor, at any tier, but beyond the control and without the fault or negligence of both the lower-tier subcontractor and the Subcontractor, Subcontractor shall not be liable for any increased costs or damages, unless the subcontracted supplies or services were reasonably obtainable from other sources in sufficient time for Subcontractor to meet the required delivery schedule.
- (g) If this Subcontract is terminated for default, Subcontractor shall reasonably cooperate with Contractor to mitigate damages and shall upon request transfer title and deliver to Contractor completed supplies, and/or partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "supplies and materials" in this Article) that Subcontractor specifically ordered or otherwise acquired for the terminated portion of this Subcontract. Upon direction of Contractor, Subcontractor shall also protect and preserve property in its possession in which Contractor or the Government has an interest.
- (h) Contractor shall pay the Subcontract price for completed supplies delivered and accepted. Subcontractor and Contractor shall agree on the amount of payment for partially completed supplies and materials delivered and accepted and for efforts to protect and preserve the property that are above and beyond Subcontractors duty to mitigate damages. Contractor may withhold from these amounts any sum it determines to be necessary to protect itself against loss or damage

resulting from the default and/or outstanding liens or claims of former lien holders.

- (i) If, after termination, it is determined that Subcontractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been cancelled for the convenience of Contractor.
- (j) Rights and remedies in this Article are in addition to any other rights and remedies available at law or in this Subcontract.

### 15) Warranty

- (a) Subcontractor warrants that supplies shall be: free from defects in material and workmanship; of the most suitable grade of their respective kinds for the intended purpose; and comply with all Subcontract requirements, until one year after first placed into service by Contractor, or three (3) years after acceptance, whichever occurs first. Subcontractor shall correct any warranty nonconformity at its sole expense, as directed by Contractor, by promptly: 1) repairing or replacing the nonconforming supplies specified including but not limited to correcting, any plans, specifications, or drawings affected; 2) furnishing Contractor any materials, parts, and instructions necessary to correct or have the nonconformity corrected, or 3) paying to Contractor a portion of the Subcontract price as is equitable under the circumstances.
- (b) Subcontractor warrants that services shall: i) reflect the highest standards of professional knowledge and judgment in the relative discipline as well as the relevant specifications; ii) shall be free from defects in workmanship, and shall comply with all Subcontract requirements, until one year from the completion of the services.
- (c) Products and services of Subcontractor's design shall be free from design errors and omissions and design services shall conform to the standards of the relative professional discipline as well as the relevant specifications.
- (d) Subcontractor shall correct any warranty nonconformity at its sole expense, as directed by Contractor, by promptly 1) re-performing the nonconforming services or 2) paying Contractor a portion of the Subcontract price as is equitable under the circumstances.
- (e) If Subcontractor fails to promptly perform its warranty obligations, Contractor may self-perform or engage a third party to perform such obligations and Subcontractor shall be liable for costs incurred thereby.
- (f) The warranty with respect to replacement supplies or services shall be the same as the warranty provided for in paragraphs (a) and (b) of this Article. The warranty for other than replacement supplies or services shall continue until the expiration of the original period plus a period equal to the time elapsed between the discovery of the nonconformity and its correction.
- (g) Unless installation is included in the scope of work, Subcontractor shall not be responsible for the cost of removal or reinstallation of any supplies furnished or items serviced hereunder, or for the cost of removal or reinstallation of items not furnished by Subcontractor hereunder. Subcontractor shall bear the cost of all packaging, handling and shipping costs for the return items and delivery of replacement items and shall bear all risk of loss or damage for the items while in transit.
- (h) When performing warranty work, if removal of "supplies" furnished or items serviced hereunder require radiation decontaminated in accordance with 10 CFR 20, the Subcontract price shall be equitably adjusted to cover ensuing cost increases. However, this paragraph shall not apply if decontamination is part of the warranted scope of work.
- (i) This warranty Article shall apply notwithstanding inspection, acceptance, or any other provision of this Subcontract, and shall not limit any other rights and remedies.

