

GENERAL TERMS AND CONDITIONS FOR COMMERCIAL PURCHASES

**SAVANNAH RIVER MISSION COMPLETION LLC
SAVANNAH RIVER SITE AIKEN, SC 29808**

** Incorporated by reference to appropriate FAR clause (see <https://www.acquisition.gov/>)
and DEAR clause (<http://www.acquisition.gov/dears>)*

APPLICABLE TO ALL TRANSACTIONS

Table of Contents

1. DEFINITIONS	2
2. RESOLUTION OF DISPUTES	2
3. ORDER OF PRECEDENCE	2
4. ADMINISTRATION AND ASSIGNMENT	2
5. ACCEPTANCE OF TERMS AND CONDITIONS	3
6. WARRANTY	3
7. NEW MATERIALS AND NON-PROLIFERATION.....	4
8. SUSPECT/COUNTERFEIT PARTS.....	4
9. TITLE AND RISK OF LOSS.....	4
10. PAYMENT.....	4
11. PAYMENT BY ELECTRONIC FUNDS TRANSFER.....	5
12. TAX WITHHOLDING FOR NONRESIDENTS	5
13. COMPLIANCE WITH LAWS	6
14. TERMINATION FOR CONVENIENCE	6
15. TERMINATION FOR CAUSE	6
16. BANKRUPTCY	6
17. TAXES	6
18. CHANGES	6
19. SUSPENSION	7
20. SELLER’S LIABILITY FOR FINES AND PENALTIES	7
21. UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)	7
22. FOREIGN NATIONALS	7
23. ACCESS TO DOE-OWNED OR LEASED FACILITIES	8
24. FOREIGN GOVERNMENT SPONSORED OR AFFILIATED ACTIVITIES	8
25. BADGING REQUIREMENTS.....	9
26. SOFTWARE LICENSE	10
27. TRAVEL	11
28. INCORPORATION BY REFERENCE.....	11

1. DEFINITIONS

The following terms shall have the meanings below:

- A. Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- B. Company means Savannah River Mission Completion LLC (SRMC), under its prime contract with DOE. SRMC may also be referred to herein as the "Licensee".
- C. Seller means the person or organization that has entered into this Agreement/Subcontract. Seller may also be referred to herein as "Licensor".
- D. Item includes "commercial item," "commercial component," and "service" as defined in Federal Acquisition Regulation (FAR) 2.101.
- E. "Software" means the specified software and/or source code licensed by the Licensor to the Licensee under this Agreement/Subcontract.

2. RESOLUTION OF DISPUTES

- A. Seller shall not be entitled to and neither the Company nor the Government shall be liable to the Seller or its lower tier suppliers or subcontractors for damages in tort (incl. negligence), or contract, or otherwise, except as specifically provided in this Agreement/ Subcontract.
- B. Seller and Company agree to make good-faith efforts to settle any dispute or claim that arises under this Agreement/Subcontract through discussion & negotiation. If such efforts fail to result in a mutually agreeable resolution, the parties shall consider the use of Alternative Disputes Resolution (ADR). In the event non-binding mediation or arbitration is agreed upon, the site of the proceedings shall be Aiken, South Carolina. The mediator or arbitrator shall allocate cost, except that there shall be no pre-decisional interest costs, & each party shall bear its discretionary costs. In the event that ADR fails or is not used, the parties agree that the appropriate forum for resolution shall be as follows:
 - (1) Any litigation shall be brought & prosecuted exclusively in Federal District Court, with venue in the U.S. District Court for the District of South Carolina, Aiken Division.
 - (2) Provided, however, that in the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in State Court in Aiken County, South Carolina.
- C. The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with the laws of the State of South Carolina.
- D. There shall be no interruption in the prosecution of the work, and the Seller shall proceed diligently with the performance of this Agreement/Subcontract pending final resolution of any dispute arising under this Agreement/Subcontract between the parties hereto or between the Seller, and its sub-tier Agreement/Subcontracts.

3. ORDER OF PRECEDENCE

- A. Any inconsistencies shall be resolved in accordance with the following descending order of precedence:
 - (1) Purchase order.
 - (2) Any Special Provisions.
 - (3) These General Provisions.
 - (4) Other provisions of this Order, whether incorporated by reference or otherwise.
- B. Wherever references are made in this Order to standards or codes in accordance with which the Work under this Order is to be performed, the edition or revision of the standards or codes current on the effective date of this Order shall apply unless otherwise expressly stated in the specifications and drawings. In case of conflict between any reference standards and codes and any Order Document, the latter shall govern.
- C. Seller shall perform all Work pursuant to this Order as an independent contractor. If any part of the Work is subcontracted, Seller is responsible for having that subcontracted Work comply with the terms of this Order. No act or order of SRMC shall be deemed to be an exercise of supervision or control of performance hereunder. No provision of this Order and no action taken by SRMC under this Order shall be construed to make or constitute SRMC the employer or joint employer of any of the employees of Seller or any sub-tier subcontractor or supplier.

4. ADMINISTRATION AND ASSIGNMENT

SRMC shall make payments under this Agreement/Subcontract from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. This Agreement/Subcontract may be assigned by the Company to DOE or its designee, and in case of such transfer and notice thereof to the Seller, the Company shall have no further responsibilities hereunder. The Seller shall not assign rights or obligations to third parties without the prior written consent of the Company. However, the Seller may assign rights to be paid amounts due or to become due to a financing institution if the Company is promptly furnished written notice and a signed copy of such assignment. Payments to an assignee shall be subject to set off

or recoupment for any present or future claims of the Company against the Seller.

5. ACCEPTANCE OF TERMS AND CONDITIONS

- A. Seller, by signing this Agreement/Subcontract or delivering the items identified herein, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement/Subcontract incorporated by reference or attachment. The Company hereby objects to any terms and conditions contained in any acknowledgment of this Agreement/Subcontract that are different from or in addition to those mentioned in this document. Failure of the Company to enforce any of the provisions of this Agreement/Subcontract shall not be construed as evidence to interpret the requirements of this Agreement/Subcontract, nor a waiver of any requirement, nor of the right of the Company to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement/Subcontract.
- B. If any part of the Work is subcontracted, the Seller is responsible for having the subcontracted Work comply with the terms of this Agreement/Subcontract.
- C. When the use of sub-tier supplier(s) is deemed necessary, Seller is responsible to flow down those Technical and Quality requirements deemed applicable for the activities within its defined scope of work, in accordance with referenced Codes/Standards/Material Specifications, or other requirements identified within the procurement documents included with this Purchase Order/Subcontract package. Seller is furthermore responsible to flow down all commercial Terms and Conditions, including articles incorporated by reference, to all sub-tier suppliers, which includes verification that the sub-tier supplier has been appropriately qualified to perform the activities required to satisfy this procurement. Seller must maintain objective evidence of the successful flow down of the referenced requirements and provide such evidence to Company upon request. This flow down is also required at all levels if the sub-tier supplier to the Prime Seller deems it necessary to further subcontract its parts of this Agreement/Subcontract.
- D. When NQA-1 is invoked as the governing standard, Seller and applicable sub-tier supplier(s) shall be required to meet the Part 1 Basic Requirements (Section 100). Additional Sections of NQA-1 Part 1, (Sections 200 and above), and NQA-1 Part II, may be invoked at the discretion of Company via the procurement documents, and if invoked, must be flowed down from the Seller to its applicable sub-tier supplier(s) at all levels. If the Prime Seller or its sub-tier supplier(s) intends to upgrade materials by way of a Commercial Grade Dedication Process, Company must be notified of this intent and the Seller's process verified and approved prior to dedicating any material associated with Company procurement.
- E. The SRMC Buyer is to be notified in writing, within five working days of any changes within your Company as identified below:
 - (1) Key quality personnel to include as a minimum:
 - (i) Quality Assurance/Quality Control Manager
 - (ii) Assistant Quality Assurance/Quality Control Manager
 - (iii) Other critical Quality Assurance/ Quality Control personnel
 - (2) Quality Assurance Program Revisions
 - (3) Company ownership transfers/buy-outs, and
 - (4) All identified Nonconformance or Corrective Action Reports associated with SRMC subcontracts including those issued concerning sub-tier suppliers.

6. WARRANTY

- A. Seller warrants that items delivered under this Agreement/Subcontract shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of this Agreement/Subcontract. The warranty shall begin upon receipt of conforming items and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if the Seller is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer of the item or has modified it. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such items or re- perform services at Seller's election. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Seller's expense. Company shall notify Seller of such nonconformity within a reasonable time after discovery, and Seller shall notify Company of whether it chooses to make repairs or replacements within three (3) working days after Company's notice of nonconformity. If repair or replacement or re- performance of services is not timely, Company may elect to return the nonconforming items or repair or replace them or re-procure the services at Seller's expense.
- B. Latent Defects:

In the event the Seller becomes aware of any latent defect(s) in any item(s) furnished under this Agreement/Subcontract, the Seller shall promptly notify the SRMC Procurement Representative. This notice shall

provide at a minimum the following information:

- (1) full description of the item(s);
- (2) manufacturer, model and/or part number;
- (3) complete description of the latent defect;
- (4) impact of the defect on the operation of the item(s);
- (5) action(s) to be taken by the Company relative to return, re-fit, repair, etc.;
- (6) date of purchase by Company; and,
- (7) applicable Company Agreement- Subcontract number.