### 16) Patent and Copyright Infringement

- (a) Subcontractor warrants that products and services provided under this subcontract will not, alone or in combination with other products, infringe upon any U.S. or foreign patents,

copyrights or trademarks and/or rights of any third party. Subcontractor shall indemnify, defend, protect and save harmless Contractor, its successors, assigns, affiliates, and customers against all suits, claims, losses, expenses or damages of any kind resulting from actual or alleged infringements. However, this indemnity shall not apply to any such claims, losses, expenses or damages arising out of Subcontractor's compliance with specifications furnished by Contractor.

- (b) The Subcontractor shall promptly provide written notice of any, known or foreseeable claim of patent, copyright or other intellectual property infringement relative to the subject matter of this Subcontract.
- (c) In the event of an alleged infringement related to this Subcontract, or the use of any supplies furnished or services performed hereunder, Subcontractor shall upon request, furnish all evidence and information in Subcontractor's possession pertaining to such suit or claim. The Subcontractor shall be entitled to an equitable adjustment for the costs relate to furnishing such evidence and information except in those cases in which Subcontractor has agreed to indemnify the Contractor and the Government.

#### 17) Organizational Conflicts Of Interest (OCI)

Pursuant to FAR subparts 9.5 and 37.2 this Article applies when the Subcontract involves any work or effort to provide advisory and assistance services. Such services typically include assistance in: preparation of preliminary designs, specifications, or statements of work; preparing program plans; and evaluation, monitoring or review of Contractor's activities or proposals submitted by prospective Subcontractors.

- (a) This Article is intended to prevent Subcontractor bias in the performance of advisory and assistance services that may result from its financial, contractual, organizational, or other interests, related to the subject matter of this Subcontract. It is also intended to prevent Subcontractor from obtaining an unfair competitive advantage.
- (b) This Article shall apply to the Subcontractor and/or any of its affiliates or their successors in interest in the performance or participation in the activities covered by this Article as a subcontractor, lower-tier subcontractor, cosponsor, joint venture, consultant, or in any similar capacity. For the purpose of this Article, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both organizations.
- (c) For a period of one (1) year after the completion of this Subcontract Subcontractor shall be ineligible to participate in subcontracts or proposals (solicited and unsolicited), which stem directly from the Subcontractor's performance of advisory and assistance services under this Subcontract. Furthermore, if the Subcontractor is, or has been substantially involved in development or marketing of advisory and assistance services under this Subcontract, Subcontractor shall not perform the same advisory and assistance services for any of its own products or services or the products or services of another party. Nothing in this paragraph (c) shall preclude the Subcontractor from competing for subsequent Subcontracts for advisory and assistance services
- (d) If this Subcontract requires Subcontractor to prepare or assist in the development of a statement of work or specifications to be used in a subsequent competitive acquisition by Contractor or the Government, Subcontractor shall not be eligible to perform, or participate, in any contractual effort related to performing or implementing such statement of work or specifications. Furthermore, Subcontractor shall not incorporate its own products or services in any statement of work or specifications produced or developed under this Subcontract, unless expressly required by the Subcontract or prior written approval is obtained from Contractor.
- (e) Nothing in this Article shall preclude the Subcontractor from offering or selling its standard commercial items to the Government.

(f) If the Subcontractor, in the performance of this Subcontract, obtains access to information, such as Contractor plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which have not been released or otherwise made available to the public, the Subcontractor agrees that, without prior written approval of the Contractor, it shall not:

- (i) Use such information for any private purpose unless the information has been released or otherwise made available to the public;
- (ii) Compete against Contractor for work based on such information for a period of six (6) months after either the completion of this Subcontract or until such information is released or otherwise made available to the public, whichever is first;
- (iii) Submit an unsolicited proposal to the Government, which is based on such information until one (1) year after such information is released or otherwise made available to the public; and/or
- (iv) Release such information unless such information has previously been released or otherwise made available to the public by the Contractor or DOE.

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

(h) Subcontractor may use technical data it first produces under this Subcontract for its private purposes consistent with this Article and the patent, rights in data, and security provisions of this Subcontract.

(i) If facts materially change subsequent to the award of this Subcontract or if additional facts become known during performance of this Subcontract that could be considered a conflict of interest, Subcontractor shall immediately provide written notice of such to the Contractor. Said notice shall include a description of any action, which Subcontractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Contractor reserves the right to terminate this Subcontract for convenience if it deems such termination to be in the best interest of the Government.