- C. In the case of software furnished under this Agreement/Subcontract, Licensor of such software warrants for a period of one (1) year following the date of this Agreement/Subcontract that the Software is free of defects and is fit for the purposes intended by Company and the Licensor shall provide Company with correction of errors found in the original software. Such corrections shall be provided at no cost to the Licensee. If Licensor is called upon by Company to undertake error exploration or correction, and such error is found to be caused by Company supplied data, modification of Software by Company, compiler or operating system characteristics, or any other cause not inherent in the original Software, Licensor may submit a proposal for adjustment in the order price for such services at the Licensor's standard rate then in effect.

7. NEW MATERIALS AND NON-PROLIFERATION

- A. Unless otherwise specified in this Agreement/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.
- B. If any item(s) provided under this Subcontract are foreign made and will require importation into the United States to fulfill the requirements under this Subcontract, the Seller represents that delivery of such items will not violate any non-proliferation laws, rules or regulations of the country or countries from which the materials are to be exported.

8. SUSPECT/COUNTERFEIT PARTS

- A. Seller shall supply products at Savannah River Site that are not and do not contain suspect/counterfeit parts. A suspect item is an item in which there is an indication by visual inspection, testing, or other information that it may not conform to established government or industry accepted specifications or national consensus standards. A suspect/counterfeit item is any item that is a copy or substitute without legal right or authority to do so, or one whose material, performance, characteristics or identity does not appear to be authentic and is verified to be either counterfeit or fraudulent. Failure by the Seller to document material substitution or identify that an item has been refurbished or remanufactured is considered to be fraud, and the item then becomes suspect/counterfeit.
- B. If it is determined that a suspect/counterfeit part has been supplied, Company will impound the items pending a decision on disposition. The Seller may be required to replace such items with items acceptable to Company and shall be liable for all costs relating to the impoundment, removal, and replacement. Company may also notify the local DOE Office of Inspector General and reserves the right to withhold payment for the items pending results of the investigation.

9. TITLE AND RISK OF LOSS

- A. Unless otherwise provided in the Agreement/Subcontract, title to the items purchased under this Agreement/Subcontract shall pass directly to the Government upon, and the risk of loss or damage to the items shall remain with the Seller until and shall pass to the Company upon:
- (1) If F.O.B. Shipping point Completion of delivery to the carrier and any loading by the Seller.
 - (2) If F.O.B. Destination: Completion of delivery or commencement of unloading by the Company at the delivery point.
- B. However; (1) if the Purchase Order provides for formal acceptance of any items by the Company, then title to such items shall pass directly to the Government upon such formal acceptance; and (2) the title and risk of loss or damage to items that are nonconforming shall remain with the Seller until acceptance of the items by the Company as conforming.

10. PAYMENT

- A. Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, if required, or (2) delivery of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Seller indicates. Credit and discount periods shall be computed from the date such invoice is so payable to the date SRMC's check is mailed or, for Electronic Funds Transfer (EFT), the specified payment date. Notwithstanding anything herein, Company shall be entitled at any and all times to set off against any amounts payable at any time by Company hereunder any amount owing from Seller to Company under this Order or other orders with Seller.

B. Overpayments:

If Seller becomes aware of a duplicate invoice payment or that Company has otherwise overpaid on an invoice payment, the Seller shall immediately notify Company and request instructions for disposition of the overpayment.

11. PAYMENT BY ELECTRONIC FUNDS TRANSFER

A. Methods of Payment:

(1) All payments by Company under this Order shall be made by Electronic Funds Transfer (EFT) except as provided in Paragraph A.2 of this Provision. As used in this provision, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event Company is unable to release one or more payments by EFT, Seller agrees to either:

- (i) Accept payment by check or some other mutually agreeable method of payment; or
- (ii) Request Company to extend payment due dates until such time as Company makes payment by EFT.

B. Mandatory Submission of Seller's EFT Information:

Seller is required to provide Company with the information required to make payment by EFT. Seller shall provide this information directly to the office designated in this Order, on forms provided by Company, no later than 15 days after award. If not otherwise specified in this Order, the payment office is the designated office for receipt of Seller's EFT information. In the event that the EFT information changes, Seller shall be responsible for providing the updated information to the designated office.

C. Mechanisms for EFT Payment:

Company may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System.

D. Suspension of Payment:

(1) Company is not required to make any payment under this Order until after receipt, by the designated office, of the correct EFT payment information from Seller. Until receipt of the correct EFT information, any invoice or subcontract financing request shall be deemed not to be a proper invoice for the purpose of payment under this Order.

(2) If the EFT information changes after submission of correct EFT information, Company shall begin using the changed EFT information no later than 30 days after its receipt by the designated office. However, Seller may request that no further payments be made until the updated EFT information is implemented by the payment office.

E. Payment Information:

On the day payment on Seller's invoice is due, Company will issue instructions to its bank to transfer payment to Seller and will also send a FAX to Seller explaining the details to support the payment.

F. Liability for Uncompleted or Erroneous Transfers:

(1) If an uncompleted or erroneous transfer occurs because Company used the Seller's EFT information incorrectly, Company remains responsible for –

- (i) Making a correct payment; and
- (ii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because Seller's EFT information was incorrect, or was revised within 30 days of Company release of the EFT payment transaction instructions to the bank, and;

- (i) If the funds are no longer under the control of the payment office, Company is deemed to have made payment and the Seller is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, Company shall not make payment and the provisions of paragraph D shall apply.

12. TAX WITHHOLDING FOR NONRESIDENTS

A. Withholdings required by section 12-8-550 do not apply to payments on orders for tangible personal property when those payments are not accompanied by services to be performed within the state of South Carolina.

B. Under Title 12 of the Code of Laws of South Carolina, section 12-8-550, two (2) percent of each and every payment made to Seller and Subcontractors who are nonresidents of the State of South Carolina and are conducting a business or performing personal services of a temporary nature carried on within South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where an order or a subcontract exceeds or could reasonably be expected to exceed ten thousand dollars (\$10,000.00) Company will withhold as required by law.

C. Under Title 12 of the Code of Laws of South Carolina, section 12-8-540, seven (7) percent (five (5) percent for corporations) of each and every payment of rentals or royalties to subcontractors who are nonresidents of the State of South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where the payments amount to twelve hundred dollars (\$1,200.00) or more a year. Company will withhold as required by law.

- D. The above withholdings will not be made provided Seller presents the affidavit of registration with the South Carolina Department of Revenue or the South Carolina Secretary of State's Office, or proof of having posted the appropriate bond with the South Carolina Tax Commission.

13. COMPLIANCE WITH LAWS

Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations, including new provisions of 10 CFR 851 relating to Health and Safety. Compliance shall be a material requirement of this Agreement/Subcontract.

14. TERMINATION FOR CONVENIENCE

Company may, in its sole discretion, terminate the Agreement/Subcontract, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Seller a written notice of termination. Upon receipt of a notice of termination, the Seller shall, unless the notice requires otherwise, discontinue all performance on the date and to the extent specified in the notice, and shall otherwise minimize costs to the Company. Payment for items already completed or in the process of completion, shall be adjusted between the Seller and the Company in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the items, or any anticipated profits thereon. Such payment for items already completed or in the process of completion shall be the total compensation due to the Seller for termination at will by the Company. If this is an order for Software, Company shall pay to Licensor any fees due under the terms of this Order licensed up to the date of termination but shall have no further liability.

15. TERMINATION FOR CAUSE

- A. Company may terminate this Agreement/Subcontract for cause, in whole or in part, if the Seller fails to comply with any of the terms of this Agreement/Subcontract or fails to provide adequate assurance of future performance. In that event, Company shall not be liable for any amount for items not accepted.
- B. If this Agreement/Subcontract is terminated for cause, Company may require Seller to deliver to the Company any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of this Agreement/Subcontract. Company shall pay the agreed-upon price for completed items delivered and accepted. Company and Seller shall agree on the amount of payment for all other deliverables.
- C. Seller shall not be liable to Company for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence, including but not limited to acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of Seller's suppliers at any tier. However, the delays of Seller's suppliers at any tier must be proved to be beyond the control of both Seller and its suppliers and without fault or negligence of either
- D. If this Agreement/Subcontract is for Software, as defined herein, either party may, by written notice, terminate this Order, in whole or in part without liability therefore if such other party fails to perform in accordance with any provision hereof; provided, however, that in the event of a termination under this paragraph D, the terminating party shall first have given the other party a written notice specifying the failure complained of and thirty (30) days to cure such failure. In the event of termination of the Order in whole or in part, Company will destroy or return to Licensor all affected Software and documentation and all copies thereof.
- E. The rights and remedies of the Company in this clause are in addition to any other rights and remedies provided by law or under this Agreement/Subcontract.

16. BANKRUPTCY

If Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Company Agreement/Subcontract Administrator responsible for administering this Agreement/Subcontract within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the Agreement/Subcontract numbers for which final payment has not been made.

17. TAXES

Seller shall not collect an increment for South Carolina sales or use tax from the Company for the items provided under this Agreement/Subcontract beyond such taxes paid by Seller to its suppliers. The Agreement/Subcontract price includes all applicable federal, state, and local taxes and duties.