(j) If Subcontractor was aware of, but failed to disclose facts required to be disclosed or the existence of an actual or potential organizational conflict of interest. Contractor may terminate this Subcontract for default, disqualify the Subcontractor from subsequent related contractual efforts, and pursue other remedies at law or under this Subcontract.

(k) Requests for waiver under this Article shall be directed in writing to the Contractor and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Contractor and/or the Government, the Contractor may issue a written waiver.

#### 18) Additional Technical Data Requirements

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

(b) The provisions of FAR 52.227-14, Rights in Data included in this Subcontract are applicable to all technical data called for under this Additional Technical Data Requirements Article. Accordingly, nothing contained in this Article shall require Subcontractor to actually deliver any technical data, the delivery of which is excused by the Rights in Data FAR Clause.

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

#### 19) Quality Assurance Program

Services provided under this Subcontract shall be provided in accordance with the Subcontractor's Quality Assurance system, which have been or shall be evaluated and approved in writing by Contractor. The Subcontractor's Quality Assurance system must meet the requirements for nuclear facilities that satisfy the requirements of 10 CFR Part 830 Subpart A; 10 CFR 50 Appendix B; DOE Order 414.1D, Quality Assurance; and ASME Section III as applicable.

#### 20) Defense Nuclear Facilities Safety Board (DNFSB)

The Subcontractor shall cooperate with the Contractor in preparation of responses to DNFSB (if required). The Subcontractor shall fully cooperate with DNFSB and provide access to such work areas, personnel, and information as necessary. If the Contractor direction to provide DNFSB support causes an increase or decrease in the cost of performance of any work under this Subcontract, Subcontractor may request an equitable adjustment pursuant to the Changes clause.

#### 21) Price-Anderson Amendments Act

- (a) The Department of Energy has promulgated Nuclear Safety Rules in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules may provide a basis for the assessment of civil and criminal penalties under the PAAA. Nuclear Safety Rules subject to enforcement under PAAA are, 10 CFR 820, Procedural Rules for DOE Nuclear Activities, 10 CFR 830, Nuclear Safety Management, Subpart A, Quality Assurance Requirements, and 10 CFR 835, Occupational Radiation Protection. This Subcontract is subject to the requirements of the above rules.
- (b) The Subcontractor shall indemnify Contractor for any civil penalties levied against Contractor, pursuant to Section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282), as amended, for any violations of applicable DOE nuclear-related rules, regulations, or orders arising out of or in connection with Subcontractor's or its lower-tier subcontractors' and suppliers' performance of this Subcontract.

#### 22) Security Violations of Classified or Sensitive Data

Subcontractor shall comply with rules and regulations relating to the safeguarding and security of restricted data including but not limited to United States PL 107-197; and pursuant to 42, U.S.C. 2282b shall be subject to a civil penalty of up to \$100,000 for each violation.

#### 23) Non-Waiver

Failure by Contractor in any instance to insist upon observance or performance by Subcontractor of all terms, conditions and requirements of this Subcontract shall not be deemed a waiver by Contractor. No waiver shall be binding upon Contractor unless in writing, signed by Contractor, and shall then be for the particular instance only. Payment of any sum by Contractor to Subcontractor, with or without the knowledge of any breach, shall not be deemed to be a waiver of any requirement of this Subcontract, nor shall such payment constitute an acceptance of work not in compliance with this Subcontract nor relieve Subcontractor of its obligations hereunder.

#### 24) Delivery And Payment

- (a) Subcontractor shall work such hours, including night shifts and overtime operations, as may be necessary to meet this Subcontract delivery date(s), or any authorized extensions thereof, at no increase in the price of this Subcontract, unless duly authorized in the Subcontract.
- (b) Unless otherwise specified in this Subcontract, a separate invoice shall be issued upon each delivery of supplies or completion of services, and shall be payable by Contractor, in accordance with the terms of this Subcontract upon receipt and acceptance of supplies or services and receipt by Contractor of a correct invoice related thereto. If applicable, credit and discount periods shall be computed from the date such invoice is payable to the date Contractor's check is mailed or issued by direct

deposit. Unless freight and other charges are itemized, the discount will be taken on the full amount of the invoice.