18. CHANGES

Company reserves the right to make changes within the general scope of this Agreement/Subcontract by issuance of a unilateral change order, or by a bilateral modification to this Agreement/Subcontract. Such changes may include, without

limitation, changes in (1) the description of the items; (2) the quantities of items ordered; (3) the method of shipment or packaging, and (4) the time or place of delivery, inspection, or acceptance. Seller shall promptly comply with any such change made by the Company. If any change affects the cost of or the time required for performance, an equitable adjustment to the price and/or delivery requirements and other affected provisions of the Agreement/Subcontract shall be made by the parties in a bilateral modification to this Agreement/Subcontract.

19. SUSPENSION

Company may, for any reason, direct Seller to suspend performance of any part of or all of the performance of this Agreement/Subcontract for an indefinite period of time. If any such suspension significantly delays the progress of or causes Seller additional direct expenses in the performance of the Agreement/Subcontract, not due to the fault or negligence of Seller, the compensation to the Seller shall be adjusted by a modification to this Agreement/Subcontract on the basis of the additional direct expenses of the Seller to perform the Agreement/Subcontract and the time of performance of the Agreement/Subcontract shall be extended by the actual duration of the suspension. Any claim by Seller for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to Seller to resume the performance of the Agreement/Subcontract.

20. SELLER'S LIABILITY FOR FINES AND PENALTIES

- A. Seller is liable to Company for all fines and penalties assessed by any governmental entity against Company or DOE as a result of Seller's failure to perform its work under this Agreement/Subcontract in compliance with the requirements of this Agreement/Subcontract.
- B. Seller shall indemnify, defend and hold harmless Company and DOE from and against any and all claims, demands, actions, causes of action, suits, damages, expenses, including attorney's fees, and liabilities whatsoever resulting from or arising in any manner on account of the assessment of said fines and penalties against Company or DOE.

21. UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

In the performance of this order, the Seller is responsible for complying with the following requirements and for flowing down all requirements to lower tier suppliers.

- A. The Seller ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE O 471.1B. Seller may provide access to material or data containing Unclassified Controlled Nuclear Information (UCNI) utilized in the performance of this Order only to employees who are citizens of the United States.
- B. The Seller ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE O 471.1B. Any material or data containing UCNI which is stored on computer systems must be protected, and the protective measures and/or policies must be specified in a Computer Protection Plan approved by the SRMC Computer Security organization. Adherence to the Plan is required during the performance of this Order.
- C. Material or data containing UCNI shall be disposed of in a manner as described in DOE O 471.1B. At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than 1/4-inch wide strips. Documents containing UCNI may also be disposed of in the same manner that is authorized for Seller disposition of other classified material or data. If the above disposal methods are not available to the Supplier, the Seller may return the UCNI matter to the STR for disposition, with the prior approval of the STR.
- D. Seller shall report to the SRMC Security Office or the SRMC Purchasing Representative any incidents involving the unauthorized disclosure of UCNI.
- E. If performance of work under this order results in the generation of unclassified documents that contain UCNI, Seller shall have a sufficient number of trained UCNI review personnel to ensure the prompt and proper review of generated material or data to provide for the identification, marking, and proper handling of material or data determined to contain UCNI. The Seller's Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE O 471.1B.
- F. If the Seller has a formally designated Classification Officer, the Classification Officer-
 - (1) Serves as a Reviewing Official for information under his/her cognizance;
 - (2) Trains and designates other Reviewing Officials in his/her organization, subordinate organizations, and lower tier suppliers and maintains a current list of all Reviewing Officials; and
 - (3) May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.
- G. If the Seller has no formally designated Classification Officer, the Seller submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions contained in DOE O 471.1B.

22. FOREIGN NATIONALS

As used in this Article, the term "Foreign National" is defined to be a person who was born outside the jurisdiction of the

United States, is a citizen of a foreign government and has not been naturalized under U.S. law.

- A. Seller shall obtain the approval of Company, in writing, prior to any visit to a DOE or SRMC facility by any Foreign National in connection with work being performed under this Order, in accordance with the requirements of DOE Order 142.3A Chg 1 (MinChg), Unclassified Foreign Visits and Assignments Program. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontract service work, including delivery of materials, or for courtesy purposes. The term "visit" also includes officially sponsored attendance at a DOE or Company event offsite from the DOE/Company facility but does not include offsite events and activities open to the general public. Subcontractors should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the SRMC Purchasing Representative at least four (4) to six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited. Forms can be obtained from the SRMC Purchasing Representative.
- B. In addition, Seller shall obtain the approval of the SRMC Purchasing Representative, in writing, prior to the employment of, or participation by, any Foreign National in the performance of work under this Subcontract or any lower tier Subcontract at offsite locations. Such approvals will be processed in accordance with the requirements of DOE Order 142.3A Chg 1 (MinChg).
- C. In the performance of offsite work, Foreign Nationals only incidentally involved with an SRMC Subcontract, and who have no knowledge that their activities are associated with SRMC Subcontract work, are exempt from the above.