- (c) All claims for money due or to become due from Contractor to Subcontractor pursuant to this Subcontract shall be subject to deduction or set-off by Contractor against any monies owed by Subcontractor to Contractor as a result of this Subcontract or any other transaction between Contractor and Subcontractor.

#### 25) Federal, State, and Local Taxes

Except as otherwise provided in this Subcontract, the Subcontract prices include all applicable federal, state, and local taxes and duties including but not limited to sales tax.

#### 26) Right to Cancel

Contractor reserves the right to cancel this Subcontract, or any part hereof for cause or for convenience at any time. In the event of such cancellation, the Subcontractor shall immediately stop all work and notify its affected suppliers and lower-tier suppliers/subcontractors to cease work. Subject to the terms of this Subcontract, the Subcontractor shall be paid for work performed prior to the notice of cancellation, plus reasonable ensuing charges that the Subcontractor can demonstrate to the satisfaction of the Contractor have resulted from such cancellation. The Subcontractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided or mitigated.

#### 27) Passage Of Title And Liens

- (a) Title to deliverables shall pass at the place of delivery to Contractor. If purchased F.O.B. origin, delivery to the carrier shall be deemed to be delivery to Contractor.
- (b) Seller agrees to furnish deliverables free and clear of all liens, claims, and encumbrances. Seller agrees to hold Contractor and the Government harmless from all liens, claims, or demands in connection with the Work.

#### 28) Domestic Manufacturer/ Buy American

To the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made. Thus, the Buy American FAR provisions incorporated herein by reference shall apply as appropriate, or as may be more particularly specified in the Purchase Order.

#### 29) Lobbying Restriction

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

#### 30) Asbestos Containing Materials

Subcontractor certifies and agrees that any item(s) provided hereunder will not contain any asbestos-containing materials (ACM), as defined in 29 CFR 1910.1001.

#### 31) Certifications and Other Statements of the Offeror

Representations, Certifications, and/or other Statements of the Offeror submitted with the offer for this Subcontract are, by reference, hereby incorporated in and made a part of this Subcontract.

#### 32) Indemnification and Limitation Of Liability

To the fullest extent permitted by applicable law Subcontractor shall indemnify and hold harmless the Contractor, Owner and their successors, assigns, customers, subsidiaries, affiliates, agents and employees from and against all claims, damages, losses and expenses including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributed to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and

(b) is caused in whole or in part by any negligent act or omission of the Subcontractor, any lower-tier subcontractor, anyone directly or indirectly employed by Subcontractor or its lower tier subcontractor or anyone for whose acts Subcontractor may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder and to the extent that such claim damage, loss or expense is not otherwise covered by insurance coverage. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party herein. Upon fulfillment or termination of the Purchase Order, provisions relating to indemnity, waivers, limitations of remedies and limitations of liability, including, but not limited to, this indemnification provision shall remain in full force and effect.

### 33) Audit Rights

At any time during the term of this Subcontract and for a period of three years thereafter, the Contractor may review the records of Subcontractor. Any such review shall occur only during normal business hours and shall be limited to records related to the performance of the Services or provision of supplies.

### 34) Nondisclosure

- (a) Subcontractor and Contractor agree that during the term of the Purchase Order or Subcontract, including any revisions or renewal(s), that other than in connection with fulfillment of this Subcontract neither party may disclose to any third party, or use for any other purpose the proprietary or confidential information of the other party, provided that (a) such information is marked as proprietary or confidential or the receiving party is notified that such information is proprietary or confidential, and (b) such information is not in the public domain or is previously known to the receiving party.
- (b) The restrictions on the use and disclosure of proprietary or confidential information shall survive any expiration or cancellation of the Purchase Order or Subcontract.
- (c) In addition to this Clause, parties may be required to sign additional Nondisclosure and/or Confidential Agreements.