23. ACCESS TO DOE-OWNED OR LEASED FACILITIES

(This Article only applies if employees of Seller will require physical access to DOE-owned or leased facilities.)

- A. The performance of this Order requires that employees of Seller have physical access to DOE-owned or leased facilities. Seller understands and agrees that DOE has a prescribed process with which Seller and its employees must comply in order to receive a security badge that allows such physical access. Seller shall propose employees whose background offers the best prospect of obtaining a security badge approval for access. This clause does not control requirements for an employee obtaining a security clearance.
- B. Seller shall assure:
 - (1) Compliance with procedures established by DOE and Company in providing its employees with any forms directed by DOE or Company;
 - (2) Employees properly complete any forms;
 - (3) Employees submit the forms to the person designated by the SRMC Procurement Representative;
 - (4) Employees cooperate with DOE and Company officials responsible for granting access to DOE-owned or leased facilities; and
 - (5) Employees provide additional information requested by those DOE/Company officials.
- C. Seller understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE or Company that an employee's application for a security badge is or will be denied, Seller shall promptly identify and submit the appropriate forms for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Order or any Seller claim against DOE or Company.
- D. Seller shall return to the SRMC Procurement Representative, or designee, the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE- owned or leased facilities by Seller's employee(s) upon:
 - (1) Termination of this Order.
 - (2) Expiration of this Order.
 - (3) Termination of employment on this Order by an individual employee.
 - (4) Demand by DOE/Company for return of the badge.
- E. Seller shall include this clause, including this paragraph E. in any lower tier subcontract, awarded in the performance of this Order, in which an employee(s) of the lower tier subcontractor will require physical access to DOE-owned or leased facilities.

24. FOREIGN GOVERNMENT SPONSORED OR AFFILIATED ACTIVITIES

(Article only applies if this is a demonstration or R&D subcontract and if the subcontractor's work scope is performed on or at a DOE/NNSA site/facility, including DOE/NNSA/contractor leased space).

- A. Subcontractor is responsible for complying with the applicable requirements of DOE Order 486.1A CRD Attachment 1 and Attachment 2 and cooperate with Contractor to allow Contractor to comply with the requirement

of DOE Order 486.1A CRD.

B. According to DOE Order 486.1A, Attachment 1:

Contractor Personnel participation in any Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk, as defined in Attachment 2, is prohibited. Contractor Employee participation in any Other Foreign Government Sponsored or Affiliated Activity is restricted.

The Contractor must utilize due diligence to ensure that (1) Contractor Personnel performing work within the scope of the DOE contract, working at any level, are not participants in any Foreign Government-Sponsored Talent Recruitment Program of a Foreign Country of Risk; and (2) Contractor Employees performing work within the scope of the DOE contract, working at any level, are not participants in any Other Foreign Government Sponsored or Affiliated Activity.

C. According to DOE Order 486.1A, Attachment 2:

“Contractor Personnel” includes any research and development (R&D) or Demonstration subcontractor employee, joint appointee from another institution, and any other individual performing R&D work, whether compensated or uncompensated, within the scope of the prime DOE contract either on-site at the DOE/NNSA site/facility or in DOE/NNSA/contractor leased space.

25. BADGING REQUIREMENTS

A. Photo Badge:

- (1) Employees may be issued a site access photo badge for a period not to exceed one year. To obtain a Photo Badge, Seller employees and any lower tier subcontractor employees must be processed through SRMC’s Subcontract Badging Procedure and are subject to investigation by Governmental authorities. All badges must be returned or accounted for prior to final payment. All employees must be at least 18 years old.
- (2) Seller employees and any lower tier/sub-tier subcontractor employees shall complete Subcontractor Employee Data Sheet and Fingerprint Cards. If a long-term badge is required (period greater than six (6) months) the employee will also be required to complete form SF 85, “Questionnaire for Non-Sensitive Positions”, and form OF 306, “Declaration for Federal Employment”. These forms are required for the Governments use in conducting background investigations per Homeland Security Presidential Directive HSPD-12. Copies of these forms are available on the Company Internet Home Page at <http://www.srsimcc.com/>.
- (3) Seller will observe the following badging procedure for processing employees through employment and security orientation:
 - (i) A minimum of two working days prior to the start of the badging and orientation process, Seller shall transmit the following information to the STR (or the End User if an STR is not appointed for this order):
 - Subcontract Number
 - Employee name
 - Employee address
 - Employee Social Security Number
 - Employee Date of Birth
 - (ii) Seller employees shall report to SRS Building 703-46A at SRS Road 1, approximately two miles east of SC Highway 125 in Jackson, SC. Employee shall be given a temporary badge for travel to SRS Central Shops Area for Substance Abuse Program (SAP) Testing. (See Article titled “Workplace Substance Abuse Programs.”)
 - (iii) Each employee must successfully pass General Employee Training (GET) prior to undergoing the Photo Badging procedure. See Article titled “General Employee Training and Annual Refresher Training for Subcontract Employees”. GET is given on Monday of each week in the Jackson, SC municipal building, and should be scheduled well in advance of the desired date in order to assure placement.
 - (iv) The orientation and badging process will take approximately four (4) hours.
- (4) The maximum duration that Subcontractor employees will be issued a site access badge is one (1) year. Subcontractor employees requiring a new badge will report to the Badge Office and repeat the badging process.
- (5) If Work under this Subcontract is to be performed in security areas, all personnel will be required to sign in and out at security gates and are subject to a search of their person and belongings at entrances to or exit from the area.

B. Temporary Badge (typically for visitors and short-term personnel):

- (1) Temporary badges are valid for a maximum of 10 calendar days per person in a calendar year. To avoid unnecessary expiration, these badges should be returned to the badge office immediately upon completion of need.
- (2) Two working days prior to the need date, subcontractor shall transmit the following information to the STR/End User:
 - Subcontract Number
 - Employee name
 - Employee address
 - Employee Social Security Number
 - Employee Date of Birth
- (3) The Assigned Competent Person (ACP) (Seller or Company employee) shall perform Task Analysis of scope to be performed and identify any applicable contractual task specific checklist(s) from the subcontractors accepted Worker Protection Plan or SRMC's Focused Observation Database if a WPP is not required by the terms of this order.
- (4) ACP shall provide advance copy of any task specific safety checklist(s) to personnel seeking temporary badges.
- (5) Badge Office provides initial security briefing, issues registration card and obtains acknowledgement signature, issues "maroon" Visitors Badge for duration requested by STR/End User.
- (6) ACP reviews any applicable checklist(s) and performs focused observations as directed by the STR/End User.
- (7) Upon completion of scope, return badge to Badge Office upon exiting SRS.

C. Identity Verification:

- (1) In order to receive a photo or temporary badge for entry to SRS, Seller/subcontractor employees, except delivery personnel (see subparagraph (2) below), will be required to present two specific forms of identification from the "List of Acceptable Documents" (Department of Homeland Security Form I- 9, copy available on the SRMC Internet Home Page at <http://www.srsimcc.com/>. At least one of the documents selected from the list must be a valid State or Federal government-issued picture ID.

- (2) Vendor Delivery Personnel:

Unbadged personnel seeking a temporary badge for material/equipment deliveries will be required to present one form of picture identification that will verify their identity, such as a valid state driver's license that includes a photograph. Delivery personnel shall enter the site at the Aiken Barricade located approximately one (1) mile south of SC Highway 278, and will be escorted at all times to the delivery location and back to the entrance barricade by Wackenhut Services, Inc assigned escorts, or by Assigned Competent Persons (Company or Seller).

- D. If Seller or any lower tier/sub-tier subcontractor should independently suspend or remove an employee from work at the Savannah River Site (SRS) for unsafe acts or behavior, Seller shall immediately notify the STR/End User, return the employee's badge to the STR/End User, and provide the STR/End User with written notification of the employee's name and reason(s) for such suspension or removal.

26. SOFTWARE LICENSE

(The following Article only applies if Software is furnished under this Order.)

Licensor hereby grants to Company a nonexclusive, transferable license to use the Software subject to the following terms, conditions, and restrictions:

- A. The license granted under this agreement authorizes Company to unlimited use of the Software in any machine-readable form on the single central processing unit (hereinafter referred to as "CPU"), or multiple central processing units controlled by a single operating system (together referred to as "CPU") designated by type, serial number, and location as follows:
 - Type _____
 - Serial No. _____
 - Location _____
- B. If the CPU designated in paragraph 1.1 becomes inoperative due to malfunction, preventive maintenance, or engineering changes, Software may be temporarily transferred to a backup CPU until the designated CPU is restored to operative status.
- C. Company acknowledges that Licensor considers Software to contain proprietary data and as such Company agrees that, during the term of this agreement and for a period of one year following termination of this agreement, to treat Software with the same degree of caution, care, and confidentiality as it treats its own proprietary information and in accordance with the provisions of this agreement, except that such obligations shall not extend to any information or technical data relating to Software which is now available to the general public or which later becomes available to the general public by acts not attributable to Company and its employees. All such proprietary data shall be so identified

and marked by Licensor at the time it is conveyed to Company. Except as may be required for Licensee's own archival purposes, Company shall not knowingly make or allow others to make copies or reproductions of the Software in any form without written consent of Licensor.

- D. Use of Software shall be limited to work under Licensee's DOE Contract (#89303322DEM000068), and any transfers are limited to DOE or successor contractors.