### 35) Expediting

- (a) Time is of the essence. Products or services, including all warranty work, shall be subject to expediting by Contractor. Contractor's representatives shall be afforded free access during working hours to Subcontractor's facilities and/or offices, and Subcontractor agrees to procure a similar right for Contractor, for expediting purposes, with respect to Subcontractor's suppliers/lower-tier subcontractors. As required by Contractor, Subcontractor shall provide copies of schedules, progress reports and lower tier Purchase Orders and Subcontracts for Contractor's use in expediting.
- (b) Subcontractor shall promptly notify Contractor in writing upon discovery of any actual or anticipated delays. Such notice shall identify the anticipated duration of the delay, a recovery plan and/or corrective actions taken and, if the delay was caused by Subcontractor, adequate assurances that Subcontractor will perform on time.
- (c) Contractor shall have the right to withdraw this Subcontract without any liability to Contractor under the "Right to Cancel" clause whenever there shall be Subcontractor caused delays in the delivery of products or services. Subcontractor may be liable for any costs or damages incurred by Contractor as a result of such Subcontractor-caused delays.

### 36) Restrictions On Subcontractor Sales To The Government

- (a) Except as authorized by law or regulation the Subcontractor shall not enter into any agreement with any actual or prospective lower-tier subcontractor(s), nor otherwise act in any manner, which has or may have the effect of restricting sales directly to the Government of any item or process (including computer software) made or furnished by the lower-tier subcontractor under this or any other subcontract or order.

### 37) Disposition Of Intellectual Property

- (a) In the event of a termination, or Subcontractor default, Contractor may, subject to the Rights in Data Article of this Subcontract, take possession of all technical information, including limited rights data and data obtained from lower-tier subcontractors, licensors, and licensees, necessary for, but not limited to, design, analysis, construction, or operation. Technical information includes, but is not limited to, designs, analyses, operation manuals, flowcharts, software, work, progress reports, and any other information necessary for completion of the Purchase Order or subcontract scope of work. Contractor's exercise of its right to have data transferred under this paragraph shall not be dependent on final payment by Contractor.
- (b) Subcontractor grants and conveys to the Contractor/Government an irrevocable, non-exclusive, paid-up license to any intellectual property, including any technical information and limited rights data, which are owned and controlled by the Subcontractor relative to the Purchase Order or Subcontract scope of work which are reasonably necessary to complete terminated work and to obtain full unrestricted use of the Subcontract subject matter. The acceptance or exercise by the Contractor of the aforesaid rights shall not prevent the Contractor at any time from contesting the enforceability, validity, or scope of, or title to, such rights, patents or other intellectual property rights licensed herein.
- (c) In addition, as Contractor/Government may reasonably request or designate, Subcontractor shall take all necessary steps to assign permits, authorizations, and obtain for Contractor/Government, any licenses in any third party intellectual property that is reasonably related to the Subcontract scope of work.

### 38) Insurance Requirements

- (a) Subcontractor shall at all times maintain insurance of such nature and in such amounts as would be maintained by a prudent and profitable business person operating in Subcontractor's industry, which in no event shall be less comprehensive than is customary in the industry. If requested, Subcontractor shall promptly provide to Contractor a certificate of such insurance from its insurance provider.
- (b) Notwithstanding paragraph (a) of this Article, at a minimum during the term(s) of this Subcontract, Subcontractor shall maintain at its sole cost and expense 1) Worker's Compensation insurance as required by the applicable jurisdiction, 2) commercial general liability insurance with limits of \$1,000,000 per occurrence / \$1,000,000 in the annual aggregate; and 3) professional liability/errors and omissions liability coverage with limits of not less than \$1,000,000 per occurrence / \$3,000,000 in the annual aggregate.
- (c) It is expressly understood by and between the parties hereto that all insurance required hereunder shall be deemed primary insurance and shall not be deemed excess to any insurance now in effect or in the future, which covers Contractor, its facilities, its agents, or employees. In addition, all insurance required by this clause must be written on either an "occurrence" or "claims made with prepaid tail" basis. Contractor is to be notified at least thirty (30) days prior to the cancellation or material modification of such insurance. Contractor shall be listed as an additional insured on Subcontractor's certificate of insurance.
- (d) Subcontractor shall require all affiliates and lower-tier subcontractors that provide services under this Subcontract to maintain the same insurance coverage at said parties sole cost and expense.

### 39) Suspect / Counterfeit Items

- (a) Suspect / Counterfeit Items ("SCI") may pose immediate and potential threats to the safety and security of Contractor's customers, their workers, the Department of Energy (DOE), the public and the environment. Subcontractor shall ensure all products delivered pursuant to this contract do not contain, include or incorporate SCI. Subcontractor is solely responsible for obtaining, collecting, maintaining, disseminating, and using the most accurate, up to date information on SCI and associated suppliers with respect to the equipment and materials provided by Subcontractor. To help identify

SCIs, the SCI Awareness Training Manual developed by the DOE Office of Health, Safety and Security can be accessed at:

<http://www.ptius.com/uploads/documents/DOESCITrainingManual.pdf>

- (b) If SCIs are discovered or suspected before and/or after delivery, Subcontractor shall promptly notify Contractor to determine an appropriate remedy. Subcontractor shall be solely responsible for all costs associated with the discovery, impoundment, removal, and/or replacement of materials and equipment that contain or exhibit SCI characteristics or conditions.
- (c) Unless otherwise specified, all materials, components and parts of manufactured equipment, including those permanently installed into systems, subsystems, and/or assemblies, shall be genuine, new (never used nor previously installed). Refurbished, rebuilt, or modified items are strictly prohibited unless specifically authorized in writing by Contractor. Materials and equipment delivered by Subcontractor shall include and display the original manufacturer's original labels, markings and/or other identification or recognized symbols with no modifications, alterations or additions.
- (d) Materials, equipment, and/or assemblies that consist of, contain or incorporate high strength fasteners (e.g., grades 5, 8, 8.2, A325, and A490, internally/externally threaded and greater than 0.25" in diameter), shall exhibit grade marks and the manufacturer's identification symbol (headmark), in accordance with the applicable specification (i.e., ASTM, SAE, etc.). Fasteners with head markings identified on the DOE SCI Headmark List set forth in the above mentioned SCI Training Manual are strictly prohibited.
- (e) Materials, equipment, or assemblies consisting of or containing electrical components shall display applicable amperage and voltage ratings, operating parameters, and original product manufacturer's labels and identification. Electrical components shall display applicable Underwriters Laboratory (UL) labels or Factory Mutual (FM) labels, or other labels as required by the ordering data or specifications.
- (f) Materials, equipment, or assemblies consisting of or containing mechanical, piping and piping system components shall clearly display the original manufacturer's labels or identification and all markings as required by the ordering data or specifications.
- (g) Materials, equipment, components or assemblies that do not display the required marks, symbols and/or original manufacturer's identification symbol as set forth herein or as required by the ordering data or specifications shall be deemed nonconforming.
- (h) Electronic components must be provided or procured from the original component manufacturer, or from a distributor, reseller or supplier authorized by the original manufacturer. For more information please see <http://www.aerospac.com/counterfeit.pdf>.
- (i) Contractor's discovery of any suspect or counterfeit condition that indicates deliberate misrepresentation of any supplied item will be reported to and may result in an investigation by the U.S. Government.

**40) Most Favored Customer Pricing**

All work or supplies purchased on a T&M or other cost reimbursable basis is subject to FAR part 31. Subcontractor hereby represents warrants and certifies that the pricing terms of such T&M or cost reimbursable items are competitive and not any less favorable than those charged to the Subcontractor's most favored customer, for like quantities of the same or similar service or supplies under like conditions. Contractor and/or its customer shall have the right to examine Subcontractor records to ensure compliance with this warranty and shall be entitled to a price reduction or refund in the event any cost is later determined to be unallowable pursuant to the FAR.

**41) Examination of Records by Comptroller General**

FAR Subpart 4.7 - (Applies if FAR 52.215-2, Audit and Records – Negotiation and subsequent Cost or Pricing data is required). The Comptroller General or a duly authorized representative from the General Accounting Office shall, until three years after final payment under this

Subcontract, or for any shorter period specified in FAR Subpart 4.7, Contractor's Records Retention, have access to, and the right to examine, any of the Subcontractor's directly pertinent books, documents, papers, or other records involving matters related to this Subcontract.

**42) Liability For Increased Costs Or Interest (Applies to Large Businesses Only).**

The Subcontractor is liable to the Government for any increased costs or interest resulting from Subcontractor's failure to comply with FAR 52.230-2 "Cost Accounting Standards" or FAR 52.230-6 "Administration of Cost Accounting Standards-General." The subcontract price is subject to adjustment by the Contractor to cover any increased costs or interest resulting from such failure.