27. TRAVEL

Travel, per diem and lodging costs are not reimbursable under this Subcontract. If travel costs outside the scope of this Order is required, a separate subcontract will be negotiated.

28. INCORPORATION BY REFERENCE

This Agreement/Subcontract incorporates certain clauses by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) provisions incorporated by reference. As used in these clauses:

“Contract” means this Subcontract or Purchase Order (except in instances when it is not applicable or appropriate) and includes changes and modifications to this Subcontract.

“Contractor” or “Supplier” means the party to whom this Subcontract or Purchase Order is awarded (except in instances when it is not applicable or appropriate).

“Government” means SRMC (except in instances when it is not applicable or appropriate. At a minimum, the change in meaning to “SRMC” does not apply to clauses addressing (i) property, real, personal, intellectual or mixed (SRMC authorized to exercise all rights the Government possesses under such clauses), (ii) nuclear or other governmental indemnification of the Contractor, or (iii) when a right, act, authorization, or obligation can be granted or performed only by the Government’s duly authorized representative).

“Contracting Officer” means the Procurement Representative of SRMC (except in instances when it is not applicable or appropriate. At a minimum, the change in meaning to “SRMC” does not apply to clauses addressing (i) property, real, personal, intellectual or mixed (SRMC authorized to exercise all rights the Government possesses under such clauses), (ii) nuclear or other governmental indemnification of the Contractor, or (iii) when a right, act, authorization, or obligation can be granted or performed only by the Government’s duly authorized representative).

“Subcontractor” means any party entering into an agreement with the Supplier or any lower tier subcontractor for the furnishing of supplies or services required for performance of this Subcontract.

The following clauses are incorporated by reference:

(This Clause is applicable to all subcontracts for commercial purchases.)

FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreement of Statements (JAN 2017)

(This Clause is applicable if Order exceeds \$10,000.)

)FAR 52.222–40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010)

(This Clause is applicable if Order exceeds \$15,000.)

FAR 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020)

(This Clause is applicable if Order exceeds \$150,000.)

FAR 52.222-35, Equal Opportunity for Veterans(JUN 2020)

(This Clause is applicable if Order exceeds \$150,000.)

FAR 52.222–37, Employment Reports on Veterans (JUN 2020)

(This Clause is applicable if Order exceeds \$700,000 and the Order offers further subcontracting opportunities.)

FAR 52.219-8, Utilization of Small Business Concerns (OCT 2018)*

*If the lower-tier subcontract (except subcontract to small business concerns) exceeds \$700,000 on the date of the subcontract award, subcontractor must include 52.219-8 in lower tier subcontract that offer further subcontracting opportunities.

(This Clause is applicable if Order exceeds \$6 million and has a period of performance of more than 120 days.)

FAR 52.203-13, Contractor Code of Business Ethics and Conduct (JUN 2020)*

*In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(This Clause is applicable if Order may involve public liability as a result of a nuclear incident.)

DEAR 952.250-70, Nuclear Hazards Indemnity Agreement (AUG 2016)

(This Clause is applicable if subcontractor employees will have access to a system of contractor records, otherwise handle PII, or design, develop, maintain, or operate a system of contractor records.)

FAR 52.224-3, Privacy Training (JAN 2017)

(This Clause is applicable if Subcontract is with a small business concern.)

FAR 52.232-40, Providing Accelerated Payments to Small Business Subcontractors (DEC 2013)

(This Clause is applicable if this Order is a contract or agreement for ocean transport services or a construction contract.)

FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006)

(This Clause is applicable to all subcontracts for commercial purchases.)

FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017).

(This Clause is applicable to all subcontracts for commercial purchases.)

FAR 52.244-6, Subcontracts for Commercial Items (JUL 2021)

(This Clause is applicable to all subcontracts for commercial purchases.)

FAR 52.204-23, Prohibition on Contracting for Hardware, Software and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018).

(This Clause is applicable to all subcontracts for commercial purchases.)

FAR 52.204-27, Prohibition on a ByteDance Covered Application (i.e., TikTok) (JUNE 2023)

(This Clause is applicable to all subcontracts for commercial purchases.)

FAR 52.222-90, Addressing DEI Discrimination by Federal Contractors (DEVIATION APR 2026)

(This Clause is applicable to all subcontracts for the acquisition of commercial products or commercial services, 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.)

FAR 52.204-21, Basic Safeguarding of Covered Contractor Information Systems (JUN 2016)

(This Clause is applicable to all subcontracts for the acquisition of commercial products or commercial services)

FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020).

(This Clause is applicable to all subcontracts with agents; The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that exceed \$550,000 and is for supplies, other than for COTS, to be acquired outside the US or for services to be performed outside the US))

FAR 52.222-50, Combating Trafficking in Persons (JAN 2019)