**43) Incorporated By Reference**

Federal Acquisition Regulations (FAR) and Department of Energy Acquisition Regulations (DEAR) are incorporated herein by reference as if set forth in their entirety. Wherever necessary to make the context of the FAR or DEAR provisions set forth below applicable to this Subcontract or Purchase Order, the term "Contractor" shall mean Subcontractor, vendor or supplier under the Purchase Order or Subcontract, the term "subcontract" shall mean lower-tier subcontract, except the terms Government and contracting Officer do not change as set forth in the relative FAR or DEAR. Cited FAR and DEAR regulations can be found at the following web address: <http://farsite.hill.af.mil/http://farsite.hill.af.mil/vfdoea.htm>. Provisions incorporated by reference are those in effect on the date of the relevant purchase order or subcontract.

- DOE O 442 Differing Professional Opinions for Technical Issues Involving ES&H Technical Concerns
- FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data (>\$700,000)
- FAR 52.222-4 Contract Work Hours and Safety Standards Act— Overtime Compensation (>\$150,000)
- FAR 52.222-20 Walsh-Healey Public Contracts Act (>\$15,000)
- FAR 52.222-21 Prohibition of Segregated Facilities (>\$10,000)
- FAR 52.222-26 Equal Opportunity (>\$10,000)
- FAR 52.222-27 Affirmative Action Compliance Requirements for Construction (>\$10,000)
- FAR 52.222-35 Affirmative Action for Veterans (>\$100,000)
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (>\$10,000)
- FAR 52.222-37 Employment Reports on Veterans (if 52.225-35 applies)
- FAR 52.222-50 Combating Trafficking in Persons
- FAR 52.223-3 Hazardous Material Identification and Material Safety Data, Alternate I
- FAR 52.223-5 Pollution Prevention and Right to Know Information
- FAR 52.223-6 Drug-Free Workplace
- FAR 52.224-2 Privacy Act
- FAR 52.225-1 Buy American Act—Supplies (>\$3,000)
- FAR 52.225-9 Buy American Act—Construction Materials (<\$7,864,000)
- FAR 52.225-11 Buy American Act—Construction Materials under Trade Agreements (>\$7,864,000)
- FAR 52.225-13 Restrictions of Certain Foreign Purchases
- FAR 52.227-14 Rights in Data, General
- FAR 52.242-13 Bankruptcy
- FAR 52.244-6 Subcontracts for Commercial Items
- DEAR 952.203-70 Whistleblower Protection for Contractor Employees
- DEAR 952.204-71 Sensitive Foreign Nations Controls
- DEAR 952.208-70 Printing
- DEAR 952.250-70 Nuclear Hazards Indemnity
- DEAR 970.5204-3 Access to and Ownership of Records
- DEAR 970.5223-1 Integration of Environment, Safety, and Health into Work Planning and Execution

(The following Apply When Price is Greater Than \$150,000)

- FAR 52.203-5 Covenant Against Contingent Fees
- FAR 52.203-6 Restrictions on Subcontractor Sales to the Government
- FAR 52.203-7 Anti-Kickback Procedures
- FAR 52.203-12 Limitation on Payments to Influence Certain Federal

Transactions



FAR 52.204-4 Printing/Copying Double Sided on Recycled Paper  
FAR 52.215-2 Audit and Records – Negotiation (Applies if Cost or Pricing data is required)  
FAR 52.223-6 Drug-Free Workplace  
FAR 52.227-1 Authorization and Consent  
FAR 52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement  
FAR 52.227-3 Patent Indemnity  
FAR 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights

(The following apply when price is expected to exceed the threshold for submission of certified cost or pricing data at FAR [15.403-4](#) (>\$700,000)  
(APPLY IF COST OR PRICING DATA IS REQUIRED.)

FAR 52.215-10 Price Reduction for Defective Cost or Pricing Data  
FAR 52.215-11 Price Reduction for Defective Cost or Pricing Data – Modifications  
FAR 52.215-12 Subcontractor Cost or Pricing Data  
FAR 52.215-13 Subcontractor Cost or Pricing Data – Modifications  
FAR 52.230-2 Cost Accounting Standards (Large business only)  
FAR 52.230-6 Administration of Cost Accounting Standards—General (Large business only